

Benchmac & Ince

Corporate Newsletter

October– December, 2020
4th Quarter (Q4), 2020 Edition

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Getting Started

By Ike C. Ibeku

Managing Partner, Benchmac & Ince

What a rollercoaster 2020 has been!

Who would have thought when we wished each other happy new year 2020, it would have panned out this way? In all, we give thanks for the joy of family, friends and colleagues- that we all are alive to see the year end.

Nigerian economy in Q4 took quite a bit of wind off it- with the ENDSARS protest hinged on police brutality that quickly degenerated into massive looting and destruction by hoodlums coupled with the growing numbers of the new variant of COVID-19 and the ensuing global economic downturn.

Some good news in all of these, the Company and Allied Matters Act 2020 was passed into law coming 30 years after the previous legislation, ditto the Banking and Other Financial Institutions Act 2020 which were all assented by Mr President in Q4 2020. These hopefully, together with the Finance Act 2020, are all expected to jumpstart the economic upturn.

On a rather sad note, the new strain of the COVID-19 virus is leaving loads of families grieving and our heart goes out to all those who have lost loved ones including the family of our March 2020 retreat keynote speaker, the inspirational Ubong King. We must each endeavour to protect the other by masking up and conforming to the covid protocols. We definitely look forward to a healthier 2021.

2. THE ECONOMY

CAPITAL IMPORTATION INTO NIGERIA UP BY 12.86%.

The Nigeria Bureau of Statistics has announced that capital importation into Nigeria in the third quarter of 2020 stood at \$1,461.49m. This represents a 12.86% increase when compared to the 2nd quarter of 2020. However, when compared with the corresponding period of 2019, a decrease of -74% is reflected.

During the period under review, Foreign Direct Investment (FDI) accounted for 28.38%(\$414.79m) of total capital imported, Portfolio investment rakes up 27.87%(\$407.25m) while other investment accounted for 43.75%(\$639.44m) of total capital imported.

Lagos State was the investment destination of choice accounting for over 82.71% (\$1,208.74m) of the total capital inflow, while the United Kingdom tops the capital investment source accounting for 40.69% (\$594.65m) of the entire sum. [Read More...](#)

NIGERIA ECONOMY CONTRACTS BY 3.62% YEAR-ON-YEAR IN THE THIRD QUARTER.

According to the Nigerian Bureau of Statistics (NBS), the Nigerian economy has contracted by 3.62% year-on-year in real terms in the third quarter of 2020. This means that the economy has slipped into its second recession in four years, no thanks to the dwindling crude oil price.

“cumulative GDP for the first 9 months of 2020 therefore, stood at -2.48 percent” the NBS said.

The Economy shrank by 6.1% in the second quarter indicating that two consecutive quarters of negative growth have been recorded in 2020. The NBS added that the oil sector contributed 8.73% to total real GDP in third quarter of 2020, down from

9.77% and 8.93% respectively recorded in the corresponding period of 2019 and the preceding quarter in 2020.

Nigeria, Africa’s biggest oil producer, had slipped into its first recession in 2 decades in 2016. Upon coming out in 2017, it has long sought for ways to diversify its economy and reduce government spending. [Read More...](#)

NIGERIA BECOMES 34TH COUNTRY TO RATIFY THE AFCFTA AGREEMENT.

Nigeria has become the 34th country to ratify the African Continental Free Trade Agreement. This event was marked as Nigeria deposited its instrument of ratification of the Agreement on the 5th of December.

Nigeria had ratified its membership to the Africa Continental Free Trade Agreement (AFCFTA) earlier in November 2020.

The AFCFTA will become operational on January 1st 2021 as scheduled by the Johannesburg declaration. It is a key move for the ambition of the African Continent. when it comes into effect the AFCFTA aims to create a single market for goods and services in Africa. [Read More...](#)

NIGERIAN PRESIDENT ORDERS IMMEDIATE RE-OPENING OF NIGERIA LAND BORDERS.

President Muhammadu Buhari has ordered the immediate reopening of four of the Nigerian Land borders in Seme, Illela, Maigatari and Mfun in the South west, Sokoto in the Northwest, and in the South-South.

This announcement was made by the Minister of Finance at the end of the 28th Virtual FEC meeting held on Wednesday December 16 2020.

Other land Borders are to be opened by 31st of December 2020.

CENTRAL BANK TO INTRODUCE SPECIAL BILLS TO BOOST BANK'S LIQUIDITY AND GROW THE ECONOMY.

The Central Bank has concluded plans to introduce special bills that will deepen the financial market. The security which shall be tradeable between market players but not discountable at the CBN window will avail the monetary authority with additional liquidity management tool.

The bill will have a 90 days tenor with a zero coupon. Its applicable yield at issuance will be determined by the CBN. As earlier stated, while the bill is tradeable among market operators, banks, retail and institutional investors, it is non-discountable at the CBN window. It will however, qualify as liquid asset in the computation of the liquidity ratio for commercial lenders.

CBN OKAYS WITHDRAWALS OF DOLLARS FROM DOMICILLIARY ACCOUNTS.

The CBN has announced an amendment of procedure for receipt of diaspora remittances to improve liquidity in the foreign exchange market. This was made in a circular issued by the CBN on Monday November 30th 2020 to all authorized dealers and the general public and signed by its Director of Trade and Exchange department; Dr O.S. Nnaji.

Under the new regime, the beneficiary of diaspora remittance through the international money transfer operators (IMTOs) shall henceforth have the option of receiving such inflows in foreign currency (US Dollars) or into their ordinary domiciliary account.

The CBN noted that these changes are necessary to deepen the foreign exchange market, provide more liquidity and create more transparency in the administration of

diaspora remittances into Nigeria. It also points out that these changes would help finance a future stream of investment opportunities for Nigerians in the diaspora, while also guaranteeing that recipients of remittances would receive a market-reflective exchange rate for their inflows. [Read More...](#)

WORLD BANK OKAYS NIGERIA \$1.5 BILLION LOAN REQUEST.

The world bank has approved Nigeria's loan request of \$1.5b.

In a statement issued on Tuesday December 15, the Bretton Woods institution said the loan facility is a five-year country partnership framework (CPF) that will last till 2024.

"This Country partnership Framework will guide our engagement for the next five years in supporting the Government of Nigeria's strategic priorities by taking a phased and adaptive approach" Shubham Chaudhuri, Country Director for Nigeria said.

The \$1.5 billion was also tied to two projects in Nigeria; Nigeria COVID-19 Action Recovery and Economic Stimulus -program for results (Nigeria CARES) and the State Fiscal Transparency, Accountability and Sustainability Program for Results (SFTAS). According to Shubham, "Our engagement will focus on supporting Nigeria's effort to reduce poverty and promote sustained private sector-led growth."

Government revenue has dipped by 60 percent in Nigeria due to a crash in global oil prices and the Covid-19 pandemic. Africa's biggest oil producer has also only just announced another recession as a result. [Read More...](#)

3. POWER AND INFRASTRUCTURE.

FEDERAL GOVERNMENT TARGETS NEW SOLAR OFFGRID CONNECTION TO 25 MILLION NIGERIANS.

The Federal Government has introduced a scheme; the #SolarPowerNaija to increase energy access through the provision of 5 Million new solar connections serving about 25 million Nigerians not currently connected to the national grid.

SolarPowerNaija is one of the projects & policies of the National Economic Sustainability Plan (NESP). NESP is the Federal Government intervention to alleviate the negative effect of Covid-19 on Nigerians. Under the SolarpowerNaija Scheme, the Central Bank of Nigeria, assisted by other developmental partners such as USAID, Sustainable Energy for All, and the World Bank, will be making preferential affordable interest rates between 5% -10% available to companies involved in the renewable energy power sector.

Implementation of the scheme will be done by the Rural Electrification Agency through a Special Purpose Vehicle.

Aside the idea to create more jobs, the major aim of the scheme is to provide more people, especially those in the rural area with energy specifically geared towards increasing local content in the solar power value chain- assembly, manufacturing of components etc. Only companies with 70% local content will be permitted.

ENGINEER SANUSI GARBA ASSUMES CHAIRMANSHIP OF NERC.

Following the approval by the Senate, Engineer Sanusi Garba has assumed the chairmanship of the Nigerian Electric Regulatory Commission.

Engineer Sanusi Garba is a seasoned professional in the Nigerian Energy Supply Industry (NESI), and also a top officer in the Commission.

Before he was appointed the Chairman of NERC, Garba served as the Vice Chairman of NERC under the leadership of Prof. Momoh. He previously served as an Executive Director in the Niger Delta Power Holding Company, also served as the Chief Executive of Katsina Steel Rolling Co. Ltd and the Director (Power) in the Federal Ministry of Power with responsibility for the Generation, Transmission and Distribution aspects of the electricity industry.

Speaking at the handover ceremony, the new Chairman of the Commission recognized the efforts and the hard work of Prof. Momoh, the outgoing chairman and thanked him for his contributions to the development of the Commission and the sector in general.

REPS PASS BILL TO MAKE DISCOS REFUND ELECTRICITY COST OF EQUIPMENT REPAIRS.

A bill to make DISCOS reimburse their electricity consumers who have incurred expenses in the acquisition of power equipment has passed the second reading in the House of Representatives.

The Bill is titled; A Bill for an Act to amend Electric Power Sector Reform Act to provide for Electricity Distribution Companies to reimburse any power consumer who incurs expenses in the acquisition of electricity apparatus connected to the national grid in Nigeria, and for related matters”

The caveat however is that consumers that intend to go into discussion over such reimbursement with the discos are to automatically yield ownership of such equipment purchased by them and

integrated into the electricity system or grid to the DISCOS.

NERC ORDERS DISCOS TO DISCONNECT CUSTOMERS REJECTING METERS.

The Nigerian Electricity Regulatory Commission has ordered power distribution companies to start disconnecting electricity consumers who reject meters.

This is contained in various regulatory directives issued to the various DISCOS and followed the recent deployment of six million meters across the country by the Federal Government to halt estimated billing and improve service delivery in the power sector.

The directives were jointly signed by the former NERC Chairman, James Momoh, and a Commissioner, Dafe Akpeneye and took effect from November 1 2020. [Read More...](#)

FEDERAL GOVERNMENT TO SANCTION DISCOS SELLING METERS;

The Federal Government has stated it will sanction any DISCOS or its representatives selling meters or asking Nigerians to pay money to get them.

The Special Adviser to the President on Infrastructure, Mr. Ahmed Zakari, gave the warning at a stakeholders' engagement on electricity tariff, organized by the FGN/NLC-TUC Ad-hoc committee.

“Even for meters that will be paid for through MAP, there is a directive from the regulator to the Discos that they need to find a way to reimburse citizens over time.” Mr. Ahmed said. [Read More...](#)

FEDERAL GOVERNMENT ISSUES GUIDELINES TO RESOLVE THE CONTROVERSY OVER THE JURISDICTION

OF ICRC AND BPE IN THE ADMINISTRATION OF PUBLIC-PRIVATE PARTNERSHIP PROCESSES.

The Secretary to the Government of Nigeria, Boss Mustapha issued a circular titled “Administration of Concession Programme of the Federal Government of Nigeria” towards resolving the lingering controversy over jurisdiction of the Bureau of Public Enterprise and the Infrastructure Concession Regulatory Commission on PPP processes.

According to the Information circular, Concession of all items listed in Schedule 1 and 2 of the Public Enterprises (Privatization and Commercialization) Act 2004 will now be the reserve of the Bureau of Public Enterprises (BPE). Furthermore, the BPE, either acting alone or in conjunction with other relevant Federal agencies, will now be the counterparty in Infrastructure projects being developed on a Public-Private Partnership basis. BPE is enjoined to ensure compliance with the Infrastructure Concession Regulatory Commission (Establishment) Act. 2005.

The ICRC will now only play a regulatory role of supervising, inspecting, and Monitoring of the projects and processes.

AKWA IBOM STATE DEEP SEAPORT RECEIVES FINAL APPROVAL.

The Akwa Ibom State Deep Sea Port project has received final approval as the Federal Executive Council approved its Final Business Case on Wednesday 16th December 2020.

According to the Akwa Ibom state Commissioner of Economic Development and Deep Sea Port, Mr. Akan Okon, the final project will kickstart almost immediately, adding “this is what we have been waiting for. We have a preferred bidder in place and

even as the process of approval was ongoing we had appointed a technical team to carry on with the various studies required for the construction of the port jointly between the State Government and the Preferred Bidder.” Please click [here](#) to read more.

BAKASSI DEEP SEAPORT PROGRESSES TO NEXT PHASE.

The Bakassi Deep Seaport has progressed to its next phase as the steering committee considered and adopted the Inception Report for the project in its meeting held on Wednesday, December 16, 2020.

The meeting which had in attendance the members of the Steering Committee drawn from the Federal Ministry of Transportation, Cross River State Government, Infrastructure Concession Regulatory Commission, Ministry of Finance and Budget Planning, Nigeria Port Authority, and CPCS Consortium (of which Benchmac & Ince is the legal lead)marked a milestone in the developmental phase of the project.

The Bakassi Deep Seaport when completed will link a 270km Superhighway (as an evacuation corridor) connecting Cross River State to the border with Northern Nigeria, providing agro-inclined northern Nigeria essential access to the Sea.



(Insert). Mr. Ibeku, Partner Benchmac & Ince addresses members of the Steering Committee on the Inception Report.

Benchmac & Ince is delighted to have provided key legal partnership and support in the actualization of the project so far.



4. Corporate News.

Corporate Affairs Commission releases new Company Regulations and Fee Schedule.

The Corporate Affairs Commission has released a new Company regulation 2021. The regulation which was made pursuant to the Companies and Allied Matters Act 2020 (CAMA), incorporated the changes introduced by the CAMA.

A new fee schedule is also consequently enacted. This fee schedule followed in the light of the CAMA and will become effective from 2020.

CBN MANDATES SHIPPING COMPANIES TO COMPLY WITH THE NIGERIA EXPORTS PROCEEDS FORM.

The Central Bank of Nigeria(CBN) has read the riot Act to shipping companies that have failed to comply with the Federal Government Directive for all exports out of Nigeria to bear the Nigeria Export Proceed (NXP).

The CBN Governor, Godwin Emefiele, threatened that all shipping companies found wanting will be sanctioned by the apex bank. According to the Governor, “We are going to set up an auto system, where if someone wants to send cargo, copies of the NXP form will be sent directly to you. So, if you don’t have it online on your system that the NXP has been registered, you will have to turn back that cargo.” [Read More...](#)

NIGERIA PRESIDENT ASSENTS TO THE BANKS AND OTHER FINANCIAL INSTITUTION ACT 2020.

President Muhammadu Buhari has assented to the 2020 enactment of the Banks and Other Financial Institution Act (BOFIA) 2020.

The new Act repeals the Banks and Other Financial Institutions Act 1991 as amended. It is expected that this Act will enhance the resilience of the Nigerian financial system for sustainable growth and development of the Nigerian economy.

The new BOFIA 2020 introduces a credit tribunal to improve loan recovery and address the incidence of high non-performing loans within the financial system. [Read more...](#)

5. ENERGY

FEDERAL GOVERNMENT REDUCES PETROL PUMP PRICE BY ₦5.

Following the pressure by organized labour, the Nigerian government has agreed to benchmark the pump price of PMS at ₦162 naira per litre. The new price regime came into force on December 14, 2020. According to the Minister of Labour and Productivity, Chris Ngige, the new price is not meant to

affect the subsisting removal of subsidy as it does not affect the price of crude oil.

Recall that by a circular of the Pipelines and Product Marketing Company (PPMC) dated November 11, the pump price of premium motor spirit (PMS) settled at 168 - 170 Naira as the Nigerian National Petroleum Corporation increased the wholesale price of the product from 147 -155 naira. This increment was despite the dwindling price of crude oil in the international market.

Nigeria had also earlier announced deregulation of the downstream sector of the petroleum industry as the government suspended its subsidy regime. The price has risen steadily since then. The price band rose from ₦121.50 - ₦123.50 per litre in June to ₦140.80 - ₦143.80 in July and ₦148-₦150 in August. In September, the pump price rose further from ₦158 to ₦162 until the now November increment. [Read more](#)

6. IP UPDATE:

NIGERIA RE-INVIGORATE FIGHT AGAINST COUNTERFEIT

The Nigeria Anti-Counterfeiting Collaboration working with World Intellectual Property Organization (WIPO) has organized a Judges’ training for Superior Court Judges in Nigeria. This Training which was declared open by the Chief Justice of Nigeria and had in attendance justices from the Federal High Court, Court of Appeal, and the Supreme Court, lasted from the 20th -21st of October 2020.

In a similar drive against counterfeiting, the Nigeria Custom’s strike force team in November 2020 intercepted contrabands and raised Debit Notes (DN) on under declaration of cargoes to N767M.

NEW COMPENDIUM OF TRADEMARK RULING PUBLISHED.

The Trademarks, Patents & Design Registry has published a compendium on Trademark rulings.

The compendium was published in October 2020 and it is titled: COMPENDIUM OF RULINGS OF TRADEMARK TRIBUNAL Vol 2 & 3, 2020.

NEW TRADEMARK JOURNAL PUBLISHED.

The Nigerian Trademark registry has also published a new trademark journal.

The Journal with citation; Vol.1 No 7 Online/Pre IPAS is dated December 21, 2020.

Following the publication, Interested Parties with potential infringement claims have 2 months, i.e till February 20, 2021, to file their Notice of Opposition.

7. TAX UPDATE.

NIGERIAN PRESIDENT ASSENTS TO 2020 FINANCE BILL.

The Nigerian President has assented to the 2020 Finance Bill.

The Federal Government had promised it will be re-enacting the Finance Act yearly to keep the nation's fiscal statutes updated.

The Finance Act 2020 will be making several introductions to wit; reducing import levy on buses, tractors, and other motor vehicles; reduce the rate of minimum tax payable from 0.5% to 0.25% for two consecutive assessment years.

There is also a novel inclusion in the Act seeking to amend the Public Procurement Act to implement key procurement reforms previously proposed by the National Assembly in 2019. Thus, the scope of the Act has now been extended to the Federal Judiciary and Legislature, provisions for the

accelerated procurement process, increased mobilization fee thresholds, and essential E-procurement reforms have also now been adequately covered.

Among other pertinent provisions of the Act is the amendment of the Fiscal Responsibility Act, to align with the provisions of the 1999 Constitution as well as to enhance fiscal efficiencies by controlling the cost-to-revenue ratios of key state and Government-owned enterprises.

IT IS ILLEGAL FOR BANKS TO DEDUCT STAMP DUTIES FOR BANK TELLER, OTHER TRANSACTIONS -FEDERAL HIGH COURT RULES.

The Federal High Court sitting in Asaba has ruled that the deduction of stamp duties on electronic transfers of money transactions or on teller deposits is illegal as nothing in the Stamp Duties Act permits the Central Bank of Nigeria to impose or the banks, the obligation to collect such.

This is the ruling contained in the recent case of *Rupert Irikefe v. Central Bank of Nigeria and 2 ors.* In suit no *FHC/ASB/CS/139/2019.*

However, it appears that the Court based its decision relying solely on the Stamp Duties Act as it is and on the circular issued by the CBN to Banks. The Finance Act 2019 had amended the Stamp Duties Act and made a provision imposing the obligation to enforce collection of Stamp Duty on the FIRS while similarly making the Banks collecting agents.

Unfortunately, no reference was made to the Finance Act 2019 by either of the parties or the court. It is not unlikely that the court will decide differently should the court be availed with the provisions of the Finance Act.

8. COVID -19: NIGERIA UPDATE

MANDATORY PAYMENT FOR REPEAT PCR TEST

The Federal Government has announced that Travelers must pay for a compulsory repeat PCR Test upon return to Nigeria.

The Government of Nigeria requires a negative PCR test to control the spread of the pandemic in Nigeria. It is to be done (depending on the country of departure) within 96 hours of arrival into Nigeria and upon arrival, seven (7) days after (post isolation).

Payment for the PCR should be done online while the test shall be from a certified Private lab in the travel portal.

COVID-19 UPDATE AS AT THE END OF Q3 AND AS AT THE END OF Q4



For more information and up to date happenings in the Nigerian legal/corporate space kindly check our corporate blogs on our Website.