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Practical cross-border insights into ESG law

Environmental, Social & Governance Law 2022

Second Edition

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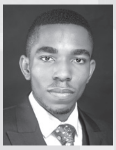

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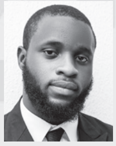

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1 Setting the Scene – Sources and Overview

1.1 What are the main substantive ESG-related regulations?

ESG has become a key concern for major sectors and industries in Nigeria.

The bedrock of ESG-related regulations in Nigeria is the Constitution of the Federal Republic of Nigeria 1999, as amended ("**Nigerian Constitution**"). Chapter II of the Nigerian Constitution contains ESG directive principles that government actors, exercising legislative, executive and judicial powers, are expected to observe and apply. Due to its global significance, ESG principles are now gradually influencing the laws and regulations passed in Nigeria. Some of them are highlighted below:

- The Companies and Allied Matters Act, 2020 ("**CAMA**"): CAMA imposes an environmental obligation on directors of Nigerian companies. CAMA mandates directors in discharging their duties as directors of a company, to consider the impact of the company's operations on the environment in the community where the company carries on its business operations.
- The Federal Competition and Consumer Protection Act, 2018 ("**FCCPA**"): The FCCPA was enacted to, among other things, protect and promote the interests and welfare of consumers, and contribute to the sustainable development of the Nigerian economy. The FCCPA established the Federal Competition and Consumer Protection Commission ("**FCCPC**") to administer the provisions of the Act. The FCCPA applies to all undertakings and commercial activities within or having effect within Nigeria and places obligations on manufacturers, importers, distributors and suppliers of goods and services. The FCCPA contains provisions that protect the rights of consumers, which include the right to safe, high-quality goods, the right to disclosure of prices of goods and services, the right to be given information in plain and understandable language, and the right to fair dealings, among others.
- The Petroleum Industry Act, 2021 ("**PIA**"): The PIA, upon its enactment in 2021, became the main legislation regulating the entire oil and gas ecosystem in Nigeria and introduced some rather novel provisions to the industry. Section 239 of the PIA empowers a body known as the Host Community Development Trust to finance and execute projects for the benefit and sustainable development of the host communities. This provision now mandates operators to participate as a matter of law in environmental and social sustainability actions in the communities in which they operate. This is in addition to other extensive provisions to protect the environment, such as decommissioning and the abandonment of petroleum wells, installations, structures, utilities, plants and pipelines in accordance with international best practice.
- The Nigerian Sustainable Banking Principles ("**NSBP**"): On September 24, 2012, the Central Bank of Nigeria ("**CBN**"), the apex regulatory body of all banks and other financial institutions in Nigeria, launched the NSBP. The adoption and implementation of these principles are compulsory and require banks, discount houses and development finance institutions to develop a management approach that balances the environmental and social risks identified with the opportunities to be exploited through their business activities. The CBN noted that the NSBP are necessary to deliver positive development impacts to society while protecting the communities and environment in which financial institutions and their clients operate.
- The Nigerian Stock Exchange's ("**NSE**") Sustainability Disclosure Guidelines: In 2018, the Securities and Exchange Commission ("**SEC**") approved the NSE's Sustainability Disclosure Guidelines for public listed companies. The Guidelines contain certain core principles on ESG and prescribed reporting requirements on ESG performance for listed companies and include a step-by-step approach to integrating sustainability/ESG into organisations, indicators to be considered for annual disclosure, and relevant timelines. The Guidelines further made sustainability/ESG reporting mandatory for companies listed on the Premium Board of the NSE.
- The Nigerian Code of Corporate Governance ("**NCCG**"): In the same light, the Financial Reporting Council of Nigeria released the NCCG on January 15, 2019, applicable to all companies incorporated in Nigeria. The NCCG contains a total of 28 broad corporate governance principles. Specifically, principle 26 of the NCCG aims at improving sustainability. It requires companies to pay adequate attention to sustainability issues including environmental, social, occupational and community health and safety, to ensure successful long-term business performance and project themselves as responsible corporate citizens, contributing to economic development.
- The Nigerian Sustainable Finance Principles ("**NSFP**"): Lastly, in April 2021, the SEC, the apex regulatory body for Nigeria's capital market, approved the NSFP Guidelines for the Nigeran capital market. The Guidelines were developed by the Financial Services Regulation Coordinating Committee of the SEC. The primary objective of the

NSFP is to achieve a balance in the pursuit of economic prosperity while ensuring environmental protection and social development.

The Guidelines and approach are principles-based and therefore do not prescribe specific implementation requirements. However, these principles are expected to be applied by each regulated entity in a manner that fits individual mandates, core values, and enterprise risk management frameworks.

Principle 1 of the Guidelines – ESG Considerations – provides that regulated entities will embed ESG considerations into their operations and decision-making processes to avoid, minimise or offset negative impacts. It further provides that regulated entities should put in place effective governance structures and consider the impact of their operations and activities on the environment and society.

Regulated entities include Capital Market Operators, Trade Groups, Self-Regulated Organisations, and Capital Trade Points.

Notably, the laws and regulations outlined above are not fully representative of the entire ESG regulatory framework in Nigeria. There exist several other laws and regulations impacting on ESG, such as the Environmental Impact Assessment ("**EIA**") Act, the National Environmental Standards and Regulations Enforcement Agency Act, the Factories Act, and the Employees Compensation Act, among others.

1.2 What are the main ESG disclosure regulations?

Specifically on the issue of the environment, the EIA Act Cap E12, Laws of the Federation of Nigeria 2004, mandatorily requires an EIA to be conducted in respect of any project or activity that is likely to significantly affect the environment. The EIA report is required to be submitted to the National Environmental Standards and Regulations Enforcement Agency ("**NESREA**") for approval and issuance of a certificate.

Another equally important piece of legislation is the NESREA (Establishment) Act. NESREA is the federal environmental protection agency that enforces general environmental standards and regulations in Nigeria, with the consequent responsibility for environmental protection, biodiversity conservation and sustainable development of Nigeria's natural resources and environmental technology. To ensure that commercial and industrial activities are carried out in an environmentally safe manner to safeguard the environment, NESREA created different broad categories of environmental permits, such as: air quality permits; waste and toxic substances permits; used electrical and electronic equipment permits; biodiversity conservation permits; eco-guard certification; and environmental import clearance.

Furthermore, there are the Sustainability Disclosure Guidelines issued by the NSE for public listed companies in Nigeria. Section 4 of the Guidelines stipulates that all listed companies are to issue sustainability (ESG) reports, which can be contained in the annual report or issued in a separate sustainability report. As stipulated in the Guidelines, the following key areas should be considered in the report:

a. the overall context on the internal structure, strategy, profile and governance of how the economic, environmental, and social risks and opportunities are managed;
b. the scope and boundaries of the report. The report could be based on the physical locations of the organisation (geographical boundary), the entities within the organisation (organisational boundary), and the operations within the entire value chain;
c. the material sustainability matters and how they are identified and managed. Materiality matters are those that reflect economic, environmental, or social impacts, or that would substantively influence the assessments and decisions of stakeholders; and
d. stakeholder inclusiveness. The organisation should identify its stakeholders and explain how it has responded to their reasonable expectations and interests.

1.3 What voluntary ESG disclosures, beyond those required by law or regulation, are customary?

In addition to various laws, some of which are cited above, various ESG-related guidelines are applied by Nigerian organisations, including the United Nations' Sustainable Development Goals and the Principles for Responsible Investment.

Examples of voluntary ESG disclosures, beyond those required by law or regulation, that are customary in Nigeria include disclosures around the level of carbon emissions, especially for manufacturing companies, the use of green energy, gender equity, inclusion, human rights, social welfare, and waste recycling, among others.

1.4 Are there significant laws or regulations currently in the proposal process?

We are not aware of any proposed law that focuses specifically on addressing ESG, although there has been a demand for this by various stakeholders in the country.

1.5 What significant private sector initiatives relating to ESG are there?

There are several initiatives adopted by the private sector relating to ESG. Some of the notable ones include spearheading thought leadership and ensuring that corporate entities have ESG policies integrated into their organisational ethos. Also, the private sector has made an indelible impact on ESG disclosures with significant input from corporates and investors.

2 Principal Sources of ESG Pressure

2.1 What are the views and perspectives of investors and asset managers toward ESG, and how do they exert influence in support of those views?

Over the past few years, ESG issues have been a centre of interest and attraction for investors, asset managers, government, regulators, shareholders, employees, corporate leaders, consumers and the general public. Otherwise known as sustainability, ESG has gained wide momentum in Nigeria and this development is a result of the united stand by various stakeholders for companies to do much more than generate profits, such as engaging in sustainable activities with a positive impact on society.

Investors all around the world, including in Nigeria, now look beyond profitability and are increasingly making business decisions based on the ESG information of a particular company or organisation. Investors are increasingly recognising the link between ESG performance, wealth generation and risk mitigation. They believe that companies that integrate ESG risks and opportunities into their operations and business strategies are more likely to deliver sustainable, long-term value to their shareholders and other stakeholders. For example, the PwC 2021 Global Investor ESG Survey revealed that companies failing to act on ESG issues risk losing investors.

Today, savvy investors and assets managers believe that ESG can have a material impact on the long-term performance of their investment portfolios and demand ESG analysis as part of the fundamental work for investing. Most institutional and retail investors have integrated ESG considerations into their investment decision-making. In other words, ESG has become a make-or-break consideration for leading investors globally. Nigerian fintech startups raised almost USD 800 million in 2021, and ESG awareness is believed to have been responsible for these figures on account of recent postures of investors in the fintech sector.

Investors exert their influence on ESG-related issues by using private and public engagement and leveraging on their proxy vote decisions to advance their views. However, it is noteworthy that ESG has not received unanimous support from all investors and stakeholders. Some stakeholders are of the view that integration of ESG into investment decision-making and business practices may help shield management from poor performance and reduce the general performance of a company.

2.2 What are the views of other stakeholders toward ESG, and how do they exert influence in support of those views?

Stakeholders at different levels in Nigeria are pressing for inclusion of ESG policies into the affairs of corporate entities in Nigeria and across the world, and for these companies to be transparent in their progress. For example, the Chartered Financial Analysts ("**CFA**") Society of Nigeria has been at the forefront, among other stakeholders, of this issue. The CFA Society organised an ESG Roundtable webinar recently where experts from various industries stimulated interesting discussions on ESG, cutting across sectors. The theme of the webinar was "unlocking value through ESG investing". The major takeaway from the virtual event was that sustainable finance is the new norm and must be embraced by every corporate entity in Nigeria.

Local experts in various fields have also maintained this position. Rukaiya el-Rufai, Partner, Sustainability & Climate Change and Public Sector Risk Assurance Services, PwC, emphasised that "[c]ompanies need to see themselves inwardly in isolation and see how they can increase enterprise value and societal value, to achieve this they have to effectively integrate ESG into their strategy, corporate governance, mode of operation, product and services rendered".

Consumers and the public, as major stakeholders, have equally joined the trend, and continue to exert pressure on companies, both directly and indirectly, to ensure compliance with ESG policies.

Many financial professionals believe that ESG investing is particularly appealing to millennials in order to make them socially responsible investors. In a poll conducted by a major asset management firm, 88% of respondents felt that financial returns could be balanced with a focus on social and environmental effects. Almost as many (86%) thought companies that adopted ESG standards would be more profitable and have better long-term investments.

Furthermore, non-profit organisations, particularly those focused on sustainability, like the Socio-Economic Rights and Accountability Project, as well as intergovernmental organisations, most notably the United Nations, and environmentalists, have lent their support and served as public platforms for promoting ESG consciousness.

2.3 What are the principal regulators with respect to ESG issues, and what issues are being pressed by those regulators?

In Nigeria, there is no sole regulator of ESG standards for corporate entities. However, for public companies, the SEC is the principal regulator in Nigeria. Also, CAMA, administered by a body known as the Corporate Affairs Commission ("**CAC**"), imposes a general duty on directors of all companies duly incorporated in Nigeria to consider the impact of the company's operations on the environment in the community where the company carries on business operations.

2.4 Have there been material enforcement actions with respect to ESG issues?

Regulators have had to take certain actions with respect to ESG issues against companies that blatantly disregard them. For example, the National Information Technology Development Agency recently fined a tech company the sum of NGN 10 million for abuse of personal data and breach of privacy. There is also an ongoing investigation by the FCCPC against a multinational tobacco company operating in Nigeria for anti-consumer protection, public health and anti-competition violations.

2.5 What are the principal ESG-related litigation risks, and has there been material litigation with respect to ESG issues, other than enforcement actions?

Companies and organisations carrying on business with little or no regard for ESG-related issues are at constant risk of not only regulatory or government sanctions, but also litigation before relevant Courts.

There have been various litigations on ESG-related issues, particularly environmental. Nigeria is a major oil-producing state; thus, a number of multinational oil companies exist in the country for the purpose of oil mining, extraction and others. This has brought a major cost to the communities in which oil is located and to the global environment at large. Consequently, many oil companies in Nigeria have been the subject of various suits and class actions due to the damage they have caused to local communities and the environment in the process of extracting oil.

The view of the Nigerian Courts has been that the right to a clean environment is a fundamental right, which is linked to right to life and human dignity. For example, in the case of *Jonah Gbemre v Shell PDC Ltd & Ors*, the Federal High Court of Nigeria held that the Constitutionally guaranteed right to life and human dignity inevitably includes the right to a clean and poison- and pollution-free environment. In this case, the Court restrained the respondents from further gas flaring and ordered them to take appropriate steps to stop further flaring of gas in the community.

Recently, on August 15, 2021, Royal Dutch Shell, one of the world's six "supermajor" oil companies, announced that it will pay NGN 45.9 billion (USD 111.6 million) to settle a decades-long legal dispute concerning an oil spill that occurred during the Biafran-Nigerian civil war.

Regarding the social and governance aspects, companies that refuse to pay attention to the needs and welfare of their employees and corporate governance issues have had to pay the heavy price of damages arising from regulatory sanctions and litigation. The National Industrial Court's increasing adoption of global standards such as those of the International Labour Organization have brought the social element of ESG to the fore.

2.6 What are current key issues of concern for the proponents of ESG?

A chief issue of concern for proponents of ESG, especially in Nigeria, an oil-producing nation, is the prevention of oil spillage, which has a deleterious effect on the environment. Other issues of concern are the management of climate change risks, including adaptation to a low-carbon economy, human capital management, particularly discrimination , consumer protection, gender diversity and inclusion in the workplace, and questions around corporate purpose and how companies are serving the interests of their stakeholders.

In the light of the COVID-19 pandemic, concerns regarding employee welfare, consumer protection, regulatory compliance, privacy and cybersecurity, and the disclosure requirements arising from them, are now critical. Proponents of ESG in Nigeria continue to maintain that disclosure, compliance and policy implementation in this regard require adoption across the board as emergent issues of remote work and employee surveillance present new challenges.

3 Integration of ESG into Business Operations and Planning

3.1 Who has principal responsibility for addressing ESG issues? What is the role of the management body in setting and changing the strategy of the corporate entity with respect to these issues?

Nigeria does not currently have a principal body responsible for addressing ESG issues for different corporates in the country. However, a cursory examination of Section 305(3) of CAMA imposes a duty on directors of companies duly registered in Nigeria to consider the impact of the company's operations on the environment in the community where the company carries on business operations, and it is discernible that the board of directors and management of a company have the principal responsibility for addressing ESG issues. Investors and different stakeholders increasingly expect the board, as the directing mind and will of a company, to play a vital role in overseeing ESG matters and lay the strategic foundation and groundwork for integrating ESG into a company's operations and strategy.

As investors' expectations on ESG continue to grow, boards of corporates are equally expected to attain and surpass these expectations. In doing this, boards must identify the material ESG risks and opportunities affecting their company as well as the ESG expectations of their investor base, including issues raised during private engagements and gathered through stakeholder surveys.

Thus, boards are expected to work closely with management to develop and monitor ESG policies in their organisations, engage with relevant stakeholders by seeking their perspectives on ESG-related issues and working with them to develop better policies, set up mechanisms to continually review these policies in line with new demands, ensure these policies are well integrated into the affairs of their organisations, and propose disclosure mechanisms that compete and are consistent with international standards.

3.2 What governance mechanisms are in place to supervise management of ESG issues? What is the role of the board and board committees?

Every corporate entity or organisation is at liberty to develop its own governance mechanism to supervise the management of ESG issues. However, it is not uncommon for boards to set up committees that are exclusively charged with supervising and monitoring the ESG compliance of their organisations. The board and board committee are required to innovate and build capacity to ensure that the structure of their organisation incorporates ESG competency and effectiveness. The committee, in most instances, is responsible for tracking industry developments and peer initiatives, which may provide the management of a company with additional insights into best practice and evolving expectations of their role on ESG oversight.

3.3 What compensation or remuneration approaches are used to align incentives with respect to ESG?

There is growing interest in aligning compensation incentive structures with ESG goals and outcomes, particularly in the wake of the COVID-19 pandemic. Although there is no legal requirement to link remuneration or incentives to ESG metrics, some organisations may decide to reward members of the management team/staff for achieving certain ESG outcomes.

3.4 What are some common examples of how companies have integrated ESG into their day-to-day operations?

Some common examples of how Nigerian companies have incorporated ESG into their daily operations include holding daily review meetings with staff members to remind them of the company's focus and objectives, as well as correcting and sometimes penalising those who fall short.

Many organisations are taking on a new outlook and shifting from the traditional workplace structure, including inscription of motivational quotes and work-life balance tips in conspicuous parts of the office space. Aside from the aesthetic purpose these serve, they more importantly help staff members to stay motivated and in check.

Companies that possess ESG consciousness in Nigeria have integrated staff welfare into their culture. It is common to see or hear of companies celebrating staff birthdays and anniversaries, which shows employees that they are valued. Some companies extend this to their customers and clients, whereby customers receive text messages or calls to congratulate them on their birthdays. Telecommunications companies and banks are performers in this category.

The pursuit of cleaner ways to generate energy is another common example. More and more companies have embraced zero-carbon pledges and are resorting to the use of solar energy to generate power as an alternative to the endless running of generators. This of course reduces the amount of generator fumes released into the atmosphere while also addressing the noise pollution caused by running generators.

4 Finance

4.1 To what extent do providers of debt and equity finance rely on internally or externally developed ESG ratings?

The banking industry is the apex of debt finance providers in Nigeria. As business leaders in the Nigerian financial sector, the banking sector is uniquely positioned to further economic growth and development through its lending and investment activities. In ensuring this, among other things, banks and other providers of debt pay particular attention to ESG ratings, whether internally or externally developed, to measure the ESG performance of borrowers, and the result is one of the key factors considered before lending.

In 2012, the Nigerian Bankers' Committee approved the adoption of the NSBP by banks, discount houses, and development finance institutions. The Principles aim to foster positive development impacts to society while protecting the communities and environment in which financial institutions and their clients operate.

The NSBP cover nine areas:

- Environmental and Social Risk Management.
- Environmental and Social Footprint.
- Human Rights.
- Women's Economic Empowerment.
- Financial Inclusion.
- Environmental, Social and Governance.
- Capacity Building.
- Collaborative Partnerships.
- Reporting.

In the same vein, key players in equity financing, such as private equity firms and venture capitalists, are beginning to recognise the growing appetite of conscious investors and will continue to harness global momentum. Thus, reliance on ESG ratings is now essential in determining which organisations to partner with and invest in.

4.2 Do green bonds or social bonds play a significant role in the market?

Yes, green bonds and social bonds play a significant role in the market.

Climate change and the low level of infrastructural development has become a great concern in the domain of sustainability in Nigeria. To address this concern, the SEC introduced the following into the market:

1. **Rules on Social Bonds – June 4, 2021**: According to the SEC rule, social bonds are a type of debt instrument where the proceeds would exclusively finance or refinance new and/or existing eligible projects with clear and identifiable social objective(s) and which are dedicated to an identified population. In other words, social bonds mainly finance government projects, including social amenities, e.g., roads, water, streetlights, etc.
2. **Green Bond Rules 2018 ("Rules")**: Nigeria joined the green bond market in December 2017, becoming the first African country to issue sovereign green bonds and the world's fourth sovereign issuer of green bonds. The debut issuance was to the tune of NGN 10.69 billion green bonds with a commitment to use the proceeds to finance green projects. The proceeds of the bonds were used to fund three green projects – the Energizing Education Project, the Rural Electrification Project, and the Afforestation Project.

Recently, North South Power Company Limited, through NSP-SPV Plc, issued a NGN 8.5 billion Green Guaranteed Infrastructure Bond to fund the company's generation of sustainable energy to Nigerians.

Furthermore, regarding the banking sector, Access Bank Plc, one of the Nigerian banking industry giants, recently obtained the approval of the SEC to commence the book-building process for its proposed NGN 15 billion green bond.

The introduction of green and social bonds into the Nigerian capital market has provided the government, companies, organisations and individuals access to funds to finance infrastructural projects, which creates a platform to build a formidable economy. Green and social bonds have provided an alternative means of resource mobilisation and equitable means of resources that have helped to address financial exclusion, alleviate poverty through job creation and tackle global warming, among others. These bonds have also assisted the government in implementing some of the provisions on the fundamental objectives contained in the Nigerian Constitution, as amended, which are ESG-related.

4.3 Do sustainability-linked bonds play a significant role in the market?

Yes, sustainability-linked bonds play a significant role in the market.

In Nigeria, sustainability-linked bonds expose issuers of bonds to various classes of investors who only consider investments that have increased environmental, social and/or governance implications.

Sustainability-linked bonds also foster a greater level of transparency and institutional accountability than regular bonds. The clarity and demonstration of the use of these proceeds in green, social and other projects as well as their monitoring make them attractive to investors, which in turn improves the market.

4.4 What are the major factors impacting the use of these types of financial instruments?

The following are some of the factors impacting the use of these types of financial instruments:

- **Inadequate Reporting and Verification Standards**: Reporting is a very important aspect of bonds as it ensures transparency and effective monitoring of the use of proceeds, which is critical to the integrity of the bond market. Reporting also helps in ascertaining the impacts of these projects. As a form of check, verification of bond reports is conducted by independent external reviewers using an assessment report to ensure credibility. The Rules provide for the preparation and filing of annual green bond reports, as well as the need for an assessment report by an independent assessor. However, the Rules are silent on the need for verification of these assessment reports. This is because the Rules do not provide for any standards that should be met by an assessment report, or on whether such reports should be verified by the SEC. Although a case of a false or inadequate assessment report is yet to occur, the absence of verification standards in the Rules points out a gap that needs to be filled to prevent such incidences from occurring.
- **Inadequate Enforcement Mechanism**: Green and social bond processes involve several stakeholders and actors, such as issuers, investors, external reviewers, and market regulators who all play several roles, but with the collective goal of ensuring that these bond proceeds eventually realise positive environmental and societal impacts. At the domestic level, government regulators play the critical role of monitoring and supervision. They approve eligible projects, set label standards, verify and approve progress reports, give out penalties where there are defaults, exercise quasi-judicial functions, etc. These functions can only be exercised properly if regulation is backed by legal authority, but this is not the case in Nigeria. The Rules are silent on the consequences of not complying with promises, or on publishing inadequate or false reports. This creates a loophole and incapacitates regulators from enforcing standards especially for post-issuance requirement compliance, as the Rules do not provide any penalty for default of any of its mandates. For green bonds, default in any of the green obligations or promises in the bond prospectus should ordinarily attract liability since they form the criteria for

classifying a bond as green. However, the Rules are ambiguous on whether "default" covers default on any obligation of a bond at all or only default related to payment of a principal sum or interest. If this is the case, then it does little to address potential breaches on green bond promises or other regulation requirements. The Rules can be amended to include penalties for breaching its provisions. This will go a long way in ensuring that issuers meet their green promises, as well as increasing investor confidence in Nigeria's bond market.

- **Lack of Substantive Criteria for Classifying Projects**: Environmental and social projects are the central focus of green and social bond issuers, as utilising proceeds of the bonds on projects that result in environmentally friendly outcomes is the basis for classifying a bond as green or social. In the identification and selection of these projects, they must be realistic with their sustainability aspirations and indeed capable of resulting in feasible positive environmental impacts. The list of eligible green projects, as listed in international green bond guidelines such as the Green Bond Principles ("**GBP**") or the Climate Bonds Standard, is more of an indicative list intended to guide jurisdictions in formulating their list of green projects. Most jurisdictions have adopted the list of green projects as contained in those guidelines as their green project taxonomies. For example, the list of green projects in the Rules are in *pari materia* with that of the GBP. While this is an applaudable gesture, one cannot help but wonder how those projects reflect the peculiar climate change-related problems of the various countries and how they proffer solutions to these problems. Working with a national development plan and sector-specific standards in developing a list of eligible green projects is a good starting point in arriving at a substantive basis for identifying projects. Doing so will ensure that: priority sectors are impacted; a pipeline of eligible green projects for the green bond market is available; and a standard for gauging potential and achieved impacts of green projects is provided.
- **The Problem of Locating these Projects**: The Rules are silent on where the projects should be located. It may not be out of place to consider situations where proceeds from a bond issue could be used in carrying out green projects outside Nigeria, thereby depriving its citizens of the direct benefits of such green projects, since there is no law prohibiting an issuer from exporting proceeds of a bond issue. This circumstance has been considered and, in some jurisdictions, laws have been put in place that ensure projects are carried out where the bonds were issued.

4.5 What is the assurance and verification process for green bonds? To what extent are these processes regulated?

The Investments and Securities Act, 2007 ("**ISA**") is the principal legislation governing securities transactions in Nigeria. The ISA establishes the SEC, which is empowered under Section 313 of the ISA to make rules and regulations to effectuate the provisions of the ISA and generally for capital market operations in Nigeria. To that effect, the SEC released the Rules.

For a green bond to be approved, the Rules require that, in addition to the general requirements for debt issuances stated in the regulations of the SEC, an issuer must file:

- a "letter of commitment" with the SEC, committing to invest all the proceeds of the bonds in those projects that qualify as green projects following the Rules;
- a feasibility study report stating the benefits of the green projects;
- a prospectus, which includes project categories, project selection criteria, decision-making procedures, environmental benefits, use and management of the proceeds; and
- an independent assessment or certification issued by a professional certification authority or person approved or recognised by the SEC.

The Rules contain a list of projects that qualify as green projects, including renewable and sustainable energy, clean transportation, sustainable water management, climate change adaptation, energy efficiency, sustainable waste management, sustainable land use, biodiversity conservation, green buildings, and any other categories as may be approved by the SEC.

According to Rule 4.0 (i) of the Rules, proceeds of bonds can be used only for those purposes stated in the approved offer documents, which are limited to those eligible green projects approved by the Rules as stated above.

On the management of proceeds, the Rules mandate that a separate account must be maintained for the net proceeds of the offer from which the project is to be funded. However, regarding the process of project evaluation and selection, the Rules are silent on requirements of what the process should entail and what standards should be met.

On reporting, which is very crucial to the success or failure of green bonds and green project monitoring, the Rules require that the issuer must provide a green bond report annually to the SEC. The report must state the project to which proceeds from the bonds were applied, the amounts disbursed, the expected impact of the project, qualitative and quantitative performance indicators, and the methodology used to prepare those indicators.

Further, the Rules require that the issuer must publish an assessment report of the green project and its associated benefits. This report must be conducted by an independent professional assessment agency and be published annually.

5 Impact of COVID-19

5.1 Has COVID-19 had a significant impact on ESG practices?

The COVID-19 pandemic and its global effect on all aspects of life has, among other things, exposed how improperly managed ESG risks can leave lasting effects, reputational or otherwise, on companies and organisations.

As a result of COVID-19, many organisations have been forced to work remotely. This has had some positive impact on the environment, such as bringing about a reduction in the level of fumes from generators released into the atmosphere. However, on the negative side, due to the fact that many organisations have shifted to remote working, leveraging on the benefit of technology, cybercrime has skyrocketed. In the past, many organisations paid little attention to security of data of their employees as well as their customers. COVID-19 exposed this lapse.

With the advent of COVID-19, a new kind of waste is being generated all over the world, including in the workplace, most notably personal protective equipment such as gloves and face masks. Many people are not properly disposing of these items, which is thus leading to an increase in the risk of spreading the virus.

Due to the pandemic, certain ESG issues, such as workplace safety, human capital management, and business sustainability, have evolved to become mainstay concerns of different stakeholders.

6 Trends

6.1 What are the material trends related to ESG?

The key material trends in relation to ESG are the following:

- **Growing Focus on Human Capital**: Human capital issues will continue to attract investor and stakeholder attention as digitisation, automation, and the growing globalised knowledge economy demand companies to be more agile and forward-leaning when shaping their future workforce. At the same time, companies will continue to juggle heightened expectations on diversity and inclusion in the workforce, particularly in senior-level management and on boards.
- **Data Protection and Cybersecurity**: Data protection and cybersecurity have remained a top priority. Investors, companies, and other stakeholders continue to focus on the critical risks posed in this area.
- **Race to Carbon Net Zero**: The continued push to "green" economies will present new opportunities and risks for companies and investors as they look to adapt to a low-carbon economy. Companies that are slow to adapt may face severe financial ramifications in the form of stranded assets and bear reputational costs as consumers continue to lean toward sustainability.

6.2 What will be the longer-term impact of COVID-19 on ESG?

The COVID-19 pandemic has undoubtedly generated both a positive and negative impact on ESG-related issues. The pandemic has accelerated many of the ongoing ESG trends while also reinforcing the importance of ESG. At a minimum, the pandemic has revealed to us that businesses must work in harmony with the planet, paying close and detailed attention to not only the environment they operate in, but also to their people. Experts have projected that the post-pandemic investment landscape is set to place greater value on ESG disclosures. In the aftermath of the pandemic, investors and other stakeholders are likely to become interested in how companies approach systematic and critical incidental risk management, disaster management, and recovery plans to anticipate future black swan events. Conversations around sustainability and adaptation to a low-carbon economy are also likely to gather momentum as investors and the general public attempt to correlate the pandemic with environmental degradation and draw parallels between the pandemic and climate change and the latter's potential to wreak havoc on a global scale.

There has been growing support in recent years for the concept of stakeholder capitalism, and the pandemic has accelerated the shift toward this concept by bringing into focus issues such as workplace safety, diversity and inclusion, consumer protection, and corporate governance principles, among others. Stakeholder capitalism is a philosophy based on the belief that companies have an obligation that goes beyond simply providing returns for shareholders.

Dayo Adu is the Managing Partner of Famsville Solicitors, a Notary Public and leads the firm's Business and Investment Immigration practice group. He advises on due diligence, regulatory and compliance audit, corporate and internal investigations, and general commercial law. He also renders legal advice on foreign investment in Nigeria, corporate structures for investment, investment incentives, tax breaks for foreign investors and company establishment procedures. He has advised both indigenous and international firms and companies on general commercial laws cutting across different industries. Dayo is a professional negotiator and mediator and also an associate member of the Chartered Institute of Arbitrators (UK). He has also co-authored Nigeria chapters for several notable international publications.
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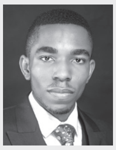

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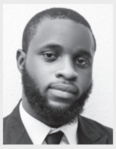

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The firm's core business is advising clients on innovative and complex transactions in a wide range of practice areas. Our goal is to be our clients' best partner. We put our clients at the centre of everything we do and collaborate with them to deliver truly innovative solutions.

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