



# **NIGERIA REPORT: UPDATE ON THE HARMONISATION OF LAWS AND REGULATIONS WITH THE PROVISION OF THE TREATY**

**BY**

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# Introduction

- The **Energy Charter Treaty** is an international agreement which establishes mutual framework for cross border cooperation in the energy industry.
- The law in Nigeria allows Nigeria to enter into agreements with other countries.
- Nigeria is a contracting member of the Vienna convention on the law of treaties.
- However accession to International Treaties is not automatic. They have to be passed into law by the National Assembly in accordance with **Section 12(1) of the Constitution of Nigeria 1999, as amended.**



# Introduction...Cont'd



- **The Energy Commission of Nigeria (ECN)**, is a creation of ECOWAS and was established by *Act No 62 of 1979*, *The Legal mandate of the Commission is as contained in ECN Act, CAP E10, Laws of the Federation, 2004* with the Statutory mandate for the strategic planning and co-ordination of national policies in the field of Energy in all its ramifications.
- The ECN however commenced operation in 1989.



# Introduction...Cont'd



- Serve as a centre for gathering and dissemination of information relating to national policy in the field of energy development.
- Serve as a centre for solving any inter-related technical problems that may arise in the implementation of any policy relating to the field of energy.
- Advise the government of the federation on questions relating to energy
- Prepare, periodic master plans for the balanced and coordinated development of energy in Nigeria
- Lay out guidelines for the utilisation of energy types.



# Introduction...Cont'd



- Inquire into and advise the government of the federation or of the state on the adequate funding of the energy sector
- Promote training and manpower development in the energy sector.
- Monitor the performance of the energy sector in the execution of government policies on energy
- Collate, analyse and publish information relating to the field of energy from all sources
- **Liaise with all international organisations in energy matters such as the International Atomic Energy Agency, World Energy Conference and other similar organisations**



# Introduction...Cont'd



- The Petroleum Industry Act (PIA) signed in to law in 2021 repealed the extant Petroleum Acts. It created an array of provisions and innovations that affect the private, public sector and stakeholders in the Oil and Gas Industry.



# Introduction...Cont'd



- It was also enacted to provide for the legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry;
- And creating an enabling environment more conducive for the growth of the sector while addressing legitimate grievances of the communities most impacted.



# Introduction...Cont'd



- Under the Petroleum Industry Act, the NNPC is to be more efficient, strengthened and commercialised by transitioning into a limited liability company.
- The regulation of the petroleum industry is now being handled by the :
- **Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and**
- **The Midstream and Downstream Petroleum Regulatory Authority (MDPRA).**



## Introduction...Cont'd



- A foreign investor, before commencing business is required to register with the NIPC by virtue of Section 20 of the NIPC Act.S.17 of the NIPC Act
- This allows any Nigerian or any non-Nigerian to invest and participate in the operation of any enterprise in Nigeria (With the condition that the enterprise is established in accordance with the Companies and Allied Matters Act 1990).



## OBJECTIVES OF THE ECT



- **The Energy Charter Treaty provides a multilateral framework for energy cooperation that is unique under international law.**
- It is designed to promote energy security through the operation of more open and competitive energy markets, while respecting the principles of sustainable development and sovereignty over energy resources.
- **The Energy Charter Treaty was signed in December 1994 and entered into legal force in April 1998.**
- Currently there are **fifty-six Members** to the Treaty and 42 observers to the Treaty.
- Nigeria presently has an observer status.



## OBJECTIVES OF THE ECT.... Cont'd



### **The Treaty's provisions focus on four broad areas:**

- The protection of foreign investments, based on the extension of national treatment, or most-favoured nation treatment (whichever is more favourable) and protection against key non-commercial risks;
- Non-discriminatory conditions for trade in energy materials, products and energy-related equipment based on WTO rules, and provisions to ensure reliable cross-border energy transit flows through pipelines, grids and other means of transportation;



## OBJECTIVES OF THE ECT.... Cont'd



- The resolution of disputes between participating states, and - in the case of investments - between investors and host states;
- The promotion of energy efficiency, and attempts to minimize the environmental impact of energy production and usage.



- Nigeria is a member of *World Trade Organization*. Therefore, **Article 29** of the **Energy Charter Treaty** would be applicable to Nigeria only when dealing with contracting parties who are not members of the World Trade Organization



# Conclusion



- There is therefore no provision of the ECT that is inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
- It is also important to note that the ECT is in tandem with the ECOWAS Protocol of Energy, which Nigeria has ratified.
- Nigeria is convinced that taking into consideration the few observations raised in the accession report vis –a –vis the ECT, Nigeria is no doubt a very attractive country for investment in the energy sector.
- This includes energy projects and infrastructures with a determination to reducing to the barest minimum technical, administrative and other unnecessary bureaucracies in energy investment in all ramifications.



# Conclusion .... Cont'd



- This again is in line with the current resolve of the urgency to promote energy sector investment and trade; and to promote investment in and outside Nigeria through effective promotional means in a bid to improve investment climate in Nigeria for Nigerian and non – Nigerians investors alike.
- Finally, while awaiting the outcome of the modernization of the Energy Charter Treaty, it is suffice to say that the provisions as currently contained in the ECT do not present any significant legal implications to the legal framework on Foreign Investment in the Energy Sector in Nigeria.



*THANK YOU*