The Nigerian Power Sector
Legal/Regulatory Framework –
Key Financing Considerations

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PRESENTATION BY
BANWO & IGHODALO

AT THE
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1. OVERVIEW OF NIGERIAN POWER SECTOR, REGULATORY FRAMEWORK & GOVERNMENT POLICY

2. REFORMS: PRIVATISATION

3. KEY FINANCING CONSIDERATIONS
Historically, Nigerian electricity supply industry was run by National Electric Power Authority ("NEPA").

Statutory Corporation 100% owned by Federal Government of Nigeria ("FGN")

Established in 1972 from merger of:
- Electricity Company of Nigeria
- Niger Dams Authority
- Generated, transmitted, distributed electric power
- Engaged in billing, metering and customer services.

Vertically integrated monopoly:

Major challenges
## OVERVIEW OF NIGERIAN POWER SECTOR (Contd.)

<table>
<thead>
<tr>
<th>MAJOR CHALLENGES</th>
<th>REFORM IMPERATIVES</th>
<th>OUTCOMES</th>
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<tbody>
<tr>
<td>Lack of adequate investment;</td>
<td>Negative impact on industrial and economic growth;</td>
<td>Efficient Electricity Supply Industry;</td>
</tr>
<tr>
<td>Aging infrastructure;</td>
<td>Est. 100m people out of current population of &gt;150m without electricity;</td>
<td>Market-determined pricing;</td>
</tr>
<tr>
<td>Unmotivated workforce – low capacity development, unpaid salaries;</td>
<td>Est. available capacity of 4500 MW; well below current suppressed capacity of about 10,500MW;</td>
<td>Private sector-driven industry;</td>
</tr>
<tr>
<td>Systemic Corruption;</td>
<td>Est. $3.5bn annual investment required for power generation alone; over next few years, to meet the set target of 40,000MW by 2020;</td>
<td>Transition to fully competitive market structure</td>
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<tr>
<td>Bureaucracy and inefficiency;</td>
<td>Private sector participation necessary to improve efficiency; investment in infrastructure &amp; bridging the power demand/supply gap.</td>
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<td>Huge supply/demand gap – high cost of alternative means of power generation;</td>
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<td>Inefficient billing/collection systems.</td>
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OVERVIEW OF NIGERIAN POWER SECTOR (Contd.)

Comparison with other Leading African markets:

<table>
<thead>
<tr>
<th>Country</th>
<th>Population</th>
<th>Generating Capacity</th>
<th>Av. Per Capital Consumption</th>
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<tbody>
<tr>
<td>EGYPT</td>
<td>circa 80M</td>
<td>17,000 MW</td>
<td>1,866KwH</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>circa 45M</td>
<td>40,000 MW</td>
<td>7,808KwH</td>
</tr>
<tr>
<td>NIGERIA</td>
<td>&gt;150M</td>
<td>4,500 MW</td>
<td>236KwH</td>
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</table>
Electricity (Amendment) Decree & NEPA (Amendment) Decree of 1998:

- lifted NEPA’s monopoly,
- allowed private participation in electricity generation (IPPs)

In 2000, FGN established Electric Power Sector Implementation Committee ("EPIC") to:

- review Nigerian Power Sector
- prepare road map for reform of the industry.

EPIC proposed:

- regulatory reforms – separation of policy maker (ministry) and independent regulator (NERC).
- unbundling NEPA from vertically integrated monopoly into different businesses.
- privatisation of unbundled business units NEPA.
- Transfer of legacy liabilities to separate entity.
Recommendations of EPIC culminated in:

- enactment of Electric Power Sector Reform Act 2005;
- transition from NEPA to PHCN;
- unbundling of PHCN into 18 successor companies (comprised of 6 GenCos and 11 DisCos and the Transmission Company of Nigeria ("TCN"); and
- transfer of the assets, as well as employees and relevant contracts from PHCN to the successor companies via transfer order instruments in accordance with the EPSRA.

Establishment of Nigerian Electricity Liability Management Company Limited by Guarantee ("NELMCO").

Establishment of Nigerian Bulk Electricity Trading Plc ("NBET"), the bulk trader.

In 2004, FGN initiated Nigerian Integrated Power Project ("NIPP") under which 10 power plants have been established with a view to increasing the country’s power production capacity and improve the transmission network.

NIPP assets are held by Niger Delta Power Holding Company.

NIPP assets not part of on-going privatisation.

Proposed separate process for the privatisation of NIPP assets.
REFORMS – PRIVATISATION

ROADMAP FOR POWER SECTOR REFORM

(A CUSTOMER-DRIVEN SECTOR-WIDE PLAN TO ACHIEVE STABLE POWER SUPPLY)
REFORMS – PRIVATISATION (Contd.)

1998-2004

Break up of monopoly of NEPA & entry of private sector investors in power generation sub-sector through IPPs

2004-2010

Enactment of EPSRA; unbundling of PHCN into 18 separate successor companies – 6 GenCos, 1 Transco and 11 DisCos
NIPP – gas-fired power plants and transmission lines

2011+

Privatization/Concession/Management Contracts for PHCN successor companies & NIPP Assets
Transition period under Bulk Trader & Payment Support Mechanisms before competitive market
## REFORMS – PRIVATISATION (Contd.)

<table>
<thead>
<tr>
<th>FGN currently in process of privatising:</th>
<th>Concession of 2 Hydro Companies, which own 3 GenCos plants;</th>
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<tr>
<td></td>
<td>Outright sale of FGN stake in 3 thermal GenCos; and FGN 51% majority stake in Geregu GenCo;</td>
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<tr>
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<td>Sale of 60% stake in 11 DisCos;</td>
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<tr>
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<td>Transaction documents signed in February 2013 (except Afam GenCo &amp; Kaduna DisCo);</td>
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<td>25% deposit paid by preferred bidders of 5 GenCos and 10 DisCos;</td>
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<td>Payment of 75% balance and final handover awaited within 6 months of signing transaction documents;</td>
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<td>Awarded management contract in respect of TCN to Manitoba.</td>
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</table>
Preferred bidders of 5 GenCos and 10 DisCos currently seeking to raise financing (onshore/offshore) to fund remaining 75% of acquisition cost/concession fees.

Under privatisation guidelines, bidders permitted to debt finance up to 70% of the acquisition price/concession fees.
Post-Privatisation Industry Structure

NERC

TCN

NELMC O

NBET

GenCo/ IPPS

DisCoS

Consumers
## REFORMS – PRIVATISATION (Contd.)

### Envisioned Market Progression:

<table>
<thead>
<tr>
<th>TRANSITION PERIOD</th>
<th>MEDIUM TERM</th>
<th>LONG TERM</th>
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<tbody>
<tr>
<td>• Progressing privatisation of remaining PHCN and all NIPP assets</td>
<td>• Fully privatized Power Industry</td>
<td>• End of generation gap</td>
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<tr>
<td>• Licencing of more IPPs</td>
<td>• Withdrawal of payment support arrangements/bilateral contracts among GenCos and DisCos</td>
<td>• Sufficient transmission and distribution infrastructure</td>
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<tr>
<td>• NBET assuming PHCN power purchasing duties:</td>
<td>• Increased competition among GenCos and IPPs</td>
<td>• Fully established payment and collection processes</td>
</tr>
<tr>
<td>• signing PPAs with most GenCos/IPP; backed by necessary payment support arrangements</td>
<td>• Market pricing of gas and other fuels</td>
<td>• Supply quality and standards achieved</td>
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<tr>
<td>• Signing Vesting Contracts with Between NBET and DisCos</td>
<td>• Gradual deregulation of pricing</td>
<td>• No DisCo monopolies</td>
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<td>• Establishment of fully liberalised &amp; competitive market</td>
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KEY FINANCING ISSUES

Short unexpired residue of term of most GenCo and DisCo licences and uncertainty of licence renewals (Section 71(10) EPSRA).

Robustness of payment support arrangements – no FGN/World Bank payment support / partial risk guarantees for DisCos.

Certainty in tariff methodology (MYTO)? How to ensure that discretionary powers exercised by NERC with respect to changes to MYTO methodology should be restricted to prescribed procedure and review periods in the MYTO.
KEY FINANCING ISSUES (Contd.)

Labour Matters – payment of huge legacy liabilities (bidders not involved in the process and not CP to handover) and need to retain key staff but bidders don’t yet have management control.

Lack of information/relevant disclosures from BPE e.g in respect of material assets of GenCos/DisCos – insufficient due diligence & yet no management control for bidders.

Insufficient warranties (generally beyond title warranties) and indemnities in Transaction Documentation – is “as is where is” basis the right approach?
Prevention of asset-stripping and other material adverse changes between signing of Transaction Documents and Handover – need for management control by preferred bidders after payment of 25% deposit; no MAC as CP for closing/handover?

Escrow account controlled by BPE to exclusion of preferred bidders.

Debt/security restrictions – BPE consent required for debt; preferred bidders cannot charge assets of GenCos/DisCos (company law rules against financial assistance?)

Gas supply risks for GenCos/effectiveness of Domestic Gas Supply Obligation on gas producers?
KEY FINANCING ISSUES (Contd.)

NBET failure to supply electricity (lack of sufficient DisCo compensation in Vesting Contract);

Responsiveness of FGN to the investor key concerns?
• no clear FGN support for key underlying aspects of MYTO, including levels of power supply, long-term support of regulated returns, etc
• no explicit indication of FGN support for take-off, solvency and/or sustainability of various FGN-owned entities that are critical to power sector, including NBET, TCN, NELMCO, Nigerian Gas Company Limited, and Gas Aggregation Company Nigeria Limited
KEY FINANCING ISSUES (Contd.)

Increasing capacity of Nigerian financiers to grant required funding but still insufficient

Possible reticence of international financial institutions (considering their perception of political, economic and security risks)
Let’s discuss...