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Nigeria's Climate Change Act – things to know and prepare for

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Nigeria, like other parties to the United Nations Framework Convention on Climate Change (UNFCCC) and other treaties aimed at stabilising greenhouse gas (GHG) emissions (i.e. the Kyoto Protocol and Paris Agreement), participated actively in the 2021 UN Climate Change Conference (COP26) which took place between October and November 2021 in Glasgow. The goals of COP26 were for countries to renew their commitment to securing net-zero targets by mid-century and to keep the 1.5degrees target within reach; protect communities and natural habitats; mobilise finance to deliver on the first two goals; and to work together to deliver on the various goals.

During COP26, Nigeria committed to achieve net-zero by 2060, and barely a week after the conference, President Muhammadu Buhari signed into law the Climate Change Act, 2021[1] (the Act), which was passed by the National Assembly in October 2021.

The Act seeks to provide a framework for achieving low GHG emissions and to mainstream climate change actions into national plans and programmes. Apart from establishing the National Council on Climate Change (NCCC) which shall have the power to make policies and decisions on all matters relating to climate change in Nigeria, the Act also provides that the NCCC will collaborate with the Federal Inland Revenue Service (FIRS) to develop a mechanism for carbon tax in Nigeria. The proceeds from the carbon tax, as well as emissions trading among other sources of funds, will be used to fund the Climate Change Fund (the Fund) proposed by the Act.

In this article, we highlight key sections of the Act which you should be aware of and provide our thoughts on the Act.

Background and changes introduced by the Act

Nigeria first developed a climate change policy, the Nigeria Climate Change Policy Response and Strategy (NCCPRS)[2], in 2012 to promote low-carbon emissions and to respond effectively to the impacts of climate change, such as extreme weather events, food insecurity etc.

In 2021, the Federal Ministry of Environment, through the Department of Climate Change introduced the National Climate Change Policy (NCCP) for the 2021 to 2030 period. The NCCP sets out Nigeria's climate change policy direction, addresses conditions required to attain Nigeria's vision to be a climate resilient economy, and sectoral measures for mitigating the effects for climate change in Nigeria.

The Act provides that the newly-established NCCC, in conjunction with the Ministries in charge of Environment, Budget and National Planning, will be responsible for formulating Nigeria's National Climate Change Action Plan (Action Plan) going forward. The Action Plan would include details about Nigeria's carbon budget - defined in the Act to mean the approved quantity of GHG emission that is acceptable over a specified time -, GHG emission profile for sectors of the economy; incentives for private and public entities that achieve their GHG emission reduction targets; the level of Nigeria's compliance with its international climate change commitments etc.

The Act also provides that the Action Plan would cover a five-year period, with the first plan expected to be produced no later than 12 months from the commencement of the Climate Change Act.

Who is impacted by the Act?

The Act requires all ministries, departments and agencies (MDAs) of the Federal Government; and public and private enterprises in Nigeria to develop and implement mechanisms geared towards fostering low carbon emission, environmentally sustainable, and a climate resilient society.

What obligations do affected persons have?

Private entities

Private entities refer to entities that employ 50 or more employees. The Act requires such entities to put in place measures to achieve the annual carbon emission reduction targets specified in the Action Plan. The Act also requires private entities to designate a Climate Change Officer or an Environmental Sustainability Officer, who would be responsible for submitting an annual report that shows the status of the entity's carbon emission reduction efforts during the relevant period.
Failure to comply with this obligation will result in fines determined by the NCCC, based on Environment Economic Accounting. The Act also empowers the NCCC to issue notices via gazette with respect to obligations and fines for non-compliance.

Public entities

The Act provides that the NCCC will issue periodic regulations to impose, vary or revoke obligations relevant to public entities - public entities are defined as organisations or bodies providing services to the public on behalf of the Nigerian government.

Ministries, Departments and Agencies (MDAs)

MDAs are required to create a climate change desk from which all compliance and planning activities for MDAs are to be carried out. Failure to comply with carbon emissions targets would result in sanctions for the principal officer of such an MDA, including fines determined by the NCCC.

The Climate Change Fund

The Act provides for the creation of the Fund which will warehouse amounts paid by way of carbon taxes and emission trading; appropriations from the National Assembly; funding from international organisations; fines and charges issued to private and public entities; subventions, grants, donations and fees etc.

The proceeds of the Fund are to be disbursed towards funding climate change mitigation initiatives, incentivising private and public entities that meet their GHG emission reduction targets, conducting climate change impact assessments, and running the NCCC.

1.We have analysed the Climate Change Bill approved and signed by the President, pending the release of the gazetted copy of the Act.

2.https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP_NIGERIA_REVISED_2-JUNE-2021.pdf

What is carbon tax and emission trading?

Carbon tax[3]

Carbon taxes are environmental taxes levied on precise units of carbon (or a proxy) by governments to reduce carbon emissions (through fossil-fuel based energy) which occur as a result of production or consumption of goods and services.

The logic is that since economic agents (i.e. companies, households etc.) generate carbon emissions, they should equally be responsible for bearing the economic cost associated with their emissions, rather than pass the economic cost of pollution to the society.

Although carbon taxes are primarily introduced to reduce carbon emissions, they have also been known to increase government revenues and to provide an incentive for technological innovation to decarbonise the planet through the invention of alternative energy sources. The United Nations estimates that as at May 2021, 33 carbon taxes had been implemented by countries, including in South Africa, to serve as a financial tool to combat climate change.

Emission trading

Emission trading is an incentives-based technique whereby the government sets a cap on the maximum level of emissions, and issues permits or allowances for each unit of emission which can be traded by people and companies. The logic is that people must choose between cutting back on their GHG emissions or actively seeking to buy / trade permits or allowances from the government or other companies. This essentially means that emissions could be traded like commodities.

As one would expect, emission trading can be complicated because it requires monitoring, reporting, and verification; and other complexities around setting up the carbon trading market/auctions etc.

Our thoughts and analysis

The President's signing of the Act and the establishment of the NCCC to coordinate all climate-related policies is a positive step towards meeting Nigeria's climate change commitments.

While the adoption of a hybrid approach to reducing carbon emissions - through carbon taxes and emission trading - is laudable, the FIRS and NCCC need to carefully consult and engage key stakeholders and specialised institutions to fully understand and appreciate the specific design features of both measures (e.g. the tax base, tax rate, coverage, mode of calculation, special consideration, set up considerations for emission trading etc.). Failure to consider these and other factors will have a negative impact on the country's climate change ambitions.

Further, the NCCC should not only use this as a means to raise additional revenue for the government. Rather, it needs to put together a clear framework for the administration of the Fund, and must report on the judicious use of the Fund for socially productive projects to ensure that stakeholders accept and comply with the provision of the Act.

Private entities need to proactively understand the implication of the Act on their activities, as well as their obligations under the Act because non-compliance will result in penalties determined by the NCCC. More importantly, private entities should take advantage of the Act and the soon-to-be-introduced incentives to introduce technological innovations that can mitigate the impact of climate change.

3.https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2021-10/Carbon%20Taxation.pdf

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