



THE CLIMATE CHANGE ACT 2021: KEY POINTS FOR CONSIDERATION

I. Introduction

In order to protect the Nigerian environment and ecosystem from the ravages associated with climate change and to achieve the reduction of greenhouse gas emissions in Nigeria, President Muhammadu Buhari of Nigeria signed the country's climate change bill into law on 18th November 2021.

We have provided a highlight of some of the key provisions of this new law below.

II. Applicability

The Climate Change Act 2021 (the "**CCA**") applies to all Ministries, Departments and Agencies ("**MDAs**") of the Federal Government of Nigeria as well as to public and private entities in Nigeria. The CCA primary aim is to develop and implement mechanisms that will foster low carbon emission and develop a sustainable environment in the country.

III. National Council on Climate Change

The CCA establishes the National Council on Climate Change (the "**Council**") which is vested with the powers to develop policies and make decisions on all matters concerning climate change in Nigeria. The Council is also required to manage the implementation of the provisions of the CCA. The Council is required to administer the climate change fund which was established by the CCA, collaborate with the Federal

Inland Revenue Service (“**FIRS**”) to develop a mechanism for imposing a carbon tax, and to coordinate the implementation of sectoral targets and guidelines for the regulation of Green House Gas (“**GHG**”) emissions and other anthropogenic causes of climate change. The membership of the Council will include members of the various ministries and departments of the Federal Government of Nigeria. The Council will also include a representative of the private sector on climate change, or environment-related matters, as well as representatives of women, youth and persons with disabilities, who will be nominated by the most representative registered national umbrella association.

The CCA also establishes a Secretariat to handle the administrative, scientific, and technical functions of the Council and a Director-General of the Secretariat who will oversee the administration of the Council.

IV. Climate Change Fund

The CCA establishes a Climate Change Fund which is to be which is to be financed by the following: (a) sums appropriated by the National Assembly for the running of the Council; (b) subventions, grants and donations, fees and charges for services rendered or publications made by the Council; (c) funding from international organisations and funds due to Nigeria for meeting her Nationally Determined Contributions; (d) fines and charges from private and public entities for flouting their Climate Change mitigation and adaptation obligations; (e) carbon tax and emissions trading; and (f) such other funds as the council may prescribe from time to time.

The Climate Change Fund is to be applied towards: the cost of administration of the Council, payments of emoluments, allowances and benefits of members and staff of the Council; climate change advocacy and information dissemination; funding innovative climate change mitigation and adaptation projects; conducting assessments of climate change impact on vulnerable communities and population; incentivising entities for their efforts toward transiting to clean energy and sustaining a reduction in GHG emissions; and any other expenditure in connection with any function of the Council.

Under the CCA, the Secretariat shall keep proper accounts and records of the income and expenditure of the Council and submit a comprehensive report of all the activities of the Secretariat and prepare a statement of account in respect of each financial year. The accounts of the Council is to be audited within 6 (six) months after the end of the financial year to which the accounts relate, and the accounts is to be audited in accordance with the guidelines issued by the Auditor-General for the Federation.

The CCA also permits the Council to accept gifts of land, money, or other property on such terms and conditions, as may be specified by the person or organisation making the gift. However, these conditions must not be inconsistent.

V. Carbon Budget

The CCA provides that the Federal Ministries of the Environment and National Planning shall have the responsibility to set the carbon budget (which means the approved quantity of GHG emission that is acceptable over a specified time) and the budgetary period for Nigeria, and periodically revise the carbon budget in line with Nigeria's Nationally Determined Contributions in order to comply with international obligations.

The goal of the carbon budget is to keep the average increase in global temperature within 2 degrees Celsius and make a concerted effort to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels.

Under the CCA, within 12 (twelve) months to the end of a carbon budgetary period, the Federal Ministry of Environment ("the Ministry") is required to submit to the Federal Executive Council ("FEC"), through the Council, a new carbon budget for approval. Where, however, there is a need to review a carbon budget within a carbon budget cycle, the Ministry shall, within 3 (three) months of the revision of the carbon budget, submit it to the FEC through the Council for approval.

The Ministry shall also be responsible for publishing guidelines for the measurement, reporting and verification of national emissions that will serve as the basis for setting and annually reviewing the carbon budget.

VI. National Climate Change Action Plan

Under the CCA, the Secretariat, in consultation with the Ministry and the Federal Ministry of Budget and National Planning, is required to formulate a National Climate Change Action Plan ("Action Plan") every five years, the first of which is to be produced within 12 (twelve) months from the commencement of the CCA.

The CCA also outlines the process through which the Action Plan is to be formulated. The process includes consultation with the public for a period of not less than 8 (eight) weeks ending 14 (fourteen) days before the presentation of the Action Plan to the Council for approval.

The Action Plan shall serve as a basis for establishing national goals, objectives and priorities on climate adaptation and for identifying activities to ensure that the national emissions profile is consistent with the carbon budget goals. The Action Plan shall also prescribe measures and mechanisms for, among other things: (a) identifying actions for adaptation and mitigation against climate change; (b) identifying strategic areas of national infrastructure requiring climate proofing, (c) enhancing energy conservation, efficiency and use of renewable energy in industrial, commercial, transport, domestic and other uses; and (d) achieving Nigeria's climate change goals.

The CCA also provides some components of the Action Plan. Some of these components include an articulated carbon budget for the five-year cycle and for each of the years in the five-year cycle, details on the level of compliance with international

climate commitments, past, current and projected GHG emission profile of GHG emission sectors of the economy, and incentives for private and public entities that achieve GHG emission reduction.

The Director-General of the Secretariat is also required to submit a detailed report on the state of the nation regarding climate change to the Council and the National Assembly Committee on Climate Change. This report shall be submitted for each five-year cycle and shall include information on the progress of the implementation of the Action Plan, the extent to which the GHG emission profile is consistent with the annual carbon budget, assessment of risk and management of risks and vulnerability, and fines issued against private and public entities for non-compliance with the provisions of the CCA.

The Director-General is also required to submit to the National Assembly, within 3 (three) months after the end of every financial year, an evaluation report on the performance of climate change duties by private and public entities.

VII. Obligations

The CCA sets out the climate change obligations of the MDAs, public entities, and private entities. MDAs, among other things, must establish a climate change desk for ensuring integration of climate change activities into their core mandate. MDAs shall also adhere to the annual carbon emission reduction targets, in accordance with the Action Plan and carbon budget made under the CCA. Where an MDA fails to meet its carbon emission reduction target, it shall be subjected to a review, and if found liable, its principal officers shall be sanctioned and may be fined as determined by the Council.

In relation to public entities, the CCA provides that the Council may by regulations impose obligations relating to climate change on such entities and may vary or revoke any such obligations, where necessary.

Private entities that have a minimum of 50 employees also have obligations under the CCA. These include the requirement to put in place measures to achieve the annual carbon emission reduction targets in line with the Action Plan and to designate a Climate Change Officer or an Environmental Sustainability Officer with the responsibility of submitting the annual reports on the entity's efforts at meeting its carbon emission reduction and climate adaptation plan. The Council may also require a private entity to prepare reports on the status of its performance of its climate change obligations, and prescribe the period for reporting.

Where a private entity fails to meet its target, it shall be liable to a fine determined by the Council, who shall rely on a system of Environmental Economic Accounting with attention on the health impacts, impact on climate variation, and total damage to ecosystem services.

VIII. Reducing Emissions from Deforestation and Forest Degradation (REDD+) Registry

The REDD+ refers to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests, and the enhancement of forest carbon stocks. The CCA empowers the Federal Ministry of Environment to set up a registry with sub-national nodes for capturing REDD+ activities in Nigeria, including updates on Forest Reference Emission Level (FREL). The CCA also empowers the Council to provide fiscal support for REDD+ activities.

IX. Offences

In relation to offences, the CCA states that any person, private or public entity that acts in a manner that negatively affects efforts towards mitigation and the adaptation measures made under the CCA or contravenes any obligations it has under the CCA commits an offence and is liable to a penalty as will be determined by the Council.

X. Conclusion

It is expected that the implementation of the CCA will enable Nigeria to achieve a reduction of greenhouse gas and carbon emissions to internationally acceptable levels. Private entities should be aware of their obligations and put in place the necessary structures that will ensure they are compliant with the CCA, especially where the Council has been given a wide discretion to determine the applicable penalties for non-compliance.

If you require any assistance with complying with the requirements of the CCA, clarification regarding this article, or information about our practice area offerings, please contact us at: uubo@uubo.org.

If you require any assistance or clarification regarding whether your processing of Personal Data conforms with the governing principles set out in the NDPR or information about our practice area offerings, please contact us at: dp@uubo.org.

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