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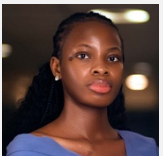
Key contacts



Desmond Ogba
Partner
desmond.ogba@templars-law.com



Temple Ezebuike
Senior Associate
temple.ezebuike@templars-law.com



Susan Omeh
Associate
susan.omeh@templars-law.com

TEMPLARS ThoughtLab

Reflections on the Lagos State Electricity Law and Electricity Market: *How Investors Are Gearing Up*

Introduction

The enactment of the Fifth Alteration (No. 33) Bill to the Nigerian Constitution, and the subsequent passage of the Electricity Act, 2023 (as amended) (the “**Electricity Act**”), marked a pivotal moment in Nigeria's electricity sector. These legislative changes created a range of new possibilities within the Nigerian electricity sector including enabling constituent States to participate in all segments of the electricity sector – whether or not covered by the national grid.

For Lagos State, in December 2024, the Governor of Lagos State assented to the Lagos State Electricity Law, 2024 (the “**Lagos Electricity Law**”), joining a number of other states that had enacted their own electricity laws to establish their own electricity markets. As the commercial center of Nigeria, characterised by the highest concentration of industries, population, and electricity consumption, the introduction of the Lagos Electricity Law represents substantial investment prospects for firms engaged in generation, transmission, distribution, and trading of electricity. To complement this development, the Lagos State Government recently announced the forthcoming launch of Africa's first subnational carbon exchange in Lagos. This initiative holds the potential to significantly enhance investments in one of the Lagos Electricity Law's key focus areas: *renewable energy*.

This publication examines the condition of the Lagos State Electricity Market (the “**Lagos Market**”) before the enactment of the Lagos Electricity Law. It addresses some of the challenges that investors faced under the previous regulatory regime and subsequently explores the new opportunities that have emerged due to the comprehensive provisions of the Lagos Electricity Law and the recent investment-focused initiatives by the Lagos State government. Furthermore, we emphasise important commercial and regulatory factors that investors should consider when pursuing energy projects within the Lagos Market.

The Lagos Market Prior to the Lagos Electricity Law

Prior to the constitutional amendments in the electricity sector in 2023 and the implementation of the Lagos Electricity Law, the Lagos Market, as well as the wider Nigerian electricity sector, was overseen at the federal level by the Nigerian Electricity Regulatory Commission (**NERC**). This centralised regulatory framework was characterised by persistent power shortages, primarily due to an excessive dependence on a fragile national grid, in addition to various regulatory, commercial, and technical challenges. For example, the lack of cost-reflective tariffs (resulting from price controls on grid-connected projects that supplied the majority of the state's electricity), coupled with limited regulatory flexibility, impeded investments not just in the generation sub-sector but also in distribution and grid modernisation.

Power Supply and Grid Challenges

Nigeria's installed electricity generation capacity has been estimated to be approximately 12.5GW. However, due to underinvestment in grid infrastructure, coupled with challenges in gas supply and other operational inefficiencies, only an average of about 4 to 5GW has been available for evacuation and consumption. This shortfall is particularly pronounced in Lagos State, which, with a vibrant population exceeding 23 million, has energy demands of approximately 9GW¹, underscoring a significant gap in supply.

This gap was worsened by Lagos State's reliance on a single national grid², which limited its ability to harness and distribute available power efficiently. The absence of a regional or isolated grid managed by the State or other State-licensed entities complicated efforts towards a decentralised grid system. As such, Lagos remained heavily dependent on its primary electricity distribution companies—Eko Distribution Company Plc (**EKEDP**) and Ikeja Distribution Company Plc (**IKEDP**). Following the privatisation process initiated in 2013, both entities have made efforts to expand their ageing distribution infrastructure, while also facing regulations that impede investments in electricity distribution.

Before the legislative and regulatory reforms of 2023, investors had begun exploring decentralised energy solutions and dedicated supply to key residential, commercial and industrial clusters but these initiatives have remained largely small-scale and insufficient compared to the broader needs of the Lagos Market.

Additionally, the heavy reliance on natural gas for power generation in the State further impeded the efforts of operators to meet market demands. The Egbin Power Station, the largest in the State, continued to face operational shutdowns due to, among other things, its dependence on gas

¹ [Economic Intelligence Department, Ministry of Economic Planning and Budget, “Lagos Economic Development Update \(LEDU\) 2025 \(March 2025\) \(https://lagosmepb.org/wp-content/uploads/2025_lagos_economic_development_update.pdf\).](https://lagosmepb.org/wp-content/uploads/2025_lagos_economic_development_update.pdf)

² According to available data, the national grid collapsed 14 times between 2020 -2023. See The Punch Newspaper, “Grid Collapses 105 Times in 10 years Despite \$1.4 Billion Naira Loans” (Punch, 2024) < <https://punchng.com/grid-collapses-105-times-in-10-years-despite-1-4bn-loans/#:~:text=Industry%20data%20showed%20that%20under.office%20on%20May%2029%2C%202023.>

supplies from the Niger Delta region. As a result, complete State control and sustainable energy solutions seemed crucial for bridging the electricity gap and powering the future of Lagos's dynamic and expanding populace.

Electricity Tariff Issues

The slow response to tariff adjustment has significantly hindered the Nigerian Electricity Supply Industry (**NESI**), including within the Lagos Market. Tariff rates, primarily determined by NERC, do not adequately reflect market dynamics. This has forced investors to adopt tariff structures and energy pricing models that frequently fall short of their revenue expectations.

Recent efforts by NERC to stimulate investment, including the promotion of islanded generation and distribution projects as well as bilateral trading, have arisen as a reaction to existing inefficiencies. Nevertheless, the consumer tariffs established for major distribution companies, such as EKEDP and IKEDP, continue to be heavily regulated and at times do not align with real-time market conditions. This restrictive pricing framework has impeded the financial viability of power projects, eroded investor confidence, and decreased the inclination to invest in large-scale grid initiatives within the Lagos Market.

With these challenges, a flexible and responsive tariff structure—reflective of actual electricity generation and distribution costs and supported by state law—seemed crucial for attracting investment and ensuring a stable and sustainable electricity supply in Lagos State.

Potential Opportunities/Commercial Considerations for Investors Post-Lagos Electricity Law

As the new electricity market in Lagos State gains momentum, operators in the State are required to comply with specific time-sensitive provisions in the Lagos Electricity Law, to ensure a seamless integration. One key provision mandates that all entities engaged in regulated activities prior to the enactment of the Lagos Electricity Law must submit their licensing applications to the Lagos State Electricity Regulatory Commission (the “**Commission**”) within three months of the law's commencement.³ However, due to certain outstanding conditions precedent (addressed later in this publication), we expect that this timeline may be temporarily suspended until the conditions are met.

The above notwithstanding, both prospective investors and current operators in the Lagos Market are actively positioning themselves to take advantage of the opportunities presented by the Lagos Electricity Law and leverage the incentives that the Commission is required to offer under the law.⁴ Although the Lagos Electricity Law does not specify the exact nature or scope of these incentives, it is expected that the Commission will work with other relevant authorities in the State, to explore key incentives that will stimulate the Lagos Market.

Below, we explore some of the opportunities and commercial considerations that investors need to focus on in order to maximise the potential offered by the Lagos Electricity Law.

Potential Investments in State/Regional Grids

The Lagos Electricity Law paves the way for the establishment of a state grid, aimed at reducing the dependence on the national grid. Under the Lagos Electricity Law, the Lagos State Ministry of Energy and Mineral Resources (the “**Ministry**”) is required to set up the Lagos Independent Service

³ Section 49(2) of the Lagos Electricity Law.

⁴ Section 19(2) of the Lagos Electricity Law.

Operation ("**Lagos ISO**") as a company limited by guarantee within eighteen (18) months from the commencement of the Lagos Electricity Law.⁵ The Lagos ISO will play a crucial role in optimising the state's grid operations, encompassing functions such as generation and transmission scheduling, coordination of generation outages, management of transmission and distribution congestion, provision of real-time operational support, local resource scheduling, procurement of ancillary services, and overseeing the interconnection of the state grid with the national grid and other state electricity grids.

We expect a significant uptick in public-private partnerships (PPPs) between Lagos State and private investors with expertise in grid financing, construction, and management solutions. If properly implemented, these collaborative efforts have the potential to unlock substantial private sector investment, driving the expansion of the state's grid infrastructure while enhancing operational efficiency and reducing the incidences of grid failures - a perennial challenge plaguing the national grid.

Expansion into Decentralised and Off-Grid Energy Solutions

With increased focus on providing energy access to unserved and underserved areas, there is a significant opportunity for investments in off-grid and mini-grid solutions.⁶ Investors may consider the development of solar mini-grids and other off-grid solutions, particularly in rural and peri-urban areas where access to stable grid power remains a challenge. Given the Lagos Electricity Law's support for decentralised energy, this sector is particularly appealing for investment, and we have begun to see significant interests from investors who are strategically positioning themselves to capitalise on this opportunity.

Renewable Energy Expansion and Carbon Market

Consistent with various initiatives aimed at energy transition, the Lagos Electricity Law empowers the Commission to promote the adoption of renewable energy sources in electricity generation, enhance energy efficiency, and facilitate the transition from utilisation of distillates (such as diesel and fuel oil) as fuel sources.⁷ The Ministry is also tasked with fostering an environment that promotes the utilisation of gas and renewable energy, supporting research and development initiatives, and ensuring collaboration with the federal government to achieve these objectives.⁸

Considering the extensive provisions of the Electricity Act, the Lagos Electricity Law and global energy transition trends, it is expected that a significant portion of the incentives from the Commission will likely to be associated with renewable energy projects. In fact, the Lagos Electricity Law already mandates that electricity generating plants within the state that exceed stipulated emission standards must contribute an emission levy to a dedicated emissions fund. This initiative not only facilitates the tracking of progress in emission reductions but also reinforces the overarching objectives of energy transition.

In complementing the relevant provisions of the Lagos Electricity Law, the Lagos State Government has stepped up to lead the energy transition initiative. On 4 March 2025, the Governor of Lagos State announced the launch of Africa's first subnational carbon exchange, making it the second in the world after California. In line with this move, the State plans to, among other things, distribute over 6 million clean cookstoves at no cost to residents under the US\$80-million Paris Agreement Crediting Mechanism (PACM)-compliant Clean Cookstoves Project, set to commence in June

⁵ Section 97(1)&(2) of the Lagos Electricity Law.

⁶ Part XV of the Lagos Electricity Law contains extensive provisions on off-grid energy solutions.

⁷ Section 114 of the Lagos Electricity Law.

⁸ Section 115(1) of the Lagos Electricity Law.

2025.⁹ These initiatives align with the recent efforts of the Federal Government of Nigeria to establish carbon markets in collaboration with some development finance institutions.¹⁰

The Lagos carbon exchange, with appropriate integration with the Federal Government's own initiative, will provide a platform for businesses in the power sector to trade carbon credits, thereby incentivising emissions reductions in energy production. Together, these government initiatives and the Lagos Electricity Law position Lagos State as a hub for carbon-related investments and innovative investment solutions.

Potential Opportunity for Cost-Reflective Tariffs

The Lagos Electricity Law mandates that all licensed activities are subject to tariff methodologies as may be adopted by the Commission, which shall, *inter alia*, ensure a consistent and apolitical response to macroeconomic signals and allow an efficient licensee to recover the full and reasonable capital and operating costs. However, the Commission is at liberty to approve *willing-buyer willing-seller* negotiated transactions including the applicable tariffs and charges agreed between a licensee and a consumer/class of consumers or between licensees.¹¹ This is commendable in light of the limitations investors faced prior to the 2023 constitutional amendments in the power sector and the enactment of the Lagos Electricity Law.

In adjusting or amending existing tariff methodologies, the Commission is obligated to consult with licensees, electricity consumers, market participants, and other relevant stakeholders. For such tariff adjustments, the Lagos Electricity Law stipulates that electricity tariffs should not be reviewed more than once during a financial year, except for adjustments allowed under a fuel surcharge formula.¹² The ability to amend tariffs on an annual basis creates an appealing investment climate. This flexibility enables investors to easily account for inflation, currency depreciation and other macroeconomic factors while encouraging long-term capital commitment¹³.

Expansive Electricity Franchising Rights

Under an electricity franchising arrangement, a license holder—referred to as the franchisor—can grant another party the rights to operate one or more businesses authorised by the franchisor's licence, utilising the franchisor's brand, system, and business model. This framework, established under the Electricity Act and mirrored in the Lagos Electricity Law, encourages investments in electricity infrastructure and services, particularly in areas where a licence holder lacks the financial capability or appetite to expand relevant electricity supply activities into underserved or unserved areas within their franchised areas. The primary advantage of franchising lies in its ability to enhance electricity access in such underserved or unserved areas.

Under the Lagos Electricity Law, franchising can be utilised by any licensee, including a generation, distribution, transmission, electricity trading and supply licensee. This differs from, and is more expansive than, the federal framework which limits franchising to only distribution activities. Franchising arrangements in the Lagos Market must receive prior written approval from the Commission. While we expect the Commission to issue regulations to clarify the conditions and approval processes for franchising arrangements, the Commission's authority to approve any arrangement similar to franchising allows investors pursuing energy franchising projects the flexibility

⁹ Helen Oji, "Lagos Unveils Carbon Exchange, Leads \$80M Clean Cookstove Drive" (The Guardian, 4 March 2025) (<https://guardian.ng/news/nigeria/metro/lagos-unveils-carbon-exchange-leads-80m-clean-cookstove-drive/>).

¹⁰ Vanguard, "FG to Establish Carbon Market for Economic, Industrial Growth".

¹¹ Section 102 of the Lagos Electricity Law.

¹² Section 109(4) of the Lagos Electricity Law.

¹³ Under the federal multi-year tariff order (MYTO) framework, NERC conducts minor tariff reviews bi-annually and undertakes a major review every five (5) years.

to develop commercial structures that suit the operational efficiencies and economics of their projects in the Lagos Market.

Regulatory Sandbox Opportunities

The Lagos Electricity Law introduces the pioneering concept of regulatory sandboxes. This empowers the Commission to establish a framework that enables operators to pilot innovative products, services, solutions, and electricity business models within the Lagos Market. This initiative represents a significant enhancement to the current electricity business environment and ensures that the Lagos Market evolves in line with advancements in electricity supply technologies and service models. A significant challenge with the erstwhile federal framework was its rigidity and uncertainty for untested or novel electricity activities. However, the potential establishment of a regulatory sandbox offers a secure regulatory environment in the Lagos Market, effectively incentivising investments in innovative electricity service models to better serve customers and address energy deficits in the State.

How Does the Lagos Electricity Law Change the Investment Climate in Lagos?

As investors are gearing up to take advantage of the prospects presented by the Lagos Electricity Law, it is important to understand the contradistinctions in the licensing and operational regimes of the Lagos Electricity Law and the Electricity Act, as the nuances play a vital role in shaping the landscape of the Lagos Market.

Recognised Licences

The Lagos Electricity Law recognises the following key licences:

- a) **Generation Licence**¹⁴: holders to construct, own, operate and maintain a generating station for the purpose of generation and provision of electricity. The Lagos Electricity Law exempts owners of generation plant whose plants do not generate electricity in excess of 1MW from the requirement to obtain a generation licence.¹⁵ For generation in excess of 1MW and for personal use, a captive permit will be required.
- b) **Transmission Licence**¹⁶: holders to construct, own, operate and maintain a transmission system within the Lagos State. Holders can connect their transmission system to another transmission, distribution or electricity system within the Lagos State grid, or national grid, or the grid of another state¹⁷.
- c) **Trading Licence**¹⁸: holders to purchase electricity in bulk from generation licensees and allows the resale of electricity to distribution or supply licensees or bulk customers.
- d) **Distribution Licence**¹⁹: holders to construct, own, operate and maintain a distribution system within Lagos State; connect the distribution system to a distribution, or transmission system within Lagos State; and supply electricity to domestic and non-domestic premises until a transfer scheme²⁰ is implemented in line with the Lagos Electricity Law.

¹⁴ Part VI of the Lagos Electricity Law.

¹⁵ Section 72(3) and Section 74 of the Lagos Electricity Law.

¹⁶ Part VII of the Lagos Electricity Law.

¹⁷ Licensing connections to the national grid or to systems in another state slips into NERC's interstate regulatory oversight, potentially exposing investors to overregulation. However, the Electricity Act contemplates this scenario, by requiring NERC and the Commission to maintain a collaborative inter-institutional relationship and establish an inter-governmental body to promote regulatory harmony in both federal and state markets. See section 230(9) of the Electricity Act.

¹⁸ Part VIII of the Lagos Electricity Law.

¹⁹ Part IX of the Lagos Electricity Law.

²⁰ This is the finalisation of the transfer of all assets and liabilities of the existing distribution companies in the State (i.e., Eko and Ikeja Electricity Distribution Companies) to their respective subsidiaries in Lagos State.

- e) **Supply Licence**²¹: holders to sell or supply electricity to domestic and/or non-domestic premises. A holder can only purchase electricity from generation or trading licensees²² and cannot sell electricity to a person who purchases for resale.²³

Licensing Procedure

We expect that the Commission to issue subsidiary legislation to clarify the documentation and other requirements for applicants seeking a licence. However, upon submission of a licence application, the Commission is required to communicate its decision to the applicant within three (3) months.²⁴ Commendably, the Commission is mandated to inform the applicant of any intention to deny the licence, rather than issuing an outright refusal, thus allowing the applicant an opportunity to address any grounds for potential denial.²⁵ Any licence granted by the Commission will remain valid for the term specified in the licence, not exceeding a duration of ten (10) years.

Licensing and Exclusivity: Competition Rules Overreach?

The Commission reserves the right to issue licences to multiple entities for the same area or activity.²⁶ In instances where a licensed activity enjoys exclusivity within a geographical region, such exclusivity shall not extend beyond five (5) years from the date the licence is granted.²⁷ While this approach is likely intended to promote a competitive electricity market, it prompts reflection on its implications for prospective investors, who may seek a degree of protection to safeguard the economics of their investments, or for existing operators, who may arguably trigger “change in law” provisions in existing contracts and seek redress from relevant counterparties, due to a potential decline in projected revenues for such contracts. It may be prudent for the Commission to find a harmonious balance between promoting competition and encouraging and/or preserving existing investments in the Lagos Market.

Failing Licensees

The Lagos Electricity Law introduces the concept of failing licensees, granting the Commission the authority to revoke a licence if it finds that the licensee: (a) is unable to fulfill its obligations under the Lagos Electricity Law and its licence; (b) is persistently in default of its requirements under the Lagos Electricity Law; (c) is experiencing a prolonged management crisis that jeopardises the interests of shareholders, consumers, and the overall functioning of the undertaking; or (d) lacks sufficient assets to meet its liabilities to lenders and faces an imminent risk of receivership.²⁸

The drawback of this provision is the absence of mechanisms designed to prevent failure, which would enable the Commission to assist struggling licensees in returning to a stable condition. In contrast, under the federal Electricity Act²⁹ and in certain jurisdictions, NERC or the relevant regulator can intervene when a regulated entity is deemed to be failing by implementing preventive measures, such as replacing the management or encouraging a merger with a financially sound entity.

Transitional Provisions

All licenses, permits, authorisations, approvals, consents, directions, permissions, or certificates held by pre-existing licensees prior to the commencement of the Lagos

²¹ Part IX of the Lagos Electricity Law.

²² Section 86(2) of the Lagos Electricity Law.

²³ Section 86(3) of the Lagos Electricity Law.

²⁴ Section 51(3) of the Lagos Electricity Law.

²⁵ Section 52(1) of the Lagos Electricity Law.

²⁶ Section 57 of the Lagos Electricity Law.

²⁷ Section 58 of the Lagos Electricity Law.

²⁸ Section 68(1) of the Lagos Electricity Law.

²⁹ Section 34(2)(g) of the Electricity Act.

Electricity Law will remain in effect for the duration of their validity and will be regarded as having been issued by the Commission, with necessary modifications to achieve the objectives of the Lagos Electricity Law.³⁰

However, it is challenging to reconcile this provision with section 49(2) of the Lagos Electricity Law, which mandates all licensees in the State to apply for a new licence within three (3) months of commencement of the Lagos Electricity Law, or the provision which affords the Commission certain rights to require pre-existing licensees to register with the Commission, or grant them an interim license for the duration of their current licence, or issue a new licence to them upon request.³¹ We expect further regulatory guidance from the Commission on these transitional requirements.

Restrictions on Transfer of Business and Licences

Under the Lagos Electricity Law, a licensee is strictly prohibited from acquiring, whether through purchase, takeover, or any other means, the utility³² of another licensee, or merging another licensee's utility with an existing utility, without obtaining prior written consent from the Commission.

Furthermore, the Lagos Electricity Law prohibits the assignment or transfer of a licence or any part of a licensee's undertaking—whether directly or indirectly—through means such as asset or share sales, mergers, mortgages, charges, pledges, leases, franchises, novation, exchanges, or any other method, without obtaining prior written consent from the Commission.³³ A notable distinction in this respect between the Lagos Electricity Law and the Electricity Act is the inclusion of the term “*indirectly*” in the Lagos Electricity Law, which effectively captures indirect mergers and acquisitions.³⁴

The LESL also obligates a licensee to obtain consent from the Commission before acquiring, directly or indirectly, any interest in or merging with another licensee or an affiliate of another licensee, regardless of whether such licensee is regulated by the Commission or another electricity regulatory agency in Nigeria.³⁵

Regulatory Considerations Before Operation of the Lagos Market

The Electricity Act sets out specific conditions precedent for the full operation of a state electricity market and, by extension, the functioning of the relevant state electricity commission. Consequently, despite the enactment of the Lagos Electricity Law, investors and operators will continue to fall under the regulatory oversight of the Electricity Act and the NERC until all stipulated conditions are satisfied. The details of these conditions are outlined below.

Establishment of an Electricity Regulatory Authority for the State³⁶

Following the enactment of a state electricity law, the Electricity Act requires states wishing to oversee its electricity market to establish a regulatory authority. Section 5 of the Lagos Electricity Law fulfils this requirement through the establishment of the Commission.

³⁰ Section 178(1)(a) of the Lagos Electricity Law.

³¹ Section 178(1)(a) of the Lagos Electricity Law.

³² Utility is defined to mean the assets, business and property of a licensed company.

³³ Section 53 of the Lagos Electricity Law.

³⁴ Section 70(1) of the Electricity Act.

³⁵ Section 66(2) of the Lagos Electricity Law.

³⁶ Section 231(2)(b) of the Electricity Act.

Delivery of a Formal Notification to NERC

The state is further required to formally notify the NERC of the enactment of its law and the establishment of its regulatory authority, enabling NERC to officially transfer regulatory oversight of the state's electricity market to this authority. Lagos State has satisfied this requirement.

Issuance of a Transfer Order by NERC

Within forty-five (45) days of receiving formal notification from the state, NERC is required to issue an order outlining a plan and timeline for the transition of regulatory responsibilities from NERC to the established regulatory authority. On December 19, 2024, after receiving the formal notification from Lagos State, NERC announced the orders which transferred regulatory oversight of the Lagos Market to the Commission (the "**Lagos Transfer Orders**").

Administrative Activities

Among other things, the Lagos Transfer Orders require both EKEDP and IKEDP to separately develop a comprehensive register detailing their power infrastructure within Lagos State. They are required to assess and allocate obligations and liabilities associated with their respective operations, identify all relevant trading points for energy offtake for EKEDP SubCo and IKEDP SubCo³⁷ within the State, and determine the number of employees necessary to fulfill these services. Additionally, they must facilitate the transfer of the identified assets, contractual obligations, liabilities, and personnel to EKEDP SubCo and IKEDP SubCo, respectively.³⁸

Furthermore, the NERC is tasked with preparing a register of all NERC licensees and permit holders in Lagos State, followed by the issuance of a "transfer of regulatory oversight" notice to these entities.

Ultimately, the Lagos Transfer Orders stipulate that these transitional activities must be finalised by **June 4, 2025**. Throughout this process, the Commission and NERC must ensure that the transfers do not negatively impact the creditors of EKEDP and IKEDP, and that there exists an agreement addressing the treatment of liabilities among the creditors, EKEDP, IKEDP, EKEDP SubCo, and IKEDP SubCo.³⁹

When will the Lagos Market become Operational?

The Electricity Act stipulates that NERC will relinquish its regulatory authority in Lagos State only after the aforementioned conditions and administrative processes have been fulfilled. Therefore, while the Lagos Electricity Law has been enacted, substantial transitional activities remain to be undertaken by both the Commission and NERC to properly launch the operations of the Lagos Market. Until these activities have been completed, operators and investors will remain subject to NERC's regulatory oversight.

While the transition is ongoing, we anticipate that investors will continue to position themselves (as we currently see them doing) to embrace the opportunities presented by the Lagos Electricity Law once the necessary conditions for the full operation of the Lagos Market are met. In line with the Lagos Transfer Orders, we expect these transitional activities to be completed by June 4, 2025.

³⁷ The subsidiaries that these distribution companies are obligated to set up.

³⁸ Order 12 of each of the Lagos Transfer Orders.

³⁹ Section 231(3) of the Electricity Act.