



# EIRA

ENERGY INVESTMENT RISK ASSESSMENT

2018

## NIGERIA





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### ENERGY CHARTER SECRETARIAT PUBLICATION

ISBN: 978-905948-206-7 (paperback)

ISBN: 978-905948-207-4 (pdf)

Depot number: D/2018/7850/3

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# ABOUT THE INTERNATIONAL ENERGY CHARTER

In the early 1990s, after the end of the Cold War, the Dutch Prime Minister at the time, Ruud Lubbers, took the initiative to establish cooperation in the field of energy between the East and the West. This paved the way for the *Energy Charter Treaty* (ECT) which was signed in December 1994 at Lisbon and entered into force in April 1998.

The ECT establishes a unique multilateral legal framework for facilitating international energy cooperation. Its key principles, namely, openness of energy markets, investment protection and non-discrimination stimulate foreign direct investment and cross-border trade. As of 1 April 2018, the ECT has 54 Signatories and Contracting Parties (including the European Union and Euratom).

The *International Energy Charter* is the informal working name of the Energy Charter Conference, its subsidiary bodies and the ECS. The name was adopted in 2016 to better reflect the global nature of the Organisation.

The Energy Charter Conference is the governing and decision-making body of the Organisation. Each year its Chairmanship is entrusted to a different Contracting Party of the ECT. In 2018, Romania holds the Chairmanship. The 95 Members and Observers of the Energy Charter Conference represent governments and regional intergovernmental organisations from six continents, including all major energy producing, transit and consuming regions.

The Energy Charter Secretariat is based in Brussels, Belgium. It is headed by Secretary-General Urban Rusnák. The main functions of the Secretariat include:

**Providing administrative support and facilitating the work of the Energy Charter Conference and its subsidiary bodies;**

**Monitoring the implementation of the ECT;**

**Assisting governments in enhancing their investment climate through various instruments;**

**Offering support for dispute settlement and conflict resolution;**

**Developing regulation and model agreements for cross-border energy projects;**

**Organising capacity building and training sessions related to the ECT;**

**Assisting Observer countries with ECT accession.**

# FOREWORD

Investment in the energy sector provides a wide range of socio-economic benefits in the countries where they are made. These include job creation, transfer of modern technology and improved efficiency.

Governments seek concrete instruments to assist them in raising investments. At the same time, investors need a predictable and robust legal framework for undertaking large scale investments. This requires, on both sides, proper investment planning as well as sound instruments for assessing market risk as well as evaluating policy, legal and regulatory issues. All market actors must be confident that the enabling environment for investment will remain attractive enough. Moreover, governments need to ensure that investment projects are realised and they live up to public policy goals.

To deal with these issues, it is important that countries develop stable, transparent and non-discriminatory policies. Indeed, such concepts are enshrined in the International Energy Charter (IECh), which envisages a multilateral framework for cross-border cooperation in the field of energy development. Nigeria, with its fast growing economy, is looking to create a robust legal and regulatory framework which can assist it in attracting inward capital flows. With this ambition in mind, in 2017 it joined the IECh as an observer Member State.

In light of this growing cooperation between Nigeria and the IECh, and in the context of the Energy Investment Risk Assessment (EIRA) Report, I am pleased to present the EIRA Extended Country Profile for Nigeria developed by my colleagues at the Energy Charter Secretariat. It represents our efforts to assist both the Government and investors in reducing the level of risk in the country's energy sector and thereby unlocking investment for a sustainable energy future. It addresses a set of specific policy, legal and regulatory risks, in the energy sector of Nigeria, which can be managed and mitigated through effective decision-making.

It is my wish, and my hope, that the Extended Country Profile for Nigeria will serve as a confidence-building instrument, help the Government and investors reach a mutual understanding on further improving Nigeria's investment policy, and aid our joint efforts to ensure energy supply, fuel energy transition, and provide energy access for all.

**Urban Rusnák**

Secretary-General  
Energy Charter Secretariat  
Brussels



# ABBREVIATIONS

BIT	Bilateral Investment Treaty
ECN	Energy Commission of Nigeria
ECOWAS	Economic Community of West African States
ECS	Energy Charter Secretariat
ECT	Energy Charter Treaty
EIRA	Energy Investment Risk Assessment
EITI	Extractive Industry Transparency Initiative
ERGP	Economic Recovery and Growth Plan
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
IEA	International Energy Agency
IECh	International Energy Charter
INDCs	Intended Nationally Determined Contributions
KPI	Key Performance Indicator
MDA	Ministries Departments and Agencies
NDC	Nationally Determined Contributions
NERC	Nigerian Energy Regulatory Commission
NIPC	Nigerian Investment Promotion Commission
NNPC	Nigerian National Petroleum Corporation
SE4ALL	Sustainable Energy for All
TPES	Total Primary Energy Supply
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law



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# **INTRODUCTION TO EIRA 2018**



Energy is an issue of global dimension. It is at the core of economic and social activities across the world. The energy sector contributes to economic growth by creating job opportunities, promoting technological innovation and improving the overall infrastructure of countries.

Unique characteristics of energy projects, such as the long lifespan of assets, extended time horizons and significant upfront costs create risks for investors. Capital is locked in for long periods during which governments may bring new political ideology to policy-making or public policy priorities may change. For instance, the adoption of the Paris Agreement has brought investors greater certainty as the global commitment to reduce CO<sub>2</sub> emissions has significantly strengthened. However, more clarity is required on the reductions expected to come from the energy sector.

Today national governments face substantial challenges as new priorities are gaining prominence. Climate change is impacting energy infrastructure in a way that resilience is already a priority in low-lying hurricane-prone States. Digitalisation of the energy sector is underway, and countries are working out how to maximise benefits for energy consumers while dealing with cybersecurity and data protection issues. Governments must design and implement effective policies that exploit synergies and manage trade-offs. Scaling up investments in sustainable energy resources and new technologies is critical. At the same time, the existing infrastructure and conventional energy resources must be maintained and developed to avoid stranded investments.

To navigate these multiple objectives and inevitable changes, governments will need to encourage and create stable, equitable and transparent investment conditions. A rules-based regime that is credible, inclusive and has broad institutional support can help reduce uncertainty and improve investor-State relations. Similarly, a well-designed and efficiently implemented legal and regulatory framework will signal to the world that private investment is welcome. It will also minimise the risk of disputes and reduced investment inflow.

EIRA intends to help countries make smart regulatory choices and develop effective strategies that ensure investor confidence is established and retained over time. It is premised on best practices and measures that enable a resilient investment environment, including a level playing field for domestic and foreign investors.

## Concept and aim

EIRA evaluates specific risks affecting energy investment that can be mitigated through adjustments to policy, legal and regulatory frameworks. It aims to identify gaps, provide learning opportunities, and stimulate reforms which make the investment climate of countries more robust and reduce the possibility of investor-State disputes.

The target audience of EIRA are policymakers. Its primary objective is to assist them in recognising policy and regulatory gaps and, in turn, render their energy sectors more conducive to foreign

investment. Additionally, it seeks to provide the energy industry, investors and the financial sector insight into particular aspects of the regulatory environment in the assessed countries. That said, the findings presented are not an alternative to the due diligence that private investors are expected to conduct before they decide to invest in the energy sector of these countries.

Various analyses and publications by other international organisations and multinational agencies examine aspects of foreign investment and energy. Some of these aspects are energy

economics, energy technologies and resources, generic investment climate rankings, and FDI flows. EIRA adds to this literature by focusing on specific risk areas related to policy change, discrimination between foreign and domestic investors and governments' breach of obligations. Other types of risks, such as those related to corruption, energy market structure, financial stability can also be mitigated by policy adjustments or governmental action. However, they are not evaluated here because different international organisations are already analysing them.

EIRA does not delve into commercial, security, geopolitical and other risks associated with technological advancements or exploration activities. While these issues fall outside its scope, EIRA's application is very comprehensive covering investment across the entire spectrum of the energy sector. It has been tailored to serve best the identified needs of the International Energy Charter constituency with the aim to help governments identify and reduce the risks, as well as improve investment conditions.

In summary, EIRA aspires to deliver a range of practical benefits for countries and the international investment community. These benefits include:

**Helping governments to diagnose key strengths and weakness in their policies, laws and regulations, and develop strategies that will reduce the risks examined by EIRA;**

**Reviewing the performance of the assessed countries periodically and, over time, tracking progress in the regulatory environment and reduction of the associated risks;**

**Promoting a robust and resilient investment environment, including a level playing field for domestic and foreign investors in the energy sector;**

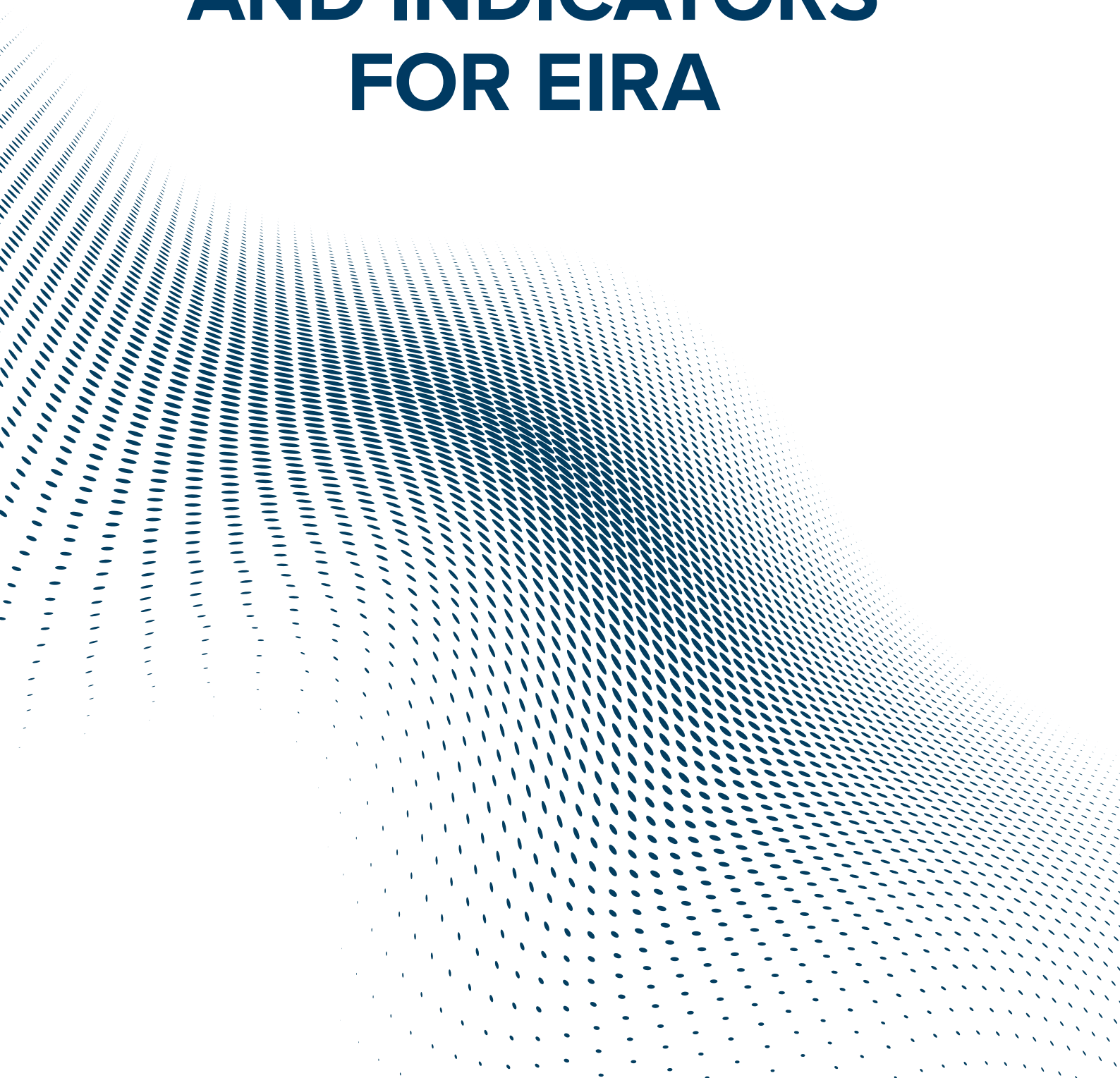
**Providing potential investors with an overview of the regulatory risk level in the participating countries.**

In 2017, the ECS tested and fine-tuned the EIRA methodology. The first non-public version of the Report was presented during the Energy Charter Conference in Ashgabat, Turkmenistan, 28-29 November 2017.

Since its inception, participation in EIRA has grown considerably – 3 countries participated in 2016 (Belarus, Colombia, and Mauritania), 9 in 2017 (Armenia, Belarus, Iran, Kazakhstan, Mauritania, Mongolia, Nigeria, Romania, and Ukraine), and 30 countries in the 2018 edition (Afghanistan, Albania, Armenia, Bangladesh, Belarus, Bosnia and Herzegovina, Chad, Croatia, Eswatini, The Gambia, Georgia, Greece, Hungary, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Liechtenstein, Mongolia, Montenegro, Nigeria, Norway, the Republic of Moldova, Romania, Rwanda, Senegal, Slovakia, Uganda, and Ukraine).

The ultimate goal is to have a recurring, full-fledged report with worldwide coverage. Through periodicity, EIRA will be able to reflect changes over time to the energy investment regulation of the assessed countries and become a useful instrument for countries to initiate and sustain reforms.

# **RISK AREAS AND INDICATORS FOR EIRA**



EIRA is primarily an instrument for governments and policymakers. Its purpose is to assess risks which can be managed and mitigated by countries through effective decision-making in their policy space. Moreover, it attempts to guide countries on how to reinforce investor rights and develop their inward investment strategies.

As countries are transitioning to sustainable energy systems, new demands are being placed upon regulatory structures. This involves introducing clear targets that encourage the transition to low carbon energy resources and technology. However, even when objectives are defined, their actual translation into practice is far from straightforward. Energy transition is brought about by structural changes that are lengthy and often non-linear. Policies have to be well-communicated and predictable enough to deal with the uncertainties linked to such a transition, while at the same time reducing problems for investors. To this end, the risk areas targeted in EIRA are unpredictable policy and regulatory changes, discrimination between domestic and foreign investors, and breach of national and international commitments by States.

The performance of countries against the assessed risks is evaluated through selected indicators. The indicators are constructed to reward countries for sound regulation and efficient processes. They capture the ability to cope with the risks through various positive measures such as the creation of predictable policy objectives, transparent decision-making processes, the establishment of strong public institutions, development of competent market oversight mechanisms, and the successful resolution of disputes with foreign investors.

## What are the risks assessed by EIRA?

EIRA analyses the following risk areas:

### **Unpredictable policy and regulatory change**

Governments reserve the authority to adopt and maintain measures necessary to pursue legitimate public policy objectives. Nevertheless, unsystematic and arbitrary modifications can sometimes detrimentally affect the interests of foreign investors. They can lead to increased or stranded costs for operating a business, reduced attractiveness for investment, and an overall distorted competitive landscape. Foreign investors may even reconsider investing in the country or relocate the investment. As a result, countries may face an elevated risk of underinvestment in the energy sector, or of disputes brought against them by foreign investors. It follows that in exercising their right to regulate, governments must make investors aware of the conditions and nature of policy changes.

### **Discrimination between domestic and foreign investors**

Foreign investors need clarity on the extent to which markets are competitive and whether they offer a level playing field. While discrimination can take various forms, between energy resources,

technologies and types of investors, EIRA focuses exclusively on discrimination between domestic and foreign investors. This includes the likelihood of an unfair advantage to local investors, as recipients of rights and privileges, to the exclusion of foreign investors. Discrimination may also occur in the form of 'protectionist' practices intended to restrain trade and give rise to foregone investment gains.

### **Breach of State obligations**

EIRA examines situations arising from a breach by governments of their domestic laws, as well as commitments stemming from international agreements. Disputes brought by investors against a State can disrupt the relations between the two parties and even damage the overall investment climate. Investors must have confidence that they will have recourse to mechanisms for dispute resolution and the enforcement of rights if governments default on their obligations. Such obligations include protection against discrimination, expropriation and nationalisation, breach of investment treaties, and limited access to alternative dispute settlement avenues.

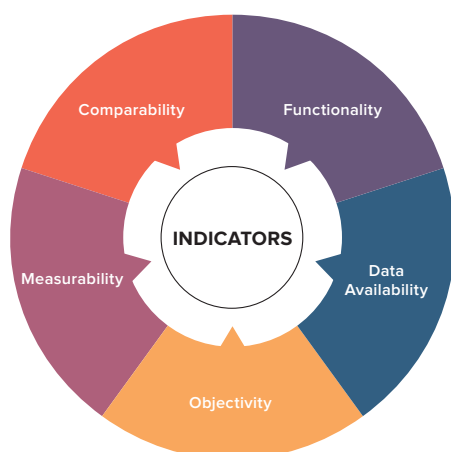


## How are the EIRA indicators selected?

The indicators have been constructed from a wide range of variables. They bear direct relevance to a government's overarching objective of creating a secure, favourable and transparent investment environment.

Five criteria are applied to determine the appropriate indicators:

Figure I.1 – Criteria for selection of indicators



**Functionality/Actionability** – Indicators are 'reform-oriented'. They reflect best practices through which countries can manage the risks. They capture aspects of policy-making and regulation which are under the control of governments.

**Availability of data** – Data for indicators are available from sources that are reputable and reliable. Indicators are based on data that are relevant, readily accessible and easy to collect.

**Measurability** – Indicators provide a quantifiable assessment. They are robust and unaffected by minor changes in the method used for their construction.

**Comparability** – Indicators allow comparability across (1) countries; (2) energy sub-sectors; and (3) the energy value chain. Additionally, they are consistent and comparable over time.

**Objectivity** – Indicators reflect an accurate overview of the policy, regulatory and legal reality in the assessed countries.

## What are the EIRA indicators?

Based on the above criteria the indicators selected are:

- | Foresight of policy and regulatory change
- | Management of decision-making processes
- | Regulatory environment and investment conditions
- | Rule of law (compliance with national and international obligations)

The indicators are cross-cutting and apply to more than one risk. Each indicator consists of two sub-indicators. Together, they measure the ability of governments to identify whether the assessed risks exist and the extent to which they can be mitigated. The indicators reward countries for taking positive measures that manage and limit arbitrary or discriminatory policy changes which could result in a breach of State obligations. Such measures include designing and setting long-term policy objectives and goals, ensuring transparency in decision-making, granting equal treatment to foreign and domestic investors, and effectively managing disputes with foreign investors.

Table I.1 – Correlation between EIRA risk areas and indicators

RISK AREAS	INDICATORS			
	Foresight of policy and regulatory change	Management of decision-making processes	Regulatory environment and investment conditions	Rule of law
<b>Unpredictable policy and regulatory change</b>	✓	✓		✓
<b>Discrimination between domestic and foreign investors</b>		✓	✓	✓
<b>Breach of State obligations</b>				✓



## INDICATOR 1

### Foresight of policy and regulatory change

National energy priorities and regulatory frameworks evolve in response to changing circumstances. Meeting new objectives may result in policy revisions, and governments must be sensitive to the impact of such revisions on long-term investments. Ensuring stable conditions is a major challenge as the global energy transition is proving to be a highly dynamic process. Policy and investment patterns are likely to evolve as countries seek to decarbonise their energy sectors under the Paris Agreement. Managing this change is crucial, so governments must communicate any adjustments to their energy policy objectives and effectively plan and implement the means to pursue them. Investors can then better manage risk, modify investment portfolios and cope with the policy changes.

#### SUB-INDICATOR:

##### COMMUNICATION OF VISION AND POLICIES

This sub-indicator captures the commitment of governments to convey the vision of their energy sector. It also looks into the approach and principles that will guide governmental decisions in this respect.

Risk management requires a view on the future. This forward-looking vision is typically enshrined in strategy documents of governments, which inform investors about the energy goals to be achieved and the timeframes for their achievement. As countries transition to sustainable energy systems, new demands are placed upon regulatory frameworks and existing decision-making structures. Understanding the energy landscape and how it can evolve is a central element of investment planning. Hence, communicating any intended changes in a clear and timely manner contributes to bolstering investor confidence and averting risk. Moreover, the establishment of milestones or short- and medium-term goals indicates to investors the pace of change and the progress made towards the final goals and targeted outcomes.

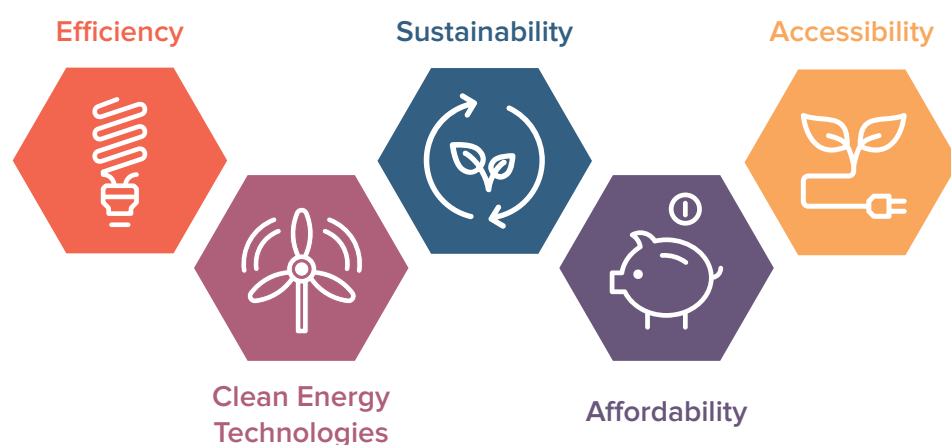
#### SUB-INDICATOR:

##### ROBUSTNESS OF POLICY GOALS AND COMMITMENTS

Robustness of policy goals is manifested not only by their existence and design but also their actual implementation. Good governance and the creation of monitoring mechanisms indicate the determination of governments to attain these goals. Conversely, a fragmented or weakly implemented regulatory framework can have a destabilising effect on the private sector, particularly on foreign investors.

This sub-indicator focuses on monitoring and evaluating the implementation of the energy goals. Monitoring provides an opportunity to assess the progress towards meeting energy investment objectives and identifying potential gaps. Furthermore, it allows governments to ensure that policies are periodically updated and amended when necessary. In this context, the establishment of an independent and competent authority with the appropriate monitoring and reporting mechanisms is critical. It gives investors the confidence that policies will be evaluated and improved to achieve the desired outcomes and will not be subject to arbitrary modifications.

Figure I.2 – Energy priorities under the UN Sustainable Development Goal 7



## INDICATOR 2

### Management of decision-making processes

Decision-making structures can directly or indirectly affect the investment climate of a country. The second indicator addresses the importance of coordinated and transparent policies in eliminating perceived or actual opacity of government initiatives and the exclusion of investors from the planning and decision-making phases. To ensure structured and simplified decision-making processes the role and responsibilities of different governmental levels must be defined. This is especially the case in cross-cutting areas such as energy and investment. It is also essential that investors are well informed and consulted whenever governments intend to revise their legal and regulatory framework. Stakeholder engagement allows foreign investors to participate in decision-making processes actively and take well-informed and timely decisions.

#### SUB-INDICATOR:

##### INSTITUTIONAL GOVERNANCE

Formulating investment and energy policies may involve several levels of government and ministries. Provinces, municipalities as well as regional and local authorities may also participate in framing policies. This can make the process relatively complicated and result in the risk of overlapping decisions. Unless well managed, complex institutional governance may lead to the adoption of sub-optimal choices or conflicting laws and policies.

This sub-indicator measures how well governments coordinate policy-making. While the degree of centralisation in each country may differ significantly, one central body should ultimately be responsible for coordinating across different levels of government and reconciling the diverging perspectives of public agencies. Effective intra-governmental and inter-ministerial management in undertaking policy design and implementation is, therefore, an essential precondition for minimising unpredictability and maintaining an investment-friendly climate.

#### SUB-INDICATOR:

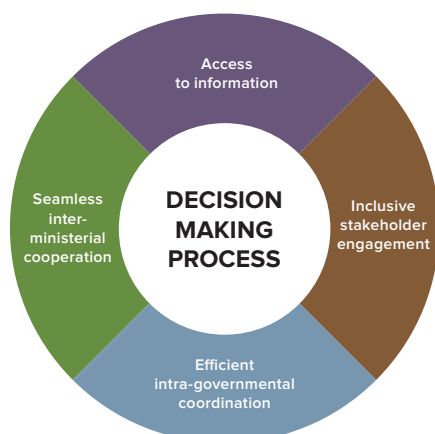
##### TRANSPARENCY

Policy and regulatory changes are always risky for investors. However, if they are systematised and transparent, investors can adapt to them better. Transparency is beneficial to all types of investors, but it is particularly crucial for foreign investors who have to cope with regulatory systems and administrative frameworks that are different from their own. This sub-indicator gauges the openness demonstrated by governments in designing and implementing their laws and policies.

EIRA understands transparency as first, effective communication of information on national laws, regulations and practices that may materially affect investments; and second, prior notification and consultation of regulatory changes that are of interest to investors.

Governments can enhance the quality and predictability of their regulatory framework by reviewing and publishing administrative decisions, codifying legislation, disseminating regulatory materials, and developing registers of existing and proposed regulation. These core transparency measures help to ensure that investors are aware of policies affecting them. Prior consultation on investment and energy-related governmental actions can provide investors with more foreseeable conditions in the host countries. For instance, it may reveal indirect discrimination caused by secondary measures that deviate from the enabling legislation. Moreover, affording interested parties the right to comment may lead legislators and regulatory authorities to reflect carefully before modifying existing laws and considering alternatives.

Figure I.3 – Key aspects of effective decision-making process



## INDICATOR 3

### Regulatory environment and investment conditions

This indicator evaluates the independence exercised by energy regulators in their decision-making and other functions. Independence from national governments and the industry guarantees neutrality and helps to avoid situations where regulatory decisions are constantly revised to the detriment of some market actors and investors. It further examines the extent of restriction faced by foreign investors in the energy sector. Despite the increasing realisation that international capital flows are crucial for the development of the energy sector, persisting restrictions act as serious deterrents for foreign investors. Key restrictions include screening and local content requirements, as well as limitations on currency and investment-related capital transfer, which tilt the playing field in favour of domestic investors.

#### SUB-INDICATOR:

##### REGULATORY EFFECTIVENESS

Market monitoring by a dedicated and expert institution minimises the risk of biased decision-making, discriminatory market rules and anti-competitive behaviour. Political distance gives the regulatory authority credibility because it limits governmental influence and provides assurance that political events will not interfere with the regulatory functions.

This sub-indicator examines the energy regulator's autonomy based on various parameters including whether its duties and powers are embedded in legislation and how they are defined in relation to ministries and government executives. It also scrutinises the regulator's financial autonomy, its accountability as well as the transparency exercised in the selection of its staff.

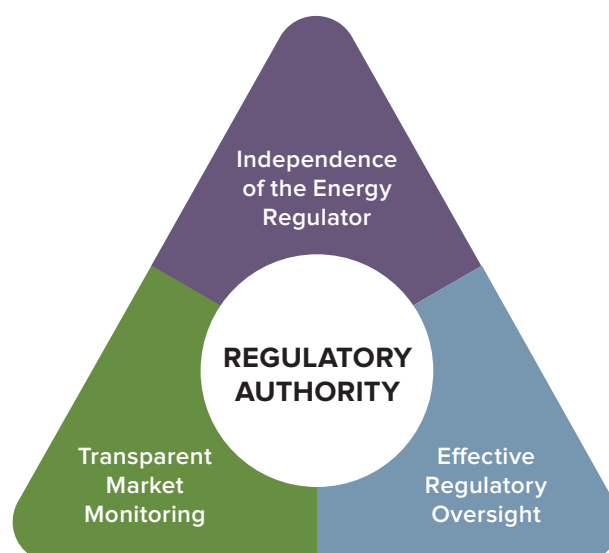
#### SUB-INDICATOR:

##### RESTRICTIONS ON FOREIGN DIRECT INVESTMENT

Overt policy and regulatory measures that discriminate between domestic and foreign firms can have a restrictive effect on inward investment flows. They can obstruct foreign investments or make the cost of operation unbearable. Some of the typical restrictive measures foreign investors may face are mandatory screening and approval procedures, regional investment restrictions, and operational controls.

This sub-indicator assesses the countries' commitment not to discriminate in the treatment afforded to domestic and foreign investors. It evaluates whether they receive equal treatment in the application of laws and regulations. Particular attention is given to the national treatment of foreign investment including sectoral restrictions, limits on the transfer of profit and repatriation of capital abroad, and onerous local content requirements.

Figure I.4 – Regulatory environment and investment conditions



## INDICATOR 4

### Rule of law (compliance with national and international obligations)

EIRA relies on the ‘rule of law’ definition presented in the UN Report “The rule of law and transitional justice in conflict and post-conflict societies”<sup>1</sup>. It focuses on three aspects of this definition. First, fair and effective implementation of national laws and international commitments arising from treaties and international agreements; second, settlement of investor-State disputes promptly and according to due process; and third, respect for the property rights of foreign investors. Peace, security and human rights are outside the purview of EIRA.

#### SUB-INDICATOR:

##### MANAGEMENT AND SETTLEMENT OF INVESTOR-STATE DISPUTES

This sub-indicator measures the efficiency of case management and settlement procedures within the assessed countries. Foreign investors place a premium on adherence by the host countries of their obligations to provide accessible, clear and predictable legislation, avoid retrospective changes to legal acts, ensure equality before the law, resolve disputes without undue cost or delay and, comply with their commitments under international, as well as national laws.

Well-organised judicial procedures help to foster investor-State trust. Effective enforcement of foreign judgments and awards reduces uncertainty because investors are assured that the domestic courts will safeguard their rights. Similarly, the existence of appeal mechanisms and domestic dispute mitigation instruments, such as an investment ombudsman and mediation, provide additional avenues for resolving conflicts between investors and States. Beyond the national legal system, governments must provide an extra layer of protection to investors by granting them recourse to dispute settlement mechanisms under international law. They may give foreign investors this benefit either through bilateral investment treaties (BITs) or on a case-by-case basis.

#### SUB-INDICATOR:

##### RESPECT FOR PROPERTY RIGHTS

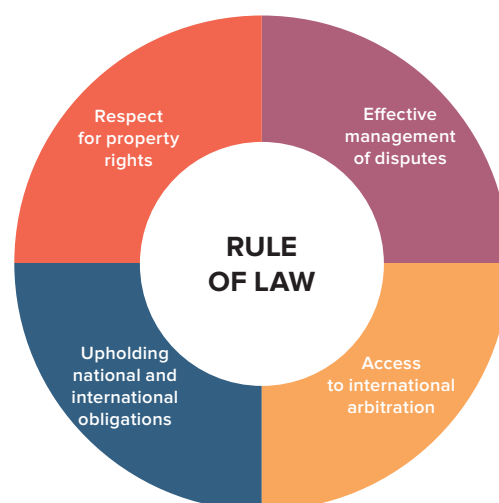
This sub-indicator assesses the risk to investors of losing ownership or control due to governmental actions or restrictions. Such actions can also lead to the additional risk of discrimination when foreign investors typically suffer such loss.

Under this sub-indicator, the term ‘investment’ refers to tangible and intangible assets, including intellectual property rights. It does not delve into

the forms of expropriation. Instead, it focuses on whether expropriation, nationalisation or confiscation (or any action tantamount to these) was undertaken for a legitimate public purpose, following the due process of law, in a non-discriminatory manner and with adequate compensation.

Some steps governments may take to reduce the risk of perceived arbitrariness are first, defining expropriation in their domestic laws; second, describing the process for the determination of compensation; and third, setting the time frame for the payment of compensation. This gives added security to foreign investors operating under the existing BITs and also protects investors that are not covered under these treaties. In turn, investors can also assess whether the host country’s laws, mechanisms and guarantees are in line with international practice and investment-related agreements. It adds to the reliability and enforceability of property rights against arbitrary expropriation. By determining the circumstances under which expropriation may take place, foreign investors can take measures to fortify their investments.

Figure I.5 – Rule of law elements covered by EIRA



<sup>1</sup> According to this Report, the ‘rule of law’ should be interpreted as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” United Nations, Report of the Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies* (2004). *UN Member States reaffirmed their commitment to uphold “rule of law” in the United Nations, Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the National and International Levels*, A/RES/67/1 (30 November 2012).

# **EIRA METHODOLOGY**



EIRA evaluates three types of risks pertinent to energy investment. Four ‘reform-oriented’ indicators have been constructed to (1) identify the actions needed for addressing these risks, and (2) highlight the corrective measures countries may take to mitigate them.

The EIRA indicators are primarily de jure. They are framed to evaluate whether specific laws and policy documents exist to support the country’s legal and regulatory framework. De facto indicators, which are typically outcome-oriented, have not been considered. While evaluating the relationship between de jure and de facto measures can be valuable, de jure indicators have an overarching policy perspective and are deemed more suitable for this year’s edition.

The indicators are based on a questionnaire developed by the ECS over a period of 2 years. The questionnaire is designed to ensure it is comprehensible to respondents and that information obtained is easily verifiable. It allows comparability across energy sub-sectors and captures trends over time. Most questions are binary, requiring simple “Yes” or “No” answers. Granular options are provided in some cases to obtain more detailed information. Moreover, respondents have the opportunity to offer additional remarks and brief descriptions of policy programs (these questions are not scored).

Pilot tests were undertaken to determine the soundness and interpretability of the indicators and the underlying questions. The draft questionnaire was administered to national experts, from different countries, seconded at the ECS. It was also shared with the Industry Advisory Panel of the ECS, various business councils, chambers of commerce, and law firms. Based on the feedback and opinions received, as well as the reaction of the actual respondents that participated in the 2017 EIRA edition, the questionnaire was significantly refined to enhance its quality.

## How are the respondents for EIRA selected?

The EIRA questionnaire is provided to the governments of the participating countries. To counter the perception of self-assessment and secure an objective viewpoint, it was also sent to selected external parties in the assessed countries.

The unit of analysis for EIRA is a country. The policies taken into consideration are those formulated and implemented at the national level. In federal arrangements, the central government is designated as a single point of contact responsible for collecting, and processing inputs from relevant ministries/ departments on the State and municipal level.

Between two to three external parties per country are chosen from a pool of experts comprising local and international law firms, legal practitioners, business councils, accounting and consulting firms, think-tanks, energy associations, chambers of commerce, international institutions and non-governmental organisations operating in the assessed countries. In 2018, over 480 external parties were contacted of which 21 per cent were short-listed. These individuals and institutions were

selected on account of their expertise, availability, and willingness to participate in the survey. Extensive research was conducted before the final decision.

The main parameters for selecting the external parties are:

**Expertise in the energy sector:** Active involvement in different stages of energy projects, the experience of providing consulting services in multiple energy sub-sectors and regulatory issues.

**Diversity of clients and neutrality:** Vast experience working with governmental entities as well as private investors. This ensures the external party has a holistic understanding of issues in the energy sector and contributes to a more balanced approach.

**Reputation:** Parties with extensive global reach or local partner groups. For law firms, international guides identifying leading providers of legal services (local and global) in each country are referred.



## What is the data collection and validation process for EIRA?

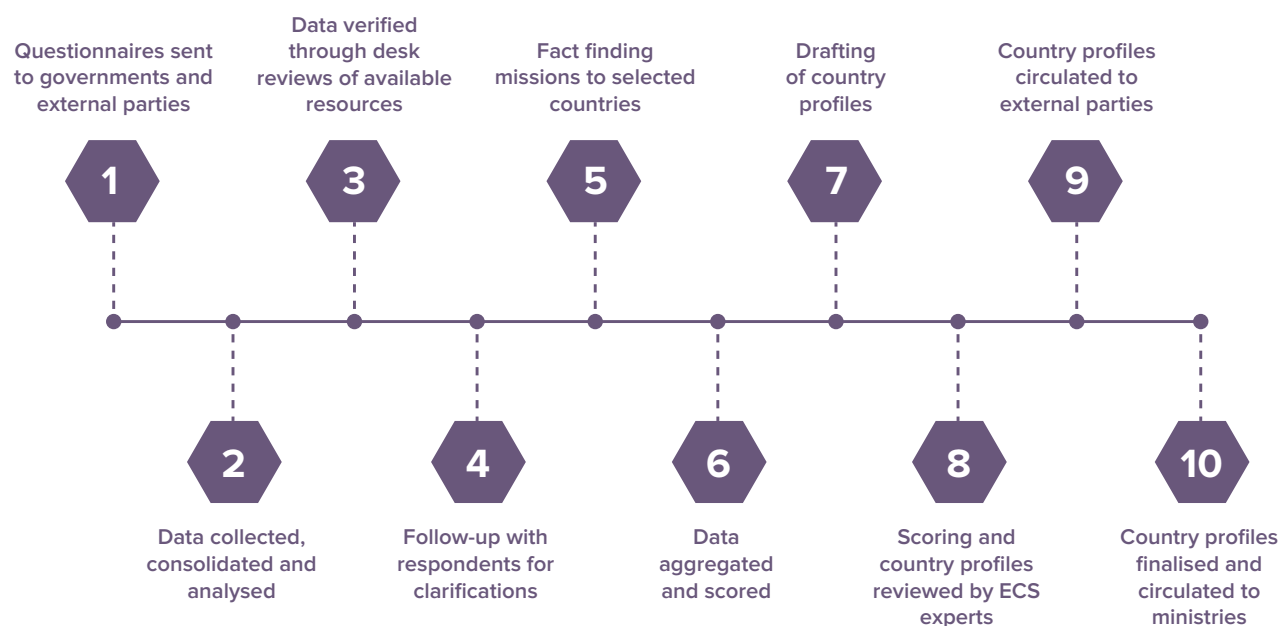
Data for EIRA are collected in a standardised manner. For the 2018 edition, responses from the participating countries and external parties were collected over a period of 3 months. The respondents furnished copies of the source documentation and translation (if required) that supported their responses. The data provided were accepted only to the extent that they were premised on original laws, regulations, national plans and strategies. Legislative initiatives and regulatory reforms not legally in force as on 1 April 2018 were not taken into consideration.

Upon the receipt of the questionnaires, the ECS in-house investment, legal, regulatory and energy efficiency experts engaged in an extensive process of validating information provided during the survey. In particular, it was confirmed that each question was correctly understood by the respondents, and the documentation submitted

supported the response given. In the absence of documents, or in the case of conflicting answers, clarifications were sought through correspondence and phone interviews with government officials and external parties. Answers obtained were once again reviewed and cross-checked for consistency with known elements of each country's investment policies and energy sector.

To obtain hands-on information fact-finding missions were undertaken to selected countries. The purpose was to gain insight into their regulatory and investment environment as well as obtain the views of different stakeholders in the energy sector. Overall, the process of data collection and validation lasted 7 months, from January to August 2018.

Figure I.6 – Data collection and validation process





## How are risks assessed in EIRA?

EIRA relies on a blend of quantitative and qualitative analysis. The depiction of quantitative analysis is through a scoring system which conveys the performance of the countries on the indicators. The more complex dynamics of the assessment are represented through qualitative country profiles which identify areas for improvement using narrative and visuals.

### Scoring system

All indicators carry equal weight. The total for each indicator is the average of its component sub-indicators. Each sub-indicator is similarly calculated through a set of questions. The questions are scored between 0 and 100 and are equally weighted. The highest achievable score for each question is 100. The overall performance across each indicator is defined as the average of first, the score received in the government questionnaire; and second, the combined average of the external party scores.

Figure I.7 – Scoring an indicator for individual respondents

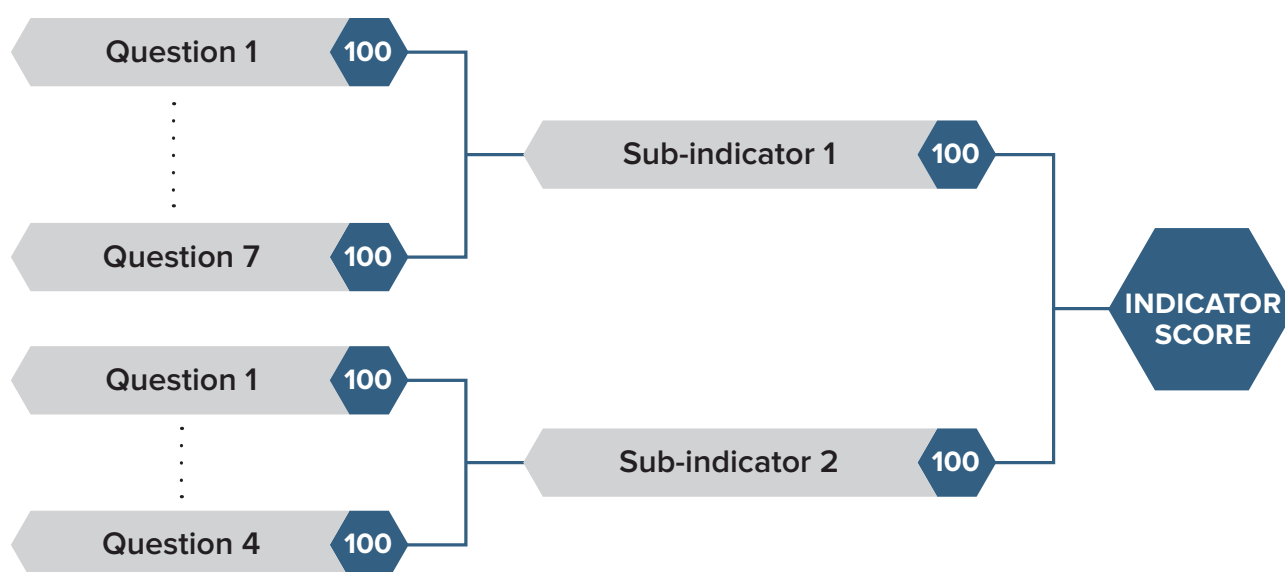
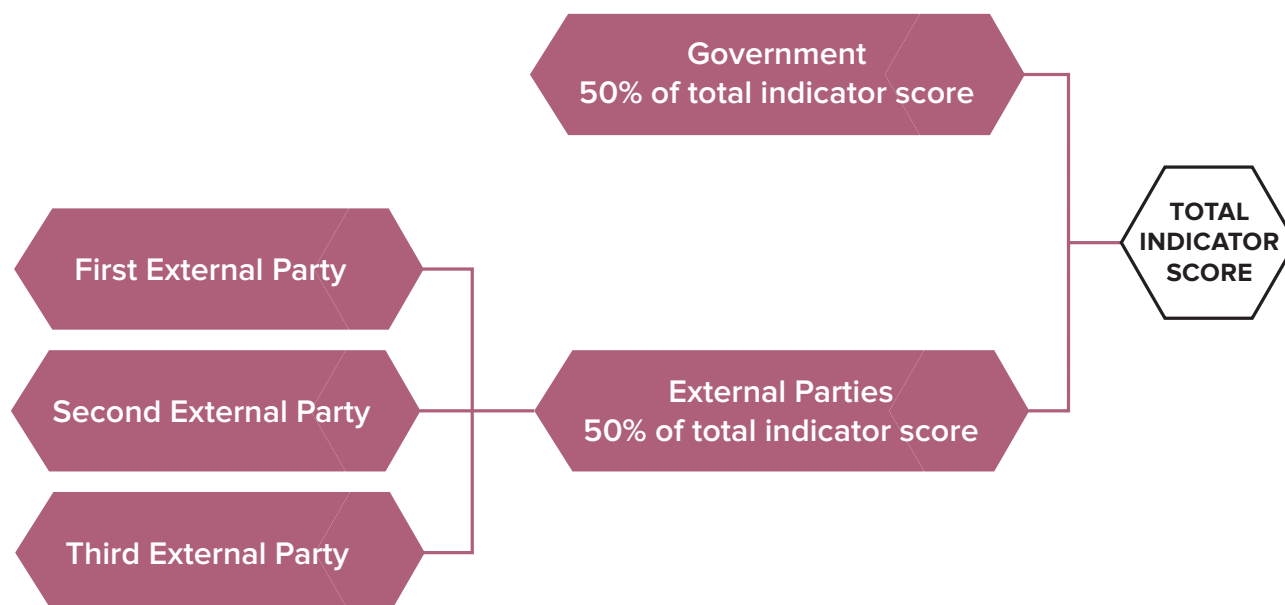
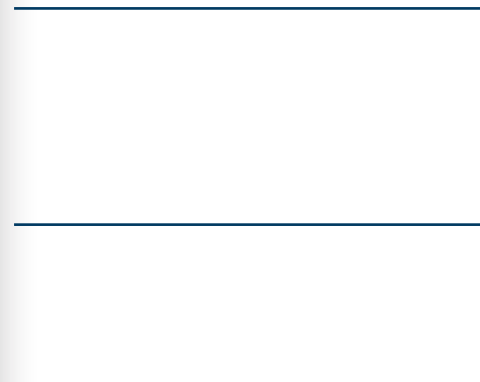


Figure I.8 – Total score for an indicator



The qualitative assessment for each country is visualised through a four-page profile. The initial two pages provide an overview of the country. They feature a table of the country's key metrics and three charts. The metrics include demographic, economic and energy information and give a background to the country's profile. The first chart illustrates the risk level across the assessed areas. It is followed by a bar chart that shows the performance of the countries under each of the four indicators. A 5-colour coding approach is used for

this purpose. Dark green represents the highest band of scores while red represents the lowest. The third chart breaks down the country's performance across the sub-indicators, where 0 denotes the weakest and 100 the strongest performance. The remaining pages of the profile offer a detailed analysis of the country's performance under each indicator. They present the overall score for each indicator and summarise the key strengths and areas of improvement.



**Population and surface area:** Data refers to year 2017. *The World Bank 2017, World Development Indicators, World Bank national accounts data and OECD National Accounts data files, <https://data.worldbank.org/> (accessed on 5 July 2018)*

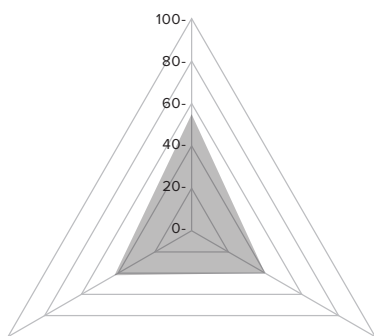
**GDP per capita (current US\$):** Data refers to year 2017. *The World Bank 2017, World Development Indicators, World Bank national accounts data and OECD National Accounts data files, <https://data.worldbank.org/> (accessed on 5 July 2018)*

**Total primary energy supply (TPES):** TPES represents inland demand only and, except for world energy demand, excludes international marine and aviation bunkers. Data refers to year 2015. OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)\*

**Energy Intensity:** It is a measure of total primary energy use per unit of gross domestic product. Data refers to year 2015. *OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)\**

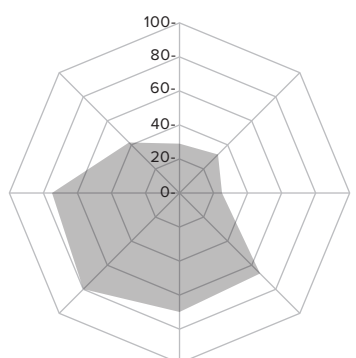
**CO<sub>2</sub> emissions from fuel combustion:** Data refers to year 2015. *OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)\**

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### RISK LEVEL

The risk level is displayed by the grey triangle. Each axis represents a risk area. The smaller the size of the grey triangle, lower is the level of risk.



### SUB-INDICATOR PERFORMANCE

Each axis represents a sub-indicator. The larger the size of the grey area, the better the country's performance.

#### INDICATOR AND SUB-INDICATOR CORRELATION

##### Indicator 1

1. Communication of vision and policies
2. Robustness of policy goals and commitments

##### Indicator 2

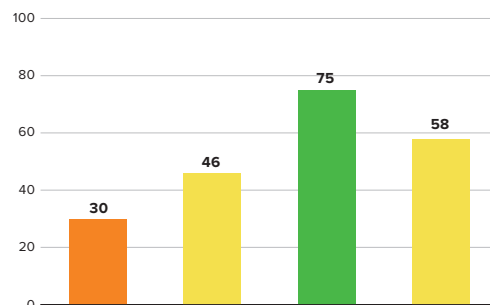
1. Institutional governance
2. Transparency

##### Indicator 3

1. Regulatory effectiveness
2. Restrictions on FDI

##### Indicator 4

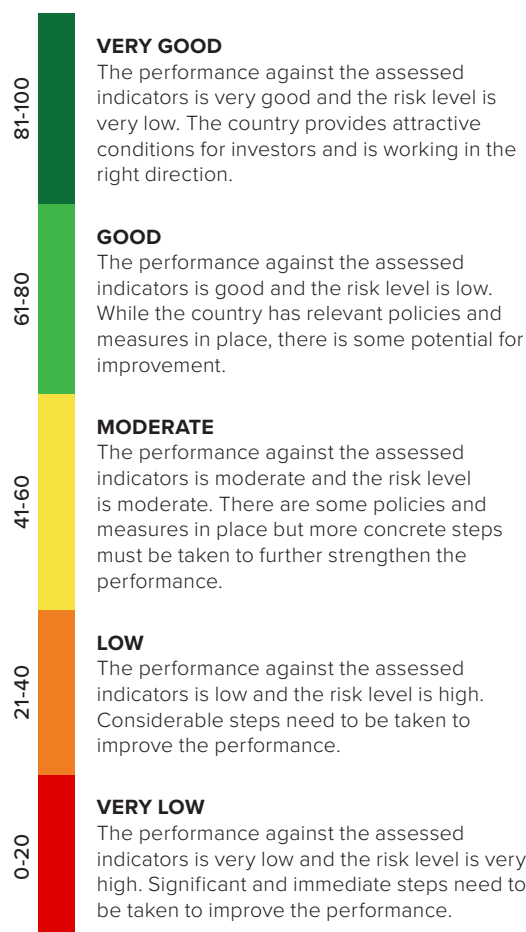
1. Management and settlement of investor-State disputes
2. Respect for property rights



### INDICATOR PERFORMANCE

The indicators affect the risk areas differently. For example, rule of law has the highest impact since it influences all three risk areas. For details on the correlation between the indicators and the risk areas, see Table I.1 on page 5.

The bars are colour-coded. Each colour corresponds to a performance level.

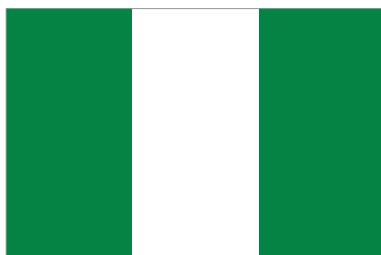




# **NIGERIA**

# **COUNTRY PROFILE**





# Nigeria

Population <sup>1</sup>	190.886.311
Area (km <sup>2</sup> ) <sup>1</sup>	923.770
GDP per capita (USD) <sup>1</sup>	1.968,56
TPES (Mtoe) <sup>2</sup>	139,37
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,30
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	64,44

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Nigeria's overall risk level against the assessed areas is **moderate**.

The three EIRA risk areas, *breach of State obligations*, *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change* are on the same level

Nigeria's performance against EIRA's four indicators is moderate. It has received a score of 59 on *management of decision-making processes* and 58 on the indicator *rule of law*. *Foresight of policy and regulatory change* is at 54 points while *regulatory environment and investment conditions* is at 51.

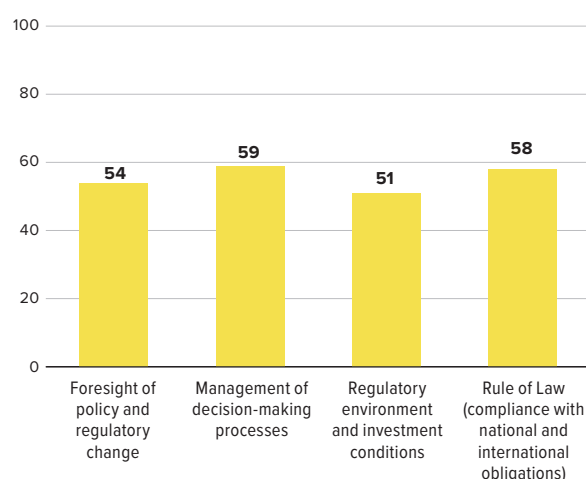
On a more detailed level, Nigeria's overall sub-indicator performance is moderate. The highest scoring sub-indicator is *management and settlement of investor-State disputes* with 73 points. The sub-indicators *communication of vision and policies* and *transparency* have received 61 points. *Regulatory effectiveness* and *institutional governance* are at 56. On *restrictions on FDI*, the score is moderate (47). It is closely followed by *robustness of policy goals and commitments* at 46. Performance on the *respect for property rights* sub-indicator is the lowest with 42 points.

While there are some policies and measures in place, more concrete steps must be taken to strengthen Nigeria's performance across all indicators and underlying sub-indicators. Particular attention should be given to re-enforcing the respect for property rights.

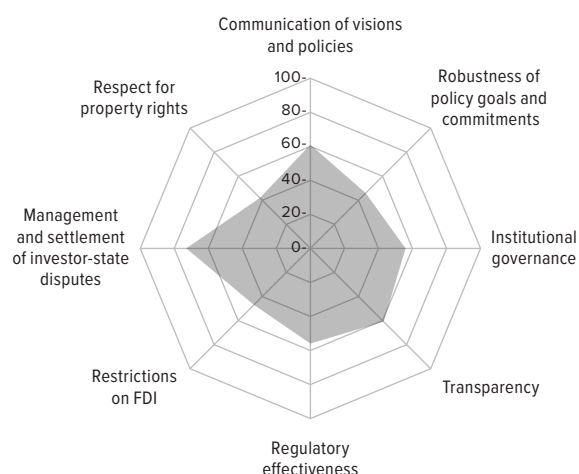
## RISK LEVEL



## INDICATOR PERFORMANCE



## SUB-INDICATOR PERFORMANCE





## Foresight of policy and regulatory change

In recent years, Nigeria has taken measures to increase the visibility of its energy investment policy framework. It has set some concrete targets for the sector and initiated programmes to promote FDI. There are, however, still concerns regarding the multiplicity of documents regulating the energy industry, and the absence of adequate monitoring instruments.

Foreign investors base their investment decisions after assessing the soundness of the host country's legal regime. They typically rely on key policy documents, programmes and initiatives to evaluate the country's investment climate. Well-communicated strategies and actions allow investors to understand the local conditions, the incentives offered by the Government, the viability of the market and the stability in its policy direction over the years. It is, therefore, important that policies and action plans are not fragmented and convey the key message in a detailed, yet simple, manner.

### QUICK FACTS

The primary strategy documents for Nigeria are the National Energy Policy 2003 and the Nigeria Vision 20:2020.

The action plans for implementing the energy policies are the Economic Recovery and Growth Plan 2017 (ERGP) and the National Integrated Infrastructure Master Plan 2015. Individual policies and action plans have been created for various energy sub-sectors such as minerals, petroleum and gas.

The National Renewable Energy and Energy Efficiency Policy 2015 for the electricity sector aligns Nigeria with the ECOWAS Renewable Energy Policy.

The National Council on Power approved in July 2016 the Sustainable Energy for All Action Agenda (SE4ALL-AA).

### STRENGTHS

Nigeria Vision 20:2020 is a blueprint of the long-term plan for stimulating Nigeria's economic growth and launching the country on a path of sustained and rapid socio-economic development. It is supported by the National Energy Policy which sets out the main goals and strategies for the different energy sub-sectors. The policy gives guidance to investors on the country's overall direction. The ERGP is another important document which sets out the broad objectives for Nigeria's economic development, including the energy sector.

Energy targets have been set under different strategy documents. For instance, targets until 2020 for increasing oil production, expanding the power sector infrastructure and boosting local refining are stated in the ERGP. Given the country's urgent need to reduce dependence on petroleum product imports, the ERGP also sets targets to cut down these imports by 60 per cent in 2018 and become a net exporter by 2020. In addition to this, the "Seven Big Wins" initiative of the Federal Ministry of Petroleum Resources outlines the short- and medium-term priorities for developing the oil and gas industry. It intends to improve transparency and efficiency in the oil and gas sub-sectors, create a stable investment climate, and protect the environment. Nigeria is also taking measures to integrate CO<sub>2</sub> reduction in its energy policy. It intends to replace, as far as possible, fossil fuels with renewable resources. The target for 2030

is to produce 30,00 MW of power, with at least 30 per cent renewables in the energy mix.

Programmes have been launched for achieving specific strategies. The Nigerian Gas Flare Commercialisation Programme was set up in 2016 to implement the objective of eliminating gas flaring by 2020. Moreover, initial steps have been taken to revamp the four State-owned refineries of the country. The Government has also approved thirteen licenses for establishing "modular refineries". The Ministry of Environment takes the lead in coordinating the national implementation of the United Nation Framework Convention on Climate Change. One of the main programmes initiated by the Ministry for this purpose is the issuance of green bonds to environment-friendly projects.

Ministries have been appointed for implementing the energy priorities. Under the ERGP, the Ministry of Budget and National Planning coordinates the plan execution. The Vision 20:2020 provides a detailed analysis on the institutional framework for monitoring and evaluation. The governance structure covers all level of government: federal, state and local. The Vision proposes setting up a Monitoring and Evaluation Office directly responsible to the Minister of the National Planning Commission. An independent Inter-ministerial Committee on Managing the Results is intended to provide oversight on the M&E duties of the Monitoring and Evaluation Office.

## AREAS OF IMPROVEMENT

There is need for greater predictability and stability in the legal and policy framework of the country. Frequent changes in the legal regime governing investment can undermine the fiscal or contractual undertakings that form the basis for investment decisions.

The multiplicity of laws, policies and action plans may lead to overlaps, contradictions and redundancies in decisions. Nigeria currently has over twenty laws and more than fifteen action plans and strategy documents for the energy sector. Apart from these, there are drafts that have not been adopted by the Parliament but are already being implemented. Also, plans framed by previous governments continue to exist but their implementation status is not clear.

The absence of Key Performance Indicators (KPIs) for the energy sector makes it difficult to monitor and evaluate the performance of the industry and, in turn, understand the effectiveness of policy decisions.

## RECOMMENDATIONS

### Carry out a rigorous impact assessment of the existing laws and policies

Nigeria currently has over twenty laws and more than fifteen action plans and strategy documents for the energy sector. Apart from these, there are drafts that have not been adopted but are being implemented. There are also plans, framed by previous governments, which continue to exist but their implementation status is unclear. **It is recommended that an impact assessment is carried out to assess the added value of each document.** Plans which are not used for benchmarking targets should be phased out or merged with running documents. New policies and legislation should be drafted after taking into account the trajectory and implementation status of the instruments in force. Impact assessment can assist in measuring the potential costs, implications, side-effects of proposed policy changes. It can also aid in assessing the actual cost and effect of existing instruments. Based on this information, the Government can understand how the quality of its decisions may be improved.

### Activities for achieving the set targets should be fulfilled

Nigeria has set ambitious targets for its energy sector. Documents, such as the National Energy Policy and the ERGP, list a set of activities which should be carried out to ensure these targets are met. **To communicate better the commitment towards achieving these targets, it is recommended that critical activities identified in the policy documents should be executed without delay.** This will allow the Government and citizens to evaluate the progress made as well as create conditions which will attract the needed investment. A key activity which deserves attention is the elimination of gas flaring by 2020. Efforts in this regard must be intensified if the Government intends to meet its target by the due date. Work on promoting off-grid renewable energy should also be reinforced. This is especially relevant since Nigeria is targeting 100 per cent electricity access by 2030, using grid, off-grid and mini-grid solutions in line with the UN Agenda 2030 and the Sustainable Development Goals. Support schemes and incentives should be granted for utilising off-grid renewable energy. Finally, and perhaps most importantly, work on overhauling the State refineries must be expedited. While laudable attempts have been made in this regard, further efforts are needed to make available the supporting infrastructure and adopt the necessary regulatory changes.

### KPIs should be set for monitoring the energy sector

To evaluate if current policies are in fact implemented, and to what extent, it is important to identify the right KPIs for the sector. **As an initial step, it is recommended that a definition for KPI is agreed upon and a methodology for determining specific indicators devised.** While setting KPIs, consideration should be given to how broad-based they will be, which ones will cut across different energy priorities and sub-sectors, which will be tailored to specific sub-sectors and, what will be the units of measurement. The collaboration of all relevant ministries, departments and agencies (MDAs) should actively be undertaken for this purpose. **Given the large number of bodies involved in the energy sector of Nigeria, it is recommended that data collection from the relevant MDAs is commenced at the earliest.** The lead body, in charge of collecting the data, should be equipped with adequate financial and human resources to do justice to the exercise.

### Periodic reporting of the monitoring and evaluation findings is encouraged

**It is recommended that the final monitoring and evaluation reports should be made widely available.** They should give a balanced account and also contain relevant recommendations. It must be ensured that the recommendations are duly considered and followed up.

## Management of decision-making processes

Nigeria has taken measures to streamline coordination between the MDAs involved in the energy sector. Over the last years, inter-ministerial committees have been set up for achieving specific goals. The Government has also led some innovative programmes for enhancing transparency in its decision-making process. More work, however, is needed on increasing accountability, taking decisions in a timely manner and fully committing to transparency initiatives to which Nigeria is a party.

Energy investors typically need to obtain various planning approvals from national, regional and local authorities. One of the key deterrents to foreign investment is high degree of bureaucracy and long drawn negotiations required at different administrative levels. It is, therefore, advisable that clear lines of responsibilities are drawn for each level, decisions are taken swiftly and transparency is exercised in the decisions made.

### QUICK FACTS

Nigeria is a federal republic, comprising thirty-six states and the Federal Capital Territory. The states are divided into smaller administrative units known as the local government areas. There are seven hundred and seventy four local governments in the country.

Nigeria is a presidential democracy. There is separation of powers between the executive, the legislature and the judiciary. The President heads the executive and is in charge of the MDAs on the federal level. The legislature is bicameral comprising the Senate and the Upper House.

The investment policies and programmes are formulated primarily by the Ministry of Industry, Trade and Investment.

Action plans for policy implementation are prepared by the Ministry of Budget and National Planning. The National Planning Commission integrates energy sector plans and policies with the overall national strategy.

The Nigerian Investment Promotion Commission encourages and coordinates all the investment activities.

Nigeria enacted the Freedom of Information Act in 2011 to make public records and information available.

### STRENGTHS

The Nigerian Constitution stipulates the exclusive competencies on the national, state and local level. It also lays down the concurrent competencies which are shared. Legislative oversight powers are provided for in the Constitution, as well as in the Rules of the Senate and the Upper House of the National Assembly.

The Federal Executive Council, comprising the federal ministries and various parastatals (State-owned corporations), gives direction to the overall policy framework of the country. For the energy sector, the Energy Commission of Nigeria (ECN) guides the strategic planning and coordination of the national policies. It enjoys wide representation from the ministries of power, trade, science and technology, external affairs and finance, among others. This gives it a strategic position in ensuring cooperation across ministries with a direct mandate and others which may indirectly affect the governance of the energy industry.

For achieving specific priorities, inter-ministerial committees have been set up. The management of Nigeria's SE4ALL-AA is ensured by the Inter-Ministerial Committee on Renewable Energy and Energy Efficiency. Recently, the Federal Government also established an inter-ministerial committee, comprising ministries of

Interior, Foreign Affairs, and Trade and Investment to facilitate the ease of doing business in Nigeria for foreign investors.

In general, the participation of non-governmental stakeholders in the policy-making process is encouraged. Initiatives have been undertaken by the Government to increase transparency in the energy sector. In 2004, Nigeria joined the Extractive Industry Transparency Initiative (EITI). A special law was enacted in 2007 to enforce the implementation of the EITI. This made Nigeria the first country to support the implementation of the EITI with an enabling legislation. The Nigerian Extractive Industry Transparency Initiative was established as a governmental agency to institutionalise accountability mechanisms and processes. It is an autonomous, self-accounting body which reports to the President and the National Assembly.

## AREAS OF IMPROVEMENT

The multiplicity of lead ministries for different energy priorities reduces accountability and may act as an impediment to the implementation of strategies and activities. For example, under the ERGP there are four authorities leading the work on improving the commercial viability of generation and distribution companies, and six working on urgently increasing oil production. Similarly, seven lead bodies have been given the responsibility of creating a business-friendly environment.

Nigeria has made commitments under various transparency initiatives, but more efforts are needed to ensure it meets the obligations envisaged under these initiatives. For instance, the Government is yet to publish all its mining, oil and gas contracts as required under the EITI.

## RECOMMENDATIONS

### Measures should be taken to increase the accountability of MDAs

The country's overall objectives will be achieved when the MDAs work towards them in an aligned manner and agree upon a single pathway for this purpose. With multiple ministries leading the work on each objective, the programmes and activities implemented for their achievement can be conflicting or mismatched. It can also create difficulties in identifying the reporting lines and setting accountability for the non-fulfilment of specific activities and strategies. While policy coordination and consultation mechanisms can vary from one country to another, **it is recommended that a single point of responsibility should be accountable for leading the work in a priority area.**

### Coordination on energy policies and their implementation should be more robust

Since the ECN guides the policy direction for the energy sector, its cooperation with relevant ministries, agencies and regulatory authorities should be intensified. **It is recommended that meetings between the high-level representatives of the ECN should be organised more regularly, at least twice a year.** Administrative barriers may also be eliminated through other coordination mechanisms, such as standing committees, working groups and collaborative programmes. Moreover, greater engagement between the relevant MDAs and the ECN staff should be encouraged. This will help to ensure that the decisions taken on a higher level be implemented at the grass root.

### Develop instruments for stakeholder consultation at different stages of the policy process

**It is recommended that instead of ad hoc consultations, the methods and timelines of public participation should be decided at an early stage and made publically known.** This will increase investor confidence, promote cooperation and encourage dialogue on policy choices. Such an approach will also increase the accountability of the Government and empower the public to make informed decisions.

### The Government is encouraged to publish all its mining, oil and gas contracts

While Nigeria is actively promoting and participating in various transparency programmes, further efforts are needed to fully realise its commitment. For this reason, **it is recommended that the Government consider publishing all its extractive industry contracts.** Oil, gas and mining contracts stipulate the terms which govern the relationship between the host-State and the extractive companies. They specify the revenue received by the parties, provisions on taxation, the key obligations for the companies and the host-State, and the terms of protection for citizens and the environment. Various countries, including Australia, Mexico, Ghana, Liberia, Bolivia, Mauritania and Niger now publish their extractive industry contracts. Additionally, international oil companies have shown support for making this information widely available. The Nigerian Government has already expressed its openness towards such disclosure through the Open Governance Partnership Action Plan as well as the "Seven Big Wins" policy strategy, which urges the publication of all established fiscal rules and contracts. Therefore, while the intention to inevitably release this information is praiseworthy, actual work in this direction needs to be undertaken.

## Regulatory environment and investment conditions

Nigeria has reformed its regulatory structure to achieve more effective market oversight. It has also brought about various changes in its policies to attract FDI in the energy sector. However, further steps must be taken to grant autonomy to regulatory bodies and reduce the role of decision-makers on regulatory issues. It is also important to expedite the adoption of critical bills that will strengthen the legal regime and grant investors a more predictable investment climate.

Effective regulation can help to achieve better social, environmental and economic outcomes for the country. Mechanisms and institutions must provide proper oversight of regulatory policies and goals. This gives confidence to investors that the market is functioning as it should and that practices which are discriminatory or punitive will be rooted out. Efficient regulatory institutions should be coupled with a non-discriminatory level playing field for foreign investors. Practices which are restrictive towards FDI should be given careful consideration before their implementation.

### QUICK FACTS

The National Electric Power Policy 2001 sets out the framework for the reform and liberalisation of the electricity supply industry.

The Nigerian Energy Regulatory Commission (NERC) regulates the generation, transmission, distribution and trading of electricity. Its mandate is to monitor and regulate the electricity industry of Nigeria and ensure compliance with market rules and operating guidelines.

The Department of Petroleum Resources, under the Federal Ministry of Petroleum Resources, is the regulator for the oil and gas sub-sectors. Additionally, the Nigerian National Petroleum Corporation (NNPC) is the State-owned enterprise which regulates the petroleum industry and participates in it, through joint ventures with private companies. The NNPC has ownership of the national oil company, the Nigerian Petroleum Development Corporation.

The mining sector is regulated by the Ministry of Solid Minerals, Mines and Steel Development. Institutions such as the National Geological Survey Agency and the Nigerian Mining Cadastre Office have been established to promote the identification and exploration of minerals and to administer mineral titles on an open and transparent basis.

The Nigerian Oil and Gas Industry Content Development Act 2010 provides the legal framework for local content.

### STRENGTHS

Measures have been taken, in recent years, to strengthen the regulatory set-up of Nigeria. Though there are multiple authorities responsible for regulating different energy sub-sectors, their mandate and composition are stated in the national legislation. For instance, the functions and powers of the Nigerian Mining Cadastre Office are clearly stipulated in its governing law. The personnel policy and management rules for most of the regulatory authorities are defined. The Chairman and the members of the NERC are appointed for a fixed tenure by the President and enjoy functional independence. Financial and budgetary accountability lies with the National Assembly and the Auditor General.

Regulatory authorities have also been established for overseeing specific activities. For instance, the National Local Content Development and Monitoring Board is responsible for integrating oil producing communities into the oil and gas value chain and linking the sub-sectors to other areas of the economy. Similarly, the Petroleum Products Pricing Regulatory Agency

determines the prices of petroleum products and regulates their supply and distribution in the country.

Given the need for balancing environmental protection with the development of the country, authorities regulating safety and environmental issues have also been set up. The Nigerian Nuclear Regulatory Authority is a parastatal under the Ministry of Petroleum Resources which is responsible for nuclear safety and radiological protection. The National Oil Spill Detection and Response Agency is in charge of monitoring and regulating tier one and two oil spills, as well as coordinating, implementing and reviewing the National Oil Spill Contingency Plan for Nigeria. Finally, the National Environmental Standards and Regulations Enforcement Agency enforces all environmental laws, guidelines, policies, standards and regulations, and requires environmental impact assessment of energy projects. It also ensures compliance with international agreements, protocols, conventions and treaties related to the environment.

The legislative framework generally supports foreign investment. The Nigerian Investment Promotion Commission Act (NIPC Act) as amended in 1998 provides guarantees to foreign investors and promotes identified strategic projects. Some BITs accord investors of the contracting countries with *most favoured nation* as well as *fair and equitable treatment*. In principle, there are no restrictions on foreign ownership in energy projects. Full repatriation of capital invested through foreign sources is permitted. There is a defined local content regime in place to boost job creation and to develop the domestic private sector.

The Presidential Enabling Business Environment Council was inaugurated in 2016 to work progressively towards removing bureaucratic constraints for investors. The Council is chaired by His Excellency, the Vice President and ten ministers, the Head of the Civil Service of the Federation, the Governor of the Central Bank of Nigeria, representatives of the National Assembly, the judiciary, and the private sector. The Council has implemented

some crucial reform initiatives. In 2017, it commenced the sub-national Ease of Doing Business project to percolate the initiatives down to the grass root. The Enabling Business Environment Secretariat assists the MDAs in implementing the reform agenda of the Council.

Efforts have been made to modernise and make transparent the business environment of the country. For example, the Executive Order no. 001 of 2017 required all MDAs to publish, within a stipulated time period, a complete list of all requirements or conditions for obtaining products and services within the MDA's scope of responsibility, including permits, licenses, waivers, tax-related processes, filings and approvals. It also envisaged disciplinary action in case of non-compliance with the provisions of the Order. Finally, it mandated the Registrar-General of the Corporate Affairs Commission to ensure that all registration processes are fully automated through its website from the start of an application process to completion, including ensuring the availability of an online payment platform where necessary.

## AREAS OF IMPROVEMENT

Due to the presence of multiple regulatory authorities, there is little clarity on the regulatory and institutional design. At present, there are over nine different agencies that perform regulatory functions. The need for regulators which perform similar or obsolete functions should be re-evaluated.

Despite their critical importance to the country's energy investment framework, certain draft laws and policies are yet to be adopted or to take effect. This is particularly relevant to the Petroleum Industry Bill, which is listed as a priority in the ERGP, but is still to be passed by the National Assembly.

## RECOMMENDATIONS

### **The division of responsibility between the different regulatory authorities should be clearly defined**

**It is recommended that, to the extent possible, decision-makers, as well as agencies participating in the market, should be granted minimal regulatory powers to avoid a conflict of interest.** In some sub-sectors, such as mining, the Government is already considering the establishment of an independent commission, which will take over the regulatory role of the Ministry of Mines and Development. In a similar vein, the regulatory functions performed by the ministries, parastatals and independent commissions must be re-evaluated. Where similar or the same functions are performed, the responsibility must be given to one autonomous authority. Best practices from countries in the region, which have gone on to create more streamlined, independent and well-defined regulatory institutions should be reviewed and adapted to best meet the local needs.

### **Develop and adopt pending legislation to increase investor confidence**

Nigeria needs to put in place a comprehensive package of laws and regulations which will provide assurance to investors making costly long-term energy investments in the country. For instance, to support the ongoing reforms and initiatives in the petroleum industry, **it is recommended that the Government passes the Petroleum Industry Bill without delay** and undertakes further work on creating a sound and transparent governance framework to stimulate growth and attract

investment. Moreover, **it is recommended that the final stages for adopting the Federal Competition and Consumer Protection Bill, which has been held up for over five years, should be completed.** The creation of a competent competition authority, as envisaged in the bill, will go a long way in giving investors certainty and improving the market's credibility.

### **Review the current local content policy to ensure it matches the country's overall development goals**

The success of policy interventions, including those related to local content, is dependent on the progress made in other areas of the economy, such as developing the needed infrastructure and improving the quality of education. **It is recommended that the policy design for local content should be developed in cohesion with the broader objectives of the country. Additionally, it is recommended that content targets should be reviewed to ensure they are realistic and relevant.** Over ambitious targets may lead to a mismatch between supply and final demand. It may create economic distortions and at the same time hinder investments in the required sectors.



## Rule of law

Concerted attempts have been made to strike a balance between protecting the interests of the State while granting foreign investors access to the energy resources of the country. Access to alternative dispute resolution mechanisms is encouraged. Protection against the acquisition of property for unjustified reasons is prohibited. There are still a few concerns which need to be addressed. Particular attention must be given to the manner in which dispute resolution mechanisms will be developed for resolving investor-State disputes and how the domestic judicial set-up will cope with these developments.

It is essential for investors to know that their operations can be conducted under a coherent legal framework, which guarantees their rights and ensures the performance of contracts and other agreements. The existence of a stable legal regime provides certainty to investors that their operation will not be stalled or detrimentally affected due to frequent changes or revisions to the energy and investment landscape.

### QUICK FACTS

Nigeria signed the International Energy Charter political declaration in 2017 and became an observer to the Energy Charter Conference.

Access to arbitration is provided in the Arbitration and Conciliation Act 2004.

Nigeria ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1965.

Nigeria acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1970.

### STRENGTHS

Local courts recognise contractual provisions that allow direct access to international arbitration. The Arbitration and Conciliation Act is inspired by the UNCITRAL Model Law. It provides the over-arching legal framework for resolving commercial disputes. National courts enforce foreign judgements on a reciprocal basis. There have been no retroactive legislative changes in the past years. The ICSID awards are enforced directly by the Supreme Court as the court of first instance.

Efforts are currently underway to modernise the legal framework for investment and dispute resolution. One of the most striking aspects which deserve attention is the Morocco-Nigeria BIT of 2016 which takes a very balanced approach between offering protection to investors and safeguarding the policy space of the States. The treaty is unique in its innovative nature and its stress on sustainable development. In terms of the domestic law, it is anticipated that a definition for the terms “investor” and “investment” will be introduced in the text of the NIPC Act, to give greater clarity on the scope and application of the Act.

The NIPC Act provides guarantees against expropriation of investments. Compulsory acquisition of property is only possible on the grounds of national interest or for public purpose. The decision to expropriate must be accompanied by a fair and adequate compensation, payable in a convertible currency. Moreover, investors have the right to approach the courts for the determination of their interest or right and the amount of compensation.

Domestic laws exist for the protection of intellectual property rights. The inflow of foreign technology is encouraged and monitored by the National Office for Technology Acquisition and Promotion.



## AREAS OF IMPROVEMENT

There is a need to evaluate the effectiveness of national judicial mechanisms and dispute resolution mechanisms. With the rising caseload of the domestic courts, the Government should expedite the establishment of a formal investment ombudsman or similar institution to resolve conflicts between foreign investors and public authorities.

Under the domestic law, expropriation refers only to physical property. National legislation does not contain provisions for granting protection against the expropriation of intangible property such as equity, shares and intellectual property.

## RECOMMENDATIONS

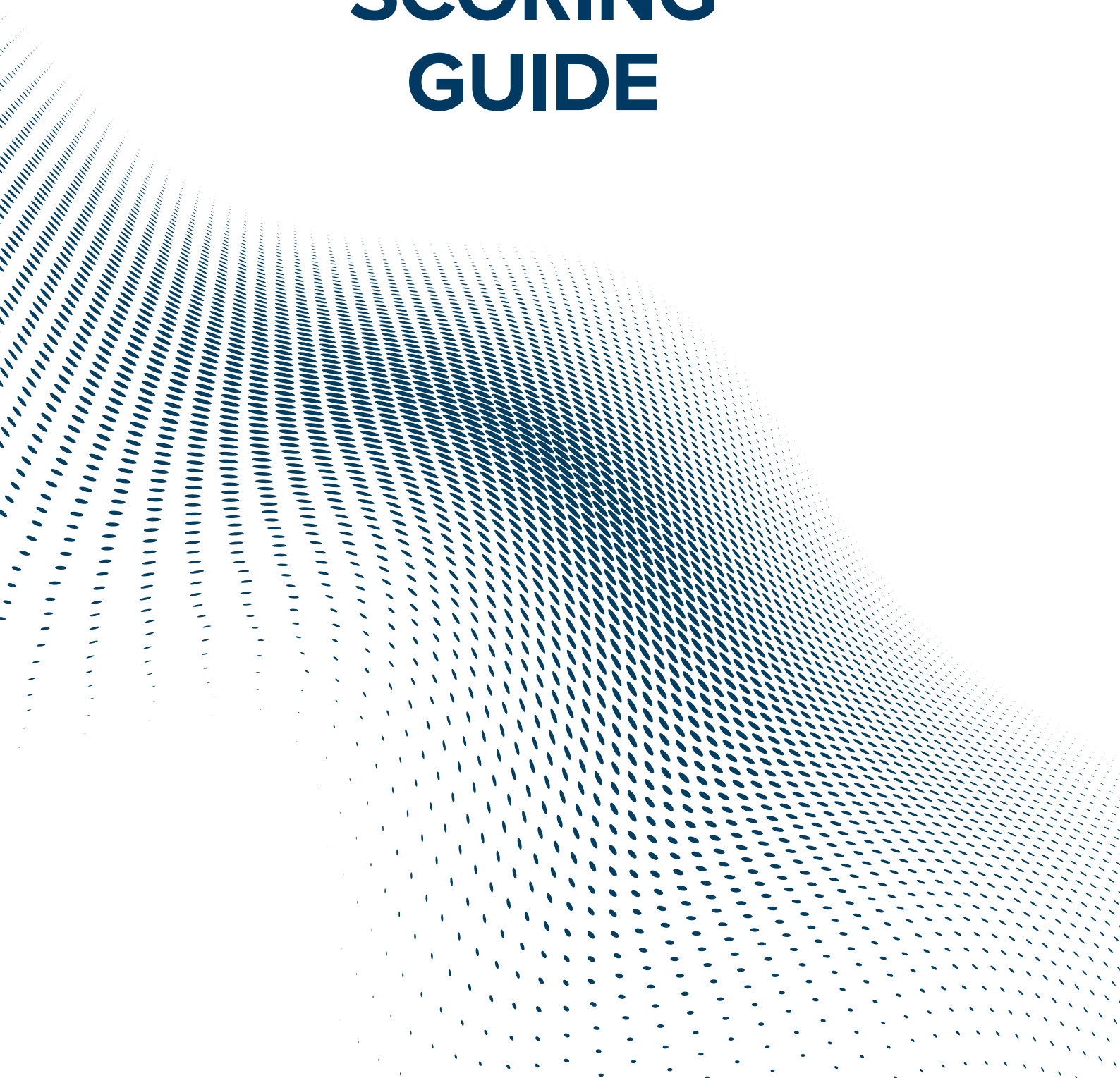
### **A carefully balanced approach should be taken in the dispute resolution mechanisms envisaged for resolving investor-State disputes**

The Government has introduced new dispute resolution mechanisms in its latest BIT with Morocco. One of the key points under this BIT was the introduction of the “exhaustion of local remedies” clause, which is also expected to be introduced in the domestic laws of the country. According to this provision, foreign investors must exhaust all local judicial remedies available before accessing international arbitration. The clause typically protects host States from, among other things, costly international arbitrations. To fully benefit from this provision, however, the Government needs to significantly enhance its domestic judicial processes and ensure that they are not perceived as ineffective or leading to delay and costs. Otherwise, exhaustion of local remedies may be counter-productive and act as a deterrent to foreign investment. **It is, therefore, recommended that urgent measures are taken to overhaul local judicial processes and case management mechanisms.** As a starting point, it should be assessed whether, and to what extent, an increase in human resource capacity and expertise will be anticipated if investment disputes with foreign investors are to be resolved before national courts. Additionally, serious consideration should be given to establishing an investment ombudsman or similar institution to handle the complaints of foreign investors against public authorities during the licensing procedures. This can help to resolve issues that can potentially precipitate into disputes.

### **Revision to the provision on expropriation under the NIPC Act may be considered**

Protection against the expropriation of intangible property may be strengthened further under the domestic laws. At present, the legal provisions on expropriation are generic and open to interpretation. **It is recommended that more explanation is given to some specific terminologies, such as “public purpose”. While the right of countries to determine what constitutes “public purpose” is paramount, at the same time a very broad formulation should be avoided.** A list of core activities which constitute public interest can provide clarity to investors. A detailed mechanism for the determination of public interest will ensure the legitimacy of the decisions to expropriate. Moreover, **it is recommended that the domestic law includes a timeline for paying compensation to the affected investor and an explanation for the intended use of the acquired property.** It should be explicitly mentioned that any act of expropriation will be non-discriminatory. This will assist in providing protection to investors and give clarity on the legal regime.

# **ANNEX I: SCORING GUIDE**



The score for each indicator is the average of its component sub-indicators. The score of each sub-indicator is the average of its underlying questions. The scoring rules for different types of questions are as follows:

## 1. Questions with proportionate scores

This category is scored based on the number of energy policy goals set by the country. In the example given below, the first sub-indicator of Indicator 1 allows the respondents to list the energy priorities of the country. Under the first question, there are nine identified options for respondents to select. Additionally, they are given the opportunity to specify other priorities considered relevant to their respective energy sectors. The response to the first question sets the premise on which the following questions will be answered and scored. For example, a country has set 5 goals. As a result, 20 points are attributed to each of the selected goals for the scoring of the next questions. Subsequently, the respondent identifies an energy strategy document for three out of the five selected goals, and the country receives 60 points on that question. The scores for the third and the fourth questions are calculated likewise. The final score of this sub-indicator is the average scores of its component questions, which in this case is 66.7.

### Sample Question Type 1

INDICATOR 1: FORESIGHT OF POLICY AND REGULATORY CHANGE	SCORING	RESPONSE	SCORE
<b>Sub-indicator 1: Communication of vision and policies</b>			<b>66.7</b>
<b>1. What are the key priorities or goals of the energy sector policy?</b> <b>1a. Energy security [Y/N]</b> <b>1b. Power reliability [Y/N]</b> <b>1c. Affordability – energy poverty [Y/N]</b> <b>1d. Access to energy [Y/N]</b> <b>1e. Investment in the energy sector [Y/N]</b> <b>1f. CO<sub>2</sub> reduction [Y/N]</b> <b>1g. Renewable energy [Y/N]</b> <b>1h. Energy efficiency [Y/N]</b> <b>1i. Innovation [Y/N]</b> <b>1j. Others issues related to the energy sector (like air quality, water quality job creation etc). Please specify.</b>	Not Scored	5 goals selected: Energy security; power reliability; access to energy; CO <sub>2</sub> reduction; and Innovation  (100/5=20 for each goal in the related questions)	–
<b>2. Does the country have an energy strategy document for the key priority areas selected above (e.g. a Vision document/ Roadmap etc.)? [Y/N]</b>	Based on the number of goals selected in the previous question proportionate scores are allocated	Energy strategy document for 3 goals: Energy security; CO <sub>2</sub> reduction; and innovation	3x20=60

## 2. Binary questions

These questions can be answered with a simple “yes” or “no”. In the example below, the respondent must answer “yes” to all three questions to obtain the highest score. However, the respondent gives two positive answers and a negative one. As a result, the score for the sub-indicator is 66.7.

### Sample Question Type 2a

INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS	SCORING	RESPONSE	SCORE
<b>Sub-indicator 1: Regulatory effectiveness</b>			<b>66.7</b>
<b>1. Does the energy regulator derive its authority from a law? [Y/N]</b>	Yes-100 No-0	Yes	100
<b>2. Are the functions and obligations of the energy regulator stated in a law? [Y/N]</b>	Yes-100 No-0	No	0
<b>3. Does the energy regulator have a budget that is separate from the government’s budget? [Y/N]</b>	Yes-100 No-0	Yes	100

In some cases, a negative response may yield a high score while a positive answer may be scored 0. In the following example, the respondent must answer “no” to all the questions to obtain the highest score. However, the respondent gives one negative and one positive answer. As a result, the score for the sub-indicator is 50.

### Sample Question Type 2b

INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS	SCORING	RESPONSE	SCORE
<b>Sub-indicator 2: Restrictions on FDI</b>			<b>50</b>
<b>1. Are foreign investors required by law to partner with State/ State-owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N]</b>	Yes-0 No-100	No	100
<b>2. Are foreign investors required to purchase a certain percentage/ value/quantity of products or services from local suppliers? [Y/N]</b>	Yes-0 No-100	Yes	0

### 3. Questions with alternative responses and granulated scores

In some cases, the respondent is asked to select an answer from a group of alternatives. The answer reflecting best practice is scored 100, whereas the score for the rest of the options is granulated. In the table below, the respondent states that only some legal and regulatory information is made available. This alternative is not considered optimal and, thus, yields only 50 points. In the following question, the respondent states that laws and regulations are accessible both electronically and in print. This is considered best practice and gets a score of 100. Similarly, the respondent answers that the energy regulator makes available all its decision to the public, which again is considered best practice and gets 100. The overall score for this sub-indicator is 83.3.

#### Sample Question Type 3

INDICATOR 2: MANAGEMENT OF DECISION-MAKING PROCESSES	SCORING	RESPONSE	SCORE
<b>Sub-indicator 1: Transparency</b>			<b>83.3</b>
<b>1. Does the country make available legal and regulatory information to the public?</b>		1-b	50
a. Yes, all information is made available	100		
b. Only some information is available	50		
c. No information is available	0		
<b>2. How are laws and regulations made accessible to public?</b>		2-a	100
a. Both electronically and in print	100		
b. Only electronically	66.7		
c. Only in print	33.3		
d. Available only upon request/or payment of fee	0		
<b>3. Does the energy regulator make available its decisions (on tariffs, tariff methodology, market access etc.) to the public?</b>		3-a	100
a. Yes, all decisions are made available	100		
b. Only some decisions are made available	50		
c. No decisions are made available	0		

## 4. Questions with alternative sub-questions

This type of question provides alternatives to the respondents, in case a negative answer to the main question is compensated by other measures. In the example provided below, the respondent claims that investors need authorisation before investing in the energy sector. Since this imposes a restriction on investors, the answer to the main question gets a 0. Where the prior authorisation requirement results in restrictiveness but is not discriminatory in nature, 50 points are 'recovered' by answering "yes" to question 1a.

Sample Question Type 4

INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS	SCORING	RESPONSE	SCORE
<b>Sub-indicator 2: Restrictions on FDI</b>			<b>50</b>
<b>1. Is there a pre-screening or prior-authorization requirement for investing in the energy sector? [Y/N]</b>	Yes-0 No-100	Yes	0
<b>If yes:</b>			
<b>1a. Is pre-screening applicable to both domestic and foreign investors? [Y/N]</b>	Yes-50 No-0	Yes	50

## 5. Divided questions

For some sub-indicators the main question is bifurcated into sub-questions, which are awarded identical scores since they are equally important. The sub-questions develop a joint perfect score of 100, when answered positively. In the example below, the country scores 50 because it is a Contracting Party only to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Sample Question Type 5

INDICATOR 4: RULE OF LAW (COMPLIANCE WITH NATIONAL AND INTERNATIONAL OBLIGATIONS)	SCORING	RESPONSE	SCORE
<b>Sub-indicator 1: Management and settlement of investor-State disputes</b>			<b>50</b>
<b>1. Is the country a Contracting Party to:</b>			
<b>1a. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? [Y/N]</b>	Yes-50 No-0	Yes	50
<b>1b. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards? [Y/N]</b>	Yes-50 No-0	No	0





# **ANNEX II: EIRA QUESTIONNAIRE 2018**



## Indicator 1: Foresight of policy and regulatory change

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>Sub-indicator 1.1: Communication of vision and policies</b>		
<b>1.1.1 What are the key priorities or goals of the energy sector policy?</b> 1a. Energy security [Y/N] 1b. Power reliability [Y/N] 1c. Affordability – energy poverty [Y/N] 1d. Access to energy [Y/N] 1e. Investment in the energy sector [Y/N] 1f. CO <sub>2</sub> reduction [Y/N] 1g. Renewable energy [Y/N] 1h. Energy efficiency [Y/N] 1i. Innovation [Y/N] 1j. Others issues related to the energy sector (like air quality, water quality job creation etc). Please specify.	This is not an exhaustive list and countries are only expected to tick the boxes relevant to them. Countries may add priorities or goals not listed.	Not scored
<b>1.1.2 Does the country have an energy strategy document for the key priority areas selected above (e.g. a Vision document/Roadmap)? [Y/N]</b>	Kindly provide details of the energy strategy (such as date when the document was endorsed). Please also provide a link to the document or send the pdf version.	Based on the number of goals selected
<b>1.1.3 Has the country set any short-, medium- term targets for the priority areas selected above? [Y/N]</b>	This may include any specific short-, medium-term outcomes/targets for the energy sub-sectors.	Based on the number of goals selected
<b>1.1.4 Has the country set any ultimate/final outcomes for the priority areas selected above? [Y/N]</b>	This may include any specific final outcomes or end game for all energy sub-sectors.	Based on the number of goals selected
<b>1.1.5 Is there a timeframe for achieving the ultimate/final outcomes for the priority areas selected above? [Y/N]</b>		Based on the number of goals selected
<b>1.1.6 Is there a binding national action plan in place for implementing the priorities selected above? [Y/N]</b>		Based on the number of goals selected
<b>1.1.7 Is the country a party to the United Nations Paris Climate Agreement? [Y/N]</b>		Yes-50 No-0
<b>1.1.7a If yes, does the country's NDC contain details on energy sector CO<sub>2</sub> contribution? [Y/N]</b>		Yes-50 No-0
<b>Sub-indicator 1.2: Robustness of policy goals and commitments</b>		
<b>1.2.1 Is there a body responsible for monitoring the implementation of each energy priority? [Y/N]</b>		Based on the number of goals selected
<b>1.2.2 Is the monitoring body independent of the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]</b>	For instance a technical/statistics body.	Based on the number of monitoring bodies
<b>1.2.3 Is the monitoring body required to provide feedback to the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]</b>		Based on the number of monitoring bodies
<b>1.2.4 Is there a legal provision that allows the government to review the energy priorities selected above, and sets out the process in which the review should be performed? [Y/N]</b>	Please provide relevant legal acts/provisions.	Yes-100 No-0
<b>Additional remarks:</b> Are there any other risks in the energy sector relevant to <i>Foresight of policy and regulatory change</i> ? Please describe.		

## Indicator 2: Management of decision-making processes

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>Sub-indicator 2.1: Institutional governance</b>		
<b>2.1.1 Indicate the levels of government involved in framing energy legislation:</b> a. Central government [Y/N] b. Provincial [Y/N] c. Municipal [Y/N] d. More than 3 [Y/N] e. How many levels are involved in total?		For one level 100 For two levels 50 For three levels 25 For more than three levels 0
<b>2.1.2 Is there a central authority responsible for the overall energy policy formulation process? [Y/N]</b>	Please provide the name of the institution and its website.	Yes-100 No-0
<b>2.1.3 Is there a central authority responsible for the overall investment policy formulation process? [Y/N]</b>	Please provide the name of the institution and its website.	Yes 100 No-0
<b>2.1.4 Do the energy and investment authorities consult each other while formulating policies related to their respective sectors? [Y/N]</b>	This includes consultation within working groups, etc.	Yes-100 No-0
<b>2.1.5 Is there an authority responsible for the overall implementation and monitoring of the country's NDC? [Y/N]</b>	Please provide the name of the institution and its website.	Yes-100 No-0
<b>2.1.6 Is there a process that requires the government to periodically review the implementation of its NDC? [Y/N]</b>		Yes-100 No-0
<b>2.1.7 Has the country established a one-stop shop investment approval authority? [Y/N]</b>	Please provide the name of the institution and its website.	Yes-50 No-0
<b>2.1.7a If yes, does it also give approval for the energy sector? [Y/N]</b>		Yes-50 No-0
<b>2.1.8 Is there a single window for all enquiries concerning investment policies and applications? [Y/N]</b>	Please provide the name of the institution and its website.	Yes-50 No-0
<b>2.1.8a If yes, does it also give information for the energy sector? [Y/N]</b>		Yes-50 No-0
<b>Sub-indicator 2.2: Transparency</b>		
<b>2.2.1 Does the country have a law on transparency? [Y/N]</b>		Yes-100 No-0
<b>2.2.2 Do exceptions to transparency rules exist? [Y/N]</b>	Such exceptions can include national security, public interest, law and order etc.	Yes-0 No-100
<b>2.2.2a If yes, are these exceptions clearly defined in law or regulation? [Y/N]</b>		Yes-100 No-0
<b>2.2.3 Does the country make available legal and regulatory information to the public?</b> a. Yes, all the information is made available b. Only some of information is made available c. No information is made available	Legal and regulatory information includes enacted laws, draft laws, regulations, draft regulations. If the information is limited, please state reasons for this answer.	100 50 0
<b>2.2.4 How is law and regulation made accessible to the public? [Y/N]</b> a. Both electronically and in print b. Only Electronically c. Only in print d. Available only upon request or payment of fee	On request means investors can approach public authorities for hard copies.	100 66.7 33.3 0
<b>2.2.5 Does the energy regulator make available its decisions (on tariffs, tariff methodology, market access etc.) to the public?</b> a. Yes, all the decisions are made available b. Only some decisions are made available c. No decisions are made available		100 50 0

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>2.2.6 Are energy strategy documents and national plans available in any of the UN languages? [Y/N]</b>	The UN languages are Arabic, Chinese, English, French, Russian and Spanish. For the purpose of this question, unofficial translations are not relevant.	Yes-100 No-0
<b>2.2.7 Are enacted laws available in any of the UN languages? [Y/N]</b>	The UN languages are Arabic, Chinese, English, French, Russian and Spanish. For the purpose of this question, unofficial translations are not relevant.	Yes-100 No-0
<b>2.2.8 Do the bodies responsible for monitoring and implementing energy priorities/objectives publish their data? [Y/N]</b>	This question refers to monitoring bodies mentioned in question 1 of Indicator 1, sub-indicator 2.	Yes-100 No-0
<b>2.2.9 Is legal information centralised?</b> a. In an electronic centralised registry of laws and regulations b. Centralised registry/official gazette in print c. No centralisation of laws and regulations		100 50 0
<b>2.2.10 Is consultation between the government and the stakeholders required under any law/regulation/rule? [Y/N]</b>	Stakeholders may include affected public and private investors, energy agencies, local government administration, non-governmental organisations, and wider community.	Yes-100 No-0
<b>2.2.11 Is consultation between the energy regulator and the stakeholders required under any law/regulation/rule? [Y/N]</b>		Yes-100 No-0
<b>2.2.12 Are stakeholders notified and consulted in advance when new laws and regulations are enacted? [Y/N]</b> a. Notified and consulted in advance b. Notified but not consulted c. Not notified or consulted		100 0 0
<b>Additional remarks:</b> Are there any other risks in the energy sector relevant to <i>Management of decision- making processes</i> ? Please describe.		

## Indicator 3: Regulatory environment and investment conditions

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>Sub-indicator 3.1: Regulatory effectiveness</b>		
<b>3.1.1 Which institution is responsible for regulating the energy sector?</b> a. A separate energy regulatory body b. An agency under the control of the Ministry c. A Ministry d. Multiple ministries/agencies regulating sub-sectors separately	Hereafter referred to as 'the energy regulator'.	Not scored
<b>3.1.2* Does the energy regulator derive its authority from a law? [Y/N]</b>	Please provide the name of the legal act which establishes the energy regulator.	Yes-100 No-0
<b>3.1.3* Are the functions and obligations of the energy regulator stated in a law? [Y/N]</b>	Please provide the name of the legal act which specifies the obligations of the energy regulator.	Yes 100 No-0
<b>3.1.4* Is the energy regulator subject to the public control conducted by other institutions?</b> a. Supreme Audit Office which is independent from the central government and/or Parliament b. Governmental institution c. None of the above		100 0 0
<b>3.1.5* Does the energy regulator have a budget that is separate from the government's budget? [Y/N]</b>	This means the budget is not determined by the government.	Yes-100 No-0
<b>3.1.6* Does the energy regulator have a dedicated budget for itself? [Y/N]</b>	Dedicated budget means that the energy regulator is not required to transfer or share its funds with any other governmental entities	Yes-100 No-0
<b>3.1.7* Does the energy regulator have the right to allocate its budget?</b> a. Yes, it has full right to do so b. Yes, but it needs approval from the governmental/ministry c. No, it cannot allocate the budget on its own		100 50 0
<b>3.1.8* Is there a fixed term appointment for the board of the energy regulator? [Y/N]</b>		Yes-50 No-0
<b>3.1.8a* If so, is the term renewable more than once? [Y/N]</b>		Yes-0 No-50
<b>3.1.9* Is the selection procedure of the board and its finalisation publically announced? [Y/N]</b>		Yes-100 No-0
<b>3.1.10 Does the energy regulator deal with competition issues? [Y/N]</b>		Yes-100 No-0
<b>3.1.10a If no, is there a separate governmental body dealing with competition issues, including the energy sector? [Y/N]</b>		Yes-100 No-0
<b>Sub-indicator 3.2: Restrictions on FDI</b>		
<b>3.2.1 Does the country give equal treatment to domestic and foreign investors? [Y/N]</b>	Please provide legal acts which grant equal treatment to domestic and foreign investors.	Yes-50 No-0
<b>3.2.1a If yes, is this equal treatment established in law? [Y/N]</b>		Yes-50 No-0
<b>3.2.2 Are investors in the energy sector allowed to invest in all zones or regions within the country? [Y/N]</b>	This can include restrictions on undertaking activities in the Exclusive Economic Zones, special economic zones, free trade zones	Yes-100 No-0
<b>3.2.2a If no, is this applicable to domestic and foreign investors alike? [Y/N]</b>		Yes-50 No-0

\* For electricity and hydrocarbon regulators

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>3.2.3 Is there a pre-screening or prior-authorization requirement for foreign investors in the energy sector? [Y/N]</b>	Screening mechanisms include requiring the foreign investors to show that the project is in the national interest of the Host State. However, in some cases, they are automatic and amount to a simple pre-notification requirement for investors.	Yes-0 No-100
<b>3.2.3a If yes, is it only a notification requirement? [Y/N]</b>		Yes-50 No-0
<b>3.2.4 Are foreign companies legally allowed to hold a majority stake in energy projects? [Y/N]</b>		Yes-100 No-0
<b>3.2.5 Are foreign investors required by law to partner with the State/State- owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N]</b>		Yes-0 No-100
<b>3.2.6 Are there limitations on the employment of foreign personnel?</b> a. There are no limitations [Y/N] b. Limitation by percentage [Y/N] c. Limitation on the number of times work permit/visa can be renewed [Y/N]		100 0 0
<b>3.2.7 Are foreign investors required to employ specific percentages of local work force?</b> a. There are no such requirements [Y/N] b. Yes, for the managerial level (board of directors etc.) [Y/N] c. Yes, for the unskilled labour and non-technical/administrative staff [Y/N]		100 0 0
<b>3.2.8 Are foreign investors required to purchase a certain percentage/value/quantity of products or services from local suppliers? [Y/N]</b>	Local content provisions require foreign investors to purchase a minimum threshold of goods (e.g. raw materials) and services (e.g. human resources) locally.	Yes-0 No-100
<b>3.2.9 Are there any currency restrictions and/or foreign exchange controls applied to foreign investors under a law or regulation? [Y/N]</b>		Yes-0 No-100
<b>3.2.9a If yes, do these exchange controls include:</b> a. Banning use of foreign currency? [Y/N] b. Limiting currency exchange to government approved exchangers? [Y/N] c. Fixed exchange rates? [Y/N]		
<b>3.2.10 Do restrictions on the transfer of investment related capital, payments and profits exist?</b>	e.g. profits, dividends, interest and royalty receipts, original capital, capital appreciation, proceeds from liquidation, payments received as compensation for property expropriation, settlement of disputes etc., and earnings of personnel engaged from abroad in connection with an investment.	Yes-0 No-100
<b>3.2.10a If yes, do they apply equally on foreign and domestic investor?</b>		Yes-50 No-0
<b>Additional remarks:</b> Are there any other risks in the energy sector relevant to <i>Regulatory environment and investment conditions</i> ? Please describe.		

## Indicator 4: Rule of Law (compliance with national and international obligations)

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>Sub-indicator 4.1: Management and settlement of investor-State disputes</b>		
<b>4.1.1 Is the jurisdiction for hearing contractual disputes with foreign investors defined in the domestic law? [Y/N]</b>		Yes-100 No-0
<b>4.1.2 Is there a separate mechanism for appealing against regulatory decisions?</b> a. Yes, appeals can be heard by the regulator in the first instance b. Appeals can only be heard by general courts c. There is no appeal process		100 50 0
<b>4.1.3 Are national courts and administrative tribunals required by law to deliver decisions within a defined time limit? [Y/N]</b>		Yes 100 No-0
<b>4.1.4 Is arbitration included in:</b> a. An investment law b. A separate arbitration law c. As a chapter/section in the code of civil procedure d. There is no law that refers to arbitration		100 100 100 0
<b>4.1.5 Is voluntary mediation, conciliation or both included in:</b> a. An investment law b. Arbitration and mediation law c. As a chapter/section in the code of civil procedure d. There is no law that refers to mediation and/or conciliation		100 100 100 0
<b>4.1.6 Is there an investment ombudsman to whom foreign investors can refer disputes with the government? [Y/N]</b>	Please provide the name of the institution and the website.	Yes-100 No-0
<b>4.1.7 Do national laws allow the recognition and enforcement of foreign judgments? [Y/N]</b>		Yes-50 No-0
<b>4.1.7a If yes, then are these laws equally applicable to different jurisdictions? [Y/N]</b>		Yes-50 No-0
<b>4.1.8 Do national laws and/or International Investment Agreements require exhaustion of local remedies (e.g. domestic courts) before recourse to international arbitration? [Y/N]</b>	Foreign investors are required to go through the administrative and judicial system of the State before initiating international proceedings directly against the State.	Yes-0 No-100
<b>4.1.9 Has the country made retroactive changes to its laws in the past 5 years? [Y/N]</b>		Yes-0 No-100
<b>4.1.10 Is the country a Contracting Party to:</b> a. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? [Y/N] b. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards? [Y/N]		Yes-50 No-0 Yes-50 No-0
<b>Sub-indicator 4.2: Respect for property rights</b>		
<b>4.2.1 Are the criteria for 'public interest' as grounds for expropriation clearly stated? [Y/N]</b>	Please provide the legal act that specifies this criteria.	Yes-100 No-0
<b>4.2.2 Does the State provide in its laws and/or its International Investment Agreements a process for determining compensation in the event of expropriation in the energy sector? [Y/N]</b>	e.g., determination of compensation by independent auditors.	Yes-100 No-0
<b>4.2.3 Does the State provide in its laws and/or its International Investment Agreements a time frame within which compensation needs to be paid? [Y/N]</b>	Please provide the law which states this time frame.	Yes-100 No-0



QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>4.2.4 Does the State include in its laws and/or International Investment Agreements protection against the expropriation of intellectual property rights? [Y/N]</b>		Yes-50 No-0
<b>4.2.4a Is the country a Member State of the World Intellectual Property Organization? [Y/N]</b>		Yes-50 No-0
<b>4.2.5 Does the State have in its laws and/or International Investment Agreements any provisions restricting the transfer of technology in the energy sector? [Y/N]</b>	Please provide the law which states this restriction.	Yes-0 No-100
<b>4.2.6 Is the country a Member State/Contracting Party to:</b> a. The World Trade Organization? [Y/N] b. The Energy Charter Treaty? [Y/N]		Yes-50 No-0 Yes-50 No-0
<b>Additional remarks:</b> Are there any other risks in the energy sector relevant to <i>Rule of Law (compliance with national and international obligations)</i> ? Please describe.		

# CONTRIBUTORS



## GOVERNMENT CONTRIBUTORS

ENERGY COMMISSION OF NIGERIA

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FEDERAL MINISTRY OF MINES AND STEEL  
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NIGERIAN BULK ELECTRICITY TRADING

MINISTRY OF BUDGET AND NATIONAL PLANNING

FEDERAL MINISTRY OF JUSTICE

NIGERIAN INVESTMENT PROMOTION COMMISSION

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Damilola Oyelade - PERCHSTONE AND GREYS

Samuel Ehiwe - PERCHSTONE AND GREYS

Martin Nnabuihe - PROF C J AMASIKE & ASSOCIATES





# ENERGY CHARTER PROCESS CHART

as of 1 April 2018

## INTERNATIONAL ENERGY CHARTER (2015)

### MEMBERS (54)

Sig	Rat	EEC	IEC	Country
2007	2013	2006	2015	Afghanistan
1994	1997	1991	2015	Albania
1994	1997	1991	2015	Armenia
1994		1991		Australia
1994	1997	1991	2015	Austria
1994	1997	1991		Azerbaijan
1994		1991	2015	Belarus
1994	1998	1991	2015	Belgium
1995	2001	1995	2016	Bosnia and Herzegovina
1994	1996	1991	2015	Bulgaria
1994	1997	1993	2015	Croatia
1994	1998	1991	2015	Cyprus
1995	1996	1993	2015	Czech Republic
1994	1997	1991	2015	Denmark
1994	1998	1992	2015	Estonia
1994	1998	1991	2015	European Union
1994	1998	1991	2015	EURATOM
1994	1997	1991	2015	Finland
1994	1999	1991	2015	France
1994	1995	1991	2015	Georgia
1994	1997	1991	2015	Germany
1994	1997	1991	2015	Greece
1995	1998	1991	2015	Hungary
1994	2015	1991		Iceland
1994	1999	1991	2015	Ireland
1995	2002	1991	2015	Japan
1994	1995	1991	2015	Kazakhstan
1994	1997	1992	2015	Kyrgyzstan
1994	1995	1991	2015	Latvia
1994	1997	1991	2015	Liechtenstein
1995	1998	1992	2015	Lithuania
1994	1997	1991	2015	Luxembourg
1994	2001	1991	2015	Malta
1994	1996	1992	2015	Moldova
1998	1999	1997	2015	Mongolia
2013	2015	2012	2015	Montenegro
1994	1997	1991	2015	Netherlands
1995		1991	2015	Norway
1994	2000	1991	2015	Poland
1994	1997	1991	2015	Portugal
1994	1996	1991	2015	Romania
1994		1991		Russian Federation
1994	1995	1993	2015	Slovakia
1994	1997	1992	2015	Slovenia
1994	1997	1991	2015	Spain
1994	1997	1991	2015	Sweden
1994	1996	1991	2015	Switzerland
1994	1997	1991		Tajikistan
1997	1998	1996	2015	The FYR Macedonia
1994	2001	1991	2015	Turkey
1994	1997	1994	2015	Turkmenistan
1994	1998	1991	2015	Ukraine
1994	1996	1991	2015	United Kingdom
1995	1995	1991	2015	Uzbekistan

## EUROPEAN ENERGY CHARTER (1991)

## ENERGY CHARTER TREATY (1994)

### ACCEDING COUNTRIES

### ECT SIGNATORIES

### OBSERVERS (41)

Country	EEC	IEC
Bangladesh		2015
Benin		2015
Burkina Faso		2017
Burundi	2015	2015
Cambodia		2015
Canada	1991	
Chad	2015	2015
Chile		2015
China		2015
Colombia		2015
EAC		2016
ECCAS		2016
ECOWAS		2015
G5 Sahel		2016
Gambia		2017
Guatemala		2016
Indonesia	2009	
Iran		2016
Iraq		2016
Italy	1991	2015
Jordan	2007	2015
Kenya		2017
Mali		2017
Mauritania	2014	2015
Morocco	2012	2015
Niger	2015	2015
Nigeria		2017
Pakistan	2005	2015
Palestine	2014	2015
Panama		2017
Rwanda		2016
Senegal		2016
Serbia	2001	2015
South Korea		2015
Swaziland		2015
Syria	2010	
Tanzania		2015
UAE		2017
Uganda		2015
USA	1991	2015
Yemen	2014	2015

### INTERNATIONAL ORGANISATIONS WITH OBSERVER STATUS (by decision of the Energy Charter Conference):



**EIRA ENERGY INVESTMENT RISK ASSESSMENT – NIGERIA**  
**ENERGY CHARTER SECRETARIAT PUBLICATION**

ISBN: 978-905948-206-7 (paperback)

ISBN: 978-905948-207-4 (pdf)

Depot number: D/2018/7850/3

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