Executive summary

Following the Nigeria Federal Ministry of Industry, Trade and Investment’s (FMITI’s) issuance of a new list of 27 industries eligible for the Pioneer Status Incentive (PSI), the Nigeria Investment Promotion Commission (NIPC) has issued pioneer status incentive application guidelines (NIPC Application Guidelines), effective from 1 August 2017.

The NIPC Application Guidelines provide information on relevant considerations and application procedures for entities making an application for a PSI, as well as entities seeking to renew an expired PSI.

It should be noted that the NIPC issued PSI Regulations in 2014 with respect to the PSI process. However, the legal validity of the PSI Regulations had been questioned on the basis that they were not validly issued. Thus, the status of the PSI Regulations remains unclear.

Detailed discussion

In August 2017, the NIPC issued the NIPC Application Guidelines setting forth the information and procedure required for applicants intending to make an application for the PSI. The information provided also pertains to applicants requesting for an extension of the PSI. It should be noted that the NIPC had issued PSI Regulations in 2014. However, the legal validity of the PSI Regulations had been questioned on the basis that they were not validly issued. Thus, the status of the PSI Regulations remains unclear.
The NIPC Application Guidelines were issued shortly after FMITI’s publication in August 2017 of the 27 new industries eligible to apply for the PSI in Nigeria. In the same publication, the FMITI also stated that the mining, mineral oil prospecting and cement industries were now mature industries and would be taken off the list of pioneer industries after a three year period from the date of the publication.

Key highlights of the NIPC Application Guidelines are summarized below.

**List of Pioneer Industries**
The list of Pioneer industries will be reviewed every two years for additions and deletions by the FMITI upon approval by the Federal Executive Council. Any deletions should become effective three years after the removal.

**Application timelines**
Based on the provisions of the NIPC Application Guidelines, a new application for the PSI should be made in the first year of production or service, while an application for extension should be made no later than one month after the expiration of the initial tax relief period of three years or an extension of one year. The Application Guidelines do not provide much clarity on the determination of the “first year of production or service.” However, it would appear from the NIPC Application Guidelines that this should relate to the timing of the “Production Day” as stated in the NIPC Application Guidelines. The NIPC Application Guidelines also stipulate that the application process should take 25 weeks while an application to extend the PSI should take 15 weeks.

**Capital expenditure requirements**
As part of the key considerations, a new PSI applicant is required to have a non-current tangible asset of over NGN100 million (approximately US$278,000) for the PSI application to be accepted. This requirement is not specifically provided for applications for extension of an expired PSI.

**Application procedure**
A detailed procedure of the application process for a new PSI and extension of an expired PSI are clearly set out. Among the steps stipulated are the requirement to make a project presentation as well as paying application fees and due diligence fees prior to submitting a formal application for the PSI. The details of non-current tangible assets should be available at the project presentation phase.

After a due diligence has been carried out and a positive response is conveyed to an applicant, a service charge determined by the NIPC is due. Thereafter, an approval-in-principle should be received by the applicant together with a request to proceed to the next phase relating to certification of the Production Day (i.e., the date of commencement of the PSI).

Applications for the production day certificate (PDC), should be made separately to the Industrial and Inspectorate Department of the FMITI (IID). A PSI should be issued after the IID communicates the Production Day to the NIPC. The procedure for an application for extension should be similar to a new application except that the documents/information request varies and there should be no requirement for a certification of a Production Day.

**Issuance of PSI certificate**
Two types of certificates will be issued to successful applicants at the end of the process. With respect to new applications, a PDC will be issued by the IID while the PSI Certificate will be issued by the NIPC.

With respect to extensions, the Certificate of Qualifying Capital Expenditure (CQCE) would be issued by the Federal Inland Revenue Service prior to an application for a PSI extension. A PSI extension certificate will be issued by the NIPC upon satisfaction of the merits of the application for extension.

**Implications**
Timing for the application remains a significant consideration. Qualifying companies should ensure that applications are made timely as the NIPC Application Guidelines specifically require companies to make their applications within one year of production or service.

Furthermore, as companies should only benefit from the PSI where profit is made during the PSI period, companies should perform a detailed analysis of cash flow forecasts and tax simulations in assessing their Production Day for the application.

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**Endnote**
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