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Nigeria's Oil and Gas Industry Brief

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1 Overview of the Nigerian Oil and gas Industry

The Nigerian oil and gas industry has been vibrant since the discovery of crude oil in 1956 by the Shell Group. However, the sector was largely dominated by multinational corporations until the early 1990s when Nigerian companies began to make a foray into the industry. Local participation was boosted with the implementation of the Nigerian Content Directives issued by the Nigerian National Petroleum Corporation (NNPC) about a decade ago, and eventually, by the promulgation of the Nigerian Oil and Gas Industry Content Development (NOGIC) Act (The Act) in 2010. The Act seeks to promote the use of Nigerian companies/resources in the award of oil licences, contracts and projects.

In terms of structure, the industry is broadly divided into:

- Upstream sector,
- Downstream sector, and
- Services sector.

The mid stream operations are usually included in the downstream sector. However, a distinction is now being made between the two sectors. Mid stream covers the processing, storage, marketing and transportation of crude oil, gas, gas-to Liquids and liquefied natural gas.

1.1 Upstream sector

This sector is characterized by exploration and production of crude oil and gas (petroleum operations). The income of companies engaged in these activities is subject to tax under the Petroleum Profits Tax Act, 2004 (PPTA), as amended.

The upstream oil sector is the single most important sector in the economy, accounting for over 90% of the country's exports and about 80% of the Federal Government (FG's) revenue. Crude Oil is currently produced from three different basins: the onshore Anambra, the offshore Benin/Dahomey (deepwater and ultra-deepwater) and the Niger Delta (shallow and deep offshore basins). The Niger Delta and Benin basins are known to be the richest basins and hold the vast majority of reserves, and the source of a large portion of current production. During the late 1990s, exploration focus turned to high risk ventures in the frontier basins of deep water offshore, with encouraging success. These ventures are becoming increasingly attractive, with developments in deepwater exploration and production technology.

Nigeria's crude oil generally has a gravity between 21°API and 45°API. Its main export crudes are Bonny Light (37°) and Forcados (31°). About 65% of Nigeria's oil is above 35°API with a very low sulphur content. The country's proven oil reserves is estimated at about 37.2bn bbl as at the end of 2010, according to the report by the US Energy Information Administration (EIA). Exploration activities have slowed down recently due to the uncertainties surrounding the passage of the proposed Petroleum Industry Bill into law. The PIB is an omnibus legislation, which will introduce significant changes to oil and gas operations in the country.

With respect to gas, a recent BP Statistical Energy Survey[1] put the proved natural gas reserves at 5.29 trillion cubic metres, 2.82% of the world's estimated reserve. Estimates of Nigeria's undiscovered gas reserves range from 300 – 600TCF. Nigeria has therefore been described largely as a gas province with some oil. The gas quality is high – particularly rich in liquids and low in sulphur. Due to the lack of gas infrastructure, 75% of associated gas is flared and only about 12% is re-injected.

1.1.1 Types of Arrangements in the Upstream Sector

The major forms of oil and gas arrangements in Nigeria's upstream sector are as follows:

- Joint Venture (JV)
- Production Sharing Contracts (PSCs)
- Service Contract (SC)
- Marginal Field Concession (MFC)

[1] www.mbendi.com

Joint Venture

This is the standard agreement between the national oil company i.e the Nigerian National Petroleum Corporation (NNPC) and a multinational oil company (MOC). Under this arrangement, both NNPC and the MOC contribute to funding oil operations in the proportion of their JV equity holdings, and generally receive crude oil produced in the same ratio.

Companies engaged in this form of arrangement are assessed to tax under the PPTA at the rate of 65.75% of chargeable profits for the first five years of operation (when the company is yet to fully recover its capitalized pre-production cost), and 85% thereafter. The tax payable is modified by the provisions of the Memorandum of Understanding (MOU) between the parties. The MOU seeks to guarantee certain profit margins to the MOC, when crude oil market price falls below certain thresholds. The Parties have since suspended the application of the MOU provisions since crude oil price now exceeds the reference price of $30 per barrel. Major operators in the JVs with the NNPC are Shell, ExxonMobil, ChevronTexaco, TotalFinaElf and Agip.

It is however important to note that the JV model is currently being phased out in the oil and gas industry, due mainly to the inability of the NNPC to fund its share of JV costs.

Production Sharing Contracts

As a result of the increasing funding pressure from the JVs, the Federal Government of Nigeria (FGN) adopted the PSC model in 1993 as the preferred petroleum arrangement with MOCs. Apart from awards restricted exclusively to indigenous companies, awards for upstream operations are now made on PSC basis. Under this arrangement, the concession is held by NNPC. NNPC engages the MOC or the indigenous company as Contractor to conduct petroleum operations on behalf of itself and NNPC. The Contractor takes on the financing risk. If the exploration is successful, the Contractor is entitled to recover its costs on commencement of commercial production. If the operation is not successful, the Contractor bears the loss.

The first set of PSCs was signed in 1993, followed by those executed in 2001, after the 2000 licensing rounds. Several other models of PSCs have been signed since then. The principles in the PSCs remain largely the same, except for variation in the profit oil sharing formula and cost oil recovery cap.

The PPT rate applicable to PSC companies is 50% of chargeable profits for the contract area.

Service Contract

Under this model, the Contractor undertakes exploration, development and production activities for, and on behalf of, NNPC or the concession holder, at its own risk. The concession ownership remains entirely with the NNPC/ holder, and the Contractor has no title to the oil produced

The Contractor is reimbursed cost incurred only from proceeds of oil sold and is paid periodical remuneration in accordance with the formulae stipulated in the contract.

The Contractor has the first option to buy back the crude oil produced from the concession

The Contractor is assessed to tax on its service fees under the Companies Income Tax Act as amended (CITA) at 30%; while the concession holder (or the NNPC) is assessed to tax under the PPTA.

Marginal Field Concession

The Federal Government (FG), in furtherance of its Nigerian Content agenda, encourages MOCs to surrender their marginal fields for assignment to indigenous concession holders. To provide special incentives to marginal field operators, the FG promulgated the Petroleum (Amendment) Act No. 23 and the Marginal Field Operations (Fiscal Regime) Regulations 2005 on the development of marginal fields.

Generally, a Marginal Field is defined as any field that has reserves booked and reported annually to the DPR and has remained unproduced for a period of over 10 years.

The main objectives of the government for introducing Marginal Field regime include:

(i) Expand the scope of participation by small (indigenous) players in Nigeria's oil industry.

(ii) Increase the country's oil and gas reserves base.

(iii) Provide opportunity for portfolio rationalization.

(iv) Enhance employment opportunity.

1.1.2 Award of Oil and Gas Exploration Licenses

Oil licences are granted to companies by direct negotiation and/or discretionary allocation by the Federal Government of Nigeria (FGN). This approach was prevalent prior to the return of

the country to democratic governance in 1999. However, to facilitate more transparency and increased revenue from award of oil licences, the FGN has competitive tenders as the preferred mode for the award. With tenders, the process becomes more competitive and brought industry players with the most persuasive technical and financial capabilities to the fore.

The Department of Petroleum Resources (DPR), under the Ministry of Petroleum Resources, is responsible for organizing oil bid rounds. The last bid round was in 2007.

1.2 Downstream Sector

The key segments in the downstream sector are discussed below:

- Transmission and Conveyance

  This involves the transportation of oil and gas to the refinery and gas stations. There is a pipeline network from the wellhead to the refinery or plant. Tankers and purpose-built vessels are also used for this purpose

- Refining

  Nigeria has four refineries: two situated in Port Harcourt and one each in Warri and Kaduna. The refineries are all wholly owned by the NNPC. The four oil refineries have a combined nameplate capacity of 505,000b/d. However, these refineries are only working at about 30% of their installed capacity; necessitating the importation of refined products to meet growing local demand. The FGN has recently awarded contracts for Turn-Around-Maintenance to be performed on the refineries to boost the level of their production.

  The number of refineries in the country is expected to increase in future as new licences have been granted. In addition, the Government's strategy of tying award of new oil licences to securing commitment on the part of licence holders to build new refineries, railway lines, gas pipelines or power plants should help in this regard.

- Distribution and Marketing

  Distribution and Marketing of refined petroleum products are complementary activities. Distribution involves the transportation of refined petroleum products from the refineries through pipelines, coastal vessels, road trucks, rail wagon etc to the storage/sale depots.

  Petroleum products are supplied in Nigeria principally through the Petroleum Product Marketing Company's (PPMC) pipeline system, which links the refineries to the about 21 regional storage/sale depots.

  The pipelines currently in use by the PPMC are divided into three phases. Phase 1 and 2 have five systems, which are referred to as 2A, 2B, 2C, 2D, and 2E . Phase 3 has three systems which are referred to as 2cx, 2dx and 2ex[2] .

  Petroleum product marketing involves the procurement and sale of refined petroleum products. Marketers lift products from PPMC depots and deliver to their various retail outlets. They also import refined products from outside of Nigeria to meet the demands of their customers.

  There are however guidelines issued by the DPR to prevent importation of substandard products.

  The FGN currently regulates the prices of refined petroleum products. The Petroleum Product Pricing Regulatory Commission (PPPRC) is responsible for fixing the prices of the products. However, as part of the energy sector reform of the FGN, there is a plan to deregulate fuel pricing and privatize the refineries. The proposed energy reforms currently faces stiff opposition from the organized labour and civil society groups in the country.

- Liquefied Natural Gas (LNG)

  Nigeria holds the largest natural gas reserves in Africa but has limited infrastructure in place to develop the sector. Nigeria's first and most ambitious gas project, the Nigeria LNG (NLNG) facility on Bonny Island has six LNG trains currently operational with a total annual capacity of 31bcm.

[2] http://www.bukisa.com/articles/630143_highlights-on-ppmcnnpc-warri-area-operations

It has become an increasingly important supplier of liquefied natural gas (LNG) to European buyers. The LNG facility is currently supplied natural gas from dedicated gas fields. The contract for the construction of a seventh LNG train is under consideration (expected to have nameplate capacity of 8.4mn tpa).

Other LNG projects that are expected to take off in the near future include the Olokola (OK) LNG and Brass LNG projects.

All the companies that operate in the downstream petroleum sector are assessed to income tax under the Companies Income Tax Act, 2004 as amended (CITA) at the rate of 30% of their chargeable profit.

1.3 Oil Service Sector

The classification of services under this sector is summarized in the table below:

Exploration support services	- Seismic data acquisition - Processing and interpretation - logging - fishing - cementing
Drilling services	-Welding services -Well drilling -Cementing -Logging -Fishing
Production support services	-Wireline services -Work over services -Production testing services -Construction of oil & gas facilities
Downstream services	-Wireline services -Refinery maintenance -Pipeline/depots construction -Petroleum products haulage -Petroleum product marketing
Others	Banking services, Catering services, Communication services

All the companies that operate in the oil services sector are subject to tax at 30% of their chargeable profit.

2 Legal and Regulatory Framework of the Nigerian Oil and Gas Industry

2.1 Regulatory Agencies

The key regulatory agencies are;

2.1.1 Ministry of Petroleum Resources

This is the government administrative arm that deals with policy formulation and provides the general direction to other agencies in the sector for the exploration and production of both oil and gas resources. It also oversees all other sectors including downstream, midstream and oil services. The Minister of Petroleum Resources supervises the Ministry.

2.1.2 Nigeria National Petroleum Corporation (NNPC)

NNPC is a statutory corporation through which the FGN participates in the oil and gas industry. The NNPC's primary function is to oversee the regulation of the oil industry, with secondary responsibilities for upstream and downstream development.

The National Petroleum Investment Management Services (NAPIMS), a subsidiary of NNPC, supervises FGN's investments in the oil industry.

2.1.3 Department of Petroleum Resources (DPR)

The DPR is responsible for ensuring compliance with the terms governing the award of oil licences to companies engaged in petroleum operations. Other functions include the following:

(i) Monitors the oil companies' operations to ensure consistency with international industry standards and practices.

(ii) Issues the annual permit (DPR Permit) to the companies, without which they would be unable to operate in the industry.

2.1.4 Nigerian Investment Promotion Commission (NIPC)

The NIPC is responsible for registering foreign investments in Nigeria. It also acts as a liaison between investors and government ministries, departments, institutional lenders and other institutions concerned with investments.

Notable incentives in the NIPC Act include, but not limited to, the following:

(i) Enlargement of the modes of payment for foreign equity to include spare parts, raw materials and other business assets acquired without initial disburse ment of foreign exchange from Nigeria

(ii) Guarantees foreign investors the unrestricted transferability of dividends or profits (net of tax) attributable to foreign investment in Nigeria and capital repatriation in the event of liquidation. Dividend payments are subject to withholding tax at 10% as final tax.

2.1.5 National Maritime Administration and Safety Agency (NIMASA)

The Agency was established by the NIMASA Act to monitor and promote the development of indigenous and commercial shipping in international and costal shipping trade, and to regulate and promote maritime safety, security and marine labor amongst other duties.

2.1.6 Nigeria Customs Service Board (NCSB)

The NCSB is charged with the responsibility for formulating general policy guidelines for Nigeria Customs Service (NCS), and for the collection of customs and excise duties in the country.

The NCSB carries out the administration of the Customs and Excise Management Act (CEMA), through the NCS.

2.1.7 Nigerian Content Development & Monitoring Board (NCDMB)

The major functions of the NCDMB are to implement the provisions of the Nigerian Oil and Gas Industry Content Development Act, 2010, with respect to supervising, coordinating, administering, monitoring and managing the development of Nigerian Content in the industry. The NCDMB is also to assist local contractors and Nigerian companies to develop their capabilities and capacities.

The key areas of focus of the NCDMB are as follows:

- Training and employment of Nigerians;
- Facilitate establishment of critical facilities such as pipe mills, docking and marine facilities, pipe coating facilities;
- Promoting indigenous ownership of marine vessels, offshore drilling rigs, etc;
- Integration of indigenes and businesses residing in oil producing areas into mainstream of industry economic activity;
- Promoting services which support industry activities such as banking, insurance, legal, etc.

2.1.8 Niger Delta Development Commission (NDDC)

The roles of the NDDC are to:

- Formulate policies and guidelines for the development of the Niger- Delta area.

- Conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger-Delta area in the field of transportation.

- Prepare master plans and schemes designed to promote the physical development of the Niger-Delta area and the estimates of the costs of implementing such master plans and schemes;

- Implement all the measures approved for the development of the Niger- Delta area by the FGN and the member States of the Commission.

- Identify factors inhibiting the development of the Niger-Delta area and assist the member States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger-Delta area.

- Tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area and advise the FGN and the member States on the prevention and control of oil spillages gas flaring and environmental pollution.

2.2 Legislation and Fiscal Provisions

The key legislation and taxes applicable to companies operating in this industry are summarized below:

2.2.1 The Petroleum Act

The Petroleum Act (The Act) (and the Regulations issued pursuant to it) is the main legislation governing matters relating to petroleum exploration and production in Nigeria. The Act amongst others:

- Vests entire ownership and control of all petroleum in, under or upon any lands (including underwater) in the State.

- Governs the issuance of oil exploration licenses, oil prospecting licenses and oil mining leases.
- Provides the basis for the issuance of DPR permit, along service lines applied for (renewable annually).
- Provides for the Ministry of Petroleum Resources as the supervisory ministry.

2.2.2 Petroleum Profits Tax Act (PPTA)

Companies engaged in petroleum operation are subject to tax under the PPTA. Their income is liable to tax at 85% (subject to the incentives contained in the MOU as relevant), or 65.75% within the first five years of operation during which they are recovering their capitalized pre-production expenditure. However, for petroleum companies operating under PSC terms, the applicable PPT rate is 50% for the contract area (see 2.2.3 below for further discussion).

All expenses which are wholly, exclusively and necessarily incurred in furtherance of the petroleum operation of the company are tax-deductible against the company's revenue before ascertaining the taxable profit. Expenses that do not satisfy the above conditions are disallowed.

Tax depreciation (capital allowance) is also granted on qualifying capital expenditure (QCE) at a flat rate of 20% annually (19% in the fifth year, and the balance is retained in the books until the QCE is disposed).

2.2.3 Deep Offshore and Inland Basin Production Sharing Contracts Act (DOIBPSCA)

The DOIBPSCA is the enactment which gives effect to the fiscal incentives granted to oil and gas companies operating in the Deep Offshore and Inland Basin areas under PSCs. The PSCs stipulate a different fiscal regime than that contained in the PPTA. "Deep Offshore" has been defined as any water depth beyond 200 metres.

Under the DOIBPSCA, PPT is assessed at the rate of 50% of chargeable profits for each contract area, during the duration of the PSC. The fiscal regime applicable to any PSC may also be specific to the licensing round during which the relevant Oil Prospecting License (OPL) or Oil Mining Lease (OML) was awarded and the PSC signed.

The other incentives applicable under the DOIBPSCA include:

- Claim of Investment Tax Credit (ITC) at 50% of QCE (for PSCs signed Pre July 1998) or a Petroleum Investment Allowance (PIA) at 50% of QCE for PSCs signed after July 1998.
- Royalty rate of 10% for companies operating in the Inland Basin and graduated royalty rates for companies in Deep Offshore operations (ranging from 0% to 12% depending on the water depth of operation).

2.2.4 Companies Income Tax Act (CITA)

Companies operating in all other segments of the oil and gas sector are assessed to CIT at 30% of taxable profits under CITA. Also, non-crude oil related income / profits earned by petroleum companies are liable to CIT, separately.

In practice, non-resident companies are taxed on a deemed profit basis at an effective tax rate of 6% of total revenue (i.e.30% of 20% deemed profit). The FIRS have indicated its intention to begin to assess them to tax on actual profits basis (based on audited accounts), like a typical Nigerian company.

2.2.5 Tertiary Education Trust Fund Act (TETFA)

The Tertiary Education Trust Fund Act, 2011 requires every company registered in Nigeria to pay 2% of its assessable profit as Tertiary Education Tax (TET). However, petroleum companies are entitled to a tax deduction on the TET payable. Non-Nigerian companies are not liable to pay the tax.

2.2.6 Value Added Tax Act (VAT Act)

The Value Added Tax Act, 2004 as amended (VAT Act) regulates the operation of VAT in Nigeria. VAT is charged at a flat rate of 5%, and is payable on supplies of taxable goods and services, except those specifically exempted from VAT.

Under the amendment to the VAT Act (passed in 2007), and an FIRS' directive issued pursuant to the amendment, companies operating in the oil and gas industry are required to deduct VAT at source from their vendors/suppliers' invoices and remit it directly to the FIRS.

For service companies, input VAT incurred on overheads and general/administrative cost are to be expensed through their profit and loss account, while VAT incurred on fixed assets is to be capitalised with the cost of the fixed assets. Essentially, the scope for input VAT recovery for these companies is quite limited.

2.2.7 Withholding Tax (WHT)

Nigerian tax laws provide that where any payment on which WHT is deductible is due from one person (or company) to another, the person making the payment is required to deduct tax at the applicable rate and remit the tax deducted to the relevant tax authority (RTA) within 21 days after deduction, or when the invoice is credited, whichever is earlier. WHT rate is either 5% or 10%, depending on the nature of the transaction and the beneficiary of the payment.

WHT deducted at source from non-resident companies in respect of interest, rent, dividend and royalty constitutes the final tax liability due from the companies. A lower rate of 7.5% would apply to beneficiaries that are resident in a country that has double tax treaty (DTT) with Nigeria.

Nigeria currently has DTTs with United Kingdom, Netherlands, Belgium, Pakistan, Romania, Philippines, Czech Republic, Canada, South Africa, China and France. The DTTs with South Korea, Spain, Sweden and Russia are yet to be completely ratified.

2.2.8 Capital Gains Tax (CGT)

The Capital Gains Tax Act, 2004 as amended (CGTA) regulates payment of CGT in Nigeria. The rate of tax is currently 10% and is levied on capital gains accruing on disposal of chargeable assets, irrespective of whether the asset is situated in Nigeria or not. Capital gains accruing outside Nigeria to a non-resident company or individual are subject to CGT only on the amount received or brought into Nigeria.

2.2.9 Royalties

The Petroleum Act (1969) requires the holder of an OPL or an OML, to pay royalties to the FGN as soon as production starts. This is usually in the form of monthly cash payments[3] at an agreed percentage of the quantity of crude oil/gas produced, after making adjustments for treatment, handling and related expenses.

The royalty rates currently applicable are as follows:

- on-shore production — 20%
- offshore production up to 100meters water depth — 18½%
- offshore production between 100 to 200 meters water depth — 16⅔%
- In areas from 201 to 500 metres water depth — 12%
- In areas from 501 to 800 metres water depth — 8%

[3] In most production sharing contracts, 'royalty oil' is allocated to NNPC. Payment is therefore in kind rather than in cash

- In areas from 801 to 1,000 metres water depth 4%
- In areas in excess of 1,000 metres water depth 0%

2.2.10 Niger Delta Development Commission Levy

The Niger Delta Development Commission Act requires oil producing companies operating in Nigeria to pay an annual contribution of 3% of their total annual budget to the Commission. The contribution will qualify as allowable deduction for PPT purpose.

2.2.11 Cabotage Act and Nigeria Maritime Administration Safety Agency Act (NIMASA)

The Coastal and Inland Shipping (Cabotage) Act, No. 5 of 2003 regulates cabotage vessels operating within Nigerian inland waters, coastal waters, Exclusive Economic Zone and Islands within Nigeria. The fee to be paid into the fund shall be 2% of the contract sum performed by any vessels engaged in coastal trade.

Coastal Trade is defined as carriage of goods by vessels or other mode of transportation from one place in Nigeria, or above Nigerian waters, to any other place in Nigeria or above Nigerian waters, either directly or via a place outside Nigeria. 'Carriage of goods' is defined to include the carriage of goods in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in Nigeria.

The Minister of Transport has power to grant approvals and waivers under the Cabotage Act, and to issue guidelines on the administration of the Act. He may grant a waiver to a duly registered foreign vessel, where he is satisfied that there are no credible Nigerian alternatives. The Minister's powers may be delegated to appropriate officers of the Nige-

rian Maritime Authority (NMA).

The NIMASA Act applies to ships and crafts registered in Nigeria, flying a foreign flag in the exclusive economic zone, territorial and inland seas, inland waterways and in the ports of Nigeria. NIMASA operates a 3% levy on inbound freights and a 2% levy on outbound freights.

3 Doing business in Nigeria

There are different investment vehicles that could be used for carrying on business in Nigeria. These include partnerships, unincorporated joint ventures and limited and unlimited liability companies. However, the authorized mode of investment by foreigners in Nigeria is through limited liability companies.

Under section 54 of the Companies and Allied Matters Act (CAMA), the law that regulates company formation and operation in Nigeria, no foreign company may carry on business in Nigeria unless it incorporates a local subsidiary in the country. However, the Federal Executive Council is empowered by section 56 to grant exemption from this mandatory requirement to foreign companies in the following categories:

- Foreign companies invited by or with approval of the Federal Government to execute special projects
- Foreign companies which are in Nigeria for the execution of specific loan projects on behalf of donor countries or international organizations
- Foreign government-owned companies engaged solely in export promotion activities; and
- Engineering consultants and technical experts engaged in specialist projects under contracts with any of the Governments of the Federation or any of their agencies or under contracts with any person where such contracts have been approved by the Federal Government.

3.1 Requirements for Incorporation of a company

The foreign company would have to conduct a name search at the Corporate Affairs Commission (CAC) to ensure that the preferred name has not been issued to an existing company, or is not a prohibited name. The following documents are required to incorporate a company in Nigeria:

- Memorandum of Association
- Articles of Association
- Statement of Share Capital
- Declaration of Compliance with CAMA
- Notice of situation of the Registered Office of the company; and
- Return of Allotment of Shares and Particulars of First Directors

Stamp duty is payable at 0.75% on the authorized share capital of a company in addition to filing fees payable to the CAC.

Once the registration process is completed, the Registrar General of the CAC will issue a Certificate of Incorporation to a company certifying that the conditions for incorporation have been fulfilled. Thereafter, the company would be required to register with the FIRS for tax purposes, and other regulatory agencies.

It is quite possible for a foreign investor to acquire an already producing oil and gas asset, or form a strategic technical partnership with a Nigerian entity to carry-on petroleum operations.

4 Current Industry Issues

4.1 Nigerian Oil and Gas Industry Content Development Act (NOGIC Act)

The main thrust of the NOGIC Act (The Act) is to increase the level of Nigerian Content in the Country's oil and gas industry.

Nigerian Content has been defined in the NOGIC Act, as:

"the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry"

NOGIC Act provides that first consideration shall be given to Nigerian independent operators, goods and services and also to Nigerians in employment and training. All fabrication and welding activities carried out in the industry must be performed in-country.

The Act imposes a levy of 1% on the value of all contracts awarded in the upstream sector. The amount is required to be deducted at source and paid into the Nigerian Content Development Fund (NCDF).

The Minister of Petroleum Resources shall consult with the relevant government agencies on the appropriate fiscal incentives to grant to companies who establish facilities, factories, production units or other operations in Nigeria for the purpose of manufacturing goods and providing services which were previously imported.

The Act provides for the establishment of the Nigerian Content Development and Monitoring Board (the Board) to monitor, coordinate and implement the provisions of the Act.

4.2 The Petroleum Industry Bill (PIB)

The PIB is an omnibus legislation which seeks to regulate all activities in the Nigerian oil and gas industry. When passed into law, it will repeal the existing laws, which govern the industry, particularly the Petroleum Act of 1969, as amended, the Petroleum Profit Tax Act of 1990, as amended and the Nigerian National Petroleum Corporation Act of 1977.

The benefits which the country hopes to realise from the implementation of the PIB include potential increase in the country's share of the revenue accruable to the FGN from crude oil production, increase in the participation of Nigerians in the industry through the enforcement of the Nigerian Content provisions and the realignment and integration of the various functions and departments in the NNPC, DPR and Ministry of Petroleum Resources. The PIB also hopes to achieve the enforcement of international best practices in the Nigerian oil and gas industry, amongst others.

To the oil producing companies, the potential benefits include removal of the restriction on capital allowances claimable against profit in any particular tax year and the reduction in the petroleum profit tax (PPT) rate from 85% to a combined rate of 80% for joint venture operations (30% CIT and 50% Nigerian Hydrocarbon Tax). There is also the general production allowance to be given to operators in small oil field, depending on their level of production.

4.3 Indigenous Oil Companies Bill

The Bill is currently being considered by the Nigerian National Assembly. The objective of the Bill is to provide a structure around the operations of indigenous oil producing companies (IOPCs) in the Nigerian oil and gas industry.

The key provisions of the current version of the Bill include the following:

- The Bill defines an IOPC as "a company incorporated under the laws of the Federal Government of Nigeria for the purpose of exploration for/and production of crude oil and natural gas, of which

60% or more of its shares are beneficially owned by citizens of Nigeria and/or associations of such citizens"

- The fiscal terms of the Bill will only be applicable to petroleum operations of an IOPC whose aggregate production is not more than 50,000 barrels per day (50 TBD)

- IOPCs shall have priority in the allocation of all OPLs that revert to the FGN as a result of revocation, relinquishment, cancellation, expiration or termination of such licenses or leases pursuant to the Petroleum Act or by any reversion of such licenses or leases by operation of any other enactment

- Participation by the FGN shall not be applicable to petroleum operations carried out by an IOPC whose aggregate production from petroleum operations is not more than 50 TBD, notwithstanding the provisions of the Back –in Rights Regulations

- Determination and payment of petroleum profit tax shall be in accordance with the PPTA, 1959 (as amended), provided that the tax rate applicable to IOPCs shall be 60%

- IOPCs shall pay signature bonus in local currency and shall be given twice the time allotted to non-indigenous companies to pay their signature bonus.

5 Challenges in the Nigeria Oil & Gas Sector

Some of the challenges facing the country's oil and gas industry are discussed below:

5.1 Niger-Delta Crisis

Although, most of Nigeria's oil comes from the Niger Delta; yet the people in the area live in abject poverty. Pollution and environmental degradation is very high. Consequently, the region has remained unstable with periodic attacks on oil facilities and pipelines.

The government has committed efforts to resolving the problems with the commencement of the Amnesty Program, which has seen most of the Niger Delta youths rehabilitated and sent outside the country for training and capacity building. This has resulted in relative peace in the region where petroleum is produced.

5.2 Government underfunding

A recurring problem in the upstream sector is the inability of the NNPC to meet its funding obligations to JV operations. In response to this problem, the FGN has explored other models like the PSC terms and Modified Carried Agreement (MCA) with MOCs to provide permanent solutions.

5.3 Long Contract Award Process

Typically, the process of contract award in the Nigerian oil and gas upstream sector is tedious and lengthy. The duration of contract award between initiation and eventual execution of the agreement could take as much as 36 months in some cases. This could affect the project economics of contracts. In response to this slow pace of award process, MOCs start contract award process well in advance of commencement of project, to ensure that all regulatory and contractual approval processes are complied with before actual project execution.

5.4 Infrastructure

Nigeria is also faced with the challenge of lack of sufficient infrastructure to run the oil and gas industry.

Government aims to fast track the monetization of the nation's gas resources, instituting a gas based industrialization and increasing the generation capacity of the power sector, to ensure sustainable electricity delivery for domestic and industrial uses.

6 Recent Developments in Nigeria's Oil & Gas Sector

6.1. Divestment of assets

The International Oil Companies (IOCs) operating in Nigeria are disposing their interest in some onshore and shallow-water blocks, in a bid to rationalize their asset portfolios, and shift strategic development focus to the deep offshore operations in Nigeria. These blocks are being disposed under negotiated bid arrangements.

Most of the blocks are recognized oil fields, while others are gas fields. Since most of the blocks are in the onshore and shallow-water areas of the Niger Delta regions, the fiscal regimes applicable to joint venture operations (as described under section 1,1 above) are applicable to these blocks.

6.2. Granting of pioneer status incentive to indigenous exploration and production companies

The Nigerian Investment Promotion Commission (NIPC or the Commission) expanded the list of pioneer industries/products to include petroleum, in the first quarter of 2012. Following this change, a number of exploration and production (E&P) companies applied to the Commission for pioneer status. Some of these companies succeeded in convincing the NIPC of their eligibility for the status and were subsequently awarded pioneer certificates. However, the major drawback to the companies' ability to enjoy the fiscal incentives conferred by the status, was that the Federal Inland Revenue Service (FIRS) did not honour the pioneer certificates.

However, the FIRS's has recently changed its position and now honours pioneer status certificates granted to indigenous E&P companies, even without the certificates being gazetted and notwithstanding the legal issues on the applicability or otherwise of the Industrial Development (Income Tax Relief) Act – the legal framework for pioneer status – to E&P companies' petroleum operations.

The implication of the above development is that E&P companies that obtain pioneer status can now enjoy the following fiscal benefits:

- Tax holiday with respect to Petroleum Profits Tax and Companies Income Tax for three (3) to five (5) years
- Exemption of dividend paid from pioneer profits from Withholding Tax
- Ability to carry forward losses incurred during the pioneer period

Typically, the application for pioneer status should be made within 12 months of commencement of commercial production

6.3. Sale of marginal fields by the Federal Government of Nigeria (FGN)

The FGN has commenced the marginal fields licensing round aimed at increasing the participation of indigenous operators in the upstream sector of the oil and gas industry.

The bidding process for 31 marginal fields commenced in 2013. Out of the 31 marginal fields being allocated, 16 are located onshore, while the remaining 15 are located in the continental shelf of Nigeria. This process is expected to be completed in April 2014, but completion may be delayed beyond this month.

Only indigenous operators are eligible for bidding for the marginal fields. However, some of the successful bidders would require various levels of financial and technical support. Therefore, potential investors can partner with these (successful) indigenous companies to provide the requisite technical and financial support.

Contact us

For information on any aspect of the Nigerian mining sector, please contact any of the following:

Adewale Ajayi
Partner, Tax Regulatory & People Services
T: +1 713 319 2802
T: +234 803 402 1014
E: adewale.ajayi@ng.kpmg.com

Ayo Luqman Salami
Partner, Tax Regulatory & People Services
T: +234 1 271 8940
T: +234 803 402 1015
E: : ayo.salami@ng.kpmg.com

Olufemi Babem
Manager, Tax Regulatory & People Services
T: +234 1 2718944
T: +234 803 975 4131
E: olufemi.babem@ng.kpmg.com

Marie-Therese Phido
Sales & Markets
T: +234 1 271 8953
T: +234 803 402 1058
E: marie-therese.phido@ng.kpmg.com

kpmg.com/socialmedia

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