
***Overview of the Nigerian
Content Development Act 2010****Content:**Background**Definitions**Scope & Application**Key Provisions**Penalty for Non-compliance**Effect of the Act**Conclusion***Background**

The Nigerian Oil and Gas Content Development Act (hereinafter referred to as the "Act") was promulgated on the 22nd of April, 2010.

There was no legislation wholly dedicated to the Nigerian content in the oil and gas industry prior to the enactment of this Act although pocket provisions existed like the Petroleum Act of 1969 and NNPC directives. The latter Act provided, amongst others, that the holder of an oil mining lease must within 10 years from the grant have employed at least 75% Nigerians in managerial, professional and supervisory grades. Also the Nigerian National Petroleum Corporation (NNPC) had short term temporary directives in respect of local content for the oil and gas industry. In fact the new Act is partially premised on the temporary directives of NNPC for the oil and gas industry in addition to other innovations. Apart from these facts, it is fair to state that some industry players have some local content policies and practices in place.

Definition

The Act defines the Nigerian content or "Local Content" as it is popularly called as the quantum of composite value added 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.

The Nigerian content simply focuses on the promotion of value addition in Nigeria through the utilization of local raw materials, products and services in order to stimulate



growth of indigenous capacity. The Act promotes a framework that guarantees active participation of Nigerians in the oil and gas industry without compromising standards. To this end, the Act requires that Nigerian indigenous operators be given first consideration when contracts are awarded for oil blocks, licenses and all projects; that service provided and goods manufactured in Nigeria be given priority or preference and finally that qualified Nigerians are considered first for employment and training.

Scope & Application

The Act applies to all the players in the oil and gas industry; such as Regulatory Authorities (including the Nigerian National Petroleum Corporation, the Department of Petroleum Resources, Ministry of Petroleum etc.), operators, contractors, subcontractors, alliance partners and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry. It applies to both Indigenous and Multinational oil companies.

As noted above, the Act requires that first consideration be given to Nigerian companies when contracts are awarded for oil blocks, licenses and all other projects. For this purpose, the Act defines a Nigerian company as one formed and registered in Nigeria under the Companies and Allied Matters Act 1990 with not less than 51% equity shares owned by Nigerians. The implication of this is that Multinational Oil companies such as Shell, ExxonMobil, Chevron, Agip, Petrobas, Total, Conoco, and Statoil whose subsidiary companies are registered in Nigeria under CAMA but whose majority of equity shares lie with their holding companies abroad may not qualify as a Nigerian Indigenous company and will therefore not benefit from the concession of a first consideration.

However, the Act applies only to contracts entered into after 22nd April 2010. As such, contracts or agreements initiated prior to the commencement of the Act would not be affected by its provisions.

Key Provisions

The Act established a Nigerian Content Management Board (the "Board") that has the responsibility of overseeing the implementation of its provisions. The Board is however subject to the directions of the Minister of Petroleum.

Other key provisions of the Act are:

a) Local Content Plan

All players in the industry are required to submit a Nigerian Content Plan to the Board in bidding for any license, permit or interest and before carrying out any project in the oil and gas industry. The Plan must demonstrate compliance with the Nigerian content requirements of the Act. The Board may conduct a public review or assessment of the Plan. It is however required to make a decision whether or not to issue a Certificate of Authorization to an operator within 30 days from the commencement of the review or assessment.

b) Bid Evaluation

The principle of bid evaluation based on the lowest bidder is waived under the Act so that where a Nigerian indigenous company has the capacity to execute a contract it will not be disqualified for the sole reason that it is not the lowest financial bidder provided the value does not exceed the lowest bid price by 10%. The Act requires that where bids otherwise are within 1% of each other on a commercial level, the bid with the highest Nigerian content



should be selected. The selected bid must have a local content level of at least 5% above its closest competitor.

c) Employment & Training Plan

An employment and training program is required for every project. To this end, there is a requirement for Nigerians to be considered first for employment and training in any project. Where such Nigerians cannot be employed for lack of training, the act requires that reasonable efforts be made to provide such training within or outside Nigeria. The Act makes provision for succession plan for every position not held by Nigerians. The plan must provide for Nigerians to understudy each incumbent expatriate for a maximum period of four years after which the position shall be transferred to a Nigerian. However, 5% of management positions are however to be held by expatriates to protect the interest of investors.

d) Labor Clause

Contracts with a total budget exceeding USD\$100 Million are to contain a labour clause mandating the use of a minimum percentage of Nigerian labour in specific cadres as may be stipulated by the Board. Nigerians are to occupy all junior and intermediate positions.

e) Research & Development Program

A research and development plan is required for all projects in order to promote education, attachment, training, research and development in relation to the oil and gas projects. The plan should be updated every six months. The Board shall review on a quarterly basis, the research and development activities of industry players.

f) Professional Services

The Act requires that professional services including legal, financial and insurance services be provided solely by Nigerian firms. Industry players are restricted from procuring offshore insurance covers without the written approval of the Nigerian Insurance Commission, whose duty it is to ensure that the Nigerian local capacity has been fully exhausted. This policy aligns with section 67 of the Insurance Act, 2003.

g) Petroleum E-marketplace

Innovations such as the E-marketplace which would serve as a virtual platform for buyers and sellers of goods and services in the oil and gas industry allowing speedy and transparent transactions is to be created by the Board.

h) Joint Qualification System

Another innovation is the Joint Qualification System (JQS), which would serve as the Industry databank of available capacities and capabilities in the Nigerian oil and gas industry is to be established by the Board.

Penalty for Non-compliance

The Act makes it an offence for an operator, contractor or subcontractor to engage in activities contrary to the Nigerian content provisions. Such operators, contractors or subcontractors may be liable on conviction to a fine of 5% of the project sum or risk having their projects cancelled.

Effect of the Act

The Act offers great opportunities for growth and expansion of Nigerian companies involved in the oil and gas industry. The Act is set to ensure skills development and capacity



building within the Nigerian oil and gas sector. It is hoped that the innovative provisions including the E-marketplace and JQS will enhance transparency within the sector.

There are however some areas of concern especially as the Act specifically excludes a retrospective application of any of its provision to contracts, arrangements, agreements or memorandum of understanding made prior to the commencement.

Conclusion

There is no doubt that the conscientious implementation of the Nigerian Content Act will greatly transform the Nigerian Oil and Gas Industry and bring about a win-win for all parties interested in the subject matter of the Act. The oil companies to which much obligation accrues under the legislation are already in a joint venture with the NNPC and have contributed in some ways in the review of

the draft Bill leading to this Act. Moreover, most oil companies are quite familiar with the several requirements of local content development in Nigeria, in their home countries as well as in other places where they operate.

However, it is important that industry players are prepared for the challenges and changes that will result from the introduction of the Act. They are advised to **secure the services of reputable Nigerian law firms and other professionals with expertise in the oil and gas industry to ensure all-round compliance with the new provisions and ensure provision of legal advice and guidance where necessary.**

Disclaimer: This document serves merely as a note on the content of the Nigerian Oil and Gas Content Development Act and is not intended to serve as a legal advice to any person or group of persons whether natural or corporate regarding the issues discussed herein. All persons desirous of legal advice should therefore contact a solicitor. Aina Blankson LP shall not be liable for any breach or loss resulting from reliance on any part of this newsletter.

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