KPMG

President signs Three Executive Orders on Oil and Gas Reforms

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On 28 February 2024, his Excellency, President Bola Ahmed Tinubu, GCFR, signed three Executive Orders as part of the Federal Government of Nigeria's (FGN) commitment to improve the investment climate and position Nigeria as the preferred investment destination for the Petroleum Sector in Africa. The Executive Orders (hereinafter referred to as the Orders), which became effective 28th February 2024, are as follows:

1. Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
2. Presidential Directive on Local Content Compliance Requirements, 2024
3. Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines, 2024

We have summarised the key provisions of the Orders below:

1. Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024

The Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order (OGCO) introduces tax incentives for various sectors of the gas industry. It is divided into four (4) major parts as follows:

i. Non-Associated Gas (NAG) Greenfield Development Incentives

The OGCO provides tax credit incentives for NAG greenfield developments in the onshore and shallow water areas, with first gas production on or before 1 January 2029. The gas tax credit is dependent on the volume of Hydrocarbon Liquids (HCL) content of the gas produced, and it will be granted at the rates shown in the table below:

S/N	HCL Content[1]	Tax Credit Rate (whichever is lower)
1	Where the HCL content does not exceed 30 barrels per Thousand Standard Cubic Feet (MSCF)	US$1.00 per thousand cubic feet or 30% of the fiscal price
2	Where HCL content exceeds 30 barrels per MSCF but does not exceed 100 barrels per MSCF	US$0.50 per thousand cubic feet or 30% of the fiscal price

[1] HCL content in a NAG field is to be determined in a guideline issued by the Nigerian Upstream Petroleum Regulatory Commission. On the average, there are about 28 barrels of oil equivalent in an MSCF.

The OGCO also prescribes the following:

i. The tax credit will be applicable for a maximum of ten (10) years, and thereafter it will become a gas tax allowance which will be computed at the rates specified in the table above.

ii. The tax credit will be limited to the Companies Income Tax liability during the year and shall not be combined with the Associated Gas Framework Agreement (AGFA) incentives for the same NAG greenfield project. Simply put, the related capital investment cannot be offset against oil development.

iii. The surplus gas tax credit can be carried forward to subsequent years, subject to a maximum of three years.

iv. In computing the tax credit, the fiscal gas price will be the same price used for determining royalties under the Petroleum Industry Act (PIA).

ii. Midstream Capital and Gas Utilization Investment Allowance

Part II of the Order introduces the gas utilization investment allowance (GUIA or "the Allowance") on qualifying expenditure on plant and equipment for any new and ongoing projects in the midstream oil and gas industry, to be granted as follows:

I. A gas company shall be granted 25% investment allowance on actual qualifying expenditure on plant and equipment incurred on any new and ongoing project.

II. The GUIA shall be granted as an allowable deduction from the assessable profits of the company from the year of purchase of the relevant plant and equipment. The allowance shall not be considered in ascertaining the residue of qualifying expenditure incurred on such plant and equipment.

III. A company shall only be granted the allowance upon the expiration of the tax-free period granted under section 39(1) of the Companies Income Tax Act (CITA).

IV. The GUIA shall not apply on qualifying expenditure incurred on plant and equipment where the following circumstances occur within five years of incurring the expenditure:

- The items of plant and equipment are sold[2] or transferred by the company, except the buyer is using the assets for the same or related business or for scrap.
- Any portion of the plant and equipment is used for a purpose other than for gas utilization.
- The expenditure for the plant and equipment is not incurred in a bonafide business transaction or if the same is an artificial or fictitious transaction.

v. The Federal Inland Revenue Service (FIRS) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) shall take appropriate steps to implement the allowance within 15 days from the date of the Order.

vi. Where GUIA has been claimed on a qualifying plant and equipment and the equipment is sold, the acquiring entity or subsequent purchaser shall not be eligible for another GUIA.

vii. The applicable capital allowance under the CITA shall continue to apply without prejudice to any other allowable deductions, allowances and incentives available under the CITA and any other applicable legislation.

iii. Incentives for Deep Water Oil and Gas Projects

The Minister is to introduce fiscal incentives for deep water oil and gas projects to achieve a competitive internal rate of return and foster investment in that area. In the interim, the Ministry of Finance Incorporated (MOFI) and the Ministry of Petroleum Incorporated (MOPI) are expected to work with NNPC Limited to implement commercial enablers for greenfield and new brownfield investments in deep water projects.

iii. Miscellaneous

The Minister may issue guidelines in partnership with the FIRS, NMDPRA, NUPRC, and any other relevant stakeholders for the implementation of the Order.

KPMG's Commentary

The FGN, via the Presidential Committee on Fiscal Policy and Tax Reforms, had earlier requested memoranda on fiscal policy and tax reforms from the public. It seems that some of the outcomes from that request are now being implemented. The issuance of the OGCO, targeted at the Gas sector, has generated a lot of interest amongst stakeholders, as it is another practical demonstration of the Government's commitment towards attracting investment into the gas sector in Nigeria, and for diversification and growth of the economy.

The gas tax credit and tax allowance introduced by the Order for NAG will provide the required incentive for the

[2] Where an asset on which GUIA has been claimed is sold, the purchaser or transferee is required to provide relevant information relating to the sale or transfer to the FIRS.

development of commercially marginal gas fields and are similar to the previous Investment Tax Credit and Investment Tax Allowance formerly available to projects in the deep offshore and inland basin (which have now been repealed by the PIA). However, in this instance, the credit/allowance is based on incentivizing gas production (like the production allowance in the PIA), rather than capital expenditure. We expect that the Guidelines that provide clarity on the determination of HCL content would be issued promptly to ensure that qualifying companies are able to utilize the applicable credits in their tax calculations.

It should be noted that only greenfield gas projects that are delivered by 1 January 2029 will benefit from the tax credit, while other projects will be entitled to the allowance. This is aimed at encouraging operators to accelerate the completion of their projects, before the due date.

While this incentive for NAG development is a welcome development given prior calls for such, the issue of regulated prices on natural gas produced is still a stay awake issue for gas producers. Thus, until the gas sector is fully deregulated (i.e., operates on a willing buyer, willing seller basis), the sector may remain unattractive to investors, which may depress the desired growth.

For the midstream operators, the OGCO provides for some additional incentives for gas utilization companies that enjoy the tax-free period stated in the CITA. In accordance with Section 302(6) of the PIA, where such company also invests in gas pipelines, it will be eligible to additional tax-free period of five years after enjoying the tax-free period stipulated in CITA. This implies that qualifying companies will enjoy a tax holiday for the applicable number of years and thereafter, claim the GUIA at the rate of 25% on plant and equipment.

Section 39(1c) of CITA grants accelerated capital allowance to companies after the tax-free period. The accelerated capital allowances include an investment allowance of 15% on plant and machinery. Considering that the Order did not repeal this provision, the implication is that gas companies will claim an effective investment allowance of 40% on plant and equipment after the tax-free period. This position is further reinforced by Paragraph 9(2) of the Order which states that the applicable capital allowance under CITA will continue to apply to a company without prejudice to other allowances, deductions and incentives that are available to the company under the CITA. Companies that are currently involved in midstream gas projects will also be entitled to the GUIA on new plant and machinery purchased for such projects.

Based on the OGCO, there is no restriction to the amount of the GUIA that can be claimable in a year of assessment, consistent with the provisions of the Finance Act 2023. Thus, a company can utilize it fully against its assessable profit. However, where the allowance is higher than the assessable profit of a company in a year of assessment, the Order is silent on the period of validity of the excess allowance. Nonetheless, the expectation is that the company would be able to carry it forward to the subsequent year(s) for utilization against its assessable profits. The additional incentives for gas utilization solidify the FGN's gas for growth initiatives, especially in the wake of petroleum subsidy removal and the adoption of gas as an alternative source of transportation fuel.

Although, the OGCO stipulates that the Minister of Finance will be responsible for the introduction of fiscal incentives for deep water oil and gas projects, it does not provide a timeline by which such incentives would be implemented. However, it is expected that these incentives would be issued soon and indeed ensure a competitive internal rate of return compared to what obtains in other jurisdictions. To ensure that deep offshore oil and gas assets achieve a desired internal rate of return, government may need to employ various

strategies that may include fiscal policies, simple regulatory framework, technology innovation and cost management.
Similarly, we are keen to see the commercial enablers that would be introduced by the trio of MOFI, MOPI and NNPC Limited. Certainly, deep offshore is capital incentive, and Nigeria has huge oil and gas reserves in this terrain, much of which are yet to be explored. Thus, it is important that whatever incentives and enablers that would be introduced are attractive enough to encourage more investments in the sector. As directed by the OGCO, we hope that the FIRS and NMDPRA will issue relevant clarifications/regulations that will operationalize the directives, within the timeline stipulated in the OGCO.

It is worthy to note that the OGCO is coming on the heels of the Circular issued by the Federal Ministry of Finance on the *Presidential Gas for Growth Initiative* which seeks to waive import duties on the importation of equipment related to compressed natural gas (CNG) and liquified petroleum gas (LPG). It also seeks to impose zero value added tax on feed gas and equipment related to CNG and LPG. Although the referenced Circular is yet to be published in a gazette, the Circular and the OGCO demonstrate the policy direction of the President in the development of the country's vast gas reserves for economic growth, consistent with the Decade of Gas agenda of the Government.

Overall, we commend the FGN for the recent policies and regulations directed at the gas sector. Hopefully, they will accelerate the actualization of the country's objectives in achieving the "Decade of Gas" initiative.

2. Presidential Directive on Local Content Compliance Requirements, 2024

The Local Content Directive (LCD) was issued pursuant to Section 100 of the Nigerian Oil and Gas Industry Content Development Act (NOGICDA) 2010. The objective of the LCD is to address the issue of significant reduction in investment in the Nigerian Oil and gas industry caused, amongst others, by high operating cost and incessant project delivery delays compared with global standards.

Pursuant to Paragraph 1 of the LCD, the President has directed the Nigerian Content Monitoring and Development Board (NCDMB or "the Board"), in its implementation of the NOGICDA, to consider the practical challenges of insufficient in-country capacity for certain services in the sector, and act in a manner that does not hinder investments or cost competitiveness of oil and gas projects. Thus, the NCDMB shall not approve a Nigerian Content Plan (NCP) that contains intermediary entities that do not have the essential in-country capacity to perform the services.

Rather, Paragraph 1(3) of the LCD requires the NCDMB to only approve NCP that consists of *contractors that meet the legal definition of Nigerian content and demonstrate genuine, substantial, and tangible capacity to independently execute projects within Nigeria.* According to Paragraph 1(4) of the LCD, where the NCDMB approves an NCP containing intermediary entities with no demonstrable capacity to execute projects, this shall be considered a violation of the local content requirements. Lastly, the Board has been saddled with the responsibility of developing the necessary guidelines for verifying the capacity of companies seeking contracts for specified activities, in consultation with industry stakeholders.

KPMG's Commentary

The LCD seeks to address the challenges being experienced in the Nigerian petroleum industry due to the strict application of the Nigerian content requirements, which has led to some unintended consequences like the emergence of intermediary companies, without the requisite skill or capacity to execute oil and gas contracts. This has, in turn led to unnecessary additional layer of "rent seeking" entrepreneurs and the resultant cost escalation and tax costs. It is instructive to note that, although the LCD does not define "Nigerian content", section 106 of the NOGICDA defines this term 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.;"

while section 3(2) of the NOGICDA stipulates that:

"There shall be exclusive consideration to Nigerian indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute such work to bid on land and swamp operating areas of the Nigerian oil and gas industry for contracts and services contained in the schedule to this Act."

The real issue was whether the NCDMB, in implementing the provision of the NOGICDA, satisfied itself that Nigerian indigenous companies that sought protection under this law met the criteria stipulated in section 3(2) of the law above? It is doubtful. Admittedly, we have seen a few Nigerian indigenous companies blossom on the back of this law; but it is a miniscule, compared to the utopian state of the sector that was envisioned when the law was enacted. Irrespective, the issuance of the Presidential Directive on Local Content Compliance Requirements is seen as a welcome development that should indeed facilitate a conducive operating and investment environment and reduce unproductive layers of contractors. It is a step in the right direction in reforming the sector and ensuring that serious and real Nigerian indigenous players come to the fore.

However, it is important to emphasize that the LCD has not introduced anything different from the provision of the NOGICDA regarding the philosophy of the Nigerian content. The only difference is that it has now made non-compliance with this philosophy by the NCDMB or the operators a violation, without necessarily stipulating the penalty for such violation! There is also no provision in the NOGICDA for any penalty for such violation. It, therefore, remains to be seen, what the Board or operators will do differently, going forward.

Furthermore, it is unclear whether foreign companies will now be considered for projects in the exclusive "land and swamp" areas where there is no Nigerian indigenous in-country capacity to execute such projects (re: section 3(2) of NOGICDA)? Has the LCD now liberalized this segment of the market for all players – local and foreign? The expectation is that the NDCMB will issue guidelines for assessing and evaluating Nigerian companies seeking for oil and gas industry contracts, and whether foreign companies will now be considered for this preserved segment, where there is no local capacity to fill the void.

3. Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines, 2024

Based on comparative analysis presented in the executive order, the contracting cycle within the Nigerian petroleum sector exceeds global industry standards by 4 to 6 times. Thus, the Directive on Contracting Costs and Timelines (DCCT) is targeted at addressing the following:

i. Shorten the procedure for obtaining approvals for contracts involving private companies and companies controlled by the FGN in the petroleum sector;

ii. Reinforce the provisions of the Business Facilitation (Miscellaneous Provisions) Act 2022 and enhance the ease of doing business in the petroleum sector; and

iii. Simplify the contracting cycle to a period of not more than six months, increase the contract approval threshold and raise the duration of third-party contracts from three to five years, with a renewal option of an additional two years.

The DCCT directs the Minister of Finance Incorporated (MOFI), Minister of Petroleum Incorporated (MOPI) and the NCDMB to comply, within 30 days of the DCCT and work out the modalities for implementing the contents of the DCCT as follows:

i. To take steps to direct the Nigerian National Petroleum Company Limited (NNPCL) to raise the contract approval threshold for Production Sharing Contracts (PSCs) or Joint Operating Agreements (JOAs) requiring its prior approval to not less than US$10million or its naira equivalent determined at the NAFEX FMDQ exchange rate or any other platform determined by the Central Bank of Nigeria, and that the threshold will be adjusted in line with consumer inflation published by the National Bureau of Statistics on a yearly basis.

ii. NNPCL and Nigerian Upstream Investment Management Services Limited (NUIMS) are to collaborate with NCDMB and other industry stakeholders to simplify the contract approval process and adopt a single level approval at each contract stage.

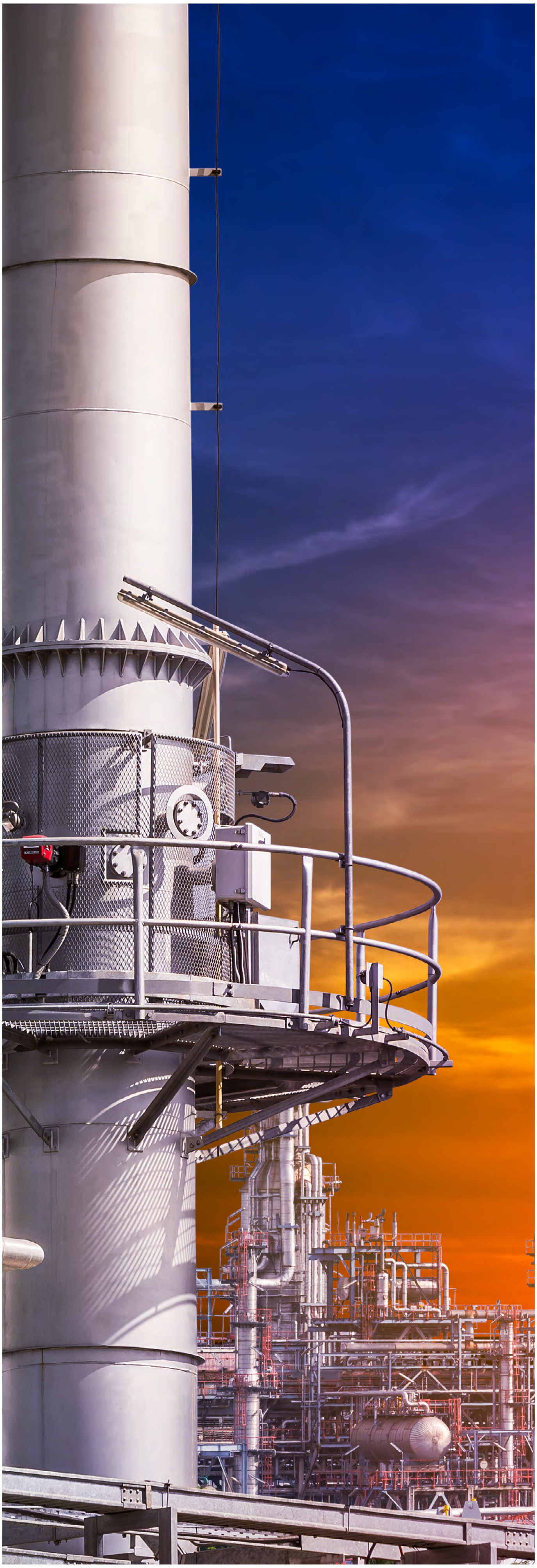
iii. NNPCL and NUIMS are to ensure that approval decisions for each contract stage pursuant to the terms of the PSCs or JOAs are communicated and/or granted within 15 days from the date of application submission, failing which their approval or consent shall be deemed granted. This is subject to the applicant providing any additional information requested by NNPCL and NUIMS within seven days, during the initial review period.

iv. The NCDMB is also required to review and communicate its decision on any NCP submitted within 10 days, failing which the NCP shall be deemed approved, provided that the applicant provides any additional information requested by the NCDMB within seven days during the initial review period.

v. The NCDMB shall direct all application for expatriate quota to the Federal Ministry of Interior (FMI) or any other relevant Ministry within 10 working days, provided all supporting documents are in place.

vi. Where any matter requiring the approval of the Board has no timeline stipulated in the NOGICDA, the Board is obligated to communicate its decision within 15 days of receiving the request, failing which the NCDMB shall be deemed to have approved or consented to such matter.

vii. Increase the duration of third-party contracts awarded pursuant to PSCs and JOAs from three years to five years, with a renewal option of an additional two years.



KPMG's Commentary

With the emergence of new indigenous players in the upstream sector of the petroleum industry and the requirements for new contractual agreements, coupled with the implementation of the PIA, the above DCCT is timely and should address the age long issue of lengthy contract awarding process in the Nigerian oil and gas sector. Furthermore, the DCCT demonstrates the FGN's commitment to improving the investment climate and positioning Nigeria as the preferred investment destination for the petroleum sector in Africa. The upward review of the duration of third-party contracts from three years to seven years (where the renewal option is exercised) will facilitate continuity in project execution and efficiency in resource utilization. Similarly, the deemed approval or consent of the NNPCL and or NCDMB, which may occur due to any delay in responding by the latter, is consistent with the spirit of the Business Facilitation Act earlier passed in 2023 and should minimize the red tape and bureaucracies typically identified with government agencies, and thus, improve the efficiency of the referenced institutions.

However, it is imperative that a feedback mechanism is put in place with the relevant stakeholders to ensure that the DCCT is addressing the issues it was envisaged to fix in the petroleum sector.

On expatriate quota, entities operating in the Nigerian Oil and Gas industry are required to obtain approval for Expatriate Quota (EQ) positions from the NCDMB, prior to submitting the EQ applications to the FMI for consideration and subsequent issuance of approval letters. The requirement for the NCDMB to submit the EQ positions to the FMI within 10 working days is a welcome development, as many organizations operating in the oil and gas industry have, hitherto, experienced prolonged delays with obtaining the NCDMB's approval. This has negatively impacted the timeline for the issuance of EQ approval letters by the FMI and by extension, that for obtaining residence permits from the Nigeria Immigration Service (NIS). However, the LCD is unclear on how the specified timeline will be monitored and enforced, where the NCDMB does not respond within the stipulated 10 days.

Lastly, it is unclear how a default approval will be implemented, where communication regarding any matter requiring the approval, satisfaction, or consent of the NNPCL, NUIMS and NCDMB is not received from the approving authority within fifteen (15) days. The FGN needs to provide clarification on the mode of conveyance of the default or deemed approval, as documentation will be required to facilitate the issuance of the relevant approval letters by the relevant agencies.

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