

Updates On Nigerian Content

Local Content Watch

KPMG in Nigeria

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Eight years after the Nigerian Oil and Gas Industry Content Development Act (NOGICDA or Act) was enacted, the landscape for Nigerian (indigenous) companies executing relatively large oil and gas projects has begun to change. In the forefront of this change is the Nigerian Content Development and Monitoring Board (NCDMB), which has been implementing the provisions of the law. We provide below, another update on the operation of the law and the events that are likely to shape its success in the years to come.

1. Possible review of the NOGICDA

The NCDMB and the Senate Committee on Local Content organized a capacity-building workshop in March 2018¹. At the workshop, the Senators highlighted the urgent need to:

- amend the NOGICDA to clarify some provisions in the law that are considered to be vague and ambiguous in their expression, revisit the waiver provisions, rephrase the section on penalty for effectiveness, and undertake a holistic review and repackaging of the Act to cover other sectors of the economy and reflect current realities;
- resuscitate technical and vocational education to facilitate human capacity development; and
- reform and reorganize the curriculum of science, engineering and technology courses offered in Nigerian tertiary institutions to meet the current requirements of the oil and gas industry.

We expect the upper house to follow up this initiative with amendment to the law Act to reflect the proposed changes. However, any proposed amendments to the NOGICDA should be exposed to all the stakeholders to ensure that their viewpoints are considered before enactment of the amended legislation.

In this regard, the NCDMB would need to engage with the authorities of the relevant tertiary institutions to agree and harmonize all stakeholders' thoughts on the curriculum revision of the select courses. Such engagements, in our view, should start in earnest.

2. NCDMB threatens tougher sanctions against offenders and commissions forensic audit on the Nigerian Content Development Fund

The NCDMB intends to engage the services of third party forensic auditors to conduct audits on companies in order to track and recover unpaid levies. It also plans to step up its enforcement of the provisions of the NOGICDA by taking legal action against offenders. The prosecution option, according to the NCDMB, had been delayed because the NCDMB wanted to fully explore alternative dispute resolution methods, develop its operating guidelines and organize capacity building workshops for the judiciary².

Given that the NCDMB now intends to prosecute defaulters, companies operating in the Nigerian oil and gas industry are advised to engage with their consultants and partners, with a view to bringing their compliance status up-to-date and avoid the reputational damage that may result from prosecution.

3. NCDMB releases \$200 million Nigerian Content Intervention (NCI) Fund to Bank of Industry (BoI)

The NCI Fund will be available for manufacturing, asset acquisition, contract financing, community contractor financing, and loan refinancing. At least eight (8) Nigerian oil and gas service providers, according to the plan, will be able to access the Fund bi-annually, and the timeline from the date of submission of complete documentation to receipt of fund is estimated to be forty-five (45) days (subject to fulfilment of all terms and conditions).

¹The workshop sought to create a better understanding of issues such as technology transfer in the oil and gas industry, execution of contracts using local manpower and companies, and amendment of the NOGICDA to include linkage to industries.

²This has now been done. Judges have been trained on their role in the development of local content in the oil and gas industry, and equipped with the appropriate philosophy, legal, fiscal and regulatory issues underpinning the NOGICDA.

The fund will be provided at single-digit interest rates - 8% for Nigerian oil and gas service providers and 5% for community contractors - with a maximum tenor of 5 years.

The concessionary loan facility gives Nigerian indigenous contractors the opportunity to upgrade and expand their operations in the sector.

4. Release of Executive Order No. 005 on enhancement of local content in public procurement

The President of the Federal Republic of Nigeria signed Executive Order No. 005 on Planning and Execution of Projects, Promotion of Nigerian Content in Contracts and Science, Engineering and Technology. The Order is expected to promote the utilization of indigenous resources (raw materials and personnel) in public procurement process. Amongst other things, the Order:

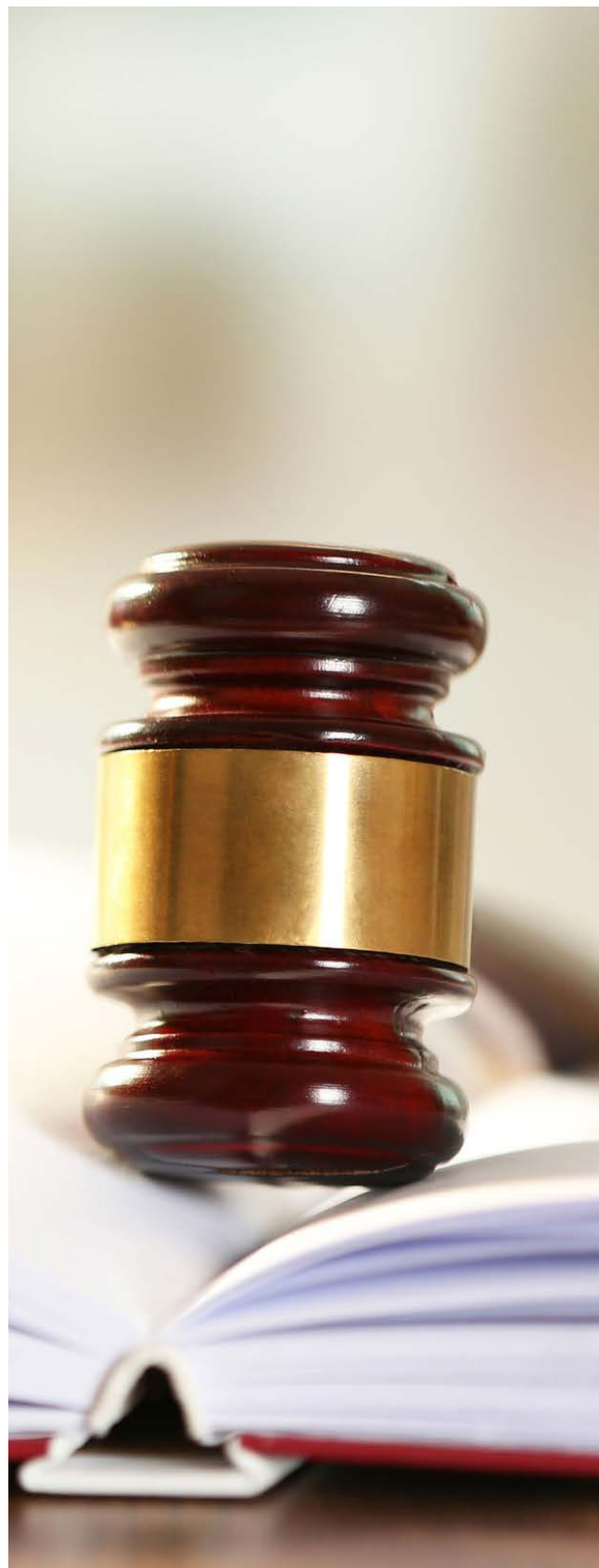
- directs procuring authorities to give preference to Nigerian companies and firms in the award of contracts in line with the Public Procurement Act 2007.
- provides that Nigerian companies or firms duly registered in accordance with the laws of Nigeria and with current practicing license, shall lead any consultancy services involving joint venture relationships and agreements relating to law, engineering, ICT, architecture, procurement, quantity surveying, etc.
- prohibits the Federal Ministry of Interior from granting visas to foreign workers whose skills are readily available in Nigeria.
- provides that the grant of expatriate quota should be contingent on applicants training the number of persons required for the execution of the project in Nigeria.
- directs Ministries, Departments and Agencies of government to engage indigenous professionals in the planning, design and execution of national security projects, and give consideration to foreign professionals only where it is certified by the appropriate authority that such expertise is not available in Nigeria.

Where the requisite indigenous expertise is lacking, the Order requires procuring entities to give preference to foreign companies or firms with a verifiable plan for indigenous development in the award of contracts.

This is a welcome development as it will further entrench Nigerian content in the relevant sectors in particular, and in Nigeria in general. However, care must be taken not to sacrifice quality in the quest for promotion of indigenous participation. Thus, Nigerian indigenous companies that hope to benefit from this incentive must be able to guarantee the provision of quality services/products, which are comparable to global best standards.

5. NCDMB to issue nine (9) Ministerial regulations

The Regulations will help deepen Nigerian content and thus achieve the NCDMB's goal of 70% in-country value retention by 2027, from the current 26%-30%. The regulations will become operational upon approval by the Minister of State for Petroleum Resources. As the draft of the regulations are made public, we will review them and analyze their implications on businesses.



6. NCDMB targets \$14billion in-country retention of yearly oil and gas industry spend

The next wave of Nigerian Content implementation, underpinned by the 10-year strategic roadmap developed recently by the NCDMB, targets in-country retention of \$14billion out of the estimated \$20billion yearly industry spend, and creation of 300,000 direct and indirect jobs. Another key target is growing in-country value retention in the sector from the current 26-30 percent to 70 percent within the next 10 years.

The NCDMB expects that the targets will be achieved by creating an enabling environment to attract investors and protecting existing and new local investment through effective compliance oversight and monitoring. The targets are hinged on the following pillars, amongst others:

- extending and deepening in-country technical capability through the completion of five oil and gas parks in Delta, Akwa Ibom, Cross River, Bayelsa³ and Imo States; establishment of two additional pipe mills; local manufacture of LPG gas cylinders; collaboration to establish a dry dock facility in-country to cater for the maintenance of big vessels; local fabrication of modular refineries and demonstration of 50 percent FPSO integration capability in 3-4 years and 100 percent integration within 10 years.

- extending the NCDMB's compliance and enforcement monitoring efforts to all operators and service providers in the upstream, midstream, and downstream sectors of the oil and gas industry.
- creating an enabling business environment that encourages investment, through reduction in aggregate cycle time of the industry contracting process and co-developing and implementing service level agreements (SLAs) on processes that interface with operators and other external stakeholders.
- ensuring sectorial and regional market linkages to increase industry contribution to the National Gross Domestic Product (GDP) and facilitate access of Nigerian-made goods and services to regional markets. The NCDMB also plans to pursue regional marketing of some of the infrastructures being developed such as the FPSO integration facility while sectorial linkages to other sectors such as power, information and communication technology (ICT), construction, mines and steel will continue.
- increasing organizational capability.

Conclusion

While the above targets appear ambitious, we believe that they are achievable with the right mindset and consistency in government policies and programs aimed at supporting the NCDMB in its move to actualize them.

³The ground breaking of the Bayelsa oil and gas park was done in April 2018.

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