

# Recent Developments on Nigerian Content law in the Oil and Gas Industry

Newsletter

## Introduction

The Nigerian Oil and Gas Industry Content Development Act (NOGICDA) was promulgated in 2010, with the main thrust of increasing indigenous companies' participation in the oil and gas industry, and as a consequence, boosting the industry's contribution to the growth of the country's gross domestic product. The implementation of the law has been acclaimed to have attracted investments worth US\$2 billion into the country, and created about 38,000 job opportunities.

This newsletter highlights the key recent developments with respect to the advancement of "Local Content" in the Nigerian oil and gas sector, and the reactions of both the main regulator, the Nigerian Content Development and Monitoring Board (NCDMB) and operators.

## Appointment of a new Executive Secretary

In September 2016, the President of the Federal Republic of Nigeria announced the appointment of Engr. Simbi Kesiye Wabote as the new Executive Secretary of the NCDMB, and also inaugurated a new Executive Board in November of the same year. Engr. Wabote replaced Mr. Patrick Daziba Obah – the Director of Planning, Research and Statistics – who was the Acting Executive Secretary following the exit of Mr. Denzil Amagbe Kentebe in February 2016.

Engr. Wabote holds a Bachelor of Science in Civil Engineering from the Rivers State University of Science and Technology, and a Master of Science in Corporate Governance from Leeds Metropolitan University in the United Kingdom. He is an experienced oil and gas professional with over 20 years' experience in the oil and gas industry. Until his appointment as Executive

Secretary, he was the General Manager, Business and Government Relations at Shell Petroleum Development Company Nigeria Limited (SPDC) and member of the company's Board. He had previously held the role of General Manager, Nigerian Content Development in SPDC and recently worked as Shell Contracting and Procurement's Global Local Content Manager where he was responsible for the development of Local Content Strategy for Royal Dutch Shell's Upstream and Downstream Operations.

Engineer Simbi has stated, in interactions with stakeholders, that the focus of the NOGICDA is not "Nigerianisation" of the sector, but the "domiciliation" of value-adding activities. This philosophy is expected to guide his administration of the NCDMB. He has also stated that the Board would soon unveil a five-year roadmap that would chart a new Nigerian Content (NC) implementation path to increase value addition in the industry.

## Launch of the Nigerian Content Intervention Fund

Section 104(1) of the NOGICDA established the Nigerian Content Development Fund (the NCD Fund) for the "purposes of funding the implementation of Nigerian content development in the Nigeria oil and gas industry." The Act provides that the source of the fund would be the one percent deducted from the value of contracts awarded in the upstream sector of the oil and gas industry. The Act further provides that the Fund will be managed by the NCDMB and employed for projects, programmes and activities directed at increasing Nigerian content in the oil and gas industry. The size of the NCD Fund is currently reported to be about US\$600million.

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In July 2016, the NCDMB and the Bank of Industry (BOI) launched the Nigerian Content Intervention Fund (the NCI Fund) with US\$100 million; to be sourced from the NCD Fund. This initiative is geared towards addressing the paucity of funds, and the inability of Nigerian companies to access credit in the banking industry. The pool of funds will be managed by the BOI, which would lend directly to qualifying players, under favorable terms. Features of the NCI Fund include: 8 per cent interest rate, long tenure of up to 10 years and single obligor limit of US\$10 Million, amongst others. The beneficiaries are expected to deploy the funds for the acquisition of fixed assets (machinery and ancillary equipment), meeting working capital needs, leasing of industrial and business equipment, and for the construction and acquisition of marine vessels. According to the NCDMB, the issues around the domiciliation of the funds with the BOI will soon be resolved, and the requirements for eligibility will be published in national dailies.

It is expected that this initiative would facilitate the gradual process of industrialization by bridging the funding gap being experienced by Nigerian (indigenous) companies.



### Nigerian Content Performance Audits

Pursuant to its mandate under the NOGICDA, the NCDMB has been conducting audit of operators for the purpose of monitoring their compliance with the provisions of the Act. The operator being audited is expected to complete and submit, prior to the commencement of the audit, Project Activity Reporting Templates that provide information on areas like ownership structure of the company, manpower distribution (expatriates and Nigerians) and project procurement plan/status, amongst others.

Operators are therefore advised to ensure that they are prepared to receive the NCDMB auditors by putting in place structures in their systems, to capture the relevant data and statistics required by the NCDMB.

### National Assembly's foray into Nigerian Content compliance review

The National Assembly's (NA) House of Representatives' Committee on Local Content, in performing its constitutional oversight functions, has recently extended invitations to some service companies in the Nigerian oil and gas industry to submit documentations, and make presentations to the Committee on their activities as they relate to the development of Nigerian content. Some of the service companies have obliged – which cover a range of matters, including their Nigerian Content Plan for ongoing projects, details of projects executed in the past, details of Nigerian and foreign

contractors, list of expatriates (with their qualifications), details of expatriate quota (EQ) approvals and evidence of payment of NCD levy, among other local content measurement parameters.

The Committee also seeks to ensure, for example, that companies obtain the approval of the NCDMB for their EQ positions prior to obtaining the approval of the Nigerian Immigration Service. In a number of instances, the Committee has imposed sanctions on non-compliant companies ranging from withdrawal of EQ positions already granted, to threat of expulsion of the companies' expatriates from the country.

Although, the objective of this exercise would seem to duplicate the functions of the NCDMB, it is advisable that Companies begin to prepare their NC compliance status, with appropriate documentation, in the event that the NA extends such invitations to them.

### Pending Public Hearing on the Implementation of Local Content in Nigeria

In a related development, the Senate of the NA, in September 2016, mandated its Committee on Petroleum (Upstream and Gas) to conduct a public hearing to investigate the implementation of local content in Nigeria, with a view to determining the degree of compliance with the NOGICDA by industry operators; and to investigating the utilization of the NCD Fund. This was consequent upon a motion raised in the Senate, which expressed concern that despite

the benefits accruing to indigenous oil and gas companies as a result of the NOGICDA, the involvement of indigenous players in the sector remains low. The motion also stated that Nigeria still imports "over 70% of goods and services in offshore and deep water projects while also failing to meet the obligation of 100% of goods and services for land and swamp operations by Nigerian indigenous business". However, we understand that the committee was yet to conduct the public hearing as at the end of February 2017.

It is important to reiterate that while the NA has powers to conduct such investigation, it calls to question what purpose such investigation would serve, if the NCDMB, the body responsible primarily to conduct such exercise is not championing the initiative. Will the NCDMB re-conduct another exercise of this nature on the operators based on its mandate? If the answer is in the affirmative, won't such exercise be an exercise too many for operators to accommodate? The most prudent approach to adopt, in our view, is for the NA to allow the NCDMB carry out such exercise and simply review its outcome/report, as submitted to it (NA) by the NCDMB. Multiple audits and reviews of operators in the sector is a needless distraction, and inimical to business.

### Conclusion

Human Resources (HR) practitioners and Local Content Managers/Coordinators have the responsibility for managing various compliance issues that arise from the implementation of Nigerian Content initiatives in their companies. In managing this portfolio, they need to keep abreast of the developments in this space in order to proactively handle the attendant issues and the ever changing landscape of the regulatory environment. Operators in the industry must realize that the entrenchment of local content is a key imperative for the current administration and the new management of the NCDMB. This is evidenced by the renewed focus by the Federal Government on "Made-In-Nigeria" initiatives, with the oil and gas industry as a major pillar of this program.

Therefore, operators who are on the compliance journey must fast-track their compliance steps to mitigate any unpleasant regulatory backlash.

**For further enquiries on the above and information on how KPMG can assist you with your Local Content issues, please contact:**

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