

Nigerian Local Content Policy

A review of the Nigerian Oil and Gas Content Development Bill 2005 and how some provisions, if unchecked, could have a negative impact on the development of the Nigerian Content Policy.

Introduction

The benefit Nigeria stands to gain from domiciling her oil and gas derivatives through the development and successful implementation of a Nigerian Content policy currently set by the Federal Government at 70% by 2010, is undoubted. A lot of conferences have been held both locally and internationally on the need to domesticate the Nigerian oil and gas derivatives through local value addition. To achieve this objective, a lot of models from other jurisdictions, which have successfully implemented local content policies, were reviewed and a common feature found was the strategic placement of the National Content objective around the oil industry where the domiciliation is expected to start and permeate other sectors of the economy.

In order to achieve its objectives, the Federal Government of Nigeria, launched its Nigerian Content Policy in 2005 to define the government's vision, outline targets and set out policy guidelines to be used in the industry. Pursuant to this in October 2006, the Nigerian National Petroleum Corporation (NNPC) issued a 23 - point set of guidelines to all companies operating in the Nigerian oil and gas industry, indicating the scope of work to be executed in Nigeria on all E&P projects. In order to give legal backing to the government's stated objectives, a draft bill, the Nigerian Oil and Gas Industry Content Development Bill 2005 ("NCB") was presented to the National Assembly. After a review of the bill by stakeholders, some of the provisions were amended and the amended draft bill is presently before the National Assembly waiting to be passed.

While commending the efforts of all who have worked thus far, to ensure the emergence of a Nigerian Content bill, a further review of some of the provisions is still required to bring the provisions in the bill in conformity with the realities in the Nigerian oil and gas industry and ensure that the legislation to be promulgated, would be capable of acting as a catalyst to the realisation of the government's Nigerian content objectives.

Some of the worrisome provisions presently contained in the NCB include the minimum Nigerian content levels prescribed for all projects in Section 13, the cumbersome nature of the approvals required from the Nigerian Content Division (NCD) in respect of oil industry projects in Sections 19 – 26, the definition of Nigerian company in section 78, shareholding ratio of Nigerian directors required in section 37(2), to mention just a few. In this write – up, I intend to focus specifically on the minimum Nigerian Content (NC) levels set out in the NCB and the likely implications for the Nigerian content policy.

Section 13 of the bill provides as follows:

- “(1) As from the commencement of this Act, the minimum Nigerian content in any project to be executed in the Nigerian oil and gas industry shall be consistent with the level set out in Schedule A to this Act.
- (2) Where a project description is not specified in Schedule A to this Act, the NCD shall state the minimum content level for that project ...through amendment of Schedule A by the National Assembly.
- (3) All operators, alliance partners and contractors shall comply with the minimum Nigerian content for particular project item, service or product ...set out in schedule A”.

From the above, it is evident that the NC levels prescribed in Schedule A are mandatory because of the use of the operative word “shall” in section 13(1) and secondly, there is no provision in section 13 or anywhere in the bill for waivers where operators and their alliance partners are unable to comply with the NC levels prescribed due to unavailability of human and/or material resources in - country.

Schedule A contains the NC levels of over three hundred different types of projects and these include the following:

FEED and Detailed Engineering Services on	
Onshore facilities – shallow waters	- 100% Man – Hours;
Deep offshore facilities – hull & topside modules	- 90% “
Fabrication and Construction of	
Topside modules (process and storage modules)	- 80% Tonnage
Flow lines and Risers	- 100% “
Accommodation module	- 90% “
Materials and Procurement	
Steel plates	- 85% Tonnage
Glass Reinforced Epoxy (GRE) pipes	- 70% “
Well and Drilling Services/Petroleum Technology	
Reservoir Services	- 75% Spend
Well completion Services	- 80% “

The pertinent question that needs to be addressed is: are there enough local personnel, goods and services available in Nigeria presently to satisfy the levels prescribed in Schedule A? It stands to reason that if the question is answered in the affirmative, the provision can be justified. Some stakeholders in the industry have argued strenuously that although the NC levels set out in Schedule A is quite ambitious when considered against the backdrop of the available capacity in - country, it is better to set the NC levels deliberately high so that even

where they are sabotaged by the International Oil Companies (IOCs) operating in the country, there would at least be some measure of compliance, which would in turn guarantee the development of Nigerian content as soon as possible. For the proponents of such views, it is necessary to understand that the NC levels set out in the bill are not targets, which may or may not be obeyed, as is with the NNPC guidelines of 6th October 2006. Immediately the NCB is passed into law, the provisions become immediately enforceable with all the penalties contained in section 70, which include a 5% fine of the project sum upon conviction or the cancellation of the project. Inability to comply with the prescribed NC levels due to unavailability of resources in – country, would not constitute a defence.

It is the writer's opinion that planning to pass a bill, which prescribes minimum NC levels, not presently available in – country and failing to make adequate provisions for waivers may amount to legislative recklessness and send wrong signals to potential investors. This is buttressed by the fact that some of these IOCs, though operating in Nigeria can be sued in their home countries in respect of their business practices in foreign countries. Rather than face prosecution, some may opt to withdraw altogether, if the operating terrain becomes difficult, until such a time when the environment becomes conducive to operate. Also, the fact that crude discoveries are being made in other countries of the world for instance, Ghana and new alliances are being formed everyday, should put Nigeria on her enquiry.

To avoid a situation where the proposed NCB becomes unenforceable when passed into law and joins the host of other unimplemented legislation in the Nigerian archives on account of section 13 or a situation where corruption becomes the order of the day, a detailed waiver provision setting out interim measures that should be taken by IOCs in the event that the minimum NC levels specified cannot be achieved.

Although, there is a general distrust of the IOCs on account of people believing that they are one of the main obstacles preventing the development of Nigerian content, it is still necessary to ensure that the law to be passed would be capable of being enforced. Also adequate measures in form of strict monitoring of technology transfer should be taken to ensure that the gap between available and required capacity, is bridged within a reasonable time - frame.

Undoubtedly, Nigerian content development is a topic that most Nigerian stakeholders are so passionate about particularly because it seems that Nigeria started its quest for Nigerian content development late. Consequently, whether we realise it or not, we are a nation in a hurry to regain the time and benefits lost and sometimes this is the

driving force behind a lot of our policy formulation. While this in itself may not be bad, care must be taken to ensure that we put in place a workable legislative frame – work otherwise, we may find out that unwittingly, we have created a structure that regresses rather than develop Nigerian content.

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