



The Nigerian Local Content Laws Made Easy –

A Summary

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At The Lonadek Event: “Local Content, Entrepreneurship & Vendor Development” – 28th April, 2016

HOW IT STARTED...

- The discovery of oil in Nigeria in the 1950's led to an influx of foreign companies and experts.
- Since the late 1960's and early 1970's, the Government has been keen on increasing the "Nigerian capacity" and this birthed various structures by which Nigerians were encouraged to become actively involved in the oil and gas sector – especially considering that 95% of the Country's foreign exchange earnings comes from crude.
- Thus, there was the Nigerian Indigenization Programme (backed by a law), the Indigenous Concession Programme, the Marginal Field Programme, establishment of the Nigerian Content Division (NCD) within the National Petroleum Investment Management ("NAPIMS") and drafts upon drafts of bills aimed at promoting "Local Content".
- Finally, in a desperate bid to enshrine the principles of indigenous participation in the Industry, the Nigerian Oil and Gas Industry Content Development Act, 2010 ("Local Content Act" or "LCA") was birthed. Admittedly, it is a hastily drafted piece of legislation but it does contain great intentions which we shall be exploring in this paper.

THE PHILOSOPHY

- ◉ The LCA mandates all stakeholders in the Industry to consider “Nigerian content” as an important element of their overall project development and management philosophy.
- ◉ It seeks to encourage the participation of Nigerians in all operations as it connects with the oil and gas industry.
- ◉ It also seeks to give first consideration to Nigerian indigenous service companies who possess the requisite equipment to execute the necessary work in the Industry and gives priority to Nigerian independent contractors, to be considered first in the award of oil blocks, oil field licences, and oil lifting licences.
- ◉ First consideration of Nigerian services, lawyers, insurances, banks etc.
- ◉ The intention is that every company partaking oil exploration, production, transportation as well as any developmental operations should meet a measured quantum of “Nigerian Content”.

SO WHAT IS NIGERIAN CONTENT?

- ◉ “the *quantum* of composite value added to or created ... through the deliberate utilisation of Nigerian human, material resources and services in the Nigerian oil and gas industry” (Section 105).
- ◉ Accordingly, we must look to the measured increase in value of the qualification and capacity of the workforce, the deliberate use of material resources within and of Nigerian origin, creation or manufacture, *and* the deployment of Nigerian technical or other services in any one project.
- ◉ The above are the broad parameters by which a company’s “Nigerian content” will be measured and in the Schedule to the Act and its directives, the quantum will include parameters such as tonnage, man hours, spend and so on.

STRUCTURE

- ◉ The LCA creates the Nigerian Content Monitoring and Development Board (“NCDMB”) responsible for monitoring, supervising and implementing the LCA and generally, fostering growth within the Industry.
- ◉ The NCDMB does not act alone, its affairs are regulated by a Governing Council which has the Minister (Petroleum) as its chairman as well as representatives of Industry stakeholders and associations. The primary function of this council is to coordinate the affairs of the NDCMB and make rules and regulations that will guide the NDCMB’s affairs.
- ◉ One of the first guidelines of the NCDMB covered the remittance of 1% of contract sums, which every operator is required to deduct at the source and pay into the Nigerian Content Development Fund (“NCDF”). The aim of the fund is to provide for capacity building initiatives carried out by the NDCMB. The guideline provides for the mandatory contributors to the fund, amongst who include: all operators, contractors, sub contractors, alliance partners and other companies including Exploration Companies, Gas producing, as well as other service companies involved in the upstream sector of Nigerian Oil and Gas industry.
- ◉ Policies to promote Nigerians occupying management and supervisory positions in Nigeria’s oil and gas industry dates as far back as the Petroleum Act of 1969. However, the LCA only permits the retention of 5% of the management positions as expatriates to handle investor interests.

STRUCTURE (Cont'd)

- ◉ The NDCMB in compliance with the LCA (Sections 55 and 56) has created the Joint Qualification System (“JQS”). It is an online platform for Nigerian content registration, pre-qualification and verification of capacities and capabilities. The aim of the JQS is to allow for the evaluation and application of Nigerian content, provide a database for national skills development, rank/ categorise oil service companies based on capabilities and Nigerian content compliance levels.
- ◉ NDCMB being empowered by the act has set up a consultative body called the Nigerian Content Consultative Forum (“NCCF”) which serves as a platform for information sharing in relation to upcoming projects in the Industry, as well as information on available local capabilities and other policy proposals that have the potential of relevance for Nigerian Content development.

STRUCTURE (Cont'd)

- ◉ A prospective bidder for an Industry license, lease or permit must first submit a Nigerian content plan to the Board. The aim of this is for the NCDMB to be able to monitor and register the applicants level of compliance with the LCA.
- ◉ The Nigerian Content Plan is expected to contain first consideration being granted to services from within Nigeria and locally manufactured goods, employment, training plans (for Nigerians), and any collective bargaining agreements entered into by the operator, project promoter or the company submitting the plan.

THE OPERATOR'S BURDEN

A greater responsibility under the Act:

- ⦿ Facilitate licensing agreement for technology transfer purposes
- ⦿ Employee and Trainee Management to ensure successful transition to management positions
- ⦿ Structure all bidding process to ensure full and fair opportunities to Nigerian indigenous contractors .
- ⦿ Must select a bid with the highest Nigerian Content where the bid is:
 - i) within 1% of the next bid at the commercial stage; and
 - ii) at least 5% higher in Nigerian Content than its closest competitor
- ⦿ Political Influences and long standing relationships will be tested
- ⦿ All adverts , pre-qualification criteria, technical bid documents, evaluation criteria and list of proposed bidders to be submitted to the Board by the operator.
- ⦿ Constant interface with the Board implies constant scrutiny of documentation provided; and investigation into underlying intention

THE OPERATOR'S BURDEN

- ◉ Increased Periodic reporting obligations
 - i) Quarterly reports of contracts , subcontracts and purchase orders proposed for award and execution in the upcoming quarter;
 - ii) Quarterly reports of contracts, subcontracts and purchase orders awarded in the preceding quarter;
 - iii) Bi-annual Legal Services , Financial services and Research and development plan
 - iv) Annual Technology Transfer Plan and annual report of results of such technology transfer activities;
 - v) Quarterly reports of compliance with Research & Development plans;
 - vi) Annual Nigerian Content Performance Report, covering all projects and activities carried out in the year of review

WHAT'S NOT TO LIKE?

- ◉ **Drafting Inelegance:** The Act provides for the specific local content targets in various oil and gas activities, all of which have been expressed to be in percentages, it however does not satisfy the question as to how the percentage should be calculated in order to arrive at the required percentage of local content for the required activity.
- ◉ **Duplicity of Functions:** For example, the workings of the Minister of Petroleum, the Comptroller-General of the Nigerian Immigration and the NCDMB on the expatriate quota approval/issuance system.
- ◉ **Need for Review:** In light of the current downturn in the Nigerian economy and a global decline in finances and opportunities it is expedient that the LCA be reviewed to accommodate and encourage FDI. The LCA grants this power to the Minister to review the schedule every two years in order to ensure continuous growth in the Industry. A re-configuration of the parameters of the Nigerian Content for contract award qualification should be considered. Such review has not been conducted since 2010.

- ◉ **Enforcement of Guidelines:** There needs to be more administrative efforts to ensure that the core principles of the Nigerian Content is fully maximized and deployed in the Industry. For example, where a company seeks to utilize the service of an offshore counsel in high profile transactions the question arises as to who will prevent such company from first engaging foreign counsel?

THE FUTURE

- ◉ It is not all bleak, the LCA has brought a fresh vigour to indigenous Nigerian businesses and the efforts of the NCDMB to encourage the participation of Nigerians in the Industry has made a significant impact in the success stories of Nigerian businesses. (SEPLAT, NDPR, Welding Companies, Fabrication Yards etc).
- ◉ The NDCMB plans to establish world class industrial parks in strategic oil bearing communities. The Nigerian Oil and Gas Park Scheme (“NOGAPS) is a capacity development plan towards establishing a physical infrastructure, create an enabling environment for low cost production of goods, domiciliation of capacity, technology acquisition, creation of employment opportunities and structured participation.
- ◉ The scheme will bolster the manufacturing industry, create further employment opportunities and increase the standard for high tech equipment in the Industry
- ◉ Also, a great deal has been achieved in training, manpower development and hopefully more efforts will be placed on Research and Development.

THANK YOU!





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