

Legal Alert ? August 2011 ? **Oil and Gas Local Content Act**

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Legal News ? New Lagos State Tenancy Law

The Lagos State Government has signed into law a new Tenancy legislation which prohibits Landlords in Lagos State from collecting rentals in excess of six (6) months from a sitting (existing) tenant, and not more than one (1) year's rent from a new tenant. On conviction, the penalty for a breach of these provisions, is a three (3) months jail time or a fine of N100,000:00 (One Hundred Thousand Naira).

Fuller details of the provisions of this Law and how it affects you will be provided in our subsequent newsletters.

Executive Summary ? Oil and Gas Local Content Law

This is a very important legislation to which it is recommended that some time be dedicated to appreciate its provisions. A summary of the high points of this law are provided in this section while fuller details are provided after the summaries.

- a. The Nigerian Oil and Gas Industry Content Development Act, 2010 ("the Oil and Gas Local Content Act") was enacted to provide for the development of an-all inclusive Nigerian Local Content to maximise the benefits in the Nigerian Oil and Gas Industry.
- b. The provisions of the Oil and Gas Local Content Act now supersede similar provisions in the Petroleum Act or in any other enactment or law pertaining to the development of a local content in the Nigerian oil and gas industry.
- c. Nigerian Independent Operators, with proven capacity, shall be given the first consideration in the award of oil blocks, oil field licences, oil lifting licences and in all projects for which a contract is to be awarded in the Nigerian oil and gas industry subject to such conditions as may be specified from time to time by the Minister of Petroleum.
- d. The Nigerian Oil and Gas Content Development and Monitoring Board ("the Content Monitoring Board") is established, as regulator, to among other things implement, supervise, coordinate, administer, monitor and manage the various provisions of the Oil and Gas Local Content Development Act, with the Regulations that will be made by the Minister for Petroleum

Resources, in furtherance of the provisions of this Law.

e. Any bid for any license, permit or interest in the Nigerian oil and gas industry must be accompanied by a Nigerian Content Plan which the local content regulator must review and issue a certificate of authorisation if the Content Plan complies with the provisions of the Nigerian Oil and Gas Local Content Act.

f. All operators and promoters in the Nigerian oil and gas industry are required to give to Nigerians, especially those operating in the oil and gas producing communities, the first consideration when acquiring goods and services, employing personnel or training existing personnel. Operators are compulsorily required to submit at regular intervals, a employment, training and succession plan.

g. Operators and Promoters in the Nigerian oil and gas industry are also required to engage the services of only financial institutions and professionals registered and licensed by Nigerian professional bodies.

h. Operations and corporations in breach of the provisions of this law are liable on conviction to a fine of 5% of the value of the contract in addition to a possible cancellation of such a contract or contracts.

Legal Alert ? Oil and Gas Content Law

The enactment of the Nigerian Oil and Gas Industry Content Development Act, which is now more commonly referred to as "the Oil and Gas Local Content Act", is the accumulation of many years of agitation for more protectionist legislation for Nigerian Citizens who have always desired to have a greater participation in the very profitable Oil and Gas sector of the Nigerian economy. An examination of the provisions of the Nigerian Oil and Gas Industry Content Development Act ("the Oil and Gas Local Content Act") is desirable in the light of previous government policies and regulations governing the Department of Petroleum Resources ("DPR") and the Nigerian National Petroleum Corporation ("NNPC"), which policies and regulations did not develop a competitive Nigerian local content in the oil and gas industry.

The Oil and Gas Local Content Act ? Introduction

The Nigerian Oil and Gas Industry Content Development Act, 2010 ("the Oil and Gas Local Content Act") was enacted to provide for the development of an all inclusive Nigerian Local Content to maximise the benefits in the Nigerian Oil and Gas Industry, plan, supervise, coordinate, monitor and implement the Nigerian Oil and Gas local content policies, and other matters related to the development of the Nigerian content or capacity in the oil and gas industry. The provisions of the Oil and Gas Local Content Act accordingly now supersede similar provisions in the Petroleum Act or in any other enactment or law pertaining to the development of

a local content in the Nigerian oil and gas industry.

Nigerian Operators ? First Consideration

The Oil and Gas Local Content Act requires that "Nigerian Independent Operators shall be given the first consideration in the award of oil blocks, oil field licences, oil lifting licences and in all projects for which a contract is to be awarded in the Nigerian oil and gas industry subject to such conditions as may be specified by the Minister."

Similarly, Nigerian Indigenous service companies that demonstrate ownership of sufficient equipment, sufficient Nigerian personnel and capacity to execute such works on land and in swampy operating areas of the Nigerian oil and gas industry are to be given exclusive consideration in the award of contracts in the areas where the projects are located.

Compliance with the provisions of the Nigerian Oil and Gas Local Content Development Act is a major criteria in considering firms and corporations to whom licenses, permits and any other commercial interest in any oil and gas exploration, production, transportation, development, and any other operations in the Nigerian oil and gas industry, will be granted.

Nigerian Local Content Monitoring Board

The regulator and enforcer of the Nigerian Oil and Gas Local Content Development legislation is the Nigerian Content Development and Monitoring Board. This Board is mandated to make procedures that will guide, monitor, coordinate and implement the provisions of the Oil and Gas Local Content Development Act.

The Oil and Gas Local Content Development and Monitoring Board ("the Board") is also statutorily required to ensure that, in a measurable manner, there is the continuous growth of Nigerian local content in all oil and gas arrangements, projects, operations, activities or transactions in the Nigerian oil and gas industry.

Nigerian Content Plan ? Evaluation

Any bid for any license, permit or interest in the Nigerian oil and gas industry must be accompanied by a Nigerian Content Plan which the local content regulator must review and issue a certificate of authorisation if the Content Plan complies with the provisions of the Nigerian Oil and Gas Local Content Act.

Also, all operators and project promoters are mandatorily required to consider a Nigerian content when evaluating any bid where the bids or bids are within 1% of each other at commercial stage, and the bid with the highest level of Nigerian content is to be selected provided that the selected bid is at least 5% higher than its closest competitor.

Other attempts to develop a genuine Nigerian Content in the Oil and Gas Industry in Nigerian include:-

(a) Operators and alliance partners in the oil and gas industry in Nigeria must maintain a bidding process for acquiring goods and services which give full and fair opportunity to Nigerian indigenous contractors and companies.

(b) A Nigerian indigenous company's bid, with proven capacity, shall not be disqualified solely on the basis that it is not the lowest financial bid provided that the value of such a bid does not exceed the lowest bid price by 10% (ten per cent).

Employment, Training and Succession Plan for Nigerians in the Oil & Gas Industry

Every operator is required to establish in its catchment area of operation(s) or in the community in Nigeria where it carries on its oil and gas operations, a project office where its project management and procurement decisions making processes must take place. All operators are also required by this Law to give Nigerians the first consideration when employing personnel, or training any of their existing personnel in any project to be executed by any of the operators or by any project promoter in the Nigerian Oil and Gas Industry.

It is in turn the responsibility of the Oil and Gas Local Content Board to ensure that all operators and project promoters' maintain a reasonable number of personnel from within the indigenous community where the operator or promoter has a significant oil and gas operation or operations. The Board undertakes this responsibility by, among other things, requiring the operators or promoters to regularly submit a Employment, Training and Succession Plan.

All foreign operators and promoters in the Oil and Gas Industry in Nigeria are further required to retain a maximum of 5% (five per cent) of all management positions to cater for their investors interests. Only Nigerians can however be employed in the junior and intermediate cadre or grades. Applications for Expatriate Quota positions can now only be made after the prior written approval of the Nigerian Oil and Gas Local Content Board has been obtained.

Local Content Research and Development

The Minister for Petroleum Resources ("the Minister") is required by this law to make regulations with requirements and targets for the growth of research and development in the Nigerian oil and gas industry. This Minister is also required to make regulations establishing the minimum standards, facilities, personnel and technology for training in the oil and gas industry.

All operators and promoters are also required to submit a Research and Development Plan ("R & D Plan") which encompasses the promotion of education, industrial attachments, employees training, research and development in Nigerian in relation to the operators and promoters activities in Nigeria. The R & D Plan must be updated every six months.

The Minister is also empowered, after consulting with other stakeholders in the oil and gas industry, to develop a fiscal framework with tax incentives for investors in the oil and gas

manufacturing and fabrication sectors, who locally produce such products or services which were previously imported into Nigeria.

Professional Services.

Operators and promoters engaged in the provision of engineering and other professional services in the Nigerian Oil and Gas Industry are required to engage the services of only professionals registered with the relevant professional bodies in Nigeria.

INSURANCE. All operators, alliance partners and Nigerian indigenous companies engaged in any form of business, operation or contract in the Nigerian Oil and Gas Industry must insure all their insurable risks relating to their oil and gas businesses, operations or contracts with a Nigerian registered and licensed insurance company through an insurance broker, all of whom must be licensed in accordance with the provisions of the Insurance Act (as amended).

Section 50 of the Oil and Gas Local Content Act also provides that no insurance risk in the Nigerian oil and gas industry shall be placed offshore without the written approval of the Nigerian Insurance Commission, and this Insurance Commission must ensure that all local insurance capacity have been exhausted before giving such a waiver.

LEGAL SERVICES. All operators, contractors and other entities engaged in any operation, business or transaction in the Nigerian Oil and Gas industry who require legal services must retain only the services of a Nigerian Barrister and Solicitor whose name is on the roll of Barristers and Solicitors at the Supreme Court of Nigeria, or a firm of Nigerian Legal Practitioners whose office is located in any part of Nigeria.

FINANCIAL SERVICES. All operators, contractors and any other entity engaged in any operation or business transaction in the Nigerian Oil and Gas industry requiring financial services must retain the services of a Nigerian licensed financial institution or organisation except where the Oil and Gas Local Content Board is satisfied that it is impracticable to do so.

The Oil and Gas Local Content Act also requires that 10% (ten per cent) of the total revenue accruing to any operator from its activities in the Nigerian oil and gas industry must be retained in a Nigerian bank account.

WELDING & FABRICATION. All operators, project promoters, contractors and any other entity engaged in the Nigerian oil and gas industry must carry out all fabrication and welding activities inside Nigeria.

Nigerian Content Monitoring Board

A Nigerian Oil and Gas Content Monitoring Board ("the Content Monitoring Board") is established to among other things implement, supervise, coordinate, administer, monitor and manage the various provisions of the Nigerian Oil and Gas Content Development Act and the

Regulations made by the Minister for Petroleum Resources, in furtherance of the provisions of this Law.

A Governing Council is also established to manage and superintend the affairs of the Content Monitoring Board, in addition to making rules and regulations for the proper functioning of this Board.

All the functions and powers previously conferred on any government agency or Department to implement a Nigerian Content Development policy for the oil and gas industry are now exclusively vested in the Oil and Gas Local Development Board.

Nigerian Content Development Fund

A Nigerian Content Development Fund ("the Content Fund") is created by the Oil and Gas Local Content Act to assist in the funding of the implementation of the Nigerian Oil and Gas Content Development and Monitoring activities.

One per cent (1%) of the value of every contract awarded to any operator, contractor, subcontractor, alliance partner or any other entity involved in any project, operation, activity or transaction in the upstream sector of the Nigerian oil and gas industry shall be deducted at source and paid to the Oil and Gas Local Content Development Fund.

Offences and Penalties

Any Operator or Corporation that fails to comply with any of the provisions of the Oil and Gas Local Content Act commits an offence and is liable on conviction to a fine of 5% of the contract sum or sums, in addition to a possible cancellation of the contract.

Conclusion

The Oil and Gas Local Content Act is a continuation of the promotion of the oil and gas industry as the principal, if not the sole, foreign exchange earner for the Nigerian government. This is in contrast with other major oil and gas producing countries who have continued to use their oil and gas resources to diversify their economies to non-oil and gas segments in recognition of the reality that oil and gas is not a renewable energy resource.

Also, previous Nigerian Government regulations and or policies for the development of a local content for Nigerians operating or intending to operate in the oil and gas sector of the Nigerian economy failed because, among other reasons, Nigeria has not developed sufficient twenty-first century human capacity that is properly trained to regulate and participate in the Nigerian Oil and Gas Industry.

The transitional period of three years before the implementation of the full localisation of the production of many items for the oil and gas industry is unrealistic in the light of poor public power generation and distribution, high costs of private power generation from private generators,

in addition to untrained local manpower to run the factories.

The attempt by government to impose a competitive educational development system on the operators and other stakeholders in the Nigerian oil and gas sector will not meet the economic development objectives of the Nigerian economy as this function is the constitutional responsibility of the Nigerian government.

The Oil and Gas Local Content Development Act is however commended as the first legislation that consolidates in a single legislation the various prior local content development legislations, from petroleum to engineering, to labour to legal, to financial and insurance services.

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