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ENERGY MARKET UPDATE: THE EXECUTIVE ORDERS SIGNED BY PRESIDENT TINUBU TO REVAMP THE OIL AND GAS SECTOR

15TH MARCH, 2024

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INTRODUCTION

In a bid to revitalize Nigeria’s oil and gas sector, and remove obstacles to investments in Nigeria, President Bola Ahmed Tinubu **(“The President”)** on 6th March 2024 signed an executive policy directive **(“The Directives”).** These directives are designed to leverage the nation's resources and position Nigeria as the preferred investment destination for the oil & gas sector in Africa.

In this market update, we discuss the key highlights of the President's directives.

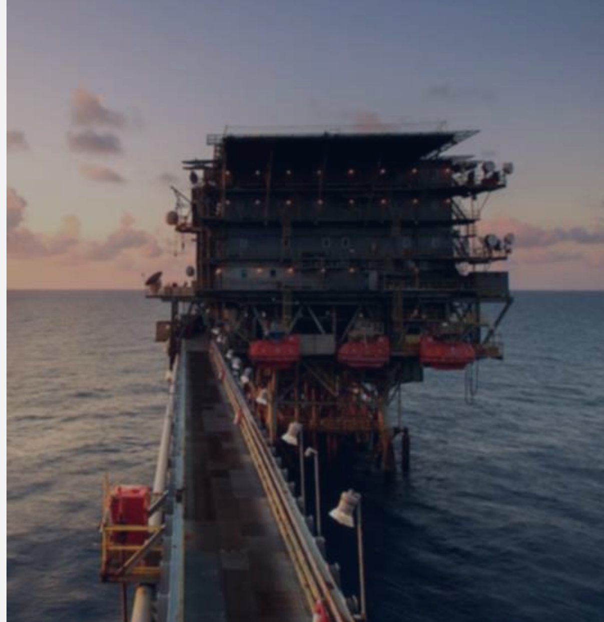
There were 3 Directives signed by the President viz:

1. **Oil And Gas Companies (Tax Incentives, Exemption, And Remission, Etc.) Order, 2024:** This directive introduces fiscal incentives for non-associated gas, midstream, and deepwater developments.

2. **Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines, 2024:** This directive is to streamline the contracting process in the petroleum sector, aiming to reduce the contracting cycle to six months.

3. **Presidential Directive on Local Content Compliance Requirements, 2024:** This directive emphasizes the application of local content requirements without impeding investments or cost competitiveness.

ANALYSIS



1. OIL AND GAS COMPANIES (TAX INCENTIVES, EXEMPTION, AND REMISSION, ETC.) ORDER, 2024.

The purpose of these incentives is to accelerate investments in the oil and gas sector through various means:

a. Tax Credits for Non-Associated Gas Greenfield Development.

These tax credits shall apply to developing Non-Associated Gas **("NAG")** Greenfield Projects[1] in onshore and shallow water areas, with the first gas production starting on or before January 1st, 2029. The credit amount will depend on the liquid hydrocarbons **("HCL")** found with the gas. Projects with low liquid content (under 30 barrels per million cubic feet of gas) will receive a credit of $1 per thousand cubic feet of gas produced, or 30% of the government-set gas price, whichever is lower. Projects with slightly more liquid content (between 30 and 100 barrels per million cubic feet) will get a credit of $0.50 per thousand cubic feet of gas produced, or 30% of the government-set gas price, whichever is lower.

Any NAG Greenfield Projects that start producing after January 1st, 2029, can qualify for a tax credit of $0.50 per thousand cubic feet of gas produced, or 30% of the government-set gas price, whichever is lower, as long as the liquid content stays below 100 barrels per million cubic feet.

It is however important to note that there are limits on these credits:

i. these NAG Greenfield Projects cannot exceed the company's income tax bill for the year, and they cannot be combined with other tax breaks for the same project.

ii. Credits can be used for up to 10 years, after which they convert into a lower tax allowance.

iii. Unused credits can be carried forward for up to 3 years for future tax use.

[1]A non-associated greenfield project refers to the exploration and extraction of natural gas deposits (independent of crude oil) on entirely undeveloped land. This requires significant investment, so countries offer incentives to make them more appealing. Examples include tax breaks on income, import duties, or royalties; subsidies for exploration, drilling, and infrastructure; guaranteed purchase agreements; streamlined permitting processes; and even government support for building pipelines and processing facilities. Countries like Argentina, China, and Egypt use a combination of these incentives to encourage non-associated gas production, recognizing it as a cleaner alternative to traditional fuels. While Nigeria has not extensively explored this area yet, states like Anambra, Benue, Benin, and Gombe hold immense potential for non-associated gas production.

The exact liquid content of the gas will be determined by guidelines set by the Nigerian Upstream Petroleum Regulatory Commission **("NUPRC").**

Additionally, the price of gas used to calculate the credit will be the same price used for royalty payments under Nigeria's Petroleum Industry Act **("PIA").**

b. Midstream Capital and Gas Utilization Investment Allowance.

This Directive introduces a tax incentive called the Gas Utilization Investment Allowance. This incentive applies to qualifying expenditures on plant and equipment incurred by companies in the midstream sector of the oil and gas industry, specifically for the transportation and storage of oil and gas.

The Gas Utilization Investment Allowance allows companies to deduct a portion of the cost of the plant and equipment from their taxable income in the year of purchase. However, this expense cannot be deducted again in later years. Companies are only eligible to claim this benefit after the tax-free period specified under the Companies Income Tax Act has ended.

The allowance is calculated as 25% of the actual cost of the equipment. Midstream oil and gas companies are ineligible to claim the allowance on qualifying expenditures if:

i. The plant and equipment are sold or transferred to a person not acquiring them for the same or related business and purpose, or for scrap.

ii. The plant and equipment are appropriated for a purpose other than gas utilization.

iii. The expenditure for the plant and equipment is not a bona fide business transaction or is artificial or fictitious.

Additionally, the allowance cannot be claimed for the same plant or equipment by subsequent purchasers.

It is important to note that this benefit can be used in conjunction with other tax deductions or allowances the company may qualify for under the Companies Income Tax Act or other laws.

c. Incentives for Deepwater Oil and Gas Projects

The Directive empowers the Minister of Finance to introduce new incentives to make deepwater oil and gas projects more financially attractive. These incentives are to be designed to

ensure that deepwater projects achieve a competitive Internal Rate of Return (IRR), a key metric used to assess project profitability.

While the specific details of these fiscal incentives are still underway, the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated are directed to procure the Nigerian National Petroleum Corporation Limited **("NNPC Limited")** to explore and implement commercial enablers for new deepwater investments. These commercial enablers could include a variety of measures, potentially including reduced costs for supplies or more adaptable contractual terms.

2. PRESIDENTIAL DIRECTIVE ON REDUCTION OF PETROLEUM SECTOR CONTRACTING COSTS AND TIMELINES, 2024.

To facilitate the ease of doing business and encourage investments in the Nigerian petroleum sector, the government has made changes to the contracting process. These changes address the current static system, which impedes the ease of doing business, discourages potential investment and falls below global best practices. The reforms prioritize transparency and efficiency by streamlining approval procedures for contracts involving government-controlled companies and others within the sector. The contracting reforms include:

a. Financial Approval Threshold.

The Directive raises the minimum financial value threshold for prior consent from the NNPCL to no less than USD 10 million (or its equivalent in Naira), in relation to awards of contracts and procurement governed by Production Sharing Contracts **("PSCs")** or Joint Operating Agreements **("JOAs").**

The Ministry of Finance Incorporated **("MOFI")** and the Ministry of Petroleum Incorporated **("MOPI")** have been tasked with directing NNPCL to amend these agreements to reflect the new minimum threshold. Furthermore, to account for inflation, this threshold shall be reviewed and adjusted annually based on data from the National Bureau of Statistics **("NBS").**

b. Consent Timelines.

i. The Directive implements a multi-pronged approach to simplify the contract approval process itself. This involves the collaboration between the NNPCL and Nigerian Upstream Investment Management Services Limited **("NUIMS")** alongside the Nigerian Content Development and Monitoring Board **("NCDMB")** and industry stakeholders. A key element is the adoption of a single approval stage for each phase of the contracting process (prequalification, technical, commercial, and final). This eliminates the need for multiple approvals and streamlines the workflow.

ii. To ensure transparency and predictability, clear deadlines for approvals have now been established. Both NNPCL and NUIMS are mandated to provide a decision on a complete contract application within Fifteen (15) days from the day of the submission of the application. If a decision is not communicated within this timeframe, approval will be considered granted by default.

iii. If an application is deemed insufficient, NNPCL and NUIMS are required to request additional information within the initial review period. The applicant then has seven (7) days to respond. Following the receipt of this additional information, NNPCL and NUIMS are obligated to deliver a decision within the next seven (7) days. Failure to deliver a decision is deemed an approval.

iv. There is also a (10) ten-day review period mandated by law for the NCDMB to assess Nigerian Content Plans **("NCPs").** Similar to the process for NNPCL and NUIMS, if the NCDMB fails to communicate a decision on an NCP within this timeframe, it will be considered approved.

v. Where any matter requires the approval, satisfaction, or consent of the NCDMB and no timeline is provided under the Nigerian Oil and Gas Industry Content Development Act, the NCDMB shall communicate its decision on such matter within 15 days of receiving a request to that effect, failing which the NCDMB shall be deemed to have approved, satisfied or consented to such matter.

c. Third-Party Contract Duration.

The duration for third-party contracts awarded pursuant to a PSC or JOA has been increased from three (3) years to five (5) years with the option of renewal for an additional two (2) years after the expiration of the initial five (5) years.

3. LOCAL CONTENT COMPLIANCE REQUIREMENTS, 2024.

Under the local content compliance requirements Directive, the NCMDB is directed to consider two key factors when implementing the Nigerian Oil and Gas Industry Content Development Act. These factors are:

- Insufficient In-Country Capacity: The NCMDB must recognize the limitations of current domestic capabilities for certain services. This ensures a pragmatic approach that avoids imposing unrealistic requirements.

- Investment and Cost Competitiveness: The NCMDB's actions should not create unnecessary hurdles for investment or inflate project costs within the oil and gas sector.

To achieve this balance, the NCDMB will:

- Scrutinize Intermediary Entities: Approval of NCPs will exclude intermediary entities that lack the essential capacity to deliver the proposed services.

- Prioritize Qualified Nigerian Contractors: NCMDB will only approve NCPs that involve contractors demonstrably meeting the legal definition of "Nigerian content."[2] This ensures that opportunities are directed towards qualified domestic firms.

[2]"Nigerian Content" shows a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry.

CONCLUSION

The enactment of this executive order is well-timed, as it comes at a point where Nigeria struggles with declining oil production, a growing gas deficit, the "exit" of International Oil Companies (IOCs) and global pressure to transition towards cleaner energy sources. The various reforms provided by the Directives aim to address these challenges by offering tax breaks for developing gas fields, especially those with lower liquid content. This incentivizes companies to focus on gas production, which is crucial for domestic power generation and potentially as an export earner.

Also, streamlining the notoriously sluggish contracting process will expedite project development. Additionally, a recalibration of local content requirements seeks a balance between promoting domestic participation and keeping investment costs competitive. If implemented effectively, these reforms could transform Nigeria's oil and gas sector by unlocking its vast gas potential, attracting much-needed investment, and boosting overall efficiency.

ABOUT STREN & BLAN PARTNERS

Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our client's business needs and surpassing their expectations, and we do this with an uncompromising commitment to Client service and legal excellence.

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