Strategic Optimization of Nigerian Content in Oil & Gas Operations: Balancing Local Capacity Building With International Expertise

strenandblan.com | contact@strenandblan.com

Introduction

The petroleum industry has been the cornerstone of Nigeria's economy, contributing around 90% of its export earnings and 40% of government revenue.[1] With the enactment of the Nigerian Oil and Gas Industry Content Development Act (NOGICD) in 2010, the government sought to strengthen local participation in the industry by ensuring that Nigerian resources, expertise, and businesses play a more significant role in petroleum operations. This approach looks to foster national growth, build local capacity, and encourage job creation, while also ensuring the long-term sustainability of the sector.

However, the development of local content does not occur in isolation. As the industry evolves, the need for collaboration with international players remains key, not as a counterbalance but as a complementary element. Global expertise offers access to advanced technology, investment, and innovation, which can further drive Nigeria's energy sector forward. By strategically integrating local capacity building with international expertise, the country can achieve a dynamic and competitive oil and gas industry that is both globally relevant and locally sustainable.

In this article, we aim to birth an understanding of the local content requirements, key provisions of the NOGICDA, extant challenges, and strategic approaches for both international and domestic players within the industry.

[1] Oxford Business, "Energy - From The Report: Nigeria 2023".Available at < https://oxfordbusinessgroup.com/online-reader?id=288707> accessed 25th September 2024

Understanding Local Content Requirements in Nigeria

Local content in Nigeria refers to the measurable value added to the country's economy through the use of Nigerian human, material, and service resources in the oil and gas sector. It is designed to ensure that a significant portion of the work in the industry is carried out by local companies and personnel, which ultimately breeds economic growth and skill development. The NOGICD Act sets specific local content requirements, including a minimum threshold for the utilization of Nigerian goods and services.

The Nigerian Content Development and Monitoring Board (NCDMB) is responsible for overseeing compliance with these regulations, where they enforce local content provisions, and ensure continuous growth in Nigerian participation in the oil and gas industry. Through the Act, there is an emphasis on skills development, job creation, and technology transfer to boost indigenous capacity.

Key Provisions of the NOGICD Act

The **Nigerian Oil and Gas Industry Content Development Act of 2010** (the "Act") is a transformative legal framework which is aimed at enhancing indigenous participation in Nigeria's oil and gas industry. The Act, which became law on April 22, 2010, was designed to increase the quantum of Nigerian value in oil and gas projects by mandating the use of Nigerian resources, human, material, and financial across various operations. The key provisions of the Act are as follows:

1. Definition of "Nigerian Content" and "Nigerian Company"

The Act defines Nigerian Content as **"the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through deliberate utilisation of Nigerian human, material resources and services in the Nigerian oil and gas industry"**

Under the Act a **"Nigerian Company" is a company formed and registered in Nigeria in accordance with the provisions of Companies and Allied Matters Act with not less than 51% equity shares by Nigerians".**

It is worth noting that while the Act defines "Nigerian Company," the term is only used in the definition section and nowhere else in the Act. Instead, the term "Indigenous Company" is used throughout, though it is not formally defined. In practice, the industry has come to interpret "Indigenous Company" as equivalent to "Nigerian Company".

aA company must therefore be majority-owned (at least 51%) by Nigerians to be considered a "Nigerian Company." This ensures that local businesses are not only participating in name but are truly owned and controlled by Nigerians.

For example, if a company operating in the oil and gas sector is registered in Nigeria but is 70% foreign owned, it would not meet the criteria for being a Nigerian Company under the NOGICD Act. This provision ensures that the economic benefits from contracts and opportunities in the oil and gas industry primarily flow to Nigerian-owned businesses.

2. Equipment Ownership Requirement

The Act provides that multinational companies operating through their Nigerian subsidiaries must ensure that at least 50% of the equipment used in their projects is owned by Nigerians. This provision is designed to encourage the use of locally owned resources, which would help to build Nigerian businesses and strengthen the country's capacity in the oil and gas industry.

3. Mandatory Submission of Nigerian Content Plans

One of the primary requirements for compliance under the Act is that all operators must submit a Nigerian Content Plan (NCP) prior to commencing any project.[2] This plan is required to outline the operator's strategy for maximizing Nigerian content within its operations, which must include the utilization of Nigerian goods, services, and personnel. Also, the plan must ensure that priority is accorded to Nigerian goods and services throughout the project's execution,[3] With a commitment to prioritizing the employment and training of Nigerians across all project phases.[4] In instances where Nigerian content capacity is deemed insufficient, the Act permits the temporary importation of goods and services for a limited period, with the approval of the Minister. However, this waiver cannot exceed three years.[5]

4. Contracting and Procurement

Per the provisions of the Act, operators and project promoters must prioritize Nigerian contractors when evaluating bids at the commercial stage, if the bids are within 1% of each other in terms of cost. Specifically, if one of the competing bids contains a higher level of Nigerian content and that content exceeds the closest competitor's by at least 5%, the bid with the greater Nigerian content should be selected.[6]

In practical terms, if two bids are nearly identical in price, the determining factor will be the extent to which each bid utilizes Nigerian resources, labor, and materials. For instance, if Bid A is priced at ₦100 million with 25% Nigerian content, and Bid B is ₦99 million with 30% Nigerian content, and Bid C is ₦99.9 million with 35% Nigerian content, Bid C would be selected, provided its Nigerian content is at least 5% higher than its competitors, as stipulated by the Act.

5. Tax Incentives

The Act gives the Minister of Petroleum Resources the authority to offer tax incentives to companies that establish facilities, factories, production units, or other operational sites within Nigeria.[7] These operations must focus on manufacturing goods or providing services that were previously imported into the country. The intent behind this grant of tax incentives is to encourage local production and reduce reliance on imported goods and services.

[2] Failure to comply with these provisions can result in the denial of the Certificate of Authorization required for project execution. The NCMB also has the authority to conduct a public review of the submitted plans to ensure transparency and compliance.
[3] Section 7, Nigerian Oil and Gas Industry Content Development Act, 2010
[4] Section 10, Nigerian Oil and Gas Industry Content Development Act, 2010
[5] Section 11(4), Nigerian Oil and Gas Industry Content Development Act, 2010
[6] Section 14, Nigerian Oil and Gas Industry Content Development Act, 2010
[7] Section 48, Nigerian Oil and Gas Industry Content Development Act, 2010

6. Maintenance of Bank Accounts

The Act mandates that all operators, contractors, and subcontractors involved in the Nigerian oil and gas industry must maintain bank accounts within Nigeria. They are required to retain a minimum of 10% of their total revenue generated from Nigerian operations in these accounts.[8] This requirement is designed to ensure that a portion of the revenue stays within the Nigerian banking system, which would promote local financial stability and facilitate reinvestment in the economy.

7. Mandatory Contracts to be Submitted to the Board

The Act establishes specific requirements for operators and project promoters involved in projects, contracts, subcontracts, and purchase orders estimated to be over $1,000,000 (USD) (One Million United States Dollars).[9] First, operators must submit several documents such as advertisements for the project, criteria for pre-qualification of bidders, technical bid documents, evaluation criteria for assessing bids, and a list of proposed bidders to the regulatory Board for approval before moving forward. Also, operators or project promoters are expected to provide enough information with their notifications to enable the Board to evaluate the situation thoroughly. This information should demonstrate that they have complied with the Nigerian content requirements.

8. Management Positions and Succession Plans

The Act provides that a maximum of 5 percent of management positions within operators or project promoters may be held by expatriates, subject to approval by the regulatory Board. Also, operators are required to submit a succession plan for any management positions not filled by Nigerians.[10] This plan must outline how Nigerians will be prepared to take over these roles. Expatriates may mentor Nigerian employees in these positions for a maximum of four years, after which the position is expected to be filled by a Nigerian citizen. This approach is intended to ensure knowledge transfer and skill development, ultimately leading to the "Nigerianisation" of management roles in the industry and fostering long-term sustainability in local leadership.

9. Insurance, Legal, and Financial Services

The Act further provides for the use of Nigerian companies for insurance, legal, and financial services, to ensure that these ancillary services support the local economy. All insurable risks related to oil and gas activities must be covered by registered Nigerian companies, with local brokers involved in procurement. Operators are required to retain Nigerian law firms for legal services and submit a Legal Services Plan to the NCMB.[11]

10. Nigerian Content Development Fund

The Act establishes the Nigerian Content Development Fund (NCDF) to finance initiatives aimed at enhancing local capacity in the oil and gas sector. The NCDF is primarily funded by a mandatory 1% deduction[12] from the value of all

[8] Section 52(3)(f), Nigerian Oil and Gas Industry Content Development Act, 2010
[9] Section 17(1), Nigerian Oil and Gas Industry Content Development Act, 2010
[10] Section 31, Nigerian Oil and Gas Industry Content Development Act, 2010
[11] Section 51, Nigerian Oil and Gas Industry Content Development Act, 2010
[12] Section 104(2), Nigerian Oil and Gas Industry Content Development Act, 2010

contracts awarded in the development of Nigerian-owned oil and gas service companies. The Fund will facilitate research and development (R&D) initiatives aimed at improving local technological capabilities and provide financial assistance to Nigerian companies looking to invest in the oil and gas industry.

11. Reporting Requirement and Penalties for Non-Compliance

Companies in the oil and gas industry must submit specific reports and plans to the regulatory Board to ensure compliance with Nigerian content requirements. They are required to provide a Nigerian Content Performance Report within 60 days of each calendar year, which evaluates their adherence to local content policies.[13] Also, companies must submit several reports every six months, including a Research and Development Plan,[14] a Legal Services Plan, a Financial Services Plan, and an Insurance Report. These reports help the Board assess the company's commitment to utilizing local resources and enhancing Nigerian capabilities. Failure to comply with these requirements is considered an offence under the Act, and violators may face penalties, including a fine of 5%[15] of the project sum or cancellation of the project.[16]

It is also pertinent to note that in April 2024, a presidential directive on local content requirements, 2024 was issued. The Local Content Directive (LCD) was issued pursuant to Section 100 of the Nigerian Oil and Gas Industry Content Development Act (NOGICDA) 2010.[17] The objective of the LCD is to address the issue of significant reduction in investment in the Nigerian Oil and gas industry caused, amongst others, by high operating cost and incessant project delivery delays compared with global standards.

The LCD instructed the NCDMB to consider the challenges of insufficient in-country capacity while implementing local content policies. Consequently, the NCDMB will approve Nigerian Content Plans (NCP) only if they include contractors capable of independently executing projects and meeting the legal definition of Nigerian content.

While the LCD reaffirms the principles of local content established in the Nigerian Oil and Gas Industry Content Development Act (NOGICDA), it emphasizes that noncompliance by the NCDMB or operators constitutes a violation, although it does not specify penalties for such violations.

[13] Section 60, Nigerian Oil and Gas Industry Content Development Act, 2010
[14] Section 38(1), Nigerian Oil & Gas Industry Content Development Act, 2010
[15] Section 64, Nigerian Oil & Gas Industry Content Development Act, 2010
[16] Section 68, Nigerian Oil & Gas Industry Content Development Act, 2010
[17] Section 100 states that *"The Minister may issue to the Board directives in relation to Nigerian content development with respect to the application, administration and implementation of this Act."*

Challenges in Implementing Local Content

Despite the Act's good intentions, its implementation has encountered significant obstacles that hinder the full realization of its potential. These challenges are complex and involve both systemic issues and entrenched business practices.

1. Gaps in Local Capacity and Expertise: Nigeria's oil & gas sector is often characterized by its high level of technicality, which as necessitated the possession of specialized skills that are often in short supply locally. Although efforts to bridge this skills gap are underway, the pace of training and education is not keeping up with industry requirements. This disparity between demand and local capability compels companies to heavily depend on foreign labour, particularly for advanced positions such as engineering, geoscience, and project management.

2. Resistance from International Firms: Multinational oil companies, which have traditionally dominated Nigeria's petroleum sector, often view local content requirements as costly and inefficient. Their resistance stems from concerns about the quality of local goods and services, as well as the higher costs associated with engaging less experienced Nigerian firms. This has invariably led to friction between international and local stakeholders.

3. Inadequate Infrastructure and Logistics: The deficiencies in Nigeria's infrastructure are compounding the difficulties associated with local content implementation. Inadequate transportation networks, unreliable power sources, and underdeveloped supply chains are hindering local companies' ability to meet the requisite quality and reliability standards in the oil and gas sector. In the absence of infrastructure enhancements, Nigerian enterprises will encounter challenges in competing with their global counterparts.

Strategic Optimization Approaches

To address these challenges, we advise a multi-faceted approach that emphasizes capacity building, international collaboration, and robust procurement strategy. Below are several strategies for optimizing Nigerian content in the petroleum industry.

1. Capacity Building Initiatives

a) Training and Development Programs: Comprehensive training programs play a crucial role in addressing the skills gap within Nigeria's oil and gas sector. These programs should prioritize high-demand technical areas, such as drilling, exploration, and refinery management.

b) Partnerships with Educational Institutions and NGOs: Partnerships forged between oil companies, universities, and vocational schools have the potential to cultivate a proficient talent pool poised to enter the industry.

c) Mentorship and Apprenticeship Programs: One of the most effective ways to transfer knowledge and skills from expatriates to Nigerian workers is through mentorship and apprenticeship programs. These programs allow Nigerian employees to work closely with international experts, gaining hands-on experience and building their technical competencies.

2. Collaboration with International Experts

a) Leveraging International Expertise: It is crucial to acknowledge the continual necessity for international expertise, particularly in advanced areas such as deepwater drilling and offshore production. Forming strategic partnerships that includes the exchange of knowledge, and the transfer of skills is essential for sustaining the growth of the industry without compromising operational efficiency.

b) Joint Ventures and Partnerships: Encouraging joint ventures between Nigerian and foreign companies fosters collaboration and ensures that local firms benefit from international expertise. Joint ventures allow for shared risk and reward, while also facilitating technology transfer and skill development.

c) Technology Transfer Agreements: One of the most efficient methods for enhancing local capacity is entering into technology transfer agreements. These contractual arrangements mandate that multinational corporations impart essential technologies to domestic counterparts, which will ultimately enable Nigerian enterprises to augment their operational capabilities.

3. Contracting Strategies

a) Local Content Clauses in Contracts: Incorporation of enforceable local content clauses is imperative in all contracts awarded to international oil companies. These clauses should delineate the requisite percentage of goods and services to be procured locally, as well as the stipulated number of Nigerian employees to be engaged in each project.

b) Performance-Based Contracting: To ensure accountability, contracts should be performance-based, with payments tied to the achievement of specific milestones. This incentivizes companies to meet their local content obligations and encourages continuous performance improvement.

Conclusion

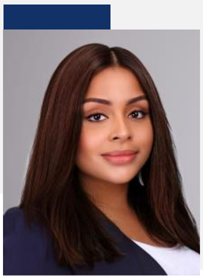
Optimizing Nigerian content in petroleum operations is important for the sustainable growth of the nation's oil and gas industry. To remain relevant and effective amidst evolving industry dynamics, it is important that the NOGICD Act undergoes periodic reviews. Also, regulatory bodies such as the NCDMB must be adequately resourced to enforce compliance and conduct regular audits. By striking a balance between local capacity building and international expertise, Nigeria can not only boost its domestic economy but also enhance its position in the global energy market.

ABOUT STREN & BLAN PARTNERS

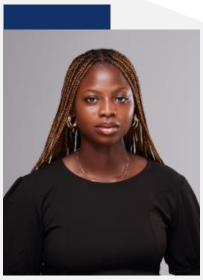
Stren & Blan Partners is an innovative and dynamic Law Firm with a compelling blend of experienced lawyers and energetic talents. We are focused on providing solutions to our client's business problems and adding value to their businesses and commercial endeavours. This underpins our ethos as everything we do flows from these underlying principles.

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.

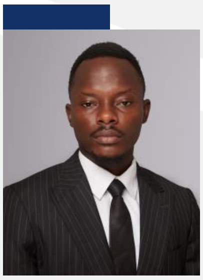
THE AUTHORS



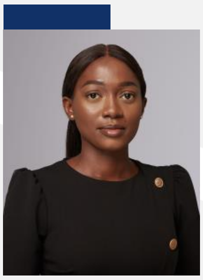
Ozioma Agu
Partner
OziomaAgu@strenandblan.com



Kolajo Onasoga
Associate
KolajoOnasoga@strenandblan.com



Bbatunde Oyewole
Associate
BabatundeOyewole@strenandblan.com



Oghenemega Igbru
Associate
OghenemmegaIgbru@strenandblan.com

Stren & Blan Partners

+234 (0)702 558 0053
3 Theophilus Orji Street,
Off Fola Osibo Road, Lekki Phase 1,
Lagos, Nigeria

www.strenandblan.com
contact@strenandblan.com
@strenandblan