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Recent Executive Instruments in Nigeria: A Breath of Fresh Air in the Oil and Gas Sector in Nigeria

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On March 6th 2024, the President of the Federal Republic of Nigeria, His Excellency Bola Ahmed Tinubu (the "President") signed Presidential Executive Directives 40, 41, and 42 (the "Directives"). The underlying reason is to improve the investment climate and position Nigeria as the preferred destination for oil and gas sector investments in Africa. Understandably, the Directives was issued after extensive engagements, analyses, and benchmarking with other jurisdictions. Accordingly, the Directives are as follows:

- Oil and Gas Companies (Tax Incentives, Exemption, Remission) Order, 2024 (the "**Oil and Gas Order**" or "**Order**") which introduced a number of fiscal incentives for deepwater, midstream, and non-associated gas projects in Nigeria.

- The Presidential Directive on Local Content Compliance Requirements 2024 (the "**Local Content Directive**"), which provides for the application of local content guidelines that do not impede investments or cost competitiveness in Nigeria.

- The Presidential Directives on Reduction of Petroleum Sector Contracting Costs and Timelines, 2024 (the "**Contracting Directive**") which provides for a reduction in the length of the contracting cycle to 6 (six) months by immensely streamlining the whole process (collectively the "**Directives**").

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

a. <u>Tax Credit for Non-Associated Gas (NAG)</u>

The Oil and Gas Order stipulates that Gas Tax Credit (**"GTC"**) incentives shall apply to NAG greenfield developments in onshore and shallow water fields with first production on or before January 1st 2029 from the date of commencement. The GTC is determined by specified rate of the Hydrocarbon Liquid (**"HCL"**) content. Accordingly, where the HCL (i) is below 30 barrels per million Standard Cubic Feet (**"SCF"**), the gas tax credit shall be at a rate of US$1.00 per thousand cubic feet or 30% of the fiscal gas price whichever is lower; and (ii) is above 30 barrels per million SCF, but less than 100 barrels per million SCF, the gas tax credit shall apply at a rate of $0.50 per thousand cubic feet or 30% of the fiscal gas price whichever is lower.

Additionally, the Oil and Gas Order also provides that NAG greenfield projects with first production coming after January 1st 2029, shall be eligible for Gas Tax Allowance (**"GTA"**). The GTA shall apply at a rate of $0.50 per thousand SCF or 30% of the fiscal gas price, whichever is lower, provided that the HCL content does not exceed 100 barrels per million SCF.

Notably, the Oil and Gas Order provides that the GTC shall be applicable for a maximum of 10 years (the **"Timeline"**), following which the GTA will now become applicable. The Order confers on the Nigerian Upstream and Midstream Petroleum Regulatory Commission (**"NUPRC"**) the right to issue the guideline specifying the HCL content.

The Order effectively prevents the possibility of a company enjoying dual incentives for the same project in the same fiscal year. Accordingly, the GTC accruable in a year shall not be combined with the Associated Gas Framework Agreement (**"AGFA"**) incentives delineated for the same NAG greenfield project and shall not exceed the company's income tax payable by the company for the fiscal year. In the event there is an excess of GTC in any year, the surplus shall be carried over to a subsequent year, not exceeding a maximum period of three (3) years. It is imperative to note that the fiscal gas price utilized shall be the same for computing the value of royalties under the Petroleum Industry Act 2021 (**"PIA"**).

b. <u>Midstream Capital and Gas Utilisation Investment Allowance</u>

Understandably, gas companies invest substantial capital expenditure in relation to the acquisition of plant and equipment for their operations. The Order therefore extends a gas utilisation investment allowance (the **"Allowance"**) to gas utilisation companies for their qualifying expenditure in plant and equipment in respect of any new and ongoing project in the midstream oil and gas industry. The Allowance shall apply to such projects subsisting on the effective date of the Order. Notably, the Allowance will be treated as an allowable deduction from the assessable profits from the year of purchase of the plant and equipment. Consequently, a gas utilisation company shall not be entitled to the Allowance only after the expiration of the tax-free period granted under the Company Income Tax Act (**"CITA"**)[1]. The implication of this is that a gas utilisation company being a current beneficiary of the tax-free period incentives available under the CITA is precluded from enjoying these benefits until its expiration.

In addition, Gas utilisation companies are entitled to a 25% allowance of the expenditure incurred on the purchase of on plant and equipment for their projects. However, the Allowance shall not apply to expenditure incurred on plant and equipment within a period of 5 years from the date on which the expenditure was incurred where (i) there has been a sale or transfer of the equipment representing the expenditure by the gas utilisation company other than to a third party utilizing the same plant for the same or related purpose as the previous holder; (ii) an appropriation of the plant and equipment has occurred for a purpose outside of gas utilisation; and (iii) the incurring expenditure for the plant and equipment occurs in an artificial or fictitious transaction other than a bona-fide business transaction.

It is important to note that the Order expressly prohibits the claim of double allowances on the same plant or equipment by the initial acquirer company and the purchaser company. To address information asymmetry that may arise on the administration of the Allowance and possibly prevent double recovery, the Order mandates the acquirer or purchaser of a plant and equipment (which has previously enjoyed the Allowance) to provide relevant information to the Federal Inland Revenue Service (**"FIRS"**) on the sale, transfer and dealing with the asset.

In terms of implementation, the Order confers on the FIRS and the Nigerian Midstream and Downstream Regulatory Authority (**"NMDPRA"**) the responsibility of taking appropriate steps to implement the administration of the Allowance within 15 days from the date of the Order.

c. <u>Incentives for Brownfield and Greenfield Deep-Water Oil and Gas Projects</u>

The Order stipulates that the Minister[2] shall introduce fiscal incentives for Brownfield and Greenfield Projects in order to achieve a competitive Internal Rate of Return (**"IRR"**). The Minister is required to issue implementation guidelines in collaboration with the FIRS, NUPRC,

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1 S.39 (1) of the Companies Income Tax Act. This provision stipulates a number of fiscal incentives for gas utilisation (downstream operations) in the form of an a) initial tax-free period of three years (renewable for an additional two-year period) b) a 35% additional investment allowance c) accelerated capital allowances after the tax-free period and d) tax free dividends during the tax-free period subject to fulfilment of specified conditions.

2 As used here, the minister is the minister responsible for finance.

NMDPRA, and other relevant stakeholders to achieve a competitive IRR. Whilst the finer details of the fiscal incentives for brownfield and greenfield deep-water oil and gas projects are yet unclear, we expect that the Minister will issue the relevant implementation guidelines with specific details of applicable fiscal incentives. It is expected that this will ultimately open up new vista of investment opportunities whilst boosting investor confidence

THE PRESIDENTIAL DIRECTIVE ON LOCAL CONTENT COMPLIANCE REQUIREMENTS 2024

In furtherance of the implementation of the Nigerian Oil and Gas Industry Content Development Act, 2010 (the **"Local Content Act"**), the Local Content Directive mandates the Nigerian Content Development and Monitoring Board (the **"Board"**) to take into consideration the practical challenges of insufficient in-country capacity for certain services, and act in a manner that does not hinder investments or the cost competitiveness of oil and gas projects. Specifically, the Local Content Directive requires the Board to only approve the Nigerian Content Plan (**"NCP"**) that contains intermediary entities lacking the essential capacity to perform the services. Consequently, the Board shall only approve an NCP that has contractors who meet the legal definition of Nigerian content, and demonstrate capacity to execute projects within Nigeria independently. Further, the Local Content Directive requires the approval of an NCP that involves entities without the capacity to execute the project, failing which shall constitute a violation of local content requirements.

Given the foregoing, we expect that the introduction of the Local Content Directive will motivate local operators to expand their capabilities. This will lead to greater business prospects, workforce upskilling, and eventually more jobs and economic growth.

PRESIDENTIAL DIRECTIVES ON REDUCTION OF PETROLEUM SECTOR CONTRACTING COSTS AND TIMELINES 2024

The Contracting Directive directs the Ministry of Finance Incorporated ("**MOFI**") and the Ministry of Petroleum Incorporated (**"MOPI"**) to procure the Nigerian National Petroleum Company Limited ("**NNPCL**" to amend the Production Sharing Contracts (**"PSCs"**) and Joint Operating Agreements (**"JOAs"**) to raise the contract approval thresholds to a minimum of $10 million or its equivalent in Naira, determined at the Nigerian Autonomous Foreign Exchange Fixing; (**"NAFEX"**) Financial Market Dealers Quotation (**"FMDQ"**) exchange rate or any other platform determined by the Central Bank of Nigeria (**"CBN"**).

Additionally, the President has mandated NNPC Limited and the Nigerian Upstream Investment Management Services Limited (**"NUIMS"**), along with the NCDMB and industry stakeholders, to simplify the contract approval procedure and adopt a single level of approval by NNPCL and NUIMS at each contract stage. The Contracting Directive also requires that all approvals or consents to be issued by NNPCL and NUIMS for contracts and procurement for each contract stage under the PSCs and JOAs should ideally be issued within 15(fifteen) days from the date of submission of application by the relevant party to the PSC or JOA.

The Contracting Directive introduces a deemed consent/approval stage to the contracting regime. The deemed regime will work in the following circumstances - the approval or consent shall be deemed granted where i) the NNPCL and NUIMS fail to communicate their decision within the prescribed timeline ii) the NNPCL and NUIMS request additional information or clarification regarding the applicant's submission where the initial information is deemed insufficient or inadequate and the NNPCL and NUIMS fails to respond within the subsequent seven days and iii) the NNPCL and NUIMS fails to communicate its decision with respect to the review of any NCP submitted within 10 days from the time of submission. .

Furthermore, the timeframe for third-party contracts awarded under a PSC or JOA is extended from 3 - 5 years, with the possibility of a 2-year renewal following the initial 3-year term.

It is important to note that the Contracting Directive aims to shorten the contracting timeline to 4 - 6 months, thereby reducing project durations, hastening the delivery of oil and gas products to the market, and enhancing the country's overall value.

CONCLUSION

The introduction of the Directives indeed represents a pivotal moment in Nigeria's quest to revitalize its oil and gas sector. These Directives, spearheaded by the President, underscore the government's unwavering commitment to fostering a conducive investment climate and positioning Nigeria as a premier destination for oil and gas investments in Africa.

By introducing these strategic measures (as outlined above), these Directives aim to attract investments, stimulate economic growth, and create employment opportunities for Nigerians.

Going forward, relevant stakeholders and regulators must collaborate closely in implementing these Directives efficiently and effectively. Through collective efforts, we expect that the full potential of Nigeria's oil and gas sector will be further unlocked whilst significantly driving sustainable development and prosperity in Nigeria.

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