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"PLUS ÇA CHANGE, PLUS C'EST LA MÊME CHOSE"- THE MORE THINGS CHANGE, THE MORE THEY REMAIN THE SAME - THE NEW OIL AND GAS POLICY FOR NIGERIA – March 2017

CONTACT DETAILS:
For further information, please contact the following persons at Advocaat Law Practice:

Oladotun Alokolaro:
ola.alokolaro@advocaat-law.com

Kolade Owolabi-Davies:
kolade.owolabi-davies@advocaat-law.com
T: +234-1- 4531004, 4547932, 2714042
W: www.advocaat-law.com

The Federal Government of Nigeria through the Ministry of Petroleum recently unveiled its National Oil and Gas policies. These policy documents outline how the government intends to reposition the oil and gas industry, ramp up existing production, reduce operational costs, foster efficiency and attract much needed investment across the entire industry value chain. Below are some of the salient aspects of both the policies.

Oil Policy:

The policy identities that the existing institutional regulatory framework is weak, largely ineffective and inefficient and to this end, proposes the consolidation of all regulatory agencies in the oil sector into a single regulatory agency to be known as the Petroleum Regulatory Commission "PRC". The PRC is to be an amalgamation of existing regulatory authorities such as the Nigeria National Petroleum Corporation (NNPC) Department of Petroleum Resources (DPR), Petroleum Products Pricing Regulatory Agency (PPRA) and the Petroleum Technology Development Fund (PDTF). The policy also seeks to transform the state oil company NNPC into five autonomous units which are to be operated independently and self-accountable. These companies will serve as profit centre subsidiaries to a proposed new parent company to be known as the National Oil Company of Nigeria (NOCN).

With respect to downstream oil activities, the policy document provides that the refineries will be given a transition period to become commercially viable and profitable and proposes the possible divestment of government ownership, where the required efficiency levels during the transition period are not met.

In conclusion, the vision of the policy is to move Nigeria beyond crude oil exports into value added activities in such as creating refining and petrochemical industries and expanding from oil into gas based industrialisation hinged on the yet to be largely untapped gas reserved in Nigeria.

Gas:

The gas policy seems to flow from the vision for the oil and gas industry which is to move Nigeria from a crude oil based economy to an attractive gas based industrial economy and sets about how this will be achieved through improved governance, solid industry structure, development of gas resources, increased gas infrastructure, building of gas markets and development of human resources.

The policy proposes new legislation by 2018 that recognises gas as a distinct fuel in its own right with such legislation forming the legal framework bedrock for midstream and downstream gas development. Similar to the oil policy, the gas policy also seeks to introduce a single regulatory authority for the gas sector by June 2017 and proposes ownership separation of gas infrastructure; operations; and gas trading. Gas prices are to be initially regulated during a transition period and thereafter become market driven. The end of the pricing transition period is to be determined by the Minister based on when domestic gas volumes exceeds export volumes. Under the policy, the price for domestic gas is proposed to be the difference between the export price of gas less the cost of liquefaction, regasification and shipping.

As part of reforming the sector, the policy proposes for the unbundling of the Nigerian Gas Company (NGC) presently a subsidiary of NNPC into a transmission operator (to be named Nigerian Gas Transmission Company (NGTP) which it to own and operate the gas transmission network) and a gas marketing company (to be named Nigerian Gas Management Company (NGMC) which is to own all the supply contracts to operate as a gas supply business).

For the purposes of developing and prioritising the domestic market, the domestic gas supply obligations are to be extended to every oil and gas producing company operating in the oil and gas sector. The role of the gas aggregation company which was previously mandated with overseeing the implementation of the domestic gas supply obligation remains unclear in the policy.

The policy seeks to tackle infrastructure deficit in the gas sector through incentivising the private sector to work with NNPC, Nigeria Petroleum Development Company Limited (NPDC), Nigerian Petroleum Investment Management Services Limited (NAPIMS) and the NGC for the realisation of a vibrant, successful and profitable gas industry.

The perennial issue of gas flaring was addressed with the proposal to increase the present flare penalty rates to appropriate levels that will dis-incentivise gas flaring.

Fiscal Policy:

The fiscal policy introduces the Nigerian Hydrocarbon Tax (NHT) to replace the current Petroleum Profits Tax. The NHT rate of 70% for upstream petroleum operations is a reduction of 15% from the current 85% under the PPT regime.

The policy also seeks to do away with a number of reliefs presently in existence in the industry. Both the Petroleum Investment Allowance (PIA) and the Investment Tax Credit (ITC) will no longer be applicable. The policy places an 80% cap on costs recovery for expenditure incurred both locally and overseas and removes the tax deductibility for acquisition costs. Gas producers hitherto, enjoyed various incentives including being able to take up to 85% tax deduction against oil income whilst paying tax at 30%. Under the new policy, gas is seen as being part of petroleum operations and therefore taxable at the NHT rate of 70%.

The policy scraps royalties being paid based on water depths and introduces a new sliding scale regime based on price and volume. Tax and royalties are now to be paid simultaneously, a clear departure from current practice. Smaller fields, (presumably marginal fields) as there is no definition for same are to enjoy a flat rate of 5%.

Other salient provisions of the new fiscal policy includes the increase of capital gains tax on asset based transactions from 10% to 30%; review of the industrial Development (Income Tax Relief) Act with a view to restructuring petroleum companies from taking tax holidays; and a reduction in the time frame within which petroleum companies are allowed to carry forward losses.

Observations and commentaries:

It appears from all three (3) documents and the provisions contained therein that the more we want to free ourselves from past policies, the more we remain shackled. For example, under the gas policy, a single regulator is proposed for the sector. However, the policy document also provides for a Gas Resource Management plan to be managed through the Ministry of Petroleum Resources (MPR) with support from the NNPC and the Industry. This could be interpreted as the MPR assuming the role of regulator as the management of the Gas Resource Management plan is clearly outside the scope of policy making thus defeating the underlying purpose of the reform in the first place, which is to separate policy, regulation and commercial activities in the sector.

Some of the policies also seem at odds with the vision for the industry. If the intent is to reform the sector so as to attract investors and investment, the documents may have fallen slightly short of that. Under the fiscal policy, a cap is placed on costs recoverable for both overseas and local expenditure which is totally at odds with a number of recent judicial decisions on the issue that cost recoverability is and must be distinct to tax deductibility. In addition at a time when we desperately seek investment in gas production and infrastructure given the gas to power linkage, the increase in the tax obligations of gas producers from the current 30% to 70% is bound to strike the wrong chord with potential investors.

Lastly, all the policy documents state that each is to be issued and subsequently gazetted and once gazetted has the force of law. This is somewhat misleading, as the law making process under the present democratic dispensation is clearly laid out in the constitution and any departure from same for these policies to become operational may render them null and void.

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