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Nigeria's Petroleum Industry Bill

With Nigeria at the heart of Africa's oil and gas industry, Chukwuka Eze at Udo Udoma & Belo-Osagie and Nicholas Antonas at Akin Gump Strauss Hauer & Feld consider the implications of long-awaited reform to the country's petroleum laws.

Nigeria is the driving force behind Africa's oil production - it is the largest oil producer and exporter on the continent. The Nigerian oil and gas industry has attracted substantial investments over the years. Between 2005 and 2010 alone, the sector attracted more than USD 67 billion of new investments.

Foreign investment, however, has recently slowed. This can be attributed to a number of factors, including legal and political uncertainty within Nigeria, which make the country's oil and gas sector less competitive than other emerging sub-Saharan African markets.

The slow-moving Petroleum Industry Bill 2012, which is currently before the National Assembly, is intended to harmonise and clarify current petroleum legislation (which is a maze of over 20 relevant statutes). Its eventual passage may go a long way to addressing some of the underlying issues.

This article will discuss the key features of the Bill and the effect it might have in reforming the Nigerian oil and gas sector.

HISTORY AND EXPECTED TIMING

The first draft of the Bill flowed from a 2008 review of the existing petroleum laws in Nigeria by the Nigerian Oil and Gas Sector Reform Implementation Committee. It subsequently went through a number of drafts, none of which passed into law – largely due to opposition from key stakeholders and the intercession of the 2011 Presidential elections.

The current version of the Bill, which was introduced by President Goodluck Jonathan in July 2012, remains under the consideration of the National Assembly; it is unclear when it might be passed.

KEY FEATURES

Crucially, the Bill aims to streamline Nigeria's complex petroleum legislation by repealing 16 statutes.

It will also introduce a new tax and fiscal regime. Petroleum profits tax is currently paid by crude oil producers on 85% of net profits (65.75% in the first five years of petroleum operations), and on 50% of net profits by companies producing crude oil from deep offshore fields under production sharing contract arrangements. Gas producers pay only companies income tax at 30%.

The Bill proposes a new dual tax regime for both crude oil and gas producers, under which, companies income tax will be paid at the rate of 30% of net profits. Nigerian hydrocarbon tax will also be paid at 50% of net profits for production from onshore or shallow water fields, and 25% of net profits for petroleum operations from deep offshore and frontier acreages and from bitumen production.

Investment tax credits and allowances will be replaced by a general production allowance that will reduce taxable profits. The allowances will be dependent on location, volume and price benchmarks for the relevant petroleum product.

A new licencing regime will introduce a national grid system for the management of petroleum acreages, and a new set of licences and leases; existing licences and leases will remain in force under grandfathering provisions. The regime will abolish the existing marginal field regime and relinquish marginal fields from their existing licences; existing marginal field operators will need to obtain new leases. The President will be granted discretionary power to award all licenses and leases.

Under a new local content regime, the definition of an indigenous company under Nigeria's local content requirements will be expanded. The Federal Government will not participate in petroleum operations carried out by indigenous petroleum companies with operations producing less than 25,000 barrels per day of crude oil or its natural gas equivalent. Indigenous companies producing less than this amount may be permitted to produce up to a technical allowable output for the licence or lease.

The Bill will also see changes made to regulating bodies. The Department of Petroleum Resources will be split into two new bodies: the Upstream Petroleum Inspectorate and the Downstream Petroleum Regulatory Agency. Meanwhile, pricing of petroleum products in the downstream product sector will be deregulated.

WHAT THE CHANGES MEAN

The importance of this reform agenda cannot be overstated. The oil and gas sector accounts for 70% of Nigeria's tax revenue; stagnating production levels have a devastating effect on Nigeria's current accounts that are only amplified by the current low crude oil prices.

Industry response to the Bill has been largely negative, however. The general perception is that it will, as drafted, increase taxes, particularly for deep-water exploration. This, coupled with uncertainty as to the royalty rates the Bill would introduce, has informed the activities of an industry pressure group, the oil producers' trade section of the Lagos Chamber of Commerce and Industry, which is lobbying for a review of certain provisions, particularly those introducing fiscal reform.

GOING FORWARD

There is a clear need to reform Nigeria's petroleum laws. There is a hope among oil and gas lawyers that the Bill will provide clarity on a number of legal and regulatory issues and create an easier to navigate set of laws.

As the Bill introduces a substantially new regime, the industry will undoubtedly need legal support to re-structure and adapt their operations to ensure ongoing compliance.

While the Bill has presented a unique opportunity to achieve this much-needed reform, it is imperative that the National Assembly balances a desire for the clarification and harmonisation of existing laws, with the need to address the concerns expressed by industry stakeholders.

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