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Nigeria: Local Content Update for the Oil & Gas Industry

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As we reported earlier last year, the Nigerian Oil and Gas Industry Content Development Act 2010 (the "Local Content Act") was enacted to enhance local content in the oil and gas industry and its central aims of developing indigenous skills across the value chain, promoting indigenous ownership of assets and use of indigenous assets, promoting the establishment of support industries and creating customised training and sustainable employment opportunities currently seem to be well on track. With contract award and local participation provisions as central tenets, much rests on the oversight of the Local Content Act by the Nigerian Content Development and Monitoring Board (the "NCDMB"), whose goals are to ensure continuous and measurable growth of Nigerian content in all oil and gas projects, operations and transactions. The NCDMB has demonstrated commitment to making the Local Content Act work and has received praise from the Minister of Petroleum Resources (also recently elected president of OPEC) who, towards the end of 2014, announced that the Local Content Act had enhanced job creation and indigenous expertise, and had grown local content generally from 3-5% to a significant 12-18%. Further figures released by the NCDMB suggest that $5bn of new investments have been made by Nigerian service companies in the last 4 years and that tens of thousands of jobs have been created. The NCDMB also recently announced that it would be assisting Kenya and Congo-Brazzaville in putting together their own local content laws. Back at home, the country is now poised to make a local content push into other energy-related sectors. The Local Content in Building and Construction Industry Bill continues to be a work in progress and there are also specific plans for local content in lubricants and power, and the creation of sectoral committees to develop ideas for other areas of the Nigerian economy (including fabrication, finance, insurance, shipping and petroleum technology). Despite these encouraging signs, the success of local content will depend on how it is enforced and the NCDMB faced some criticism about its response to certain disputes between foreign companies and indigenous contractors during the course of 2014. As Nigeria strengthens its efforts to boost the local economy and to ensure that value from a whole range of projects is captured in-country, indigenous companies will look to the NCDMB for support and action. If the NCDMB shows signs of stepping-up enforcement, 2015 will be a critical time for expatriate companies operating in the country. In view of the potentially fierce penalties for non-compliance, operators must continue to observe the requirements and international companies engaged in other sectors will now also need to stay tuned. As well as implementing local content requirements relating to ownership and participation, Nigeria appears increasingly committed to securing the financial future of local industry through the Nigerian Content Development

Fund ("NCDF"), established by the Local Content Act to assist Nigerian companies operating in the oil and gas industry with finance and liquidity issues. In 2014, the NCDMB issued an overview of the operating model for the NCDF. Broadly, the NCDF comprises 1% of the value of every contract awarded in relation to any "project, operation, activity or transaction in the upstream sector". As such, the system works as a withholding to be made by the awarder of the contract and subsequently remitted to custodian banks for the programme. The funds in the NCDF are used for guaranteeing lending to Nigerian service companies and for infrastructure and training investment led by the NCDMB, and reportedly reached $350m at the turn of the year, with projected growth to $700 million over the next 5 years. Although there have been concerns voiced that funds were unavailable or inaccessible, it appears that the NCDF is now being put to use, with the NCDMB having recently announced up to $100 million of funding for planned oil and gas parks. The planned parks will, themselves, aim to advance local content even further through promotion of local component manufacturing. As well as infrastructure development, other envisaged "commercial interventions" for the NCDF include the use of accumulated funds for project finance, asset acquisition finance and as security for under-financed indigenous companies. And whilst the NCDF is not anticipated to work as a "handout" system, it certainly has the potential to be effective in removing common commercial barriers that smaller indigenous players might otherwise face in competing for contracts. Alongside local content and the NCDF, the Nigerian Sovereign Wealth Fund (established in 2011 to manage funds in excess of budgeted revenues for hydrocarbons) shows further desire to ensure that Nigeria's dominant resource brings tangible benefits to the country. The split focus of the Sovereign Wealth Fund on the "stabilisation fund", the "future generations fund" and the "Nigeria infrastructure fund" should help to address multiple issues. To aid sustainability, the promotion of investment schemes to support indigenous equipment manufacturers and companies engaged in research and development should, in turn, feed through into the service sector and, by association, back into the upstream sector. Thus, the holistic approach to local content shows how the benefits can come full circle and potentially provide benefits across multiple sectors, and across the value chain in each of them. Capitalising on considerable momentum, the Government has, in early 2015, reaffirmed its commitment to grow local content in a variety of sectors across the economy and has indicated that it will maintain requirements notwithstanding the recent fall in oil prices. Nigeria is certainly demonstrating a multi-pronged and steadfast approach to local content both now and for the future. Indeed, if President Jonathan's desire for the funds to represent "a new era of financial responsibility" is realised then, whether oil prices stay low or rebound, there should be commercial assistance for indigenous companies and financial benefits for the people of Nigeria for years to come.