

Nigeria considers changes to Nigerian content requirements in the oil and gas sector

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What has happened?

The Nigerian government has prepared new legislation – the Nigerian Content Development and Enforcement Bill (“**Bill**”) – to revise the country’s regulatory approach to mandatory Nigerian content in the oil and gas sector and beyond. The Bill was submitted to the House of Representatives on 18 December 2019 for its first reading and has made slow legislative progress since (and which seems likely to slow further as the Government tackles the effects of Covid-19 and the oil price crash)..

What does it cover?

The Bill, if it becomes law, will repeal and replace the Nigerian Oil and Gas Industry Content Development Act 2010 (“**Act**”). The Act established a legal framework for the development of local content requirements in the oil and gas sector in Nigeria. The Bill has two main new functions: (1) it broadens the existing local content requirements for the oil and gas sector; and (2) it implements a similar regime for the ICT, power, solid minerals and construction sectors.

What are the main provisions?

Many of the Act’s requirements continue to apply in the Bill:

- **Governing body:** the Bill seeks to establish a new Nigerian Oil and Gas Content Development and Enforcement Board (“**Board**”) to oversee and enforce the local content requirements in the oil and gas sector. Among other things, the Board is responsible for evaluating and approving Nigerian content plans and reports submitted by operators and, in conjunction with the Minister of Petroleum, making regulations establishing minimum standards.
- **Preference to Nigerian operators:** similarly to the Act, the Bill provides that Nigerian independent operators must be given “first consideration” in the award of oil blocks, licences and projects and that indigenous Nigerian service companies which can demonstrate capacity to execute oil and gas contracts and services receive “exclusive consideration”.

- **Work permits for non-Nigerians:** all non-Nigerian persons employed or to be employed in the oil and gas sector must apply for and obtain a work permit and prior approval of the Board must be obtained before any such application is made.
- **Labour clause:** all contracts or projects with a total budget exceeding US\$ 1,000,000 must contain a “labour clause” mandating the use of a minimum percentage of Nigerian labour as may be specified by the Board.
- **Employment of Nigerians:** all operators and companies operating in the Nigerian oil and gas sector must employ only Nigerians in their junior and intermediate ranks.
- **Succession plan:** operators must submit to the Board a succession plan for any position not held by a Nigerian person. Such plan must provide for Nigerians to shadow each incumbent expatriate for a maximum period of five years and at the end of the five year period the position must become “Nigerianised”.
- **Ownership of equipment:** international companies operating through their Nigerian subsidiaries must demonstrate that a minimum of 50% of the equipment used is owned by their Nigerian subsidiaries.
- **Penalties: penalties for non-compliance now include five years imprisonment in addition to a fine of fifteen per cent of the project sum.**

From the draft of the Bill we have seen, there are some important changes from the Act including the end of charging of the content development levy and the Board is to instead receive funding from the Government (however the power and solid mineral industries will face content levies). The requirement to retain a minimum 10 per cent of revenues from Nigerian operations in a Nigerian bank account has been maintained in the Bill.

What next?

The Bill must still pass through the House of Representatives and the Senate in order to reach Presidential assent and enter law. The draft of the Bill we have seen contains many of the compliance challenges the Act caused for participants in the industry: the scope is deliberately wide so as to promote engagement but this approach raises questions of interpretation of its terms, whether it applies across the industry or just the upstream part, and how feasible it is for operators to fully comply with all its terms. We anticipate that the Bill’s progress may be stalled amidst the disruption caused by the Covid-19 pandemic. Considering the potential implications of the Bill on the oil and gas sector as well as other key sectors in Nigeria, we expect to see increased engagement and lobbying from industry on its contents as it works its way through the National Assembly.