A CONSIDERATION OF THE PRESIDENTIAL ORDER AND DIRECTIVES TO ACCELERATE AND SUPPORT INVESTMENT IN THE NIGERIAN PETROLEUM SECTOR

Introduction

By virtue of the powers conferred by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and other applicable laws, the President of the Federal Republic of Nigeria and Minister of Petroleum Resources, Bola Ahmed Tinubu (the "**President**"), on 6 March 2024, issued an Executive Order and two Policy Directives (the "**Directives**") that are aimed at accelerating and supporting investments in Nigeria's oil and gas sector. The Order and Directives are timely intervention measures given the significant challenges that the country faces in attracting investments in the oil and gas sector.

As stated in the press release by the State House, the Order and Directives issued by the President are to achieve the following objectives:

(i) the introduction of fiscal incentives for non-associated gas, midstream and deep-water developments;
(ii) streamlining of the contracting process to compress the contracting cycle to 6 months; and
(iii) the application of local content requirements without hindering investments or cost competitiveness.

This Note provides an overview of the President's Order and Directives and highlights aspects that we believe are of importance to operators and potential investors in the Nigerian petroleum sector.

1. Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024 ("Fiscal Incentives Order")

The Fiscal Incentives Order covers the applicability of new fiscal incentives to three aspects of oil and gas projects that are capital intensive and for which incentives are very much needed to attract the required investments. These are the development of non-associated gas greenfield projects, midstream gas infrastructure projects and deep water oil and gas projects.

- **Tax Credits for Non-Associated Gas (NAG) Greenfield Development**

Subject to certain qualifications, the Fiscal Incentives Order offers a gas tax credit or gas tax allowance for NAG greenfield developments in onshore and shallow water areas, depending on whether first gas production is achieved on or before 1 January 2029 or later. Where it is on or before 1 January 2029, a tax credit assessed as the lesser of:

(i) either US$1.00 or US$0.50 per thousand cubic feet (Mscf) of gas, depending on whether the hydrocarbon liquid content is equal to or less than 30 barrels per million standard cubic feet (MMscf) of gas or exceeds same, or
(ii) 30% of the fiscal gas price,

is applicable. The gas tax credit is to apply for a maximum of ten (10) years, after which it would become a gas tax allowance claimable at the above-mentioned rates.

Where the first commercial production for a NAG greenfield development is after 1 January 2029 and the hydrocarbon liquid content does not exceed 100 barrels per MMscf, a gas tax allowance may be claimed at the lesser of US$0.50 per Mscf or 30% of the fiscal gas price.

- **Midstream Capital and Gas Utilisation Investment Allowance**

The Fiscal Incentives Order provides for a gas utilisation investment allowance (the "**Allowance**") on qualifying expenditure on plant and equipment incurred by 'gas companies' engaged in new or ongoing midstream gas utilisation projects as at the date of the Fiscal Incentives Order, i.e., 28 February 2024.

This Allowance is granted at the rate of 25% of the actual expenditure incurred on the purchase of such plant and equipment and would only be applicable following the expiration of the initial 3 + 2 years renewal tax-free period under the Companies Income Tax Act, 1977 as amended (**CITA**). In addition, to ensure the Allowance actually incentivises investments in gas utilisation projects, the Fiscal Incentives Order excludes its applicability where within a period of 5 years from the date on which the qualifying expenditure was incurred:

(i) the plant and equipment is sold and would be used for a purpose other than for gas utilisation or as scrap; or
(ii) the acquired plant and equipment is used for a purpose other than for a gas utilisation project; or
(iii) it is ascertained that the expenditure was made in respect of an artificial or fictitious transaction.

Also of note is that notwithstanding the applicability of the Allowance, a company engaged in gas utilisation would still be able to claim the capital allowance provided under CITA.

- **Fiscal Incentives for Deep Water Oil and Gas Projects**

The Fiscal Incentives Order directs the Minister of Finance to introduce fiscal incentives aimed at ensuring a competitive Internal Rate of Return (**IRR**) for investments in deep water oil and gas projects. Pending the Minister of Finance's introduction of the incentives, the shareholders of Nigerian National Petroleum Company Limited (**NNPCL**), i.e., the Ministry of Finance Incorporated (**MOFI**) and Ministry of Petroleum Resources Incorporated (**MOPI**) are to procure that NNPCL considers and implements commercial enablers for new brownfield and greenfield investments in deep water areas.

Unlike the other incentives for NAG and midstream gas infrastructure developments, there are no definitive incentives provided for deep water oil and gas projects. What this achieves is a mandate to the Minister of Finance and NNPCL's shareholders to consider strategies that may be adopted to create a better operating environment for deep water projects and guarantee better returns on investment.

2. Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines, 2024 (the "Contracting Directive")

The Contracting Directive is applicable to the shareholders of NNPCL, i.e., MOFI and MOPI, the Nigerian Upstream Investment Management Services Limited (**NUIMS**) and the Nigerian Content Monitoring and Development Board (**NCDMB**), and primarily places on obligation on these entities to ensure the reduction of contracting timelines and costs by the:

(i) increase of contractual approval thresholds that NNPCL joint ventures (under relevant joint operating agreements (**JOA**)), and production sharing contracts (**PSC**) are subject, to a minimum of US$10,000,000 or the applicable Naira equivalent, and reviewed annually based on the rate of consumer inflation published by the National Bureau of Statistics;

(ii) simplification of the contracting cycle for upstream projects as a result of prescribed timelines for the grant of consent or approvals by NNPCL, NUIMS and NCDMB, failing which relevant applications for consent or approval will be deemed granted; and

(iii) increase of the duration of 3rd party contracts awarded pursuant to JOAs and PSCs from 3 years to 5 years with the option of renewing such contracts for an additional period of 2 years.

3. Presidential Directive on Local Content Compliance Requirements, 2024 (the "Local Content Directive")

The Local Content Directive proposes to reduce the cost of upstream operations and ensure projects are delivered on schedule by ensuring the Nigerian contractor parties have the requisite capacity. It therefore mandates the NCDMB to refrain from approving any Nigerian Content Plan ("**NCP**") that contains intermediary entities with no demonstrable capacity to independently execute projects or perform required services within Nigeria.

Furthermore, in consultation with industry stakeholders, the Board of the NCDMB is to develop guidelines for the assessment and verification of the capacity of Nigerian companies that seek to be contracted to undertake specified activities.

Given that the application of this Local Content Directive is hinged on the NCDMB Board's issuance of the guidelines referred to above, it would have been helpful if there was a prescribed timeline for the engagement with industry stakeholders and issuance of the guidelines.

Conclusion

By addressing critical issues such as investment barriers, contracting delays and the effective application of local content requirements, the Order and Directives represent a conscious effort and commitment of the Nigerian government to foster an environment that not only accelerates investment in the oil and gas sector but also ensures that the benefits of such investments impact the Nigerian economy.

We hope you have found our analysis of the Order and Directives useful, and we are available to provide advice on any aspects of this subject matter.

Disclaimer: This publication is not a legal opinion and is not designed to provide legal advice. Should you require legal advice on how the Order and Directives impact your business, do not hesitate to contact us.

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