



**Renegotiation of Nigeria's
Production Sharing Contracts**

The Nigerian Government (FGN) recently announced its intention to revisit the fiscal terms of existing Production Sharing Contracts (PSCs) with international oil companies (IOCs). From the FGN's perspective, given that some of these PSCs were negotiated and entered into over 20 years ago, there is a need to update them to reflect current realities and also to ensure that they produce a lot more benefits in terms of rights and revenue for the government.

From the perspective of the FGN's PSC counterparties and the private sector generally however, this decision of the FGN has created some level of uncertainty and anxiety. In a bid to calm some of that anxiety, the FGN has stated that it would be careful in the proposed review so as not to create a counter-productive anti-investment atmosphere. That assurance notwithstanding, the proposed renegotiation of the PSCs raises a number of issues including the following:

1. The basis for renegotiation:

The existing PSCs can only be amended in writing by mutual consent of the parties. The FGN cannot therefore unilaterally alter their terms - except as provided in the Deep Offshore and Inland Basin Production Sharing Contracts Act ("PSC Act"). The PSC Act (which grants certain fiscal incentives to exploration and production companies operating in the deep offshore and inland basin area of Nigeria) allows [the FGN] to adjust the revenue sharing formula in the PSC whenever the price of crude oil exceeds \$20 per barrel, with a view to making the PSC more economically beneficial to the government. On this basis, the Nigerian government can be said to be well within its rights

in seeking to increase its share of the economics under the existing PSCs. The question may however be asked whether the government's failure to ever invoke this statutory right at any time since the enactment of the PSC Act in 1999 constitutes a waiver and therefore an impediment to the assertion of that right today.

Another point that is worthy of consideration here is that while the PSC Act provides for adjustment of the revenue sharing ratio in favour of the FGN in the event of oil price exceeding \$20 per barrel, no provisions has been made for adjustment in the opposite direction in the event of prices falling below \$20 per barrel. Given the recent trend in the global price of crude oil, it is not impossible to imagine such a drastic fall, hence it is in the interest of the PSC counterparties of the FGN to canvass the introduction of a two-way adjustment mechanism into the PSCs going forward.

2. Renegotiation of Profits versus Taxes –

Although as shown above, the FGN is entitled under the PSC Act to extract additional revenue from the PSCs when the price exceeds \$20 per barrel, no such provisions have been made under the PSC Act or any other law in relation to the royalties or petroleum profits tax applicable to PSCs. For this reason, any alteration of the relevant taxes and royalties would require the amendment of such laws as the Petroleum Profits Tax Act and

the Petroleum Act under which these taxes and royalties were set in the first place. Strictly speaking, such amendments are not a matter for contractual negotiation between the FGN and the IOCs, but more than likely, the IOCs as well as other stakeholders, would have the opportunity during the legislative consultation process, to make an input into the amendments.

3. Fiscal renegotiation and stabilization triggers:

If the FGN goes ahead to amend the relevant laws to alter the taxes payable in relation to the PSCs, such alterations would almost certainly trigger the stabilisation clauses in the PSCs. Briefly, these stabilisation clauses were designed to protect the PSC counterparties of the FGN from any material adverse effects of any changes in law, policy, directives, procedure etc.

4. Impact of renegotiation and existing PSC disputes with IOCs:

On the bright side, any “negotiated” amendments to the fiscal terms of the PSCs may offer a useful opportunity for the resolution of some of the various disputes that has arisen (and been litigated) between the IOCs and FGN on PSC-related fiscal issues in the recent past.

In summary therefore, if these issues are thoroughly considered, the proposed “renegotiation” may prove useful to both the FGN and the IOCs by not only ensuring that the terms of the PSCs reflect current economic realities for both parties but also providing clarity on the hitherto unclear or controversial provisions of the PSCs that have given rise to expensive and protracted disputes between the IOCs and government. Hopefully, the proposed review process would, in addition to the NNPC, include such critical agencies of the FGN as the Federal Inland Revenue Services so as to ensure a consistency and coherent public sector approach to the exercise.