

TEMPLARS LEGISLATIVE WATCH: The Nigerian Content Development and Enforcement Bill

The House of Representative ('HoR') on 18th December 2019, commenced the first reading of the Nigerian Content Development and Enforcement Bill (the 'NCDE Bill'). The NCDE Bill seeks to repeal the Nigerian Oil and Gas Industry Content Development Act 2010 ('the Act') and in addition to the Oil and Gas Industry, broaden the scope of its application to cover other industries/sectors to wit; Information and Communication Technology (ICT), Power Sector, Solid minerals and Construction.

The Bill seeks to ensure that first consideration should be given to Nigerian operators in the issuance of licences and permits in the designated sectors while enterprises or individuals desirous of carrying out business in any area of the Nigerian economy shall give priority in terms of award of contracts and employment to Nigerian indigenous businesses and individuals.

The Bill proposes the creation of various governing boards and departments to drive the implementation and development of Nigerian content in the designated sectors of the economy.

Some salient provisions of the Bill are summarized as follows:

Oil and Gas Sector

- 1) Nigerian independent operators should be given first consideration in the award of oil blocks, oil field licences, oil lifting licences as well as contracts for projects subject to the fulfilment of conditions as may be

specified by the Minister of Petroleum Resources.¹

- 2) Prior approval of the Nigerian Oil and Gas Content Monitoring and Enforcement Board ("the Board") shall be a prerequisite to applying or obtaining an approval for expatriate quota from the Ministry of Internal Affairs and every non Nigerian either to be employed or already employed in the Nigerian oil and gas

¹ Section 11 NCDE Bill

sector shall apply for, and obtain a work permit.²

- 3) All operators are mandated to submit to the Board a succession plan for positions not held by Nigerians. Nigerians are to understudy incumbent expatriates for a maximum period of five years after which such positions will be Nigerianised.³
- 4) Contracts with total budget exceeding \$1million shall have a Labour Clause mandating the use of a minimum percentage of Nigerian labour in specific cadres as may be stipulated by the Board.
- 5) All operators and companies operating in the Nigerian oil and gas industry shall employ only Nigerians in their junior and intermediate cadre or any other corresponding grades designated by the operator or company.
- 6) Any operator, contractor or sub-contractor who contravenes the provisions of the Bill is liable upon conviction to imprisonment of not more than five years in addition to a fine of fifteen per cent (15%) of the project sum for each project the offence is committed.⁴

Information and Communication Technology Sector

- 1) Establishment of the National Office for Nigerian Content on Information And Communication Technology (“the National Office on ICT”) which shall be responsible for implementing the local content obligations of the ICT sector.
- 2) Exclusive consideration to be given to Nigerian indigenous companies who demonstrate the requisite capacity, with regards to the grant of licence, leases,

permits, and other right-vesting instruments in relation to the ICT sector.⁵

Power Sector

- 1) Establishment of the Nigerian Content Development and Enforcement Agency on Power (“the Agency”) which shall be responsible for the implementation of the local content obligations of the power sector.
- 2) The Bill further provides that in the exercise of powers to issue licences, permits, leases and other instruments vesting right of operation in the Power Sector of Nigeria, there shall be exclusive consideration to Nigerian indigenous companies who demonstrate the capacity to carry out the relevant activity.⁶
- 3) It also provides that contracts with total budget exceeding a threshold that will be set by the Agency shall have a Labour Clause mandating the use of a minimum percentage of Nigerian labour in specific cadres.
- 4) Under certain circumstances, as provided by the Bill, and where there is inadequate local materials and/or capacity for any contract to be undertaken, the Agency may grant its permission for a waiver, on the basis that such permission is granted for a period not longer than 3 years from the date of the approval.⁷
- 5) The Bill imposes on every unit of power purchased by a final consumer a two per cent (2%) charge of the monetary value of the unit purchased. The charge shall be paid into a Fund to be known as “National Power Development Fund” which shall be administered by the Agency together with the Nigerian Electricity Regulatory Commission to promote Nigerian Content in the power Sector.⁸

² Section 40(1), 130(2), 196(1)

³ Section 38(1) NCDE Bill

⁴ Section 68

⁵ Section 95

⁶ Section 124

⁷ Section 135(1)

⁸ Section 137

- 6) The penalty for contravention of the provisions of the Bill as regards the Power sector is imprisonment for a term not less than three (3) years in a correctional facility including a fine of not less than Ten (10) Million Naira circa \$27,000.00 where the offender is an individual. In the case of a company, the Directors and/or the officers of the Company that took the decision shall be liable upon conviction to imprisonment for a term not less than three (3) years in a correctional facility and the Company shall pay a fine of not less than One Hundred (100) Million Naira, circa \$277,000.00⁹

Solid Minerals Sector

- 1) Establishment of the Department of Nigerian Content Development and Enforcement on Solid Minerals (“the Department”) which shall be responsible for the implementation of the local content obligations of the solid minerals and mining sector.
- 2) All permits, licenses and leases arrangements, agreements, contracts or memoranda of understanding relating to any operation or transaction in the Solid Minerals shall be in conformity with the regulations to be issued by the Department.
- 3) In the issuance of all instruments conferring right of operation in the Solid Minerals Mining in Nigeria, exclusive consideration shall be given to Nigerian indigenous companies who demonstrate capacity to execute any work in the Solid Minerals Mining Sector in the Nigerian economy.
- 4) The Bill proposes a five percent (5%) development charge of the monetary value of the sale and the money derived therefrom any operator in the sector to be paid into a Fund to be known as “National Solid Mineral Development Fund” which

“Fund” shall be administered by the Department to promote Nigerian Content in the Solid Minerals Sector especially in respect of the execution of projects that will enhance acquisition of equipment and technologies by Nigerians to independently exploit solid mineral resources.

Construction Industry

- 1) Again, the Bill provides that the exercise of powers conferring right of operation in the Construction Industry in the Nigerian economy give exclusive consideration to Nigerian indigenous companies who demonstrate capacity to execute the relevant work in the Construction Industry. All Federal Government owned entities are mandated to comply with this requirement.
- 2) Although the Bill does not provide for an agency for the management of the local content obligations in the construction industry, there is a likelihood that this may be provided in a subsequent draft of the Bill in line with the provisions of the other sectors of the economy.

General Provisions

- 1) On the issuance of visas, the Bill provides that where a Public Officer charged with the responsibility of issuing visas, issues a visa to any foreign worker whose skill is readily available in Nigeria, such officer commits an offence and is liable to a term of Two (2) years at a Correctional Facility without the option of fine.¹⁰
- 2) Any dispute arising from the application or enforcement of the Bill shall, after exploration of amicable settlement be referred to the Chief Justice of the Federal High Court who shall constitute an Arbitration panel consisting of not less than three (3) Judges of the Federal High Court.¹¹

⁹ Section 140(1) & (2)

¹⁰ Section 226(2)

¹¹ Section 227(1) & (2)

As earlier noted, the NCDE Bill came up for first reading Q4 2019 and must still undergo the customary stages of passage into law. Given the wide-reaching implications of the Bill on key sectors of the economy, we expect that

there will be robust public engagement and debate as the Bill progresses. In view of this, we do not expect this Bill to become law before Q4 of 2020.

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