



ALLIANCE LAW FIRM

SPOTLIGHT ON THE LOCAL CONTENT COMPLIANCE REQUIREMENTS PRESIDENTIAL DIRECTIVE 2024.

Simbiat Abubakar Okwilagwe, Lilian Adat, Daniel Anagu¹

Introduction

The role of the oil and gas industry as the primary contributor to Nigeria’s external reserves undeniably highlights the sector’s economic significance. It is no secret that the sector bears an overarching importance to the well-being of the Nigerian economy. Hence, the decline in investments in the oil and gas sector witnessed by the country has necessitated the drive by the Federal Government of Nigeria (“FGN”) to enhance the investment and operational environment in the sector, to attract both local and international investors.

Nigeria stands as Africa’s largest oil producer, boasting 38% of the continent’s hydrocarbon reserves², the country currently only attracts 5% of Africa’s overall oil and gas investments. To foster increased investment and address the challenges facing operators and investors in Nigeria’s oil and gas sector, the President of the Federal Republic of Nigeria and Minister of Petroleum Resources, Bola Ahmed Tinubu in the exercise of the powers conferred on him by Section 100 of the Nigerian Oil and Gas Industry Content Development Act, 2010 signed the Presidential Directive on Local Content Compliance Requirements (“the Directive”) on the 28th of February 2024 to introduce positive reforms to the oil and gas sector.

Review of the Directive

Compliance with local content requirements:

Under Paragraph 1 of the Directive, the Nigerian Content Monitoring and Development Board (“NCMDB”) in its implementation of the Nigerian Oil and Gas Industry Content Development Act, 2010 (“the Act”) shall ensure that its implementation of the Act:

- a. Considers the practical challenges of insufficient in-country capacity for certain services; and

¹ Simbiat Abubakar Okwilagwe is an Executive Associate at Alliance Law Firm, Lagos, while Lilian Adat and Daniel Anagu both Associates at the same firm.

² Presidential Directive on Local Content Compliance Requirements, 2024.

- b. Does not hinder investments and competitiveness in the oil and gas projects in Nigeria.

Thus, the NCMDDB shall not approve a Nigerian Content Plan (“NCP”) that contains intermediary entities that do not have the essential in-country capacity to perform the services.³ This is to plug leakages in the industry by rejecting entities that cannot perform the services stated in the NCP.

Violation of the local content requirements:

By Paragraph 1(4) of the Directive, the approval of an NCP by the NCMDDB that contains entities acting solely as intermediaries, with no demonstrable capacity to execute the project or activity, shall be considered a violation of the local content requirements.

Development of guidelines by the NCMDDB:

The Directive mandates the NCMDDB to develop guidelines for evaluating and confirming the capability of companies pursuing contracts for designated activities under the Act in collaboration with industry stakeholders.⁴

Commentary:

The Directive aims at tackling the difficulties encountered in the Nigerian petroleum industry due to the rigorous enforcement of Nigerian content regulations. This enforcement has resulted in unintended outcomes such as the emergence of intermediary firms lacking the necessary expertise or capabilities to fulfil oil and gas contracts. Consequently, this has also introduced an unnecessary layer of rent-seeking entrepreneurs, leading to increased costs and tax burdens.

Furthermore, it is important to highlight that the Directive does not provide a specific definition of “Nigerian content.” However, section 106 of the Act does clarify the term thus:

“The quantum of composite value added to or created in the Nigeria economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry”.

Nonetheless, it is crucial to underscore that the Directive has not introduced anything distinct from the provisions of the Act concerning the Nigerian content philosophy. The sole difference lies in its designation of non-compliance with this philosophy by the

³ Paragraph 1(2) of the Presidential Directive on Local Content Compliance Requirements, 2024.

⁴ Paragraph 1(5) of the Presidential Directive on Local Content Compliance Requirements, 2024

NCDMB or the operators as a violation, without explicitly specifying the penalty for such infringement. Similarly, the Act does not outline any penalties for such violations. Hence, it remains uncertain what actions the NCDMB or operators will take.

Conclusion:

The issuance of the Directive reflects a conscious effort and commitment by the Federal Government of Nigeria to cultivate an environment that not only expedites investment in the oil and gas sector but also ensures that the dividends of such investments positively affect the Nigerian economy. This Directive is viewed as a positive step forward, expected to foster a favourable operating and investment climate while eliminating redundant layers of contractors. The Directive signifies a move in the right direction towards sector reform, and is aimed at promoting genuine Nigerian indigenous participation in the oil and gas industry.