



M. J. Nunna & Partners LLP
Trial Attorneys & Transaction Advisors

APRIL NEWSLETTER:

HOUSE COMMITTEE HOLDS PUBLIC HEARING ON NON-OIL & GAS AND OIL & GAS BILLS ON NIGERIAN CONTENT DEVELOPMENT & MONITORING

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INTRODUCTION

On Thursday, the 18th of April, 2024, the House of Representatives Committee on Nigerian Content Development & Monitoring under the Chairmanship of Hon. Boma Goodhead as part of its inclusive approach to law-making processes organized a public hearing for deliberations on bills relating to the Non-Oil & Gas and Oil & Gas sectors in Nigeria.

As providers of advisory services within the oil and gas sector, we were not left out as members of our Public Sector and Community Liaison practice group represented the Firm at the meeting. Our team carried out legislative watch activities and engaged in constructive discussions concerning the relevant bills on the floor of the House.

THE BILLS

The bills set down for deliberations were as follows:

1. A BILL FOR AN ACT TO ENACT THE NIGERIAN CONTENT (NON-OIL AND GAS SECTOR) DEVELOPMENT (ESTABLISHMENT) BILL TO ESTABLISH THE NIGERIAN CONTENT (NON-OIL AND GAS SECTOR) DEVELOPMENT COUNCIL AND TO PROVIDE FOR PROGRAMMES AND STRUCTURES FOR THE USE OF NIGERIAN EXPERTISE, MADE IN NIGERIA GOODS AND SERVICES, ECONOMIC DIVERSIFICATION AND FOR RELATED MATTERS.
2. A BILL FOR AN ACT TO REPEAL THE NIGERIAN OIL AND GAS INDUSTRY DEVELOPMENT ACT NO. 2020 AND TO ENACT THE NIGERIAN OIL AND GAS INDUSTRY CONTENT ACT TO ESTABLISH THE NIGERIAN CONTENT DEVELOPMENT AND MONITORING BOARD AND TO PROVIDE FOR LEGAL FRAMEWORK, STRUCTURE, AND PROGRAMMES FOR THE STRENGTHENING OF NIGERIAN CONTENT IN THE NIGERIAN OIL AND GAS INDUSTRY AND FOR OTHER RELATED MATTERS.

HIGHLIGHTS OF THE HEARING

To begin, it is pertinent to note that the public hearing was aimed at presenting relevant industry stakeholders, interested parties, and members of the general public with the platform to engage in constructive discussions and the opportunity to make salient contributions to the highlighted bills which could potentially influence the future of the legal framework promoting local content development in various sectors of the Nigerian economy.

Although these bills are aimed at promoting the development of local content within the oil & gas and non-oil & gas sectors in Nigeria as well as creating a sustainable environment that engenders an upward trajectory for indigenous businesses and consequently - Nigeria's gross domestic product. Accordingly, industry stakeholders identified various challenges associated with the respective bills, paying particular attention to the bill relating to the oil and gas industry content development and proffered perceived solutions to those challenges.

Key industry stakeholders such as the Manufacturers Association of Nigeria, Federal Ministry of Information, Science and Technology, Nigerian Content Development Monitoring Board, Oil Producers Trade Section, Petroleum Contractors Trade Section, Standard Organization of Nigeria, amidst a host of other bodies, as well as members of the general public were present at the meeting and accordingly seized the occasion to express their concerns with regards to the bills set down for deliberation.

Worthy of note is the position taken by the Federal Ministry of Information, Science and Technology (FMIST) wherein it called for an end of further legislative actions in respect of the bill seeking to establish the Nigerian Content (Non-Oil and Gas Sector) Development Council, citing the existence of FMIST which is the statutory body responsible for science, technology and innovation in Nigeria amidst other constitutional, legal and technical issues it claimed to have identified. The Ministry stated that it already works in collaboration with other government ministries across states to promote the development of science, technology, and innovation including local content, and as such the establishment of the Nigerian (Non-Oil & Gas Sector) Content Development Council would amount to a duplication of functions.

Reacting to the bill seeking to repeal the Nigerian Oil and Gas Industry Content Development Act, 2010, the Nigerian Content Development Monitoring Board (NCDMB) as the agency responsible for the implementation of local content regulation in the oil and gas industry stated that the move to repeal the existing legal framework creates the impression that the existing legal framework has fallen short of expectations of critical stakeholders and having administered the Act for about 14 years, the Board had enormous wherewithal to advise on the practicality of local content principles and practices in the oil and gas industry as well as the challenges associated with it.

The Board highlighted some clauses that appeared discriminatory under various International Trade Conventions and Bilateral Investment Treaties to which Nigeria is a signatory¹. The Board emphasized that the promotion of local content should not revolve around local ownership but rather on the promotion of the utilization of domestic goods and services.

In addressing the margin of preference clause which provides that the margin of preference is to be set by Regulations made by the Council, the Board recommended that the intent of the clause would be more effectively achieved through the issuance of a Guideline by the Board, rather than through Regulations issued by the Council on the basis that the use of Guidelines will ensure speed and create room for consultations between the Board and relevant stakeholders, thus creating an alignment before its final issuance. In addition, the Board recommended the use of Guidelines on the basis that Guidelines would be easier to review where the occasion arises as opposed to Regulations which would entail a more complex process being a form of subsidiary legislation.

Concurring with the NCDMB, the Petroleum Contractors Trade Section (PCTS) aired its reservation against Clause 9 of the Bill seeking to repeal the Nigerian Oil and Gas Industry Content Development Act, 2010, opining that the clause is discriminatory. The body stressed that focus should be placed

¹ Clause 15 and Clause 9 (1) and (2) of the Bill for an Act to repeal the Nigerian Oil and Gas Industry Development Act No. 2020 and to enact the Nigerian Oil and Gas Industry Content Act to establish the Nigerian Content Development and Monitoring Board and to provide for legal framework, structure and programmes for the strengthening of Nigerian content in the Nigerian oil and gas industry and for other related matters.

on local content value creation rather than on '*Nigerianization*', such that foreign investors within the industry who had already contributed over Ten Billion Dollars to Nigeria's Gross Domestic Product, be considered Nigerian enough.

Aligning its views with those of the NCDMB, the Oil Producers Trade Section (OPTS) called for the review of certain clauses. The body recommended that the procedure for rejection of locally made goods and services be reviewed to allow for the development of a more precise definition of the standards to which local goods and services must conform. The body further recommended that Clause 15 of the bill seeking to repeal the Nigerian Oil and Gas Industry Content Development Act, 2010 be reviewed, stating that although it was not against the requirement on non-indigenous oil and gas companies to sub-contract some contracts to indigenous companies, the quotation of the percentage of work to be sub-contracted should not be dictated by the Operators as that would give room for corruption.

OUR POSITION

While we believe that the Bills were drafted with the best intentions, we identified slight lacunas therein upon a thorough review of the said Bills which have been shared with the Committee via a memorandum for onward consideration. It is however pertinent to state that our recommendations are not radically different from the points highlighted by other industry stakeholders at the hearing, hence we shall not be reiterating same. We hope that the House Committee takes into serious consideration these recommendations and apply same to ensure a positive expansion of the legal framework for local content.

CONCLUSION

We commend the House Committee for creating an amicable platform through which industry stakeholders and general members of the public can constructively participate in the law-making process. Public hearings are a crucial part of democracy as they engender inclusivity, transparency, and collaboration in law-making processes, which in turn guarantees an

alignment of interests and purpose amongst concerned industry stakeholders, interested parties, and members of the society at large.

We strongly believe that public advocacy holds the potential to facilitate the passing of thoroughly-considered laws for the advancement of the nation and as such we will continue to track activities within the legislative space and provide first-hand updates as they occur.

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