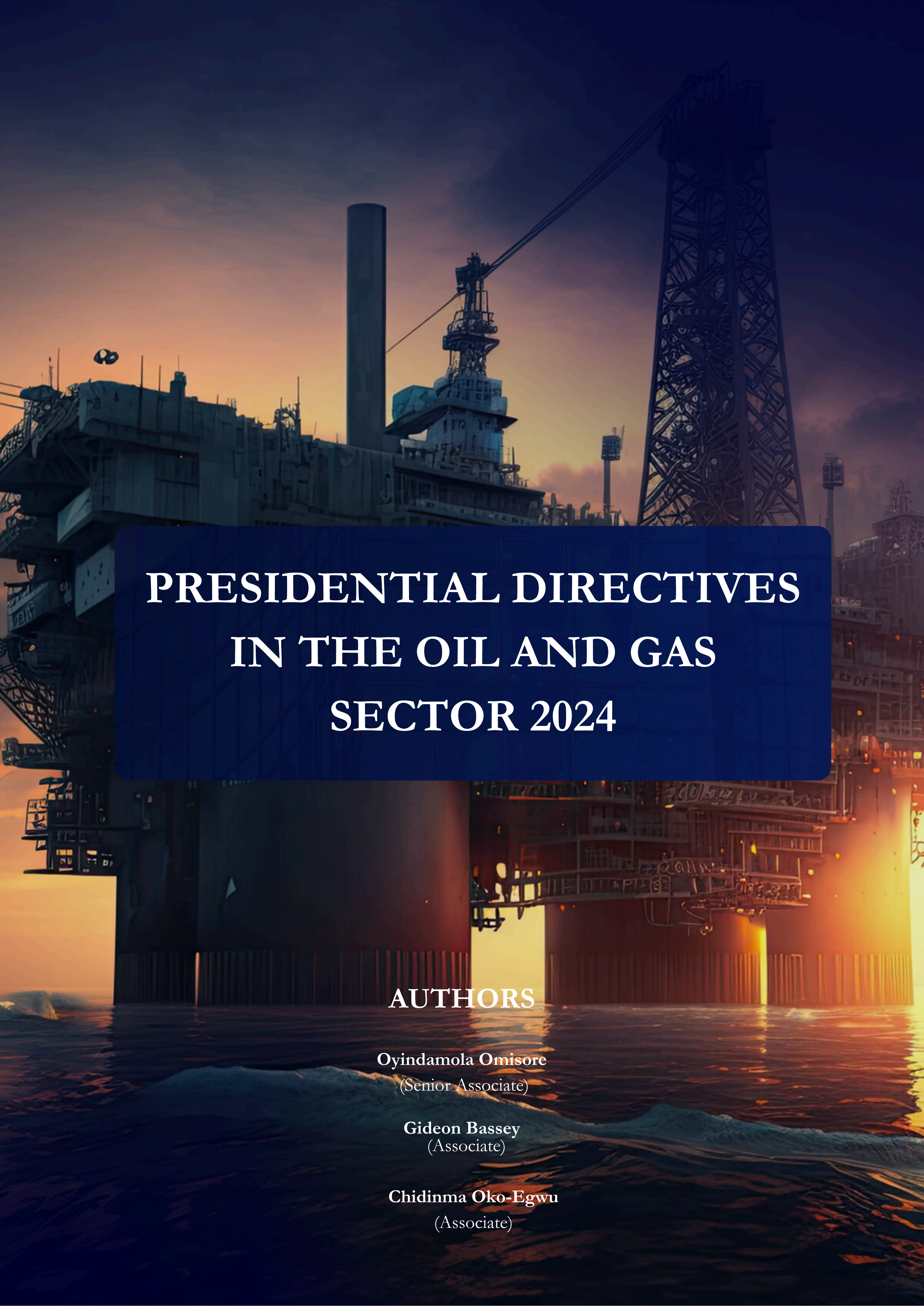

PRESIDENTIAL DIRECTIVES IN THE OIL AND GAS SECTOR 2024

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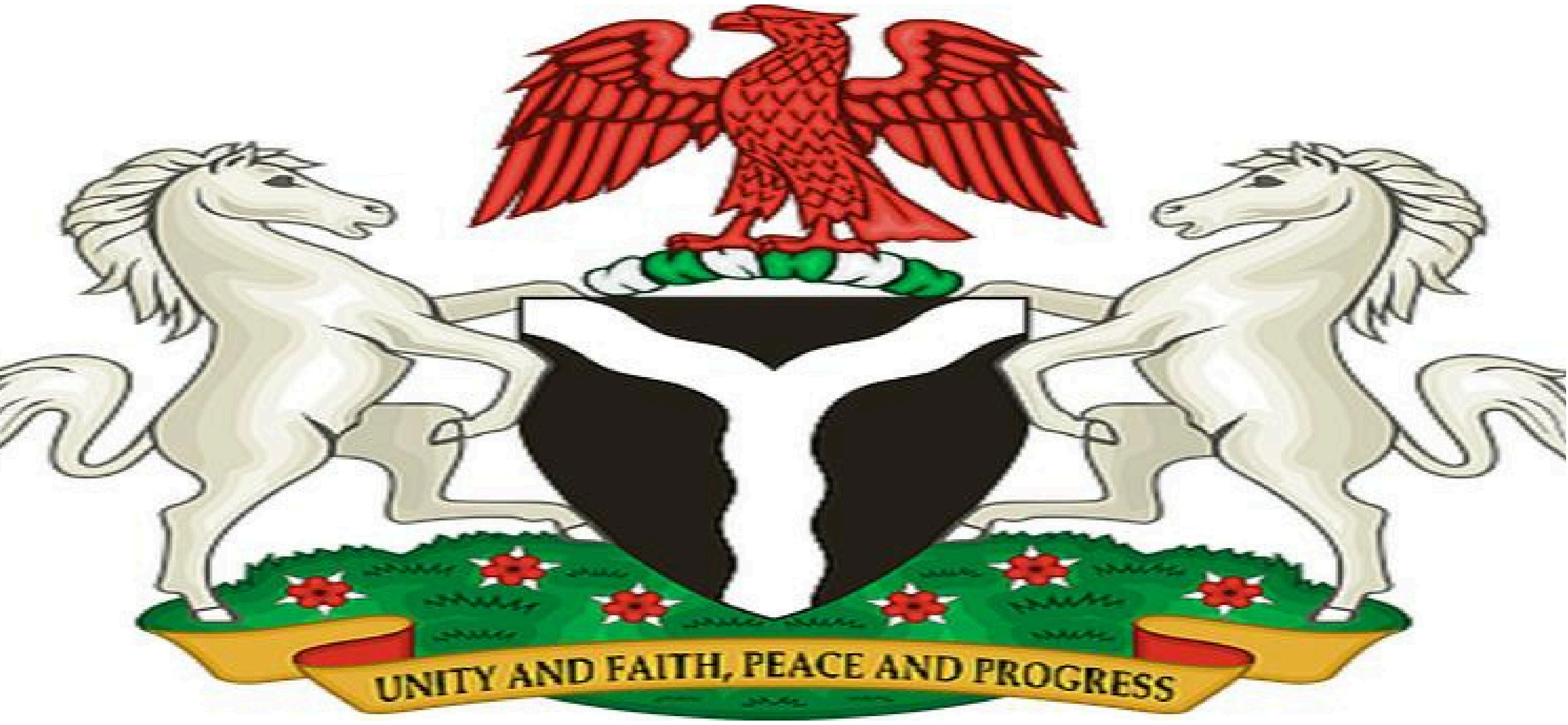
On February 28, 2024, the President of the Federal Republic of Nigeria issued three directives targeting the oil and gas sector, to streamline operations, enhance local participation, and encourage investment in the sector.

These directives include the Presidential Directive on Reduction of Petroleum Sector Contracting Cost and Timeline, 2024; Presidential Directive on Local Content Compliance Requirement, 2024; Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc) Order, 2024.



We have carefully examined each directive to provide a clear understanding of their implications and the changes they are expected to bring. This analysis seeks to dissect the objectives, strategies, and potential outcomes of these presidential directives.

PRESIDENTIAL DIRECTIVE ON REDUCTION OF PETROLEUM SECTOR CONTRACTING COSTS AND TIMELINES 2024 (DIRECTIVE)

The Federal Government of Nigeria (FGN) recognizes that the prolonged contracting cycle in the petroleum sector hinders competitiveness and growth. This Directive aims to enhance transparency, efficiency and promote investment by simplifying the contracting process within 6 months, adjusting the approval threshold and extending third-party contract duration for 5 years, with the option of a 2-year renewal.

These reforms are part of the FGN’s commitment to improving the investment climate, stimulating economic growth, development, and positioning Nigeria as a top destination for petroleum sector investment. The FGN’s directives are as follows.

1. **Financial Approval Threshold**

MoFI and MoPI are directed to procure NNPCL to amend the financial threshold for Production Sharing Contracts (PSC) or Joint Operating Agreements (JOA) requiring the Nigerian National Petroleum Company Limited’s (NNPCL) approval to not less than $10,000,000 or its equivalent in Naira, determined by the FMDQ NAFEX exchange rate or the Central Bank of Nigeria (CBN).

By raising the threshold, contracts less than $10,000,000 may be expedited, as they may no longer require approval from the NNPCL. This could potentially streamline the approval process and reduce bureaucratic delays. This also makes the environment more attractive and encourage companies to consider and pursue opportunities in Nigeria's petroleum sector.

Additionally, MoFI and MoPI are tasked with ensuring that this financial threshold is reviewed and adjusted annually in accordance with the rate of consumer inflation reported by the National Bureau of Statistics. This ensures that the financial threshold remains relevant and continues to serve its purpose of separating contracts requiring NNPCL's prior approval from those that do not require NNPCL's approval.

2. **Consent Timelines**

NNPCL and Nigeria Upstream Investment Management Services Limited (NUIMS), in collaboration with NCDMB and industry stakeholders are directed to streamline the contract approval process and adopt a single level of approval at each contract stage. The Directive outlines the following simplified and time-bound contract approval process in Nigeria's oil and gas sector:

i. Approvals or consents required for contracts and procurement under PSCs or JOAs must be issued by NNPCL and NUIMS within 15 days of application submission.

ii. Communication of decisions by NNPCL and NUIMS to applicants must occur within the specified 15-day timeframe above.

iii. Failure of NNPCL AND NUIMS to communicate decisions within the specified time will result in approval or consent deemed granted.

iv. If an applicant's submission is insufficient, NNPCL and NUIMS will request additional information during the initial review period.

v. The applicant must provide requested information within 7 days.

vi. NNPCL and NUIMS must respond to the applicant within 7 days after receiving additional information, or approval/consent will be deemed granted.

vii. NCDMB will review Nigerian Content Plans (NCP) within the stipulated 10 days under the Nigerian Oil and Gas Industry Content Development Act.

viii. If NCDMB fails to communicate decisions within 10 days, the NCP will be deemed approved.

ix. If an applicant's submission is deemed insufficient, NCDMB will request additional information during the initial review period.

x. The applicant must provide requested information within 7 days.

xi. NCDMB must respond to the applicant within 7 days after receiving additional information, or approval will be deemed granted.

xii. NCDMB will direct expatriate quota applications to the relevant authorities within 10 working days, given all supporting documents are in place.

xiii. For matters requiring NCDMB approval without specified timelines, decisions must be communicated within 15 days of receiving a request, or NCDMB will be deemed to have approved or consented to the matter.

The introduction of a single level of approval at each contract stage, coupled with a commitment to issue approvals within specific timeframes, promises increased efficiency and speed in decision-making. It also reduces bureaucratic delays and fosters a more predictable and reliable business environment, attracting investments into the country's oil and gas sector. The simplified process, responsive communication of decisions will enhance the ease of doing business in this sector.

3. **Third Party Contract Duration**

The extension of the duration for third-party contracts awarded under a PSC or JOA from 3 years to 5 years with the option of renewal for an additional 2 years is a strategic move with several potential advantages.

The process of re-awarding contracts every three years can be time-consuming and expensive for the FGN. Extending the duration reduces these administrative burdens and associated costs.

The extension also allows for increased stability and long-term planning for the parties, fostering a more conducive environment for sustained investment in the oil and gas sector. A longer contract allows companies to recoup investments and implement projects. Third-party companies may be more willing to invest in specialized equipment, training, or personnel for the project considering that the contract is for an extended period.

PRESIDENTIAL DIRECTIVE ON LOCAL CONTENT COMPLIANCE REQUIREMENTS 2024 (DIRECTIVE)

This Directive recognises the significant decrease in investments the Oil and Gas sector despite having 38% of Africa's hydrocarbon reserves. According to the Directive, industry stakeholders and regulators have ascribed this decrease to the high cost of operating in the sector and delays in project delivery which are also partly occasioned by the misapplication of Nigerian content requirement to goods and services. As a result, the Directive aims to create a favorable operating environment for industry players and promote investment in the sector by providing policies to tackle the problems highlighted above. The Directive is to be effective immediately with the Nigerian Content Development and Monitoring Board (NCDMB) responsible for its implementation.

Compliance With Local Content Requirements

The Directive mandates the NCDMB to comply with the following in its implementation of the Nigerian Oil and Gas Industry Content Development Act 2010 (the Act);

i. acknowledge the practical challenges of insufficient in-country capacity for certain services;

ii. act in a manner that does not hinder investments or the cost competitiveness of oil and gas projects.

Approval of Nigerian Content Plan (NCP)

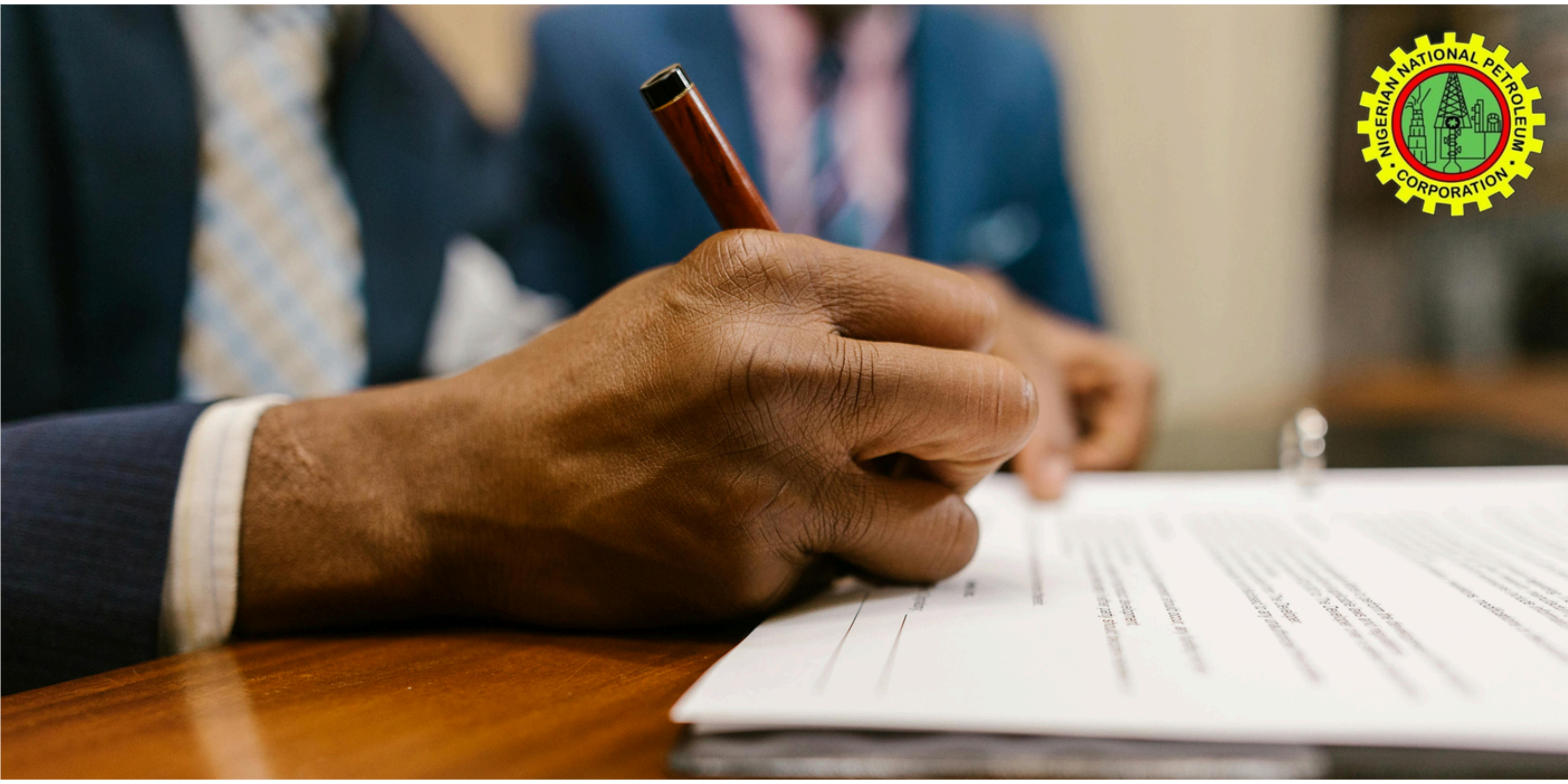
The NCDMB will not approve any Nigerian Content Plan (NCP) that contains intermediary entities lacking the essential capacity to perform the services. The NCDMB will also only approve an NCP that comprises contractors that:

a. meet the legal definition of Nigerian Content; and

b. demonstrate genuine, substantial and tangible capacity to independently execute projects within Nigeria.

The Directive provides that the NCDMB will be deemed to have violated local content requirements where it approves an NCP that contains entities acting solely as intermediaries, with no demonstrable capacity to execute the project or activity.

The NCDMB has been directed to develop guidelines for the assessment and verification of the capabilities of companies that seek contracts for specified activities under the Act, in consultation with industry stakeholders.



OIL AND GAS COMPANIES (TAX INCENTIVES, EXEMPTION, REMISSION, ETC) ORDER 2024. (ORDER)

The Order aims to incentivise investment especially in the Gas sector. The incentives are in three broad categories: Non-Associated Gas Greenfield project; Gas Utilization Investment Allowance for the midstream sector; and Deep Water Oil and Gas projects.

Tax Credit - Non-Associated Gas (NAG) Greenfield Development

Non-Associated Gas (NAG) often termed dry gas is natural gas that is produced from a natural gas well, rather than oil well (associated gas), that is, from a reservoir that contains no crude oil or any known source of liquid petroleum.

Under the Petroleum Industry Act, companies engaged in upstream petroleum operations are liable to Hydrocarbon Tax (HCT) and Companies Income Tax (CIT). However, the HCT is not applicable to non-associated natural gas[1] .

Given the above background, the Order, in this part, aims to encourage entities to invest in the development of greenfield NAG project in onshore and shallow water locations. The tax credit[2] relates to:

Projects with first gas production on or before 1 January 2029:

i. Where the Hydrocarbon Liquids (HCL) content does not exceed 30 barrels per million Standard Cubic Feet (SCF), the tax credit shall be the lower of US$1.00 per thousand cubic feet or 30% of the fiscal gas price; and

ii. Where the HCL exceeds 30 barrels but within 100 barrels per million SCF, the tax credit shall be the lower of US$0.50 per SCF or 30% of the fiscal gas price[3], provided that the HCL content does not exceed 100 barrels per million SCF. This implies that greenfield NAG project with HCL of over 100 barrels per million SCF will not be eligible for this incentive.

Projects with first production after 1 January 2029

Greenfield NAG projects with first gas commercial production after 1 January 2029 will be eligible for tax allowance at a rate that is the lower of US$0.50 per thousand SCF or 30% of the fiscal gas price. Just like in “ii” above, where the HCL exceeds 100 barrels per million SCF, the NAG project will not be eligible for this incentive.

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1. See Section 260 (1) (b) (i) of the Petroleum Industry Act.
2. Tax credit reduces the tax payable by a taxable entity to the tune of the credit.
3. Determine by reference to the Petroleum Industry Act.

Applicability of the Incentive

i. The incentive will be applicable for a maximum of 10 years. At the expiration of the 10-year period, the incentive will be treated as a gas tax allowance[4] at the same rate as above.

ii. The tax credit shall not exceed the CIT payable by the company for a fiscal year and be combined with the Associated Gas Framework Agreement (AFGA) incentives for the same greenfield NAG project. Therefore, a project already claiming incentives further to AFGA will not be liable for the tax credit.

iii. A tax credit surplus is allowed to be carried forward to the subsequent year, subject to a maximum of three years.

Midstream Capital and Gas Utilization Investment Allowance

To encourage investment in plant and equipment, whether in new or ongoing projects, the Order grants midstream gas companies a 25% allowance of the actual expenditure incurred on qualifying expenditure on plant and equipment. The gas utilization investment allowance is an allowable deduction from the assessable profits of the company from the year of purchase of the relevant plant and equipment and will not be considered in determining the residue of qualifying expenditure incurred on such plant and equipment.

4. This Section grants gas utilization companies in the downstream sector a tax-free period of 3 years, which may be renewed for an additional 2 years.

Features of the Investment Allowance

i. A company can only enjoy the allowance upon the expiration of the tax-free period granted under Section 39 (1)[5] of the Companies Income Tax Act.

ii. The allowance shall be clawed back, where within 5 years of the date of the expenditure:

• there is a sale or transfer of the plant and equipment subject to the allowance by the company except to a person acquiring the plant and equipment for the same or related business and purpose;

• the plant and equipment are appropriated for purposes other than gas utilization; or

• the expenditure was not incurred in a bona fide business transaction, or it is a fictitious or artificial transaction.

iii. Plant or equipment subject to a gas utilization investment allowance will not be eligible for another gas utilization investment allowance by acquiring entity or subsequent purchaser.

iv. The value of an asset subject to capital allowance by a company under the Companies Income Tax Act (CITA) shall not restrict or reduce the gas utilization investment allowance available under the Order. Accordingly, the gas utilization investment allowance is in addition to the applicable capital allowance available under CITA and any other applicable legislation.

Incentives for Deep Water Oil and Gas Projects

The Order did not provide for specific incentives under this heading. However, the Minister of Finance is mandated to introduce fiscal incentives that will ensure that investments for deep water oil and gas projects achieve a competitive Internal Rate of Return (IRR). Pending when this is done, the Ministry of Finance Incorporated (MoFI) and Ministry of Petroleum Incorporated (MoPI) are to mandate NNPC Limited to consider and implement commercial enablers for new brownfield and greenfield investments in deep water. This implies that there may be a special contractual regime for deep water oil and gas project.

Conclusion

The Federal Government of Nigeria's recent directives clearly underscore its commitment to revitalizing and making the oil and gas sector more investor friendly. It is hoped that the directives will help eradicate project delays and attract investment into the sector thereby facilitating economic growth in the country.

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