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Client note:

Investing in Nigeria's Oil and Gas Industry

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INVESTING IN NIGERIA'S OIL AND GAS INDUSTRY

1. Overview of the Oil and Gas Sector

Nigeria is one of the world's largest producers of crude oil. The country currently produces an average of 2.5 million barrels of crude oil per day. This makes her the 10th largest producer of crude oil in the world and the 6th largest exporter among OPEC members. Production capacity currently stands at about 3 million barrels per day whilst reserves is about 35 billion barrels which the government intends to increase to 40 billion barrels by the year 2010. Nigeria's proven natural gas reserves are estimated at about 185 TCF which is the World's 7th largest gas reserves. Estimates of Nigeria's undiscovered gas reserves range from 300 – 600 TCF. Nigeria has therefore been described as a gas province with some oil. The gas quality is high – particularly rich in liquids and low in sulphur. Nigeria currently produces about 4 BCF/D, a significant portion of which is flared. It is estimated that the amount of natural gas flared is sufficient to generate power for the entire Sub-Saharan Africa. In response to this unwholesome situation, the Nigerian Government set a target date of 2008 for the complete elimination of gas flaring and has also initiated a number of gas utilization projects to reduce the flaring of gas and monetize the country's gas resources.

1.1 Apart from the Shell-led NLNG which is the premier gas project in Nigeria, other projects on the drawing board or at different stages of implementation include the Chevron Escravos Gas Project, the Chevron-led West African Gas Pipeline Project (WAGP), the Chevron/Sasol GTL (Gas to liquids) project, the Brass LNG, the ExxonMobil NGL 2, the Statoil/Shell Nnwa–Doro LNG, the Trans-Sahara Gas Project and the Olokola LNG. Nigeria now has the 2nd fastest growing LNG capacity in the World. There has been an unprecedented growth in gas demand from Nigeria both in the domestic and export markets. From a current demand level of about 4 – 5 BCF/D, there has been an expression of interest in gas demand which is forecasted to peak at about 20 BCF/day by 2015.

1.2 Nigeria recently launched a Gas Master Plan (GMP). The GMP comprises 3 key sections as follows:

- Gas Pricing Policy
- Gas Supply Obligation Regulation
- Gas Infrastructure Blueprint

The objective of this Pricing Policy as stated by the government is to create structures and a transparent framework for gas pricing that supports the government's aspiration for accelerated domestic economic growth via rapid gas based industrialisation and maximizing value from high value LNG and pipeline exports. The policy establishes 3 broad categories for buyers of gas as follows:

- The Strategic Domestic Sector – primarily the power sector.
- The Strategic Industrial Sector – Sectors that take gas as main feedstock i.e. gas based industries such as fertilizer, menthol, GTL, LNG, etc.
- Commercial Sectors – sectors that take gas for fuel.

The policy then adopts different pricing approaches to the different sectors. It should be noted that the pricing does not fix gas prices, but provides a framework for establishing the minimum gas price that can be charged to any category of gas buyers.

1.3 The government has also introduced a Domestic Supply Obligation Regulation which is aimed at ensuring gas availability for critical gas utilization projects such as power, fertilizer, petrochemical, etc. Under the Regulations, the Ministry of Energy has the powers to determine the annual Domestic Gas Demand requirement which will then be allocated at the beginning of every year to companies licensed to produce petroleum.

The Government has also approved a Gas Infrastructure blueprint, which will guide all future gas infrastructure developments in Nigeria. It is expected that the infrastructure development will be private sector led and commercially driven. This blueprint provides for the establishment of 3 gas gathering and processing facilities and a network of gas transmission lines. For the purposes of the processing facilities, the Niger Delta region has been divided into 3 franchise areas. Each franchise area will have a processing facility which will have exclusive rights for processing gas in the franchise area. This will not affect

processing facilities that are already operating in the franchise area. Such existing processing facilities will continue to operate side by side with the new processing facilities. A new downstream gas bill has been developed and is being considered by stakeholders and the National Assembly. This gas bill will liberalise the downstream gas sector, and is expected to be passed into law soon. Nigeria therefore presents significant opportunities for both foreign and local investors in the Oil and Gas Industry.

2. Relevant state agencies and their roles

Under the Nigerian Constitution, all minerals, mineral oils and natural gas in Nigeria is vested in the Government of the Federation for the benefit of all Nigerians. Petroleum operations and activities are regulated primarily by federal agencies, although some state governments and local governments also have regulations and bye-laws that affect activities in the Oil and Gas Industry.

The principal government agencies responsible for petroleum matters are (1) The Ministry of Energy ("MOE"), (2) The Department of Petroleum Resources ("DPR"), which is the regulatory arm of the MOE, (3) The Nigerian National Petroleum Corporation ("NNPC"), (4) The Federal Ministry of Environment ("FMOE"), (5) The Federal Inland Revenue Service ("FIRS") and (6) The Niger Delta Development Commission ("NDDC").

2.1 Ministry of Energy

The Ministry of Energy has overall responsibility for the regulation and supervision of the Petroleum Industry. The Ministry is also responsible for the formulation, implementation and coordination of government policy for the sector. The Minister of Energy who is the head of the Ministry enjoys a special status and has wide powers under the petroleum laws and regulations. The Minister is responsible for the issue and execution of the major licences for operations in the sector such as OPLs and OMLs and his consent is also required for the assignment of licences. The current President like his predecessor, President Olusegun Obasanjo has retained the portfolio of Minister of Energy. He is assisted by three Ministers of State, each with responsibility for Oil,

Gas and Power. The Minister also has wide powers under the petroleum legislations to make subsidiary legislation for the regulation of petroleum activities.

2.2 DPR

Most of the regulatory functions of the Minister of Energy is exercised by the DPR. The DPR is responsible for the day to day regulation of the upstream and downstream sectors of the Petroleum Industry. Its functions include:

- Overseeing the activities of companies engaged in petroleum operations.
- Monitoring and control of oil industry operations to ensure compliance with national goals and policies.
- Enforcement of conservation measures and laws.
- Issuing of permits, licences, leases and giving authorisations and approvals as required under various petroleum laws governing the whole range of oil and gas administration.

Under the proposed Downstream Gas Act, the regulatory functions of the DPR as it relates to downstream gas activities is to be transferred to a new regulatory body to be established and known as the "Gas Regulatory Commission ("GRC").

2.3 NNPC

The NNPC is the State oil company. It is a statutory corporation engaged primarily in commercial activities. Activities of NNPC span through the whole spectrum of the oil and gas value chain, from exploration, to production, refining, transportation, distribution and supply of petroleum. The NNPC sometimes operates directly in petroleum operations (for example, its participation in upstream petroleum arrangements with international oil companies) and sometimes indirectly through subsidiaries. One of the more prominent subsidiaries is the Nigerian Petroleum Development Company ("NPDC") which is engaged in petroleum exploration and production. Another well-known subsidiary is the Petroleum Products Marketing Company Limited ("PPMC"). The PPMC is responsible for the transportation of crude oil to the refineries and the transportation of petroleum products to depots located in various parts of Nigeria. Government has already commenced plans to privatise the

PPMC as well as other subsidiaries operating in the downstream petroleum sector.

Another important arm of the NNPC is the National Petroleum Investment Management Services ("NAPIMS"). The NAPIMS is responsible for overseeing the investments of the Federal Government of Nigeria in upstream petroleum operations conducted under joint ventures, production sharing contracts and other petroleum arrangements with the international oil companies ("IOCs"). The Nigerian government recently commenced what has been described as one of the most sweeping reforms of the Nigerian Oil and Gas Sector. Part of the aims of the reform is the separation of policy from regulation and commercial activities. Under the reforms, NNPC is to be restructured to be a fully commercial organization with its own asset base against which it can raise money from the money and/or capital market.

2.4 **FMOE**

The Federal Ministry of Environment is responsible for the initiation and development of policies for the environment in general. In conjunction with the DPR, it is also responsible for the regulation of and administration of environmental standards and regulation for the Oil and Gas Industry. The Federal Ministry of Environment is also responsible in conjunction with the DPR for conducting any necessary environmental impact assessment ("EIA") and issuing the necessary approvals for projects that are subject to EIA.

2.5 **FIRS**

The Federal Inland Revenue Service ("FIRS") is responsible for the assessment, collection and administration of all federal taxes. The taxes include petroleum profits tax, companies income tax, capital gains tax, education tax and value added tax. These taxes are discussed in more detail in the section on fiscal regime.

2.6 **NDDC**

The Niger Delta Development Commission ("NDDC") is the corporation established to formulate Policies & Guidelines, and to develop and implement projects& programmes for the development of the Niger-Delta area where most of Nigeria's crude oil is

produced. Oil producing companies and gas processing companies are required by law to contribute 3% of their annual budget to the NDDC fund.

There are other governmental agencies at federal, state and local government levels that regulate certain aspects of petroleum operations and activities.

3. Types of licences

As previously stated, the Nigerian Constitution provides that the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly. The Petroleum Act provides for 3 types of licences for upstream operations: Oil Exploration Licence ("OEL"), Oil Prospecting Licence ("OPL") and Oil Mining Lease ("OML").

In practice, OEL's are no longer issued, so the OEL will not be discussed in this article. Only citizens of Nigeria and companies incorporated in Nigeria can be granted an OPL or OML or allowed to hold or acquire any interest in the licence or lease. Nigerian Company Law does not permit branch operations. As such, any foreign company that intends to do business in Nigeria or to hold any interest in an OPL or OML is required by law to establish a subsidiary or affiliate company in Nigeria for that purpose. An OPL confers on the grantee the exclusive right to conduct petroleum operations in the OPL area and to produce and dispose of the produced hydrocarbons. The duration of an OPL for onshore areas and shallow waters is 5 years, inclusive of any period of renewal, while the duration of an OPL for Deep Offshore and Inland Basins is 10 years. An OML confers on the grantee the exclusive right to search for, win, work, carry away and dispose of all petroleum in, under or throughout the area covered by the OML. An OML confers essentially the same rights as an OPL but the duration of an OML is 20 years and may be renewed for a further period of 20 years. The applicant for an OML must be a holder of an OPL who has discovered crude oil in commercial quantity. Commercial quantity is deemed to have been achieved if the OPL holder can satisfy the authorities that a

production of 10,000 barrels per day of crude oil can be obtained from the OPL area. Unlike what obtains in some other jurisdictions, there is no special prospecting licence or mining lease for Gas. The rights granted to the holder of an OPL or OML apply both to Oil as well as Gas.

4. Types of petroleum arrangements

There are broadly speaking, three types of petroleum arrangements in the Nigerian upstream oil and gas sector:

- Concessions
- Joint Ventures
- Production Sharing Contracts

4.1 Concessions

The earliest form of petroleum arrangement in Nigeria is the Concession arrangement. Under this arrangement an oil company is granted an Oil Prospecting Licence ("OPL") and on discovery of petroleum in commercial quantity, the company is granted an Oil Mining Lease ("OML"). The oil company conducts petroleum operations on its own, subject of course, to regulations by the appropriate authorities and pays royalties and petroleum profit tax ("PPT") to the government. This was the arrangement operating in Nigeria prior to the 1960s and 1970s when the Nigerian Government through the NNPC acquired participating interests in the various concessions thereby converting the concessions to joint ventures. The concession arrangement still operates in relation to oil blocks allocated to indigenous companies. The letter of allocation ("concession letter") typically contains a provision which reserves a right to the government to acquire a participating interest in the block upon conversion to an OML. The concession letter also provides that the indigenous company cannot assign more than 40% of its interest to an IOC (i.e. a company owned wholly or partially owned by an IOC.) With regard to deep offshore blocks, the Deep Water Block allocations to companies (Back-in-rights) Regulations provide among other things that the government can acquire $^5/_6$ of the indigenous party's interest in a Deep Offshore OPL or OML. An exercise by the government of its back-in-rights will convert such concessions to joint ventures. The interest acquired by the federal government will be held and administered by NNPC.

4.2 Joint Ventures

The term "Joint Venture" ("JVs") is used commonly to describe the arrangements between the government and IOCs whereby both parties provide funding for the exploration, development and production of petroleum, and the hydrocarbons produced is shared in proportion to each party's participating interest. This arrangement is typically governed by a Joint Operating Agreement ("JOA") between NNPC and the IOCs, providing for the conduct of petroleum operations. The IOC is typically the operator with a management committee established to supervise operations. The project is funded through cash calls on each of the parties.

This was the petroleum arrangement adopted in the 1960s and the 70s when OPEC countries decided to acquire participating interests in petroleum operations in their countries. These Joint Ventures have come under severe funding pressure due to the increasing cost of funding the JV operations which is put at about USD15.2 billion for year 2008 and NNPC's inability to fund its share of the cost which is put at about USD8.7 billion. NNPC have had to enter into alternative funding arrangements (similar to the PSC arrangements) for the funding of some of the JVs. There are also joint ventures involving only private investors. These joint ventures are usually created when an indigenous company which has obtained a concession from the government farms out an interest to another investor, typically an IOC.

4.3 Production Sharing Contracts

As a result of increasing funding pressure from the JVs, the government in 1993 adopted the production sharing contract as the preferred petroleum arrangement with IOCs. Apart from awards restricted exclusively to indigenous companies, all awards for upstream operations are now made on the PSC basis. Under the PSC arrangement, the OPL and on conversion, the OML is held by NNPC. NNPC then engages the IOC or indigenous private investor as Contractor to conduct petroleum operations on behalf of itself and NNPC. The Contractor is responsible for financing all the costs of the various stages of petroleum operations, i.e. exploration, development and production. If the exploration is successful, the Contractor will be entitled to recover its

costs together with reasonable profit on commencement of commercial production. If the operation is not successful, then the Contractor will bear all the losses. Upon commencement of production, a portion of the available crude oil is allocated to the Contractor towards the reimbursement of operating costs ("Cost Oil") while a portion of the available crude oil ("Royalty Oil") is allocated to NNPC for the payment of the royalties due and other concession rentals to the government. A portion is also allocated to NNPC for the payment of the petroleum profit tax due from the operations ("Tax Oil"). The balance of available crude oil after deducting Cost Oil, Royalty Oil and Tax Oil ("Profit Oil") is then shared between NNPC and the Contractor in the proportion set out in the PSC. The ratio or formula for the sharing of Profit oil vary from one model contract to the other. There are presently about 5 PSC model contracts operating in Nigeria.

The first generation of PSCs were signed in 1993. The second generation were the 2001 model contracts which were signed following the 2000 licensing rounds. Following the exercise by the government of its back-in-rights in a deep offshore block, NNPC also introduced a 2004 model PSC. The fourth is the model PSC for the Nigeria/Sao Tome Joint Development Zone (JDZ). The fifth is the 2005 model PSC which was introduced during the 2005 licensing round. The principles in the PSCs remain largely the same while the sharing formula for Profit Oil and other provisions vary in detail. The government has also developed a draft Gas Development Agreement for upstream gas projects and is currently discussing the draft with stakeholders.

4.4 <u>Downstream Operations</u>

The arrangements described above apply essentially to upstream operations. The Nigerian downstream petroleum sector is not as developed as the upstream, as most of the operations apart from the NLNG and a few other Projects are operated by the government as a monopoly. The Bureau for Public Enterprises ("BPE"), the government agency responsible for privatization has already commenced the process for the privatization of most of the government-owned companies operating in the downstream sector. A proposed Downstream Gas Act to regulate the downstream gas sector has

been developed with assistance from the World Bank and is currently before the National Assembly.

As stated above, the Downstream Gas bill seeks to establish a Gas Regulatory Commission ("GRC") to be charged with the responsibility for the development and regulation of the Downstream Gas sector. The Downstream Gas sector is defined under the bill to *"comprise the activities of transportation, distribution and supply of gas to customers. It includes the extraction of Liquefied Petroleum Gas for commercial purposes and the sale and purchase of gas for industrial purposes such as the production of compressed natural gas, electric power, gas to liquids, liquefied natural gas, methanol and fertilizer, but excludes pipelines for the transportation of natural gas from producing wells to facilities producing Pipeline Specification Gas."* The Bill also stipulates a licensing regime in respect of a number of activities in the Downstream Gas sector as well as the conditions and requirements for the issue of the licences. Some of the activities include:

- The transportation of gas.
- The operation of the transportation network.
- The distribution of gas.
- The supply of gas.
- The trading of gas.
- Construction, conversion and operation of the facilities for the transportation, distribution, supply and trading of gas.

The Bill empowers the GRC to issue licences subject to certain obligations. The obligations include obligations to enter into agreements with third parties for connection to and use of the Transportation Network and Distribution Systems and Obligations on Suppliers to supply customers on request.

Most of the current projects in the downstream sector are either organized as a corporate joint venture such as the NLNG or an unincorporated joint venture such as the NNPC/Mobil NGL Project.

5. **<u>Tenders or direct negotiations</u>**

Nigerian law allows licences to be granted to companies by direct negotiation in what is commonly known as discretionary allocations. This is the basis on which most licences were issued prior to the inauguration of the Obasanjo

administration in 1999. As a result of the abuse of the discretionary allocation system and its commitment to a transparency policy, the government adopted tenders as the preferred mode for the award of licences. This has also resulted in increased revenue to the government. A tender may either be open to all applicants, restricted to only a limited number of shortlisted applicants or in the case of marginal fields restricted only to indigenous companies. Increasingly, the tender approach is also being adopted for downstream projects. The initial awards of licences for the establishment and construction of refineries was made by tender. Even though the general policy is to award licences based on tender, there are still a few instances where licences have been awarded by direct negotiations.

6. **Fiscal regime**

It is not possible to give a detailed analysis of the applicable fiscal regime in this write-up. We will only provide an overview of the fiscal regime for the oil and gas sector. The petroleum profit tax ("PPT") rate for onshore and shallow waters operations is 85%. A special rate of 65.75% applies where a company has not yet commenced the sale or bulk disposal of chargeable oil under a programme of continuous production, and all pre-production capitalized costs have not been fully amortised. The PPT rate for deep offshore operations is 50%. The range of deductible expenses for petroleum operations is quite broad. All expenses, wholly, exclusively and necessarily incurred for the purpose of petroleum operations are deductible for the purpose of calculating adjusted profit under the PPT Act. There are also provisions for generous capital allowances. Capital allowances on qualifying capital expenditure is given at the following rates on a straight line basis for crude oil operations:

First year	-	20%
Second year	-	20%
Third year	-	20%
Fourth year	-	20%
Fifth year	-	19%

In addition to capital allowances, companies that have incurred qualifying capital expenditure are entitled to petroleum tax allowance ("PTA") in the range of 5 - 20% for onshore operations and shallow waters. Companies operating in the Deep Offshore are entitled to an investment tax allowance

("ITA") of 50% for qualifying capital expenditure. Losses can also be carried forward indefinitely.

6.1 **Royalties**

The royalty rate for crude oil production are as follows:

(a) In onshore areas 20%

In areas up to 100m water depth … … … 18.5%

In areas up to 200m water depth … … 16.5%

In areas from 201m to 500m water depth … … 12.00%

In areas from 501m to 800m water depth … 8.00%

In areas from 801m to 1000m water depth [(1)] … 8%

In areas in water depth higher than 1000m … 8%
Inland basins … … 10.0%

(b) Offshore up to water depth of 100 meters -

(i) for production below 5 thousand barrels of oil per day … … 2.5%

(ii) for production between 5 and 10 thousand barrels of oil per day… … 7.5%

(iii) for production between 10 and 15 thousand barrels of oil per day … … 12.5%

(iv) for production above 15 thousand barrels of oil per day … … 18.5%

(c) Offshore between water depth of 100 and 200 meters –

(i) for production below 5 thousand barrels of oil per day … … 1.5%

(ii) for production between 5 and 10 thousand barrels of oil per day … … 3.0%

(iii) for production between 10 and 15 thousand barrels of oil per day… … 5.0%

(iv) for production between 15 and 25 thousand barrels of oil per day … … 10.0%

(v) for production above 25 thousand barrels of oil per day 16.67%

The government has also approved a special royalty rate for marginal fields under the Marginal Fields Operations (Fiscal Regime) Regulations as follows:

Production below 5,000 bpd ... 2.5%

Btw. 5,000 and 10,000 bpd … 7.5%

Btw. 10,000 and 15,000 bpc … 12.5%

Btw. 15,000 and 25,000 bpc … 18.5%

[(1)] The Royalty rates prescribed by the Petroleum (Drilling and Production) (Amendment) Regulation of 2006 for areas from 801 to 1000m water depth and water depth higher than 1000m does not reflect the rates stipulated in the Deep Offshore and Inland Basin Act LFN 2004. The Government and the Oil Industry have been holding discussions on how to reconcile these conflicting rates.

6.2 **Value Added Tax**

VAT is generally applicable to oil and gas operations at a flat rate of 5%. However, exports, including export of hydrocarbons, is exempted from VAT.

6.3 **Other taxes and levies**

There are also other taxes such as education tax and Niger Delta Development Commission ("NDDC") levy at the federal level. There are various other taxes and levies payable to different government agencies in respect of various operational permits and licences as well as at the state and local government levels.

6.4 **Downstream**

Activities in the downstream sectors is subject to Companies Income Tax and not petroleum profits tax. Companies Income Tax is assessed at the rate of 30% of taxable profit. The range of deductible expenses under the Companies Income tax is not as wide as that of the PPT. There are however a wide range of fiscal incentives for gas utilization projects including the following:

- An initial tax holiday period of 3 years which may be renewed for an additional period of two years subject to the satisfactory performance of the business.
- The tax – free period of a Company will start on the day the Company commences production as certified by the Ministry of Energy.
- Accelerated capital allowances after the tax holiday of 90% annual allowance with 10% retention for investment in plant and machinery.
- An Investment Tax Allowance ("ITA") for qualifying capital expenditure of 15% which shall not reduce the value of the asset.
- Allowance of interest on loans for gas project as deductible expenses provided that prior approval is obtained from the Federal Ministry of Finance.
- Exemption of plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations from VAT.

6.5 **Oil Service Companies**

Activities of service companies operating in either the upstream or downstream sector is subject to the Companies Income tax which is assessed at the rate of 30%. Typically, oil service companies operate a dual structure whereby the local component of the work or services is

provided by a local entity which may either be a subsidiary, affiliate or agent of the foreign company, while the offshore component of the work is executed by a non-resident company. As with an upstream company, an oil service company cannot carry on business in Nigeria through a branch. It is required to either incorporate a company in Nigeria for that purpose or establish a joint venture company in Nigeria as (an affiliate) or appoint a local company as its agent to execute the Nigerian component of the work. Non-resident companies are subject to different tax rules from local entities.

Since non-resident companies are not technically within the jurisdiction of Nigerian tax authorities, only the portion of their income which is derived from Nigeria is subject to taxation in Nigeria. They are therefore assessed on a deemed profit basis which translates to an effective tax rate of 6% of turnover. Non-resident companies are deemed to make a profit of 20% of the turnover. The 20% profit is then subject to a 30% tax rate which amounts to 6% of the turnover.

7. <u>Nigerian content and training</u>

The Nigerian government has initiated a policy to increase the Nigerian content of goods and services utilised in the Nigerian oil and gas sector. At present, the level of Nigerian content in the oil and gas industry is less than 20%. The target of the government is to increase Nigerian content to 70% by 2010. The Nigerian content policy focuses on domiciliation rather than indigenization in order to maintain a good balance between national aspirations for local capacity development and participation by International Investors in the Nigerian oil and gas Industry. A Nigerian content Development Bill has been presented to the National Assembly for consideration, but it is yet to be passed into law.

The JVs and the PSCs contain provisions requiring the IOCs to give preference to local goods and services if they are competitive in quality, price and specification. The PSCs also contain a provision that fabrication whenever practicable shall be done in Nigeria and that local offers will enjoy a 10% premium.

Even though the Nigerian Content Development bill is yet to be passed into law, NNPC is in a position to enforce compliance with the Nigerian Content Policy. The JVs and PSCs contain provisions requiring NNPC's approval before any significant contract can be awarded. This gives NNPC the leverage to enforce the Nigerian Content Policy.

In furtherance of the Nigerian Content Policy, NNPC has issued a number of directives to its JV partners and PSC operators with a view to maximizing Nigerian content in their operations. Some of the directives include the following:

- FEED and detailed engineering design for all projects is to be domiciled in Nigeria.

- Project Management Teams and Procurement Centres for all projects in the Nigerian Oil and Gas Industry must be located in Nigeria.

- Fabrication and integration of all fixed (offshore and onshore) platforms weighing up to 10,000 tons are to be carried out in Nigeria. For the fixed platforms (offshore and onshore) greater than 10,000 tons, all items in directive 5, pressure vessels and integration of the topside modules are to be carried out in Nigeria.

- Fabrication of all piles, decks, anchors, buoys, jackets, pipe racks, bridges, flare booms and storage tanks including all galvanizing works for LNG and process plants are to be done in Nigeria.

- All seismic data acquisition projects, all seismic date processing projects, all reservoir management studies and all date management and storage services are to be carried out in Nigeria.

- All waste management, onshore and swamp integrated completions, onshore and swamp well simulations, onshore fluid and mud solids control, onshore measurement while drilling (MWD), logging while drilling (LWD) and directional drilling (DD) activities are to be performed by indigenous or indigenous companies having genuine alliances with multinational companies.

7.1 For the purposes of local content policy, companies have been classified into five categories as follows:

(a) Wholly indigenous company:

This is an indigenous company or contractor which is wholly owned by Nigerians, has recognizable establishment and its own resources in Nigeria appropriate

to the type and level of work which it claims to be able to perform. It must also satisfy the following requirements:

- Its equipment must be 100% owned by the company.
- At least 80% of Directors must be Nigerian Nationals.
- A minimum of 8% of top management must be Nigerians.
- And a minimum of 90% of senior field personnel must be Nigerians.

(b) Majority Nigerian shareholding company:

This is a company registered in Nigeria with majority Nigerian shareholding that has the establishment, expertise, assets and financial capability appropriate to the type and level of work it claims to be able to perform.

(c) Alliance or joint venture:

This describes an alliance between a Nigerian Company (category "A" and a Foreign Company (category "E").

(d) Majority foreign shareholding company:

This is a company registered in Nigeria with majority Nigerian shareholding that has the establishment, expertise, assets and financial capability appropriate to the type and level of work it claims to be able to perform.

(e) Foreign company:

A Foreign Company, whether registered in Nigeria or not, with no Nigerian shareholding and whose assets belong to the offshore company.

7.2 NNPC usually gives preference to Category A Companies over Category B Companies and preference to a Category B Company over a Category C and

7.3 In that same order where the quality and the price is about the same. In general, projects

requiring low to medium level technology are expected to be executed by Category A and B companies while projects requiring high technology are to be executed by Categories C, D and E where Categories A and B do not have the capacity to execute such projects.

There is also a general requirement for both the IOCs and the oil service companies to train Nigerians to fill specialised positions in their companies. IOCs and oil service companies are allowed, subject to obtaining the necessary expatriate quota, to employ expatriates to fill key positions in their organisations. They are however required to train Nigerians over a period of time to take over from the expatriates.

With regard to IOCs, there is a specific requirement that an OML holder shall ensure that within ten years from the grant of an OML, the number of citizens of Nigeria employed by the company in connection with the lease in managerial, professional and supervisory grades (or any corresponding grades designated by the company in a manner approved by the Minister) shall reach at least 75% of the total number of persons employed by him in those grades and the number of citizens of Nigeria in any one such grade shall not be less than 60% of the total.

Expatriate Quota (i.e. Work Permits for expatriates) is issued by the Federal Ministry of Internal Affairs and the Nigerian Investment Promotion Council ("NIPC"). These institutions usually request the DPR in the case of applications relating to the oil and gas industry to confirm that the type of positions and the number of positions required are appropriate for the particular company.

8. **<u>Investor protection</u>**

The Nigerian Investment Promotion Commission Act ("NIPC Act") provides several protections for foreign investors in Nigeria. Section 24 of the NIPC Act provides that a foreign investor in an enterprise to which the Act applies shall be guaranteed unconditional transferability of funds through an authorized dealer, in freely convertible currency, of:

- dividends or profit (net of taxes) attributable to the investment,

- payments in respect of loan servicing where a foreign loan has been obtained, and
- remittance of proceeds (net of all taxes) and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment.

The NIPC Act also provides assurances and protection against expropriation. Section 25 of the NIPC Act provides that:

(a) no enterprise shall be nationalized or expropriated by any government of the federation, and

(b) no person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other person.

The NIPC Act further provides that where there is a dispute between an investor and the government, the dispute can be resolved by any means agreed between the parties, or as provided in any applicable bilateral or multilateral agreement. If the investor and the federal government do not agree on the method of dispute settlement, the dispute will be resolved in accordance with the rules of the International Centre for Settlement of Investment Disputes ("ICSID"). It should be noted that Nigeria is a signatory to the convention establishing the ICSID ("ICSID Convention"). Nigeria has also signed bilateral investment protection treaties with several countries which provides additional protection to the nationals of and companies with headquarters in those countries.

May 2008.

FURTHER INFORMATION

If you would like further information on investing in the Nigerian oil and gas industry, please contact any of the following at the firm:

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