MONEDA INTELLIGENCE

# Policy Review

Nigeria's President signed three executive orders to stimulate the oil and gas industry.

MARCH 2024

# 1 Fiscal Incentives for Non-Associated Gas (NAG), Midstream and Deepwater Developments

**"Gas tax credits (GTC) shall apply to non-associated gas (NAG) greenfield developments** in onshore and shallow water locations."

### What's new?

The Petroleum Industry Act (PIA) specifies tax incentives for downstream, midstream and large-scale gas utilization industries. PIA also includes a **5-year tax-free period** for gas pipeline projects.

This new directive goes further to include greenfield(1), upstream developments for non-associated gas (NAG) as eligible for tax incentives. This was done through the creation of **a 10-year Gas Tax Credits (GTC) system** which is a function of the produced gas quality called **hydrocarbon liquid content (HCL)**. For HCL content up to 30 barrels per million cubic feet, GTC is either US$1.00 per thousand cubic feet or 30% of the fiscal gas price, whichever is lower; if HCL content exceeds 30 barrels but stays under 100 barrels per million cubic feet, GTC is either US$0.50 per thousand cubic feet or 30% of the fiscal gas price, whichever is lower.

### Expected impact

Of Nigeria's **208 trillion cubic feet** proven natural gas reserves, about **51%** is NAG but NAG contributes less than **34%** to the country's production. This gap is largely as a result of the unattractiveness of non-associated gas development projects with respect to economics. Simulating with a typical greenfield NAG development project as a case study, we found that the successful implementation of this directive will improve the project profitability by at least **48%**.

In effect, this will make non-associated gas development more attractive to investors possibly close the gap between potential and actual revenue for the country

"**A 25% gas utilization investment allowance shall apply on qualifying expenditure** on plant and equipment incurred by a gas utilization company.

### What's new?

302 (3) (b) (ii) of PIA says capital investment in the midstream petroleum operations consolidated with upstream petroleum operations cannot be represented for capital allowances(2) when 'fiscalizing' the income from midstream petroleum operations.

This new directive removes the caveat placed by section 302 (3)(b)(ii) on gas midstream projects. All gas midstream projects are now eligible for capital allowance and is **25%** of the actual expenditure incurred.

(1) A greenfield is an oil or gas field with no existing production facilities

(2) Capital allowance is a deduction a company can claim against its taxes due to the level of investment it has made.

### Expected impact

We have previously seen the introduction of capital allowance in the oil industry, through previous legislations, encourage the deployment of more and more capital into projects. We believe the same effect will be had by this directive on gas projects. The specific use of the term 'gas utilization' may also include gas-fired power plants which would boost the generation capacity of the country as well as other gas utilization projects including petrochemicals and fertilizers, which have been somewhat neglected over the last couple of years. This shows that the directive could impact the country in more ways than one.

On the flip side, the directive also vaguely makes use of the term 'qualifying expenditure' without highlighting the terms for qualification which could also draw some level of skepticism from investors.

## The implementation of commercial enablers for new brownfield and greenfield investments in deep water locations

### What's new?

While the executive order was vague on what constitutes a **'commercial enabler'**, it highlights **internal rate of return (IRR)** as the measure of effectiveness or efficiency of the commercial enablers. Brownfield and greenfield investments in deep water assets, which are typically very capital intensive, are now expected to have 'competitive' IRR. In cases where they do not, NNPC and the Ministry of Finance Incorporated are required to introduce any commercial facilitator to improve the IRR.

(3) A brownfield is an oil or gas field with existing production facilities

## 2 Reduction of Petroleum Sector Contracting Costs and Timelines.

**Financial Approval Threshold:** NNPC and NCDMB's approval would not be required for upstream contracts with a value less than $10,000,000 or its equivalent in Naira.

**What's new?**

This directive looks to override a provision in the Nigerian Content Act (section 17) which mandates operators to submit all contracts, subcontracts and purchase orders exceeding $1,000,000 to the Nigerian Content Development and Monitoring Board for approval. This threshold has now been increased to $10,000,000.

**Expected impact**

The increase of the financial approval threshold will directly impact contracting timelines but could have a negative impact on local content development. The approval process has previously added up to about **36 months** to the contracting timelines each of which comes as a cost to the operators.

Conversely, not subjecting contracts less than $10,000,000 to proper regulatory scrutiny puts more projects at risk of violating local content requirements/quotas.

**The Nigerian Upstream Investment Management Services Limited ("NUIMS") and Nigerian Content Development and Monitoring Board ("NCDMB")** are required to simplify contract approval processes.

**What's new?**

The Nigerian Content Act mandates NCDMB to provide a preliminary assessment of the submitted documentation within **10 days** and an approval decision within **30 days** after the satisfaction of the previous response by the operators. At best, approval decision timeline was **40 days** and the Act was mute on what happens if no response is delivered within those timelines.

The new directive mandates a single line of approval (thus, removing the preliminary assessment of documentation), reduces the approval decision timeline to **15 days** and highlights lack of response within that timeline as an approval.

**Expected impact**

We strongly believe this will also play a key role in reducing contracting timelines. In addition, it could also improve the efficiency of NCDMB and cause them to act swiftly since operators will be quick to invoke the "No response" clause.

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# 3 Local Content Compliance Requirements, 2024 (the "Local Content Directive")

**The NCDMB shall not approve any Nigerian Content Plan (NCP)** that contains contractors or subcontractors who lack technical capabilities.

**What's new?**

Previously, NCDMB is only mandated by law to ensure the presence of Nigerians or Nigerian entities in the Nigerian Content Plan (NCP).

This directive takes an extra step to mandate NCDMB to also verify the technical capacity of such entities.

**Expected impact**

While the intent of this directive is to help reduce project delays which could accrue from incompetence, it also exposes projects to a deficiency of Nigerian content since it is mute on a resolution in the event of lack of in-country capacity. It could be construed that such cases are to be resolved by contracting foreign entities and this will defeat the aim of skill/technology transfer.

**Capacity Assessment:** The NCDMB, in consultation with industry stakeholders, is expected to develop guidelines for assessing and verifying the capacity of companies seeking contracts for specified activities

**What's new?**

This is in line with section 70(b) of the Nigerian Content Act which empowers the Board to provide guidelines, specifications and measurements of Nigerian content indicators.

This directive, however, mandates the Board to provide the guidelines for verifying the competence and technical capacity of companies for specified activities.

**Expected impact**

If implemented correctly, this directive could change the approach from being reactive to a more proactive one. The published guidelines will enable [indigenous] contractors assess themselves prior to bidding for a contract, using NCDMB's template. This will provide them with a near-accurate depiction of their position capacity-wise.

This will not only reduce contracting timelines but will also improve local content since companies can now take proactive measures to boost their capacity prior to bidding and/or contract award. It would also provide a scoring template for NCDMB to quickly make an approval decision when reviewing contract and contract awards.

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Section (70) (b) of the Nigerian Content Act says implement the regulations made by the Minister in relation to any aspect of this Act

## In Summary...

The executive orders signed by President Tinubu to effect change in the oil and gas industry were drafted through close collaboration with stakeholders in the industry. Through this collaboration, the painpoints of these stakeholders were taken into consideration in the improvement of the current regulations. While we believe these improvements will increase investors' profitability (consequently, confidence), particularly in the gas space, we also believe in some cases, it could come at the cost of local content development.

It appears these regulations tilts towards the investors in the event of a clash between profitability and local content. Albeit vaguely, it, however, mandates NCDMB to carefully monitor impacts on local content and ensure there is a reasonable balance between profitability and social impact. In effect, while the directives are steps in the right direction, it would take the concerted efforts of all stakeholders to ensure that it has its desired effect on investment with as minimal impact on local content as possible.

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