

Overview of the Nigerian Content Development and Enforcement Bill

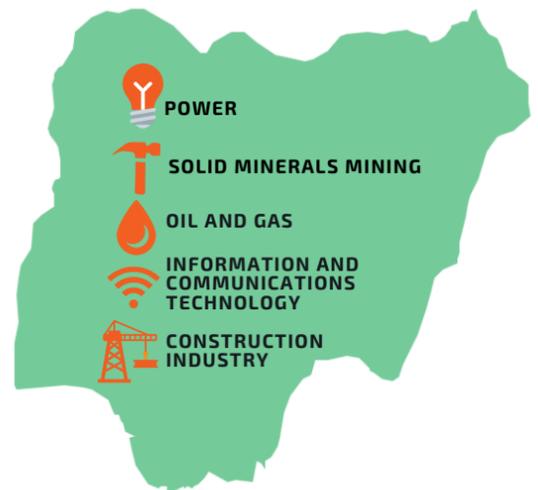


The Nigerian Content Development and Enforcement Bill ["The Bill"] seeks to promote indigenous participation in key sectors of the economy [Information and Communications Technology [ICT], Mining, Construction, Oil and Gas and Power.

When enacted, the Bill will repeal the Nigerian Oil and Gas Industry Content Development Act of 2010 ['The Local Content Act 2010'] whilst the new law will broaden reach and scope of Nigeria's local content regulation beyond the oil and gas sector.

The Bill also provides a framework for governance, monitoring and enforcement across all the selected sectors.

The 'NCDE' Bill



THE OLD (The Act) v THE NEW (The Bill)

BROADER SCOPE

- The Nigerian Content Development and Enforcement Bill unlike the Local Content Act 2010 is all encompassing as it applies to five core sectors which include: Oil and Gas, the ICT, Power, Construction and Solid Minerals/Mining.
- Unlike the Local Content Act, the Bill establishes an Enforcement Board and a Governing Council for each of the sectors. The Governing Councils will work with the Minister in charge of each sector to effect the implementation of the Bill.
- The Bill further provides that Contracts with total budget exceeding USD\$1 million in all the sectors shall have a Labour Clause mandating the use of a minimum percentage of Nigerian labour in specific cadres as may from time to time be prescribed by the Board.

IMPORTATION OF FOREIGN SKILLS

- The Bill makes it unlawful to issue visas to a foreigner seeking to work in Nigeria where the skill being imported is readily available in Nigeria. (Section 226(1))

DISPUTE RESOLUTION

- Unlike the Act, the Bill prescribes that any dispute arising from the application or enforcement of the Bill shall first be settled amicably between the parties; failing which it shall then be referred to the Chief Justice of the Federal High Court who shall constitute an arbitral panel of not less than three Judges of the Federal High Court one of which shall be appointed as Chairman of the Panel to rule on the dispute. (Section 227)

NIGERIAN CONTENT FUND

- The Bill imposes an additional two percent (2%) charge on every unit of power sold by indigenous power distribution companies who are required to aggregate and pay same into the National Development Power Fund. This fund is to be administered by the Nigerian Content Development Board and the Nigerian Electricity Regulatory Board to promote Nigerian Content in the Power Sector. (Section 137)
- The Bill also imposes an additional five percent (5%) development charge on any sale made by any Operator in the Industry who shall aggregate same and pay into a Fund to be known as National Solid Mineral Development Fund to be administered by the Board to promote Nigerian Content in the Solid Minerals sector especially in respect of the execution of projects which will enhance the procurement of equipment and technology for indigenous and independent exploitation of solid minerals.(Section 208)



OIL AND GAS SECTOR

The Bill establishes the Nigerian Oil and Gas Content Development and Enforcement Board to approve, evaluate and receive the Nigerian content plan and reports submitted by Operators in the Oil and Gas Industry. It also lays down procedures to guide the implementation of the Bill, establishes plans and programmes for training of local skills. The Bill also requires Operators to maintain offices in all communities where they have significant operations. In conjunction with the Minister of Oil and Gas the Board is empowered to make regulations setting out targets for the full utilization of indigenous companies as Operators in the sector. (Sections 3, 4, 5, 7, 34 and 48)

The Bill provides that Indigenous Operators shall be given first consideration in the award of oil blocks, oil licences and contracts in the oil and gas industry. (Section 11). The Bill also mandates the submission of a Nigerian Content Plan in the award of any contracts by or to an Operator. It also provides for the issuance of a Certificate of Authorization by the Board where the plan complies with the provisions of the Bill. (Section 14 and 15).The Nigerian content plan is required to depict how the Operators intend to give first consideration to Nigerian goods and services in the course of their operations.

The Bill mandates the Operators to submit to the Board 30days prior to the first day of each quarter a list of all contracts, subcontracts and purchase orders exceeding \$1,000,000 (Section 25).

The Bill also mandates all Operators to submit to the Board a succession plan for positions not held by Nigerians. Nigerians are to understudy incumbent expatriates for a maximum period of five years after which such positions will be 'Nigerianised' (Section 38).

The Bill mandates every non-Nigerian employed or to be employed in the oil and gas sector to obtain a work permit subject to expatriate quota approval by the Board.(Section 40)

The Bill stipulates that contracts with total budget exceeding \$1 million shall have a Labour Clause mandating the use of a minimum percentage of Nigerian labour in specific cadres as may be stipulated by the Board. (Section 41)

The Bill empowers the Minister of Oil and Gas to make regulations with requirements and targets for the growth of research and development in the Nigerian oil and gas sector. (Section 43)

The Bill mandates International or multinational companies in the oil and gas industry working through their Nigerian subsidiaries to demonstrate that a minimum of 50% of equipment deployed for execution of work are owned by the local entity. (Section 48(2))

The Bill also requires Operators to report to the Board on the implementation of plans and programmes promoting transfer of technology/technical know how to its Nigerian personnel (Section 50).

The Bill empowers the Board and the sectoral Minister to may make regulations requiring Operators to invest in the production, manufacturing or provision of services or goods otherwise imported into Nigeria. (Section 54)



CONSTRUCTION SECTOR

The Bill provides that licenses or grant of right to operate in the Construction industry shall be reserved exclusively for indigenous companies that demonstrate capacity to execute works required to be done in the sector. (Section 215)

Any Operator carrying out business in Nigeria must ensure that Indigenous companies are given first consideration in the award of contracts for projects relating to the construction of houses, roads among others.



POWER SECTOR

The Bill establishes the body known as Nigerian Content Development and Enforcement on Power Agency. (Section 141)

The Bill provides that the issuance of licences or permit be exclusive to indigenous companies that demonstrate capacity to execute work in the Power sector. (Section 124)

The Bill also provides that all contracts or projects in the power sector whose total budget exceeds \$1,000,000 shall contain a Labour clause mandating the use of a minimum percentage of Nigerian labour in specific cadres. (Section 134(3))

The Bill provides that where there is inadequate local capacity and or materials for any power sector contract, the Board may grant an approval for a waiver for the work to be undertaken by a foreign entity provided that such approval shall not be valid for more than three years. (Section 135).

The Bill imposes an additional two percent (2%) charge on every unit of power sold by indigenous power distribution companies who are required to aggregate and pay same into the National Development Power Fund. This fund is to be administered by the Nigerian Content Development Board and the Nigerian Electricity Regulatory Board to promote Nigerian Content in the Power Sector. (Section 137)

The Bill stipulates that the penalty for the contravention of any provisions of the Act by an individual shall be a minimum of 3 years imprisonment and a fine of Ten Million Naira. In the case of a corporate body, all the Directors and officers involved in the infraction shall be sentenced to a minimum of three years imprisonment whilst the Company will pay a fine of one hundred million naira. (Section 14o)



I.C.T SECTOR

The Bill establishes the National Office for Nigerian Content on Information and Communications Technology which is empowered to appraise, evaluate and approve the Nigerian content plans and reports submitted to the Office in respect of matters in the Information and communications technology industry in Nigeria, promote mutually beneficial Private Public Partnership by direct collaboration in the manufacturing and production of such ventures between foreign manufacturers and indigenous engineering facilities and to establish a Centre for Acquisition of Technology in the oil and gas producing areas of the Country to promote technology utilization, strengthening of technology management capability and information system. (Section 97 and 99)

The Second Schedule of the Bill makes provisions that all Federal MDAs, Federal Government Owned Companies (fully or partially owned), Federal Institutions/Public Corporation, Private Sector Institutions, Business Enterprises and individuals carrying out activity in any area in ICT must comply with. Its provisions will also form part of existing or future requirements for periodic accreditation and renewal of licence of ICT Companies, Original Equipment Manufacturers (OEM), Original Design Manufacturers (ODM), NITDA registered entities and NCC licensees. Its provisions shall also apply in the grant of approvals or permits for the establishment of new manufacturing or assembly plants, software houses, ICT parks and allied facilities.



SOLID MINERALS & MINING SECTOR

The Bill establishes the body known as Department of Nigerian Content Development and Enforcement on Solid Minerals (Section 210).

The Bill grants exclusive right to operate in Solid Minerals and Mining Industry to indigenous companies that demonstrate capacity to execute any works in the sector. (Section 168)

The Bill provides for the issuance of a Certificate of Authorization by the Board where the plan complies with the provisions of the Bill. The Nigerian content plan is required to depict how the Operators intend to give first consideration to Nigerian goods and services in the course of their operations. (Section 171, 173-178).

The Bill also mandates that award of contracts in the Solid Minerals sector shall not be based solely on the principle of "lowest bidder" where to do so would favour a foreign entity. An Indigenous Company with capacity to execute the project must be given consideration in so far as its bid price is not more than the lowest bid by 15 percent. (Section 179)

The Bill requires all Operators to submit to The Board within thirty days from the end of each quarter a list of all contracts, subcontracts and purchase orders exceeding USD\$1,000,000 (or such other limit prescribed by the Board) awarded by it in the previous quarter. (Section 187)

The Bill mandates that all operator or project promoters in the sector shall submit a Nigerian Content Plan which shall contain an Employment and Training Plan. (Section 192).

The Bill mandates all Operators in the sector to receive the approval of the Board before applying to the Ministry of Internal Affairs for expatriate quota. (Section 196).

The Bill provides that all contracts or projects in the Solid Minerals sector shall contain a labour clause mandating the use of a minimum percentage of Nigerian labour in specific cadres. (Section 197)

The Bill requires all Operators in the sector to map out a plan for effective transfer of technology to Nigerian individuals and companies. (Section 205)

The Bill also imposes an additional five percent (5%) development charge on any sale made by any Operator in the Industry who shall aggregate same and pay into a Fund to be known as National Solid Mineral Development Fund to be administered by the Board to promote Nigerian Content in the Solid Minerals sector especially in respect of the execution of projects which will enhance the procurement of equipment and technology for indigenous and independent exploitation of solid minerals.(Section 208)

GENERAL PROVISIONS ON PROCUREMENT OF INDIGENOUS SERVICES AND DISPUTE RESOLUTION

The Bill requires every Operator, project promoters, alliance partners and Nigerian indigenous Operators to patronize insurance and legal services in Nigeria for execution of their operations. (Section 220-222)

The Bill requires Operators engaged in business in any of the selected sectors to retain the services of the Nigerian Financial institutions or organisations except the transaction relates to securing loan at a lower rate compared to what is obtainable in the financial sector in Nigeria. (Section 223)

The Bill also provides that every ministry, department or agency seeking to award contracts to foreign companies shall ensure that the Nigerian counterpart staff are engaged from beginning to end of the project. The Bill also makes it unlawful to issue visas to a foreigner seeking to work in Nigeria where the skill being imported is readily available in Nigeria(Section 226)

The Bill prescribes that any dispute arising from the application or enforcement of the Bill shall first be settled amicably between the parties; failing which it shall then be referred to the Chief Justice of the Federal High Court who shall constitute an arbitral panel of not less than three Judges of the Federal High Court one of which shall be appointed as Chairman of the Panel to rule on the dispute. (Section 227)