Revitalizing Investments in the Nigerian Oil and Gas Industry: The Presidential Order and Directives

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On the 28th of February 2024, the President of the Federal Republic of Nigeria signed a Presidential Order and 2 Directives (the "Presidential Directives") aimed at reattracting investments into the Nigerian Oil and Gas Industry which has been on the decline in recent years. These Presidential Directives aim to tackle the issue of low investments, by:

a. Providing fiscal incentives to stimulate investments,
b. Aligning local content requirements with investment demands, and
c. Streamlining approval timelines in contracting processes.

This article highlights key provisions of the Presidential Directives.

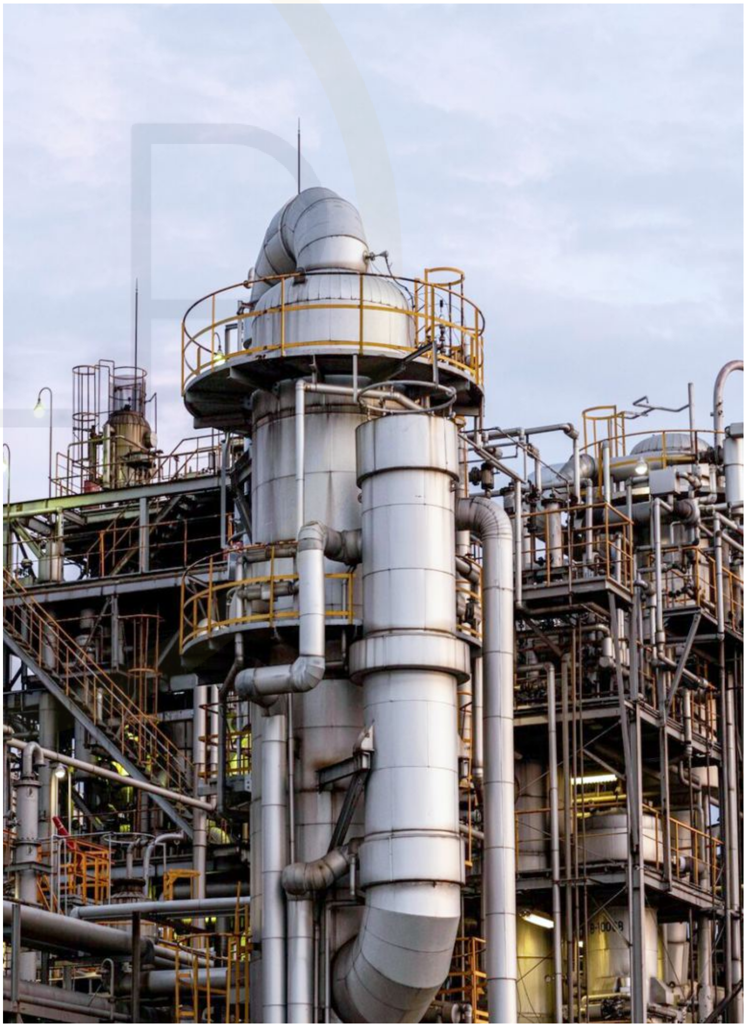
1. The Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024.

This Order introduces fiscal incentives primarily aimed at enhancing investments in both upstream and midstream gas development in Nigeria through tax credits and investment allowance.

a. Tax Credit for Non-Associated Gas (NAG) Greenfield Development Projects:

Depending on the date of first gas production, the relevant tax credit for each NAG greenfield project (''Project") varies.

For onshore and shallow water Projects with first gas production before or on the 1st of January 2029, the tax credit is applicable as follows:[1]



[1]Paragraph 1(2) of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024

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a. Where the Hydrocarbon Liquids (HCL) content, does not exceed 30 barrels per million Standard Cubic Feet (SCF), the gas tax credit will be calculated as the lower value between either the rate of US$1.00 per thousand cubic feet or 30% of the fiscal gas price;

b. Where the HCL content exceeds 30 barrels per million SCF but does not exceed 100 barrels per million SCF the gas tax credit will be calculated as the lower value between either the rate of US$0.50 per thousand cubic feet or 30% of the fiscal gas price.

Any other Project whose date of first commercial production is after the 1st of January, 2029 shall be entitled to gas tax allowance at a rate of US$0.50 per thousand SCF or 30% of the fiscal gas price, whichever is lower, provided that the HCL content does not exceed 100 barrels per million SCF.[2]

Notwithstanding the applicable rate or date of first commercial production:

(i). the relevant gas tax credit each company is entitled to in each year shall not exceed its Companies Income Tax (CIT) payable for that year and shall not be combined with the Associated Gas Framework Agreement (AGFA) incentives for the same greenfield NAG project.[3]

(ii). Surplus gas tax credit in any year can only be carried forward for a maximum of 3 years.[4]

(iii). Gas tax credit granted pursuant to the Order shall apply for a maximum of 10 years after which they become Gas Tax allowance claimable according to the rates applicable to Projects with first gas production before or on the 1st of January 2029.[5]

b. Midstream Capital and Gas Utilization Investment Allowance

The Order also provides for the Midstream Capital and Gas Utilization Investment Allowance incentive, which grants a 25% investment allowance to gas companies in respect of actual expenditure incurred in the acquisition of plants and equipment for new and subsisting midstream gas projects as of the effective date of this Order.[6] The investment allowance is to be available to gas companies upon the expiration of the tax-free period granted pursuant to the Companies Income Tax Act.[7]

[2] Paragraph 1(3) of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[3] Paragraph 1(6) of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[4] Paragraph 2 of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[5] Paragraph 1(5) of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[6] Paragraph 5 of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[7] Paragraph 4(3) of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024

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Furthermore, the gas utilization investment allowance is to be granted as an allowable deduction from the assessable profits of an eligible company from the year of purchase of the relevant plant and equipment and is not to be considered in determining the residue of qualifying expenditure incurred on such plant and equipment.[8]

However, the gas utilization investment allowance will not apply on any qualifying expenditure incurred on plant and equipment within a period of five years from the date on which the expenditure was incurred where:[9]

(i). the plant or equipment is sold or transferred to the entity purchasing it for a different or unrelated purpose or for scrap;

(ii). the plant or equipment was appropriated representing expenditure for a purpose other than for gas utilization; and

(iii). the expenditure incurred for the plant and equipment occurs under a fictitious transaction or other than for a bonafide business transaction.

A plant or equipment on which a gas utilization allowance has been claimed shall not be eligible for gas utilization investment allowance by the acquiring entity or any subsequent purchaser.[10]

The Order directs the Federal Inland Revenue Service (FIRS) in conjunction with the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) to work towards the implementation of the investment allowance within 15 days of the Order.[11]

c. Incentives for Deep Water Oil and Gas Projects

The Order requires the Minister of Finance to introduce fiscal incentives for deep water oil and gas projects towards attaining a competitive Internal Rate of Return.[12] In the interim, the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated are tasked with taking steps towards causing the NNPCL to consider and implement commercial enablers for new brownfield and greenfield investments in the deep water.[13]

[8]Paragraph 4(2) of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[9]Paragraph 7 of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[10]Paragraph 8(2) of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[11]Paragraph 6 of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[12]Paragraph 10 of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024
[13]Paragraph 11 of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024

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2. Presidential Directive on Local Content Compliance Requirements, 2024

Pursuant to the powers of the Nigerian Content Development and Monitoring Board (NCDMB) to implement provisions of the Nigerian Oil and Gas Industry Content Development Act, 2010, the Presidential Directives further directs the NCDMB to approve only National Content Plans (NCPs) which consist of contractors that meet the legal definition of Nigerian content and demonstrate substantial capacity to independently execute projects in Nigeria.[14] Approvals of NCPs consisting of intermediary entities lacking essential capacity to execute the project amounts to violation of local content requirements.[15]

The NCDMB is directed to work out the modalities of this Directive[16] and in collaboration with industry stakeholders, develop guidelines for assessing and verifying the capacity of companies seeking contracts for specified activities.[17]

3. Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines 2024

With a view to shorten the procedure of approval for contracting within the industry, the Presidential Directive was issued and its provisions were drafted to align with the Business Facilitation Act (Miscellaneous Provisions) 2022 and enhance the ease of doing business within the petroleum sector as follows:

a. The Ministry of Finance Incorporated (MOFI) and Ministry of Petroleum Incorporated (MOPI) as shareholders of the NNPCL are mandated to cause the NNPCL to revise the minimum thresholds amount for approval of contracts in NNPCL's PSCs and JOAs to US$10,000,000 or the Naira equivalent determined at the Nigerian Autonomous Foreign Exchange (NAFEX) Financial Markets Dealers Quotation (FMDQ) exchange rate, or any other platform determined by the Central Bank of Nigeria. This threshold is to be subject to periodic review in accordance with the rate of consumer inflation determined by the National Bureau of Statistics on an annual basis.[18]
b. NNPCL, the Nigerian Upstream Investment Management Services Limited ("NUIMS") and the Nigerian Content Development and Monitoring Board (NCDMB) are required to collaborate with industry stakeholders towards streamlining the contract approval process to a single-

[14] Paragraph 1(3) of the Presidential Directive on Local Content Compliance Requirements, 2024
[15] Paragraph 1(4) of the Presidential Directive on Local Content Compliance Requirements, 2024
[16] Paragraph 2(2) of the Presidential Directive on Local Content Compliance Requirements, 2024
[17] Paragraph 1(5) of the Presidential Directive on Local Content Compliance Requirements, 2024
[18] Paragraph 1 of the Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines 2024

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level approval at each contract stage.[19]

c. The decision of NNPCL and NUIMS on applications for approval for contracts or procurement must be communicated to an applicant within 15 days from the submission of the application otherwise such approval shall be deemed granted.[20]
d. Nigerian Content Plans (NCPs) submitted to the NCDMB must be reviewed with a decision communicated within 10 days otherwise, such NCP shall be deemed approved.[21]
e. Regarding application for Expatriate quota where all supporting documents are in place, the NCDMB must direct such applications to the Ministry of Interior or any other relevant MDA within 10 working days.[22]

Where no timeline has been provided for the review and approval of any application to the NCDMB under the Nigerian Oil and Gas Industry Content Development Act, the NCDMB is to communicate its decision on such application within 15 days of receipt failure of which approval shall be deemed granted.[23]

Finally, the Presidential Directive revises the duration of third-party contracts awarded pursuant to a PSC or JOA from 3 years to 5 years with an option to renew for a further term of 2 years.[24]

The MOFI, MOPI and NCDMB are expected to comply with this Directive within 30 days and work out the modalities for its implementation.[25]

Conclusion

While these Directives hold significant potential to attract investments into the Nigerian Oil and Gas Industry, their effectiveness hinges largely on the political will of regulatory authorities. It is noteworthy that the FIRS has issued two guidelines further to the Presidential Order, namely, (i) the Guideline on the applicability of the Midstream Capital and Gas Utilization Investment Allowance;[26] and, (ii) the Guideline on the applicability of the Gas Tax Credits and Allowances for NAG Greenfield Developments.[27] Stakeholders are hereby urged to actively engage and collaborate with the regulators towards attaining the objectives of the Presidential Order and Directives.

[19] Paragraph 2(1) of the Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines 2024
[20] Paragraph 2(2), (3) and (4) of the Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines 2024
[21] Paragraph 2(8) of the Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines 2024
[22] Paragraph 2(13) of the Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines 2024
[23] Paragraph 2(14) of the Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines 2024
[24] Paragraph 3 of the Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines 2024
[25] Paragraph 4 of the Presidential Directive on Reduction of Petroleum Sector Contracting Costs and Timelines 2024
[26] https://www.firs.gov.ng/wp-content/uploads/2024/04/GUIDELINE-ON-THE-APPLICABILITY-OF-THE-MIDSTREAM-CAPITAL-AND-GAS-UTILIZATION-INVESTMENT-ALLOWANCE-1-00000002.pdf (Last accessed on May 16, 2024)
[27] https://www.firs.gov.ng/wp-content/uploads/2024/04/GUIDELINE-ON-THE-APPLICABILITY-OF-THE-GAS-TAX-CREDITS-AND-ALLOWANCES-FOR-NON-ASSOCIATED-GAS-GREENFIELD-DEVELOPMENT2.pdf (Last accessed on May 16, 2024)

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