Overview of Deep Offshore and Inland Basin Production Sharing Contract (PSC) Amendment Act 2019

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Introduction

The President of the Federal Republic of Nigeria recently assented to the Deep Offshore and Inland Basin Production Sharing Contract (PSC) Amendment Bill ("the Amendment Act"). The Amendment Act aims to significantly increase the revenue earnings derived by Nigeria from its offshore oil wells.

The Amendment Act amends the Deep Offshore and Inland Basin Production Sharing Contracts Act ("the Act"). The purpose of the Act is to give effect to fiscal incentives given to Oil and Gas companies operating in the Deep Offshore and Inland Basin areas under production sharing contracts between the Nigerian National Petroleum Corporation (NNPC) or other companies holding oil prospecting licences (OPL) or oil mining leases (OML) and various petroleum exploration and production companies.

This article highlights the minor changes made to the Act by the Amendment Act.

Amendments

Section 5 – Royalty payable in respect of deep offshore production sharing contracts

Previously, royalty payments were calculated solely on a graduated basis according to water depth; that is, the percentage payable as royalty was fixed according to different water depths as stated in the Act. Under the Amendment Act, the royalty rates applicable are dependent on the type of field in which the royalty payments are to be calculated with different rates applicable to deep offshore fields and frontier/inland basin fields. Thus, the calculation of the royalty payable in respect of deep offshore PSCs is to be a percentage of the chargeable volume of the crude oil and condensates produced from the relevant area in the relevant period as follows:

- In deep offshore: greater than 200m water depth – 10%; and
- In frontier/inland basin – 7.5%.

This method of calculation allows the royalties payable to reflect the periodic changes in the price of crude oil, condensates and natural gas. To this extent, the royalty rate is determined as follows according to the price of crude oil and condensates as follows:

- US$20 per barrel and under ……………………… 0%
- Above US$20 and up to US$60 per barrel…………2.5%
- Above US$60 and up to US$100 per barrel……….4%
- Above US$100 and up to US$150 per barrel……….8%
- Above US$150 per barrel…………………..……….10%

In line with the above, the previous section of the Act which required periodic review of royalty rates where the price of crude oil exceeded US$20 (Twenty United States Dollars) per barrel is obsolete and has been deleted.

Omission of Royalty Rates for Natural Gas

It is noteworthy that although the Amendment Act states that "royalty by price is to be adopted to allow for royalty reflexivity based on changing prices of crude oil, condensates and natural gas" when it lists royalty rates according to price, it fails to mention natural gas. Therefore, it is left to be seen if the rates in the Amendment Act will extend to royalties payable in respect of natural gas or whether the extant rates in the Petroleum (Drilling and Production) Regulations ("the Regulations") will subsist.

In the absence of any specific mention of rates for natural gas under the Amendment Act, it appears that the rates payable for natural gas shall be as stated under the Regulations as follows; seven per cent (7%) for onshore areas and five per cent (5%) for offshore areas.

New Section 17

PSCs are now to be reviewed every eight (8) years. Previously, the Act did not mandate a specific timeframe for review of PSCs and PSCs were reviewed sporadically.

New Section 18

This section introduces a criminal penalty for failure to comply with the provisions of the Act. The penalty is a fine of ₦500,000,000 (Five Hundred Million Naira) or imprisonment of five (5) years or both.

There was previously no criminal penalty for non-compliance.

Conclusion

Upon review, it is obvious that the general intention behind the amendment to the Act is to plug leaking revenue holes and increase government earnings.

Conversely, this may decrease profits earned by Oil and Gas albeit not to a significant extent as to, by itself, disincentivise investment in oil and gas.

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