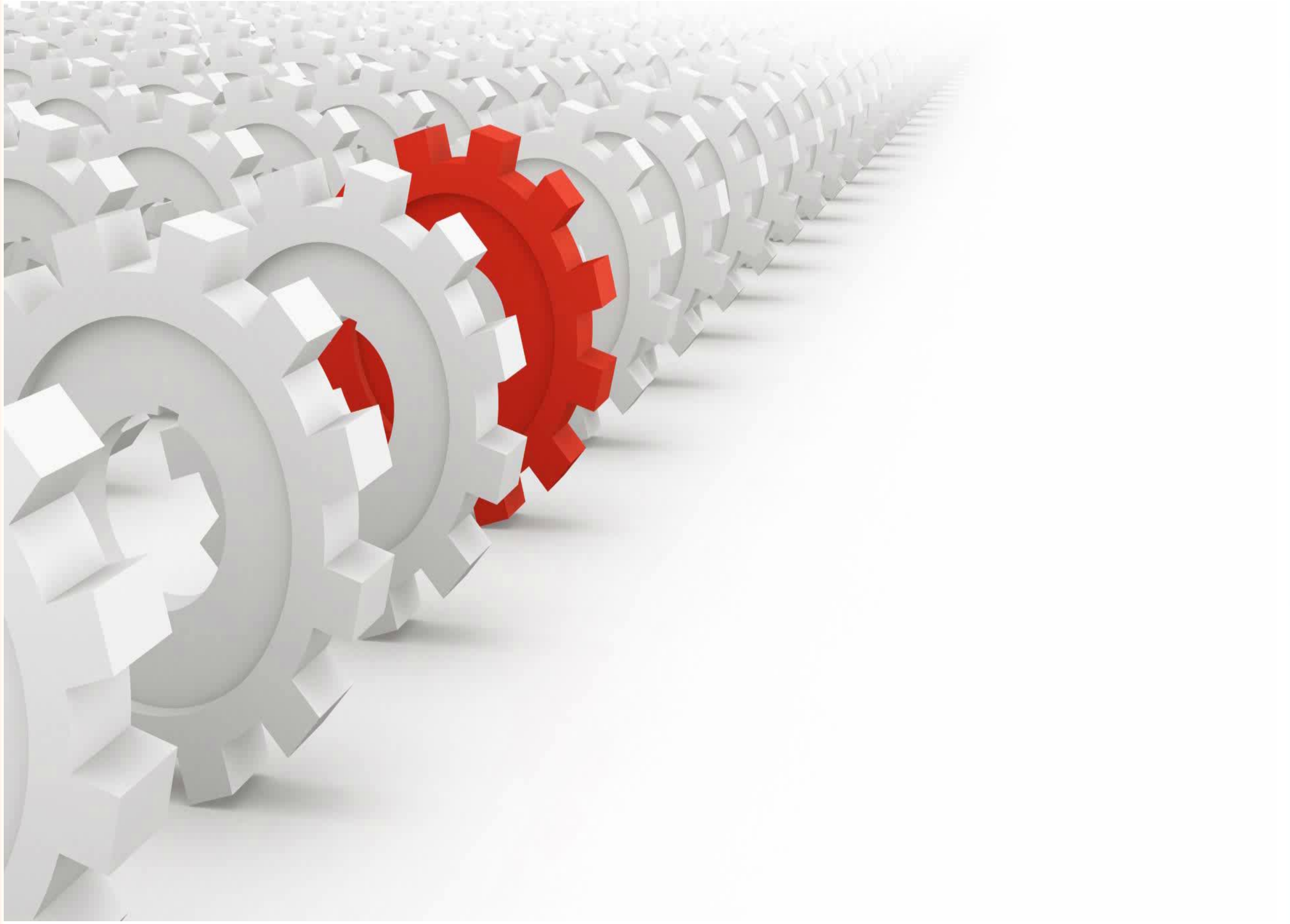

Key Legal Principles and Local Content Requirements

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Outline

- Key Drivers for Local Content Requirements (LCRs)
- General Legal Framework for LCR in Nigeria
- The Nigerian Oil & Gas Industry Content Development Act 2010
- Key LCR Principles in NOGICDA
- Benchmarking Local Content Development
- Global Trends and Key Approaches to LCRs
- Big Wins for Nigeria
- Challenges to Implementation

Key Drivers for LCRs

Countries with rich O&G resources operating in isolation with other sectors of the economy.

GDP and National Growth

Minimal Participation of Citizens and Need for Citizens to enjoy the Benefit of the Resources.

Importation of Finished Goods and Services lead to Capital Flight.

Use of Nationals in the execution of contracts leading to Job Creation.

Improvement of National technology capacity; In-country capacity and indigenous capabilities.

Active participation and synergy with all the sectors of the economy.

General Legal Framework for LCR in Nigeria

- The Immigration Act and MOI Guidelines for Expatriate Quota Approvals
- NOTAP Act
- Cabotage Act and PGC Act
- Nigeria Oil & Gas Industry Content Development (NOGICD) Act, 2010;
- Nigerian Content Development and Monitoring Board (NCDMB).
- Nigerian Content Development Fund (NCDF)
- Ministerial Regulation on Local Content
- NCDMB Guidelines
- Presidential Executive Order No. 5 on Local Content
- NOGIC JQS system – data base for industry capacities, training, employment and EQ data.

Nigerian Oil & Gas Industry Content Development Act, 2010 (NOGICDA)

The 3rd Era

1st Era – 1956 to 1970

Limited participation by FGN to royalties, rent and taxes from IOCs
That was due to lack of technical and financial capabilities
92% FDI with 82% contracts to foreigners

3rd Era – 2010 to 2021?

Indigenous involvement in upstream operations via Marginal Fields and utilization of Nigerian human and material resources via Local Content Development

2nd Era – 1971 to 2004

Petroleum became a strategic national resource requiring government participation via JVs, PSCs and Service Contracts.
PA, OPEC, NNPC.
Objective not achieved
NNPC remained a Sleeping Partner

NOGICDA

The Triggers

- Traditionally IOC's dominated the oil and gas space due to their technological and financial advantages.
- Lack of proper regulation for local content.
- Critical lack of infrastructure to support processing and refining locally.
- Estimated that $380b and 2m jobs lost because majority of engineering, welding and construction by IOCs were carried out overseas due to lack of international certified dockyards and construction sites.
- Poor integration of the oil & gas sector with other sectors of the economy. No leverage of the potentials; country not benefitting from the associated benefits.
- Although it contributes more than 90% of total export earnings, its share of GDP is mostly 10%. Compare Angola (50%); Saudi Arabia (42%), Trinidad and Tobago (40%) and Algeria (30%).

Key LCR Principles in NOGICDA

No general prohibition of foreign owned companies from operating in the Nigerian Oil & Gas Industry:

- **CAMA 2020**
- **NIPC Act**

Preferential treatment of "Nigerian Companies" however required in relation to identified issues/activities:

- **First consideration in the award of contracts generally, oil blocks, oil field licences and lifting licences;**
- **Exclusive consideration in relation to work in land and swamp areas;**
- **Contract bids with highest Nigerian content to be preferred in bids within 1% of each other.**
- **Firs consideration for any divestment or assignment of interest**

Nigerian company defined as "company formed and registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51% equity shares by Nigerians."

Key LCR Principles in NOGICDA

Schedule prescribes threshold of Nigerian content (i.e. spend, man-hours, number, tonnage) for various activities in the Industry.

Obligation on all operators, contractors and sub-contractors to maintain a bank account in Nigerian in which it shall retain 10% of revenue from Nigerian operations

1% of every contract awarded to any operator, contractor, subcontractor, alliance partner, or other entity in the upstream sector shall be deducted at source and contributed to the Nigerian Content Development Fund. Penalty is 5% of project sum or cancellation.

Key LCR Principles in NOGICDA

NCDMB

Penalties for Default

Enforcement

Benchmarking Local Content Development - Selected Jurisdictions

Middle East and North Africa (MENA) Region

- Especially Gulf countries - Kuwait, Iran, Iraq, Bahrain, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE).
- World's largest exporters of oil and natural gas. Approx. 45% global total of proven gas reserves, 48% of the world's proven oil reserves.
- Saudi Arabia alone produces 12 mbd. Qatar is the third-biggest exporter of natural gas. Iran has second-largest gas reserves and the fourth-largest oil reserves in the world. Kuwait holds 10% of the world's proven oil reserves.
- MENA region has historically provided opportunities for IOCs to spearhead oil exploration and production activities.
- Determined to maximize the gains of FDI, MENA countries, have increasingly introduced LCRs that require foreign companies to give priority to nationals in the procurement of goods and services used for petroleum operations.

Mexico, Angola, Brazil, Ghana, Angola, Australia, Tanzania and Europe

Global Trends and Key Approaches

There are 5 key approaches or key indicators to LCR regime as follows:

- Legal Framework
- Institutional Framework/Regulator
- Government Participation in Procurement Processes
- Definition of Local
- Local Content Threshold

Global Trends and Key Approaches

Legal Framework

- Mexico, Angola, Australia, Ghana and Brazil have enacted comprehensive legislative frameworks dedicated to local content.
- In the MENA region, source of obligations vary and though stated in domestic legislation and petroleum agreements signed with an operator, are often not detailed. This leads to a lack of clarity on the meaning, nature and scope of LCRs. Iran being an exception having adopted a local content law in 2012.
- In the MENA region, the scope are not comprehensively codified and can be expanded or revised in routine guidelines released by the national oil company or in general public procurement laws. For example, Saudi IKTVA (In-Kingdom Total Value Added) programme and the Oman ICV (In-Country Value) strategy introduce additional LCRs on employment, product sourcing, training and total in-country expenditure.
- To avoid legal risks, a prudent IOC operating in the MENA region would ensure that LCRs are clarified and memorialised in the petroleum agreement.
- What about Nigeria?

Global Trends and Key Approaches

Institutional Framework/Regulator

- While several MENA countries stipulate LCRs, only Saudi Arabia, Iran and Oman establish institutions for monitoring and enforcement. Oman's ICV Program Management Office is responsible for monitoring, while Saudi Aramco directly evaluates and monitors the "added value" brought to the Kingdom by a supplier.
- Countries such as Jordan, Qatar, Lebanon and Syria establish contractual LCRs, but they do not provide clarity on how such requirements are to be implemented or measured.
- Nigeria is often viewed as a local content success story because its LCRs is backed by the NCDMB.
- Ghana has followed Nigeria's example in establishing its own "Local Content Committee" via Ghana's 2013 Regulation. Tanzania's 2013 Local Content Policy similarly evinces an intention to establish a "National Local Content Committee" which will be chaired by its Minister of Petroleum.

Benefits of having an Institutional Framework

- Promoting public awareness and reducing uncertainty on the scope of LCRs.
- Providing guidance to operators and investors.
- Monitoring and investigating compliance. For example, NCDMB has statutory powers to prescribe penalties of at least 5% of the project total. Such fines are paid to LCDF to support training and local enterprises.
- From the perspective of an IOC, it reduces ambiguities and surprises with respect to LCRs while from a government and policy standpoint it ensures that LCRs are indeed actually monitored and enforced such that they can result in real and quantifiable benefits in the long run.
- It can function as a one-stop shop that can coordinate with other relevant agencies and ministries to maximise and fast track the attainment of national local content objectives. The wide range of stakeholders in a country underscores the importance of coordination.

Government Participation in Procurement Process

- In MENA regimes, procurement procedures are frequently not well established. Several provide the contractor with the flexibility to design its own procurement processes, so long as they comply with LCRs (for example Jordan, Iraq (Kurdistan Region)).
- In some regimes, government must be informed after the fact through yearly returns or performance review to show compliance with LCRs (Oman, Iran, Saudi Arabia, UAE).
- In others, procurement plans must be submitted prior to the commencement of petroleum operations (Lebanon, Iraq (Federal)).
- In more extreme cases, government must be informed and may participate in procurement activities above certain financial thresholds (Libya, Egypt).
- A common approach in Europe, is for the Contractor to submit a LCR compliance and procurement plan within sixty (60) days from the petroleum agreement. This allows the IOC to develop its own procurement practices, while providing the State an early opportunity to make inputs.
- Government participation in procurement processes, as a way of monitoring LCRs and transparency, poses significant risks due to bureaucratic bottlenecks. When necessary, government participation could be limited to large projects.

Definition of “Local”

- Several countries do not exactly define the term local. Generally ‘local’ is defined in terms of nationals, and companies owned, or majority controlled by nationals (Qatar, UAE, Oman, Saudi Arabia, also Jordan).
- In terms of employment, these countries expressly aim to ensure that qualified nationals are given first consideration and adequate training is given to nationals on the job. “Local” in these countries therefore refers to nationality, rather than the locality or country where the oil and gas activities take place.
- Other MENA countries adopt a more expansive definition that include locally-registered firms and entities and the employment of residents (Yemen, Algeria, Iran, Lebanon, Iraq (Federal)). “Local” in this case is equivalent to domestic entities or local players as opposed to nationality or citizenship.
- Nigerian company defined as “company formed and registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51% equity shares by Nigerians.”
- A more flexible model is found in the Qatari PSC which refers to locally manufactured or locally available goods. Thus, an IOC can consider other categories of locals if the IOC so decides for operational reasons, or in cases when suitably qualified nationals are not available.

Local Content Threshold

- Saudi Arabia, Iran, Oman, and Libya, provide for mandatory thresholds. Saudi Arabia mandates operators to achieve 70% local content by 2021. Oman planned to raise the percentage of retained local benefits to the Sultanate from 18% to 32% by 2020. In Iran, a minimum of 51% of the cost of every project must be executed through domestic labor.
- Under the Libyan PSC, Operator is obliged to spend at least 50% of its approved budget on supplies, equipment and services available locally.
- In Jordan, Syria and Qatar there are no mandatory threshold. For example, the Syrian PSC allows import if the local price is more than 10% higher than the international price before custom duties, after transportation and insurance costs have been added. Jordanian PSC provides preference to Jordanian nationals, with the right to employ its own key personnel in appropriate positions.
- The Qatar PSC is flexible as it refers to nationals or companies that are majority owned by Qatar nationals. In purchasing goods, Contractor shall give preference to locally manufactured or locally available goods so long as their technical specifications, quality and time of delivery and services are comparable to internationally available ones.

Global Trends and Key Approaches

Angola and Brazil

1 Defined Angolan Company to "be one which as a sole trader or a company established in Angola, has its effective headquarters on national territory and which is wholly owned by Angolan citizens or where at least 51% of the share capital is held by Angolan citizens or Angolan firms exclusively or jointly".

2 Exclusivity for minimal CAPEX non-specialized know-how; Semi-Compliance allows joint collaboration on reasonable CAPEX/SKH and competition system for high CAPEX and specialty without prejudice to strategic alliances.

3 Brazil removed the requirements that local content be made a bid assessment criterion/factor and is now required to be made a contractual clause with percentage requirements to be respected by oil companies.

4 Whilst still acknowledging that local content is the percentage of domestic goods and services, Brazil has expanded the definition of local content to now include investments in new operational plants, R&D centers and investments to bring new technologies to be applied to the oil and gas industry

Big Wins for Nigeria

- Seplat, Oando, Frontier Oil, Energia, indigenous marine vessels, Dangote Refinery;
- Fabrication of EGINA FPSO (Floating Production and Storage and Offloading Vessel), the largest in Africa with 77% of construction completed in-country; many more
- R&D clusters and funding
- Relative Security and Stability in the Nigeria Delta (though increase oil theft)
- Stimulating greater indigenous participation, technology advancement, infrastructure development and economic synergy across the country.
- Supports gas revolution for shift from oil-based to gas-based economy, cheap and reliable power source, and improved environmental safety.
- Increased award of contracts to indigenous companies. Performance levels engineering (90%); fabrication (55%), and manufacturing (10%).
- More than 30,000 jobs created in the sector since 2010.

Challenges to Implementation

The Challenges include the following:

- Meaning of Nigerian company Is a HoldCo set up in Nigeria? What about indirect, trust or nominee arrangements?.
- Undefined terms in the Act e.g. Nigerian independent operators, Nigerian indigenous companies, and Nigerian indigenous services companies.
- Local capacity of Nigerians. Professional services dominance by foreign firms e.g. foreign law firms who simply engage local firms to advice on Nigerian law aspects.
- Social Infrastructures, Attitudinal Change, Strong Partnership Firms with Corporate Governance.
- A stable economic and business environment. Bottlenecks - Beyond legislative amendments.

Questions?

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