The Deep Offshore and Inland Basin Production Sharing Contracts Bill receives executive assent

November 2019

www.pwc.com/ng

In summary

The President recently assented to the Deep Offshore and Inland Basin Production Sharing Contract (Amendment) Bill 2019. In summary, the amendment introduces provisions for price-reflective royalties, 8 year periodic review of the Production Sharing Contracts ("PSCs") and penalties for non-compliance with the Act.

Background

The original Act enacted in 1993 (old Act) was introduced to grant certain incentives to companies operating in the deep offshore and inland basin area. These incentives ranged from reduced royalty rates to lower tax rates to encourage investments in these areas.

The amendments to the Act are aimed at increasing Nigeria's earnings from the oil and gas industry to shore up the Federal Government's revenue. We have highlighted the key amendments of the Act.

Summary of the Amendments

- *Revision of Royalty Rates*: The new Act substitutes Section 5 of the old Act with a new section revising how Royalties are calculated.

  Under the old Act, Royalties were calculated based on the water depth of the of the field. This ranged from 12% to 0%.

  The amendment has eliminated the 0% rate. Royalties would now be calculated on a field basis, dependent on the chargeable volume of the crude and condensates produced per field. The new rates are 10% (for fields in the deep offshore - greater than 200m water depth) while that of the frontier or inland basin is 7.5% as opposed to 10% under the old Act.

- *Additional Royalty based on Price*: The amendment also imposes an additional royalty rate to account for increase in price of crude in excess of $20 per barrel.

Price per barrel	Rate
$0 to $20	0%
>$20 to $60	2.5%
>$61 to $100	4%
>$100 to $150	8%
Above $150	10%

- This is a new development in the oil and gas gas sector.

- *Deletion of section 16:* Section 16 of the old Act required a review of the Act after 15 years of commencement of the Act and every 5 years thereafter but this was never applied. This provision has now been deleted. This may be as a result of the fact that section was never applied.

- *Review of Contracts*: The Act includes a new section 17 which prescribes that all PSCs shall be reviewed every 8 years. There was a similar provision under Section 16 of the old Act for the review of the PSCs. The old provision triggered a review if the price of crude oil at any time exceeded $20 per barrel in real terms. In such a case, the share of profit of government should have been adjusted in the PSCs to be economically beneficial to the government. This provision was never enforced until this amendment.

- *Offences and Penalties*: The Act also introduces a new section 18 which stipulates that any person who does not comply with any provision in the Act has committed an offence and will be liable on conviction to a fine not below NGN500m and/or at least a 5 year imprisonment. This is novel as there were no penalties under the old Act.

Takeaway

The effective date would be from the date of the gazette. It appears that the intention of the amendment is to apply the price-reflective royalty rates in addition to the royalties based on the distance/location of the field even though this was not very clearly expressed in the Amendment Bill. The price-reflective rates are expected to apply flat depending on the price per barrel of crude.

Companies should assess the commercial impact that the changes would have on their future cash flows, taking into consideration:

- the ultimate upward review of royalty rates; and
- the flexibility of the government to renegotiate the PSCs.

The lack of certainty around the fiscal outcomes of impending PSC reviews may also be an additional disincentive for future investments in these assets.

For a deeper discussion, please contact any member of our team below or your usual contact with PwC Nigeria:

Kenneth Erikume
+234 (1) 271 1700 Ext 50004
kenneth.y.erikume@pwc.com

Olayemi Williams
+2341 2711700 Ext 50018
olayemi.williams@pwc.com

Ayomide Olowonyo
+234 1 271 1700
ayomide.olowonyo@pwc.com

© 2019 PricewaterhouseCoopers Limited. All rights reserved. In this document, PwC refers to PricewaterhouseCoopers Limited (a Nigerian limited liability company), which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.