SUMMARY OF THE NIGERIAN OIL AND GAS INDUSTRY CONTENT DEVELOPMENT ACT, 2010

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1.0 Introduction

The Nigerian Oil and Gas Industry Content Development Act, 2010 as an act of parliament was assented into law by President Goodluck Jonathan on the 22nd of April, 2010. The Act mainly focusses on the development of Nigerian Content in all matters pertaining to all operations and transactions carried out or connected therewith in the Nigerian Oil and Gas Industry. The Act makes provision for Nigerian Content plan, supervision, co-ordination, monitoring, and implementation of the Nigerian Content and other related matters. It seeks to ensure Nigerians' ownership of facilities/equipment, personnel, and capacity to execute contracts/jobs, thereby making indigenous participation in the oil and gas industry obligatory. That is to say that the Act emphasizes exclusive consideration of Nigerian indigenous service companies, which demonstrate ownership of equipment, Nigerian personnel, and capacity to execute contracts/jobs in the Nigerian Oil and Gas Industry.

2.0 Summary of the Major Parts and Sections of the NOGICD Act, 2010

The whole Act is mainly made up of three sub-divisional parts. Part 1 comprises 68 sections (i.e. sect. 1-68), which specifically make provisions for Nigerian Content development in the Oil and Gas Industry. These sections (1-68) clearly state among other things how Nigerian Content/Capacities should be developed and/or built. Section 3(1) precisely in Part 1 for instance, stipulates that Nigerian independent operators should be given first consideration in the award of oil blocks, oil fields

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licences, oil lifting licences and in all contracts for which contracts is to be awarded in the Nigerian Oil and Gas Industry subject to the fulfilment of such conditions as may be specified by the Minister. Furthermore, section 10(1a) clearly states that first consideration should be given to services provided from within Nigeria and to goods manufactured in Nigeria.

In a similar vein, sub section 1b of same section 10 provides that Nigerians should be given first consideration for training and employment in the work programme for which the Nigerian Content Plan was submitted. Section 16 of the Act further stressed that the award of contract shall not be solely based on the principle of the lowest bidder; where a Nigerian Indigenous company has capacity to execute such job, the company shall not be disqualified exclusively on the basis that it is not the lowest financial bidder, provided the value does not exceed the lowest bid price by 10 per cent. The Act also in section 28(2) empowers the board to ensure that operator or project promoter maintains a reasonable number of personnel from areas it has significant operation.

Part 2 of the Act comprises 21 sections (i.e sec.69-89), which specifically make provisions for establishment of the Nigerian Content Development and Monitoring Board (the focal agency charged with the responsibility of implementing the Act), stating clearly its composition, functions and how it should be operated. Section 69(1) precisely in Part 2 for instance, succinctly states that there should be established the Nigerian Content Monitoring Board (in this Act referred to as 'the Board') which shall have the functions and powers conferred on it by this Act. The

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Act in section 70(b) mandates the Board to supervise, co-ordinate, administer and monitor the implementation and development of Nigerian Content as specified in the Schedule to this Act in operations of operators, contractors, and all other entities the Nigerian Oil and Gas industry. Not only that, sub section (h) of the same section 70 also mandates the Board to assist local contractors and Nigerian Companies to develop their capabilities and capacities to further the attainment of the goal of developing Nigerian Content in the Nigerian Oil and Gas Industry.

Part 3 of the Act on the other hand, consists of 19 sections (i.e sec. 90-107), which makes provision for financing. Section 90(1) for instance, empowers the Board to establish and maintain a fund to which all monies accruing to it should be paid into or from which should be defrayed all expenditure incurred by the Board.

Similarly, section 104(1) stipulates that a fund to be known as the Nigerian Content Development Fund (''the Fund'') should be established for purposes of funding the implementation of Nigerian Content development in the Nigerian Oil and Gas Industry. Section 104(2) further stressed that the sum of one per cent of every contract awarded to any operator, contractor, sub-contractor, alliance partner or any other entity involved in any project, operation, activity or transaction in the upstream sector of the Nigeria Oil and Gas Industry shall be deducted at source and paid into the Fund.

On the whole, the Nigerian Oil and Gas Industry Content Development Act, 2010 makes it mandatory for all operators, contractors, sub-contractors, alliance partners and any other entities involved in any project, operation, activity or transaction in

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the oil and gas industry to consider Nigerians as an important element of the overall project development and management philosophy for project execution.

3.0 Some Comments and Suggestions

The Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010 as x-rayed above is endowed with well-articulated sections and provisions intended to pave way for Nigerians' full participation in the Nigerian Oil and Gas Industry. But the Act is however not without some shortcomings and limitations. Such limitations include but not restricted to the following:

- **The Act fails to make Provisions for 'Local Community' Content**. It is a very lofty idea to make the Act all-Nigerians inclusive, but it is my humble opinion that some sort of due consideration should have been given to the oil producing communities. This is because it is the host communities who suffer most the negative consequences resulting from the oil exploration activities of the IOCs. Hence, such communities need special attention and/or considerations.

- **Weakness of 5% Fine of the Project Sum for Defaulters.** The Act in section 68 categorically spells out some measures of sanctions for defaulters. It reads thus:

"An operator, contractor, or sub-contractor who carries out any project contrary to the provision of this Act, commits an offence and is liable upon conviction to a fine of 5% of the project sum for each project in which the offence is committed or cancellation of the project"

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The 5% fine of the project sum to me is however, too weak to serve as a deterrent to players in the industry. If for instance, what an operator in the industry stands to gain is more than the 5% prescribed fine if he violates the Law, the operator will probably choose to violate the Law and pay the 5% sum of the project as prescribed in the Act.

Therefore, it is my considered opinion that the 5% fine of the contract sum should be reviewed upward to at least 10%.

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