Doing business in Nigeria
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Nigeria is located in west Africa
Legal framework
Legal framework

► The Constitution

► The main laws:
  ► Petroleum Act 1969
  ► Petroleum Profits Tax (PPT) Act, Cap P13, LFN 2004
  ► Companies and Allied Matters Act (CAMA), Cap C20, LFN 2004
  ► Companies Income Tax (Amendment) Act 2007
  ► Nigeria Oil and Gas Industry Content Development Act 2010

► Regulations

► Memorandum of Understanding (MOU)

► Contracts
Legal framework
Resource ownership and control

► The Constitution: “The entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.”

► The Petroleum Act: “The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.”
  ► Private companies may however have the title to production from a license or lease area, subject to the nature of the interest granted by the government.
  ► Only companies incorporated in Nigeria may engage in the exploration or production of petroleum. S54 (CAMA)
Legal framework
The petroleum act

► The most important petroleum legislation in Nigeria is the Petroleum Act, 1969.

► This section applies to all (including land covered by water) that
  ► Is in Nigeria
  ► Is under the territorial waters of Nigeria
  ► Forms part of the continental shelf
  ► Forms part of the Exclusive Economic Zone of Nigeria

► The Petroleum Act 1969 provides for three types of grants of interests – exploration, prospecting and production rights.
Legal framework
Regulations under the petroleum act

► Crude Oil (Transportation and Shipment) Regulations 1984
► Mineral Oils (Safety) Regulations 1963, as amended
► Oil and Gas Pipelines Regulations 1995
► Petroleum (Drilling and Production) Regulations 1969, as amended
► Petroleum Refining Regulations 1974
► Petroleum Regulations 1967, as amended
► Deep Water Block Allocations to Companies (Back-in-rights) Regulations 2003
► Oil Prospecting Licenses (Conversion to Oil Mining Leases etc.) Regulations 2004
► Marginal Fields Fiscal Regime Regulations 2005
Legal framework
Other relevant legislation

► Oil Pipelines Act
► Petroleum Profits Tax Act
► Deep Offshore and Inland Basin Production Sharing Contract Act
► Associated Gas Re-injection Act
► Land Use Act
► Environmental Impact Assessment Act 1992
► Exclusive Economic Zone Act: sets the limits of Nigeria’s exclusive economic zone
► National Environmental Standards and Regulations Enforcement Agency (NESREA) Act
Legal framework
Regulatory authority/bodies

► President
► National Assembly
► Ministry of Petroleum Resources
► Ministry of Mines and Steel Development
► Nigerian National Petroleum Corporation (NNPC)
► Department of Petroleum Resources
► Ministry of Environment
► Federal Inland Revenue Service
Legal framework
Types of licenses

- **Types:**
  - Oil Exploration License (OEL)
  - Oil Prospecting License (OPL)
  - Oil Mining Lease (OML)

- An Oil Exploration License (OEL) is necessary to conduct preliminary exploration surveys. The non-exclusive license is granted for a period of one year. It is renewable annually.

- Exploration activities are carried out under OPLs. An OPL allows for more extensive exploration surveys. It is granted for a period not exceeding five years for onshore joint ventures and PSCs and shallow offshore PSCs. The duration of an OEL of a PSC in the deep offshore and inland basin depends on the location and depth of the concession and may range from 5 to 10 years.

- An Oil Mining Lease (OML) is granted for a 20-year period with respect to joint ventures or PSCs with an option to renew. Production activities are carried out under OMLs.
Legal framework
Contractual models

Typical contractual models for the development of oil resources in Nigeria:
- Joint ventures (JV)
- Production sharing contracts (PSC)
- Service contracts
- Sole risk contracts

Joint ventures are regulated by the contract and the provisions of the petroleum laws currently in force. The commercial aspects of joint venture agreements are covered in the Memorandum of Understanding (MOU) signed between the government and some international oil companies (IOCs). There are seven joint ventures operated by foreign oil companies in partnership with the Federal Government of Nigeria.

Production sharing contracts (PSC): The first Nigerian PSC was the Ashland Oil PSC signed in 1973. Since then, due to Nigeria’s inability to adequately meet its cash call obligations to fund JV operations, all new government contracts with oil companies are PSCs.
Legal framework
The environment

► Legislation:
  ► Environmental Impact Assessment Act, 1992
  ► Oil in Navigable Waters Act [Cap 337] LFN 1990
  ► Federal Environmental Protection Agency Act

► Regulations:
  ► Mineral Oils (Safety) Regulations Act 1963, as amended
  ► Petroleum (Drilling and Production) Regulations [Cap 350] LFN 1990

► International law:
  ► E.g., the National Oil Spill Contingency Plan, which establishes a response system to oil pollution incidents, was drafted in compliance with Nigeria’s international obligations as a signatory to the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990.
Accounting issues
Accounting issues

► Petroleum costs
  ► Conditions of recovery:
    ► Under a joint venture:
      ► There is consolidation of revenues and expenses in Nigerian petroleum profits taxation as revenue aggregation and deductible expense rules are set on a company basis
    ► Under a production sharing contract:
      ► There is *ring fencing* because revenues and expense rules are set at the level of wells, fields and blocks
      ► However, recent arbitration decisions permit consolidation of costs from different fields or blocks

► Bookkeeping
  ► The subsidiary’s bookkeeping should be in Nigerian currency (NGN)
  ► Petroleum exploration and production companies should file tax returns in US dollars
Accounting issues

► International Financial Reporting Standards (IFRS) conversion
  ► The roadmap, which is in three phases, mandates that publicly listed and significant public interest entities prepare their financial statements based on IFRS by 1 January 2012 (i.e., full IFRS financial statements by 31 December 2012)
  ► Other public interest entities are required to adopt IFRS for statutory purposes by 1 January 2013
  ► The third phase requires Small and Medium-sized Entities (SMEs) to adopt IFRS by 1 January 2014
HR issues
HR issues

- Residence is the basis for taxing employment income in Nigeria. Individuals *resident* or *deemed to be resident* in Nigeria are liable for tax on their global employment income, i.e., income from all sources, both inside and outside Nigeria.

- The residency rule is based on 183 days.

- Employees are regarded as resident in Nigeria throughout an assessment year if they are domiciled in Nigeria for a period of 183 days or more in any 12-month period commencing in a calendar year and ending either within that same year or the following.

- Non-residents are liable to tax on their Nigerian-sourced income.
HR issues
Personal Income Tax Act 2011

- Personal Income Tax (Amendment) Act 2011 (enacted into law on 14 June 2011)
  - There is no provision for the effective date of commencement of the Act, and the Act was gazetted on 24 June 2011
  - Personal emoluments now include “benefits in kind”
  - Taxpaying employees have been re-defined as either temporary or permanent employees. Therefore, casual and temporary employees are now taxed under PITA
  - Employers based in Nigeria with employees working offshore are to remit their taxes to relevant tax authorities in Nigeria
  - The 183-day rule or threshold for taxable presence in Nigeria will now include aggregate number of days of absence (i.e., annual leave and temporary period of absence)
  - Consolidated Relief Allowance (CRA) of NGN200,000 + 20% of gross income (GI), now to be granted as single relief in lieu of personal allowance, children allowance, dependant allowance and other allowances, although these allowances were not repealed in the Act
  - Where an individual’s CRA exceeds his GI, such employee would be liable to minimum tax (see below)
  - Minimum tax revised upward from 0.5% to 1%
HR issues
Personal Income Tax Act 2011 (cont.)

► The due date of filing employees’ returns by employers is 31 January
  ► Penalty for non-compliance
    ► NGN500,000 for corporate bodies
    ► NGN50,000 for individuals
  ► Tax-exempt deductions (Sixth Schedule – Income Tax Table)
    ► National Housing Fund
    ► National Health Insurance Scheme
    ► Life Assurance Premium
    ► National Pension Scheme
  ► Income tax scale
    ► 1st NGN300,000 @7%
    ► Next NGN300,000 @11%
    ► Next NGN500,000 @15%
    ► Next NGN500,000 @19%
    ► Next NGN1.6 million @21%
    ► Above NGN3.2 million @24%
Nigerian Oil and Gas Industry Content Development Act 2010

► The Act was signed into law in April 2010
► It is the legal framework and vehicle for the creation of an enabling environment aimed at increasing indigenous capacity building
► The implementation of the provisions is carried out by the Nigerian Content and Development Monitoring Board
► The Nigerian Content and Development Monitoring Board issues guidelines from time to time, e.g., operational guidelines on the mandatory deduction of 1% Nigerian Content Development Fund
Petroleum Industry Bill (draft)
Petroleum Industry Bill (draft)

The Petroleum Industry Bill (PIB)

- Petroleum Industry Law: “A reform legislation which aims to put in place of the existing myriad of legislative and administrative instruments governing the petroleum industry, one omnibus legislation establishing clear rules, procedures and institutions for the administration of the petroleum industry in Nigeria.”

- It will repeal all 16 prior Acts and relevant legislation impacting the industry and consolidate them into a single Act for the entire petroleum industry.

- It will convert:
  - Nigerian National Petroleum Corporation (NNPC) into a self-financing national oil corporation (NOC)
  - Joint operating agreements into NOC incorporated joint ventures
  - Licenses and leases previously held by NNPC, including those with respect to which PSCs have been awarded, shall be held by the National Petroleum Directorate.
  - Use corporate JVs to operate PSCs and replace unincorporated joint venture agreements (JVAs).
Petroleum Industry Bill (draft)

- Amendment of tax structure: Separation of oil and gas for petroleum profit tax purposes:
  - CIT plus Nigerian Hydrocarbon Tax (NHT)
  - Gas taxed at 45%
- The definition of a marginal field under the PIB is specific and not left to the discretion of the President as currently provided in the Petroleum Act
- Mandatory bid system for all upstream licenses and leases
- Removal of existing confidentiality on royalty and tax payments
Taxation
Taxation
Service company taxation

► Taxation under Company Income Tax Act (CITA) – tax regime applicable to subcontractors
  ► Nigerian companies are taxed on the basis of residency and income derived and accruing in Nigeria
  ► Foreign (nonresident) companies are taxed on deemed profit tax basis
    ► Deemed profit tax regime of 6% of turnover (i.e., 20% deemed profit taxed at the current company income tax rate of 30%) applicable to oil subcontractors with a permanent establishment (subsidiary) providing services or performing activities in Nigeria.
    ► The taxable basis is the total turnover realized by the subcontractor in Nigeria.
    ► This tax regime covers corporate income tax (CIT) and value added tax (VAT), with the personal income tax on salary to be paid by the employer.
Taxation
Transaction taxes

► VAT
► Withholding taxes
► Customs duty
► Other levies
Taxation
International dimensions

► Organization of Petroleum Exporting Countries (OPEC)

► The law extends a distance of 200 nautical miles from the baselines, from which the breadth of the territorial waters is measured.

► Treaty between Nigeria and São Tomé and Príncipe on the Joint Development of Petroleum and other Resources in areas of the exclusive economic zone of the two states (Ratification and Enforcement) Act 2005.

► International tax treaties – see next slide on tax treaties

► International oil and energy requirements/market
Countries that have signed the double tax treaties (DTTs) with Nigeria are:

- Belgium
- Canada
- Czech Republic
- France
- Netherlands
- Pakistan
- Romania
- South Africa
- United Kingdom

Applicable withholding tax on dividends:

- 7.5% for double taxation agreement (DTA) countries
- 10% for non-DTA countries
Taxation
Tax planning

- Tax planning opportunities may exist in the following areas:
  - Company formation within domestic legislation
  - Specific statutory exemptions and incentives
  - Contracting structure
  - Timing of revenue and cost accounting
  - Debt and equity financing
  - Dividend repatriation and tax
Jurisdictions that are often used by companies investing in Nigeria are Cyprus and the Netherlands.

In practice, Parent (top) holding companies are sometimes legally incorporated in a low-tax jurisdiction but are tax resident in higher-tax jurisdictions.

Since Nigeria does not have DTTs with low-tax jurisdictions (e.g., BVI, Jersey, Guernsey) dividends paid by a Nigerian company to a shareholder registered in such a jurisdiction would be taxable at the Nigerian domestic withholding tax rate of 10%. Therefore, the direct holding of an investment in a Nigerian company by a company established in a low-tax jurisdiction is not tax efficient.

Incorporation of an intermediary holding company in a suitable third jurisdiction may provide a more tax-efficient structure both for dividend flows and disposals.

It is advisable that shareholders in Nigerian companies are resident and incorporated in a single jurisdiction, otherwise treaty benefits may be denied.
Taxation
Fiscal federalism and taxing powers

- Constitutional taxing powers (1999 Constitution as amended)
- Federal Government has exclusive taxing powers on substantial revenue-generating matters – see Exclusive Legislative List (Schedule 1)
- Federating units are left with little or no taxing powers
- Fiscal stability:
  - Is obtained through legislation and by contract with the state
  - Covers almost all taxes payable at federal level
- Federal Inland Revenue Service (FIRS):
  - Established by the Finance Miscellaneous Taxation Provision Act No. 3 of 1993 as the operational arm of the Federal Board of Inland Revenue
  - Federal government [administers 8 taxes]
- State Internal Revenue Service:
  - State government (administrers 11 taxes)
- Local Government Revenue Committee: Local government (administers 20 taxes)
Taxation
Tax administration issues

► Federal
  ► Petroleum profits tax
  ► Companies income tax (non-oil exploration companies)
  ► Withholding taxes
  ► Value-added tax (VAT)
  ► Capital gains tax
  ► Education tax (Nigerian companies only)
  ► Stamp duties
  ► Customs duties
  ► Personal income tax (nonresidents, armed forces and residents) of the Federal Capital Territory (FCT)
Taxation
Tax administration issues (cont.)

► State
  ► Personal income tax (residents of the states)
  ► Withholding taxes
  ► Sales tax (Lagos State only)
  ► Property tax/land use charge (Lagos State only)

► Local
  ► “Advertisement tax”
  ► Tenement rate
  ► Effluent charges (common in oil-producing states)
Taxation

Tax administration issues (cont.)

► Revenue Tax Audit and Controversy
  ► Under the local tax law, the Federal Inland Revenue Service (FIRS) and State Internal Revenue Service (SIRS) have unlimited powers to examine the tax returns filed by companies or individual taxpayers.
  ► FIRS has tax audit units in all the tax offices all over the country. This is aimed at covering as many taxpayers as possible.
  ► The audit exercise is aimed at ascertaining the integrity of the tax returns filed.
  ► The FIRS adopts a risk-based assessment in selecting taxpayers to be audited.
  ► The SIRS, on the other hand, has a centralized tax audit unit.
Taxation
Tax administration issues (cont.)

► What triggers a tax audit?
  ► FIRS
    ► Government budget from tax stream
    ► Incorrect filing or persistent late filing of tax returns
    ► Record of persistent tax losses
    ► Huge withholding tax credit for future tax offset
    ► Withholding and VAT refund applications
  ► SIRS
    ► Reduction in the amount of tax in the returns compared with previous year returns
    ► Government budget from tax stream
    ► Incorrect filing or persistent late filing of tax returns
    ► Discrepancies between information on immigration returns and tax returns filed
Taxation

Tax administration issues (cont.)

► Tax desk examination/audit by:
  ► Audit and investigation (intelligence, civil and criminal department) of the FIRS
  ► The Nigerian Extractive Industries Transparency Initiative (NEITI)

► Focus areas:
  ► Intercompany transactions
  ► Technical fee and royalties payable to parent companies or foreign technical partners
  ► Management services fees paid/payable to related entities
  ► Acceptance certificate for capex for the purpose of validating capital allowances
  ► Cross-border financing (especially interest on loans provided by parent or foreign affiliates)
  ► Inventory write-off, obsolete and damaged inventory – for oil servicing companies only
Taxation
Tax administration issues (cont.)

► Amortization of operating licenses fee and the license ranking for capital allowances claim
► Specific provisions for bad and doubtful debts
► Gratuity provisions
► Tax penalties
► Donations to bodies or institutions not specifically stated on the statutory approved list (i.e., Fifth Schedule to CITA) – for oil servicing companies only
► Expatriate expenses such as rent paid on official quarters that should have been borne by the offshore company (for employee taxes)
► Expatriate contract of employment
► Tracking of entry and exit for expatriates who spend less than 12 months in a tax year
Taxation
Tax administration issues (cont.)

► How is a tax audit concluded?
  ► After the field exercise, the Revenue tax authority issues a report of findings that contains issues to be reconciled
  ► There will be series of reconciliation meetings where contentious issues are substantiated with documentary evidence and resolved based on the provisions of the tax laws
  ► An agreed-upon position is reached between the Revenue tax authority, the taxpayer and the tax consultants
  ► Additional assessments are issued based on the agreed-upon positions, and payments are made by the taxpayer within the 30-day statutory time limit
  ► If agreement cannot be reached on any issue, the taxpayer has the right to object to the assessment within 30 days of issuance; this could be the beginning of a protracted legal battle between the Revenue tax authority and the taxpayer.

► Negotiation is predominant, but arbitration and litigation are becoming more acceptable.
Recent and expected legislative changes
Recent and expected legislative changes

- Clarity and stability of rules and policy
- Transparency, consistency and harmony
- Expertise for monitoring and enforcement
- Conducive and relevant legislation for foreign investment
- Multiple taxation and cost
- Legislative changes and developments
- FIRS autonomy and drive toward proficiency
- Judicial tradition and processes
- IFRS & tax reporting
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