

A photograph of an oil rig at sunset. The rig is a complex of yellow and blue metal structures. The leftmost structure is a tall derrick with two bright orange lights at the top. In the center is a drilling derrick. To the right is a tall, slender crane. The sky is a mix of blue and orange from the setting sun. In the foreground, there are blue storage tanks and other rig components. A large black diagonal shape covers the bottom half of the image, serving as a background for the title.

COVID-19: REGULATORY WATCH FOR THE OIL AND GAS INDUSTRY



April 2020

Introduction

In response to COVID-19, various policies and regulatory measures have been introduced by the Federal Government of Nigeria (FGN) and its agencies (such as the Department for Petroleum Resources (DPR)), and by various state governments. We highlight below some of the key developments which should be borne in mind by companies active in this sector.

General

- a) **DPR Directives in response to COVID-19 outbreak:** Following the infection of six workers on the Siem Marlin offshore rig¹ – an offshore oil rig in Lagos State, the DPR directed oil and gas firms to reduce the workforce on offshore platforms and at project sites. In its Circulars published on 29 and 30 March 2020², the DPR expressly stated that *“the current situation is considered ‘force majeure’”* and directed as follows:
 - i. offshore travel would now require an offshore safety permit;
 - ii. all non-essential staff are to be withdrawn from the offshore locations and only essential staff are permitted to travel; and
 - iii. staff rotation at these locations to be at least 28 days.

Note: the withdrawal of non-essential staff from offshore installations may affect the ability of contractors and sub-contractors to perform their obligations (particularly as “non-essential staff” was not defined). Since “force majeure” is usually defined in the contract it is unclear what legal value may be accorded to the DPR’s recognition of the COVID-19 pandemic as “force majeure”. Nonetheless, we expect that many organisations will seek to rely on the DPR’s declaration as law.
- b) **Specific restrictions:** in addition to the restriction of movement by most states, Lagos State has issued a stop-order on all on-going construction and building works in the state³, and Rivers State, a major oil producing state, has closed its borders to air and road travel. This may have a negative impact on oil production activity and on any on-going EPC and fabrication projects in these states.
- c) **Risk of Contravention of Laws/ Regulations:** There has already been an incident (in Rivers State) involving criminal charges being brought against oil and gas sector workers.
 - (i) Companies are advised to determine if any new laws or directives impact their contracts or operations. Companies should be up to date on COVID-19 related government directives.
 - (ii) Where there is uncertainty (for example about what work is “essential” and when movement is not permitted), it is strongly advised that companies communicate regularly with their regulatory agencies such as the DPR, Nigerian Maritime Administration and Safety Agency (in case of shipping-related matters) and the Nigerian Civil Aviation Authority (in case of aviation related matters) and, where necessary, obtain express and documented approval.

¹ <https://www.nytimes.com/reuters/2020/03/29/world/africa/29reuters-health-coronavirus-nigeria-oil.html>

² Click [here](#) and [here](#) to view

³ <https://lagosstate.gov.ng/blog/2020/04/01/covid-19-lasg-orders-suspension-of-building-construction-works/>

Taxation

Tax laws remain extant and care must be taken to ensure compliance. On 31 March 2020, the Federal Inland Revenue Service (**FIRS**) issued the following directives to assist taxpayers with compliance during the pandemic:

- a) tax filings should be done on the e-filing portal;
- b) late returns penalty will be waived for taxpayers who pay their taxes early and file later (an email was also provided to facilitate the submission of documents);
- c) value added tax (VAT) remittances have been extended from every 21st day of the month to the end of the month;
- d) taxpayers who have challenges sourcing foreign exchange to offset their tax liabilities now have the option of paying the accrued tax in Naira, at the prevailing Investors & Exporters FOREX window rate on the day of payment;
- e) all tax audits and investigations have been suspended indefinitely.

As regards petroleum profits tax (**PPT**), given global crude prices, estimated PPT liability for 2020 may now be inaccurate. Oil and gas companies must update their earnings reports and file further returns with revised estimated tax.⁴

Taxation – key points to note

1. The FIRS directive gives some comfort. Companies should note revised timelines and take advantage of electronic filing using efiling.firs.gov.ng
2. PPT companies should take advantage of the advance revision provision of the PPTA to avoid penalties on late tax outside the instalment periods i.e. commencing no later than the third month of the accounting period and subsequent payments made no later than the last day of each month.⁵

Employee Relations

- a) In line with the DPR's directive, non-essential personnel should be withdrawn from offshore rigs and the 28-day rotation system implemented. To comply with the FGN's lockdown directive companies may where possible work remotely. For essential services, for example, petrol stations, staff should have proper identification to sufficiently demonstrate that they are exempted from the lockdown restrictions.

Some companies may seek to terminate employment contracts as a result of the crisis. Such companies should bear in mind the DPR Guidelines on the Release of Staff in the Oil & Gas Industry. Although, there are valid grounds for questioning the legality of the DPR's Guidelines (as they purport to interfere in employer/employee contracts), to the best of our knowledge, the Guidelines have yet to be challenged in court.⁶

- b) **Economic Stimulus Bills:** in order to protect jobs and alleviate the financial burden on citizens caused by the COVID-19 pandemic the National Assembly on 25 March 2020 passed the first Economic Stimulus Bill. The Bill if enacted will provide tax incentives to the companies on the conditions stipulated therein -. e.g. 50% tax rebate

⁴ Section 46 of the Petroleum Profits Tax Act

⁵ Section 33(2) of the Petroleum Profits Tax Act

⁶ <https://www.dpr.gov.ng/wp-content/uploads/2019/10/Guidelines-on-Staff-Release-in-the-Nigerian-Oil-and-Gas-Industry.pdf>

to companies who retain their staff between 1 March 2020 – 31 December 2020. The Bill is yet to be passed by the Senate and is not yet law.

The Bill however excludes oil and gas companies subject to Petroleum Profits Tax Act (PPTA). It might therefore be useful for the companies, possibly through the Oil Producers Trade Section (OPTS) group, to make representations to the National Assembly to remove the exclusion clause given the devastating impact of COVID-19 on the sector – fall in crude prices and demand for oil, border closures, OPEC production cuts and pricing challenges.

Maritime

The Nigerian Maritime Administration and Safety Agency (NIMASA) has issued a specific Marine Notice in response to COVID 19 to all stakeholders in the Nigerian shipping sector⁷. Vessel owners, charterers and operators are advised to familiarise themselves with the directives, which include, but are not limited to:

1. a requirement that all maritime stakeholders develop risk assessment and safety intervention guidelines for their personnel and operations;
2. a requirement that all offshore operations requiring new crew or crew changes from affected countries should ensure that pre-departure tests for COVID 19 are conducted on such crew and self-isolation procedures for the prescribed period are instituted; and
3. that only vessels having thermal screening facilities be allowed into Nigerian ports.

Companies in the sector must also be mindful of the provisions of their charterparties that may be triggered or affected by the pandemic. For example, vessel owners operating charterparties that incorporated the recently drafted BIMCO Infectious or Contagious Disease Clause will likely have the right (unless waived) to prevent charterers from entering into ports affected by COVID-19. Also, contractors operating offshore vessels under the Supplytime contracts should be aware that vessel hire may not be payable where vessels are prevented from working due to a “deficiency of crew” – this is particularly relevant in view of the above-mentioned DPR directive reducing the number of workers on offshore installations.

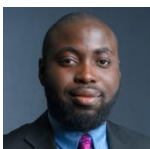
Final Words

In the face of the unprecedented challenges facing the oil and gas industry, risk assessment across all levels of your business is important. The time to act is now.

⁷ <https://nimasa.gov.ng/wp-content/uploads/2020/03/covid-19-guidance-1-converted.pdf>



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