

INSIGHTS

A new regime for Nigerian upstream royalty rates

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What has happened?

Nigerian President Muhammadu Buhari has taken the final steps to pass a new law amending the country's upstream royalty rates applying to offshore and certain inland areas.

The Deep Offshore and Inland Basin Production Sharing Contracts (Amendment) Bill ("**Amendment**") quickly passed through Nigeria's National Assembly and was returned to the President for his assent.

What does it cover?

The Amendment makes changes to an existing law – the Deep Offshore and Inland Basin Production Sharing Contract 1993 ("**Act**"). The Act establishes the legal framework for deep offshore and inland oil activities, including the applicable royalties and key fiscal terms.

The "deep offshore areas" covered by the Act and the Amendment are areas in water depth beyond 200 metres. The "inland areas" covered by the Act and the Amendment are the Anambra, Benin, Benue, Chad, Gongola and Sokoto basins and such other basins as the Minister of Petroleum may determine from time to time.

What are the key changes?

- **Flat offshore royalty rate:** a 10% royalty will apply on production from fields with a water depth of greater than 200 metres. Under the existing Act, this rate was graduated, reducing with the extent of the depth of field (participants had paid 12% in areas from 201 to 500 metres water depth; 8% in areas from 501 to 800 metres water depth; 4% in areas from 801 to 1000 metres water depth; and 0% in areas in excess of 1000 metres water depth).
- **Reduced rate for frontier and inland basins:** these will be subject to a 7.5% royalty (under the existing Act, participants paid 10%).
- **Oil price royalty:** a new royalty is payable on the basis of the oil price with an additional rate payable of 2.5% for an oil price of US\$ 20 – 60 per barrel; 4% for an oil price of US\$ 61 – 100 per barrel; 8% for an oil price of US\$ 101 – 150 per barrel; and 10% above US\$ 150. This replaces section 16 in the existing Act which stated that the royalties in the Act

were subject to review when the price of crude oil exceeded \$20 per barrel.

- **Right of review of PSC terms:** the Minister of Petroleum has a new right to call for a review of production sharing contracts every eight years and imposes new penalties of a fine not below 500,000,000 naira or five years imprisonment for non-compliance.

What are the implications?

- **Deep offshore players face increased royalties.** Participants with existing deep-water projects in Nigeria face potential increases to the royalties payable on their production. Operators in the deepest fields will now pay royalties, when previously none had applied. This may challenge the returns of ongoing projects and the economics of those awaiting FID.
- **Oil price royalties now apply.** There had been much debate recently over the applicability of oil price royalties and the historic non-exercise by the Government of its right under the Act to review royalty rates when oil prices exceed \$20 (and whether the Government would pursue efforts to try to claw these back). The Amendment seeks to address this position going forward and establishes a new royalty (even if some of the detail behind how it will be calculated is lacking).
- **Continuing uncertainty in some areas:**
 - While the Amendment helps to offer certainty about the near term fiscal position (and may even be lower than some of the industry's expectations), the Petroleum Industry Bill looms large (as ever) and may, when passed, operate to further change the fiscal terms applicable to projects and participants.
 - The Minister's right to review PSC terms will undermine certainty around the contractual and fiscal terms that apply. The Amendment does not contain any detail about how any such review process would be undertaken and how the Government and PSC holders must reach agreement on the findings of such a review.
 - Many production sharing contracts in Nigeria include stabilisation provisions, and participants will be looking closely at their terms and any contractual protection that may potentially be available – which may soon be tested.

While the Amendment appears to have been passed into law, it is unclear whether it will have immediate effect or whether there will be any period of implementation (but no delay is specified in its terms).