

Oil & Gas Industry

18 May, 2015

The Oil and Gas Export Free Zone Act (Amendment) Bill

INTRODUCTION

On Thursday 07th May 2015, the Nigerian Senate passed a bill to amend the Oil and Gas Export Free Zone Act, Cap O5, LFN 2004 (**Export Free Zone Act**), (the **Amendment Bill**). In the main, the Amendment Bill seeks to bring clarity to certain key issues which had been thrown up in the course of the implementation of the Export Free Zone Act, whilst also expanding the scope of the Export Free Zone Act to provide for more investment opportunities.

Some of the notable changes introduced by the Amendment Bill include, the introduction of Special Investment Areas (**SIAs**), the vesting of powers on the President to designate areas in Nigeria as Oil and Gas Export Free Zones (**OGEFZ or Free Zones**) and SIAs, the removal of total tax exemption granted to operators within the OGEFZ and SIAs after a maximum cumulative period of twenty (20) years from commencement of operations and the establishment of the Free Zones and Special Investment Areas Training Fund, amongst others.

KEY AMENDMENTS

Introduction of Special Investment Areas

The Amendment Bill introduces a new category of investment area within the Federal Republic of Nigeria called Special Investment Areas. Unfortunately, there is no definition of the SIA or any indication as to the special characteristic of the SIA as opposed to the OGEFZ under the Amendment Bill. Rather the Amendment Bill simply introduces a global amendment by inserting the phrase 'Special Investment Areas' after the words 'Free Zones', anywhere it appears in the Amendment Bill. Admittedly, the introduction of SIAs appears to be a deliberate legislative attempt to create a new type of investment area in Nigeria; however other than the name SIA, there is no distinction between the SIA and OGEFZ. The Amendment Bill falls short of expectations in terms of giving clarity to the purpose and use of SIAs.

Powers of the President to Designate OGEFZ and SIAs

Under the Export Free Zone Act, the only OGEFZ was the Onne/Ikpokiri area of Rivers State. However, pursuant to the Amendment Bill, the President is now vested with the power to designate anywhere within the Federal Republic of Nigeria, as an OGEFZ or SIA. Furthermore, in addition to the Onne/Ikpokiri area, the Ogu creeks area in Rivers State has also been specifically designated as an OGEFZ.

Special Investment Areas

Notably, whilst SIAs are not defined anywhere in the Amendment Bill, there is however, a global amendment in the Amendment Bill which introduces the term 'SIA', wherever OGEFZ is used in the Export Free Zone Act. There is need for clarity on how the SIAs would differ from the OGEFZ.

Designation of Areas as OGEFZs and SIAs

Section 1(1) (a) and (b) of the Amendment Bill

Removal of Total Tax Exemption Status

Section 8 of the Export Free Zone Act which exempts enterprises operating within the OGEFZs from Federal, State and Local Government taxes and rates, has now been amended. First, unlike the former Section 8 of the Export Free Zone Act which uses the term, 'enterprises operating within the free zones' to indicate the entities covered by the tax exemption, Section 8 (as amended), introduces additional language to include 'body corporate or firm operating within the free zones'. This clarifies the category of entities who may take benefit of the tax exemptions. Secondly, the Amendment Bill expressly specifies the exempted taxes to include value added tax, levies, custom duties, rates, withholding tax and deductions.

More importantly, there is no longer an indefinite tax holiday under the Export Free Zone Act, as the Amendment Bill now restricts the tax holiday to fifteen (15) years (**Tax Period**), subject to a further five (5) year extension by the Minister, which amounts to a cumulative, maximum Tax Period of twenty (20) years.

Teaser: *Considering that the Amendment Bill stipulates that the Tax Period would run from the date an enterprise commences operations in the OGEFZ or SIA, would a company that has been operating in the OGEFZ for ten years prior to the amendment, be entitled to only an additional ten years tax holiday, or would the enterprise enjoy the full twenty year period?*

Functions of the Authority

Another notable amendment is that the functions of the Authority have been expanded under the Amendment Bill. Some key additional powers which have been conferred on the Authority include powers to: (x) purchase or otherwise acquire any asset; (y) obtain financing from banks licensed by the Central Bank of Nigeria; and (z) enter into contracts and other arrangements with any company or firm or body. Furthermore, the functions hitherto performed by the Nigerian Export Processing Zone are now vested in the Authority to the extent that those functions relate to export of oil and gas.

Joint Private and Public Operation of Free Zones and Special Investment Areas

The Amendment Bill facilitates private sector involvement in the development of OGEFZs and SIAs by permitting the Authority to collaborate with a *private* or *public enterprise* in the design, development, funding or operation of OGEFZs and SIAs. With what may be termed as the 'liberalization' of the development of OGEFZs and SIAs, private players as well as public enterprises may now take advantage of the expanded investment opportunities which abound in the OGEFZ, not only as an enterprise operating in the OGEFZ, but also as a developer or financier of a OGEFZ or SIA.

Tax Exemption

Significantly, the Amendment Bill removes the total tax exempt status previously enjoyed by entities operating within the OGEFZ providing a cumulative, maximum Tax period of twenty (20) years.

Functions of the Authority

The Authority would now function "...as a one-stop shop for all government services for Free Zones and Special Investment Areas.

Board Membership

The Board membership of the Authority has been expanded to include representatives of the following:

- o *Chairman, Federal Inland Revenue Service;*
- o *Governor of the Central Bank of Nigeria; and*
- o *Managing Director of the Civil Aviation Authority*

However it is important to note that the Authority is only permitted to raise finance from Nigerian Banks.

Oil and Gas Free Zones and Special Investment Areas Training Fund

Similar to the Nigerian Content Development Fund established under the *Nigerian Oil & Gas Industry Content Development Act*, the Amendment Bill introduces the Oil and Gas Free Zones and Special Investment Areas Training Fund, (**the Fund**) to promote the acquisition of skills in the activities in the OGEFZ and SIAs in order to generate a pool of indigenous trained manpower. Notably, every approved enterprise having ten or more employees in its employ is expected (annually, and on the date prescribed by the Authority), to contribute 0.5 percent of its annual payroll to the Fund. In addition, Section 25(4) of the Amendment Bill renders the Industrial Training Fund Act, inapplicable in OGEFZs and SIAs.

OTHER PROVISIONS

The Authority- For greater efficiency, minimum qualifications have been prescribed for members of the Governing Board of the Authority, including the Chairman who would also function as the chief executive officer of the Authority and whose appointment is now subject to confirmation by the Senate. Further, the membership of the governing board of the Authority has been significantly expanded to include representatives of various government agencies.

Labour Council – Provision has also been made for the establishment of the *Oil and Gas Free Zones and Special Investment Areas Labour Council* which would be responsible for dialogue and resolution of labour issues within the OGEFZ and SIAs as well as make recommendations to the Authority on resolution of labour issues in the designated areas.

CONCLUSION

In précis, the Amendment Bill seeks to expand the scope of the Export Free Zone Act, whilst addressing some of the operational challenges and other inadequacies associated with the OGEFZ prior to the amendment. Further, it is envisaged that due to the specific provisions of the Amendment Bill which seek to encourage increased participation of the private sector in the OGEFZs and SIAs, the Oil and Gas sector would witness increased activities in the zones. In sum, the existing legal framework now presents a broader range of investment opportunities for investors, developers and other entities desirous of participating in the Nigerian Oil and Gas industry.

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