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COVID-19: COMPLYING WITH THE GUIDELINES FOR THE RELEASE OF STAFF IN THE NIGERIAN OIL AND GAS INDUSTRY 2019

The global outbreak of the novel coronavirus (COVID-19) coupled with the Russia-Saudi Arabia crude oil price war ushered in a new low crude oil price environment, which is ravaging oil dependent economies. Nigeria is not spared. The Federal Government of Nigeria has had to implement fiscal measures to mitigate the adverse economic effects of COVID-19 and low crude oil prices, including a reduction of budgeted capital expenditure by 20% across ministries, departments and agencies, and a 25% reduction of capital expenditure and overhead budgets by all government owned enterprises.

Similarly, it is expected that operators, contractors and service providers in the Nigerian oil and gas industry (the "**Industry**") will implement cost-cutting measures in order to stay afloat and survive the double-whammy of low crude oil prices and business disruptions caused by the COVID-19 pandemic. One of the cost-cutting measures usually resorted to by companies is job cuts.

The Nigerian Content Development and Monitoring Board (the "**NCDMB**" – the local content regulator) – recognizing that job cuts may be one of the cost-cutting measures that would be considered and discussed in the board rooms of most oil and gas operators, contractors and service providers – noted in a recent business continuity announcement that the NCDMB is engaging leaders of service companies under the Petroleum Technology Association of Nigeria on possible institutional support for the service companies to ensure resilience and prevent job losses after the COVID-19 pandemic, considering the steep fall in crude oil prices.

Regulatory Requirement for Release of Staff in the Industry

While Nigerian companies are generally allowed to terminate the employment of their employees provided that they comply with relevant employment contracts, collective bargaining agreements, employment policies/handbooks and laws, and provide valid reason(s) for the termination, for companies operating in the Industry, there is an additional requirement to comply with the provisions of the Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry 2019 (the "**Guidelines**").

The Guidelines were issued by the Department of Petroleum Resources (the "**DPR**") to protect the employment of Nigerian nationals working in the Industry. The Guidelines establish the procedure for obtaining the approval of the Minister of Petroleum Resources (the "**Minister**") through the DPR for the release of any Nigerian national by an employer. An employer under the Guidelines is a holder of an oil mining lease, licence or permit (or any interest therein) issued under the Petroleum Act Cap P10 Laws of the Federation 2004 or under relevant regulations or any person registered to provide any related services. Clearly, the reach of the Guidelines is vast given that all companies operating in the Industry are either lease, licence or permit holders. As such, prior to resorting to job-cuts as a cost-cutting measure, such companies must adhere to the requirements of the Guidelines or run the risk of being sanctioned.

The Guidelines provide that any employer who wishes to release (by dismissal, involuntary retirement, termination or redundancy) a worker (this refers to any Nigerian national) shall apply in writing to the Director of Petroleum Resources for the Minister's approval stating the manner of staff release, the reasons for the proposed release, the compensation due to the worker and any proposed replacement of the worker. Under the Guidelines, staff release means the removal of a worker in a manner that permanently separates the worker from the employer.

In applying to the DPR for staff release, relevant employment documents that govern the relationship between the employer and the worker must also be submitted. Applications that are submitted without any of the required information shall not be eligible for the Minister's approval. Following an application for staff release, the DPR will conduct an inquiry into the circumstances of the proposed staff release and make a decision on whether to convey the Minister's approval or otherwise.

In addition, employers are restricted from advertising, publishing or making a press release in relation to the release of any worker prior to the DPR's decision. The basis for this is to forestall a situation where the advertisement, publication or press release prejudices the outcome of the inquiry.

COVID-19 Situation

It is beyond doubt that the COVID-19 pandemic, low crude oil prices and business disruptions have negatively impacted the revenues of oil and gas operators, contractors and service providers, with the need for such companies to implement cost-cutting measures to stay afloat. It is therefore envisaged that the inquires by the DPR in relation to applications submitted to it would be timeously and effectively conducted.

Any decision reached by the DPR is required to be implemented no later than 10 (ten) days after it is received by the employer. Theoretically, the DPR is not limited in the decision it can take. Therefore, rather than simply approve and/or reject an application for staff release, the DPR may in conjunction with the NCDMB recommend appropriate salary cuts and/or deferrals, to ensure that there is a fair balance between the interests of the employer (to cut-cost and stay afloat) and the employees (sustenance of livelihood). It is thus reasonable for the DPR to adopt a situational approach in the application of the provisions of the Guidelines during these unprecedented times, in order to ensure that its decisions on staff release are mutually beneficial to both employers and employees.

Penalty for Non-Compliance

As a deterrence, non-compliance with the requirements of the Guidelines attract a penalty not exceeding US$250,000 (two hundred and fifty thousand United States Dollars). In addition, any permit, licence or lease granted may be withdrawn or cancelled.

Given the heavy sanctions that attach to non-compliance with the provisions of the Guidelines, oil and gas operators, contractors and service providers that plan to deploy job-cuts as a cost-cutting measure should ensure that they comply with the Guidelines. Non-compliance would not only result in a monumental cost-cutting failure, but would be a massive cost-incurring venture.

Adepetun Caxton-Martins Agbor & Segun by telephone (+234 1 462 2094), fax (+234 01 461 3140)