

**NIGER – DELTA
DEVELOPMENT COMMISSION
(ESTABLISHMENT)
(AMENDMENT) ACT 2017:
MATTERS ARISING**



On 29 December 2017, the Nigerian President signed into law the Niger-Delta Development Commission (Establishment)(Amendment) Act ("Amendment Act"). The Amendment Act amends the provisions of Section 14(2)(b) of the Niger-Delta Development Commission (Establishment, etc) Act (the "Principal Act") as follows:

"There shall be paid and credited to the fund established pursuant to subsection (1) of this section –

(b) 3 per cent of:

- (i) the total annual budget of any oil producing company operating onshore and offshore, in the Nigeria Delta area; and;*
- (ii) the total annual budget of any gas processing company in the Niger Delta area, excluding the cost of feed gas."*

Our thoughts:

The Amendment Act seem to clarify the applicability of NDDC levy to gas processing companies operating only in the Niger Delta as opposed to the erstwhile provisions of the Principal Act which only mentioned "gas-processing" companies without more. However, we believe the following issues are yet to be addressed:

1. Definition of Gas Processing: The Amendment Act fails to address the definition of "gas-processing". Considering the decision of the ***Niger Delta Development Commission v. Nigeria Liquefied Natural Gas Limited (2009) 1 TLR 1*** where the definition of gas processing was an issue for determination, we thought the Amendment Act would have defined "gas processing". Perhaps the legislature appears satisfied with the definition of gas processing in *Niger Delta Development Commission v. Nigeria Liquefied Natural Gas Limited* where the court defined gas-processing as "those companies who subject the natural gas on supply to a succession of actions to bring about some desired result or a method of changing the gas by industrial process in order to make them suitable for export". That said, the challenge with this definition is the assumption that a gas processing company is engaged in such activity for export. The language of the Amendment Act suggests that the NDDC levy applies to all gas processing companies operating in the Niger Delta irrespective of whether the activity is export oriented or not. Also, we believe the definition in the NLNG case is specific which may not apply in all instances but should serve as a guide in the definition of gas processing companies in the absence of any decision or statutory provision to the contrary.

2. Enforcement: The Amendment Act like the Principal Act fails to introduce any form of enforcement provisions with regards to non-compliance neither are there any form of
3. Cost of Feed Gas: Due to the fact that costs more often than not are made up of various components (fixed and variable), the question that would arise is how will the cost of feed gas be determined? A simple approach is to determine cost of feed gas on the basis of the relevant Gas Sale Agreements however, this may not be the only determinant of costs as there is the possibility of other variables to consider. In our view, the cost of feed gas for the purpose of its exclusion from the budget of a company is source of potential disagreement between gas processing companies and the NDDC.

For further information on the foregoing, please contact Oyeyemi Oke (oyeyemi.oke@aolaw.com) or Moyo Omidiran (moyo.omidiran@aolaw.com) with the subject: "Niger-Delta Development Commission (Establishment)(Amendment) Act 2017: Matters Arising".