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## WEIGHTS & MEASURES REGULATIONS – THE NEED FOR CLARITY

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**S**ometime in 2012, the Federal Government published the Weights and Measures (Legal Metrology and Related Services) Regulations (“Regulations”). The Regulations were made by the then Minister of Trade and Investment (“Minister”) pursuant to Section 47 of the Weights and Measures Act, Cap W3, Laws of the Federation of Nigeria, 2004 (“Act”). The objective of the Regulations is to prescribe fees for services rendered by staff of the Weights and Measures Department of the Federal Ministry of Trade and Investment (“Department”) to various businesses.

In recent times, some businesses have questioned the astronomical fees introduced under the Regulations and the expansion of the powers of the Department. For instance, the Regulations prescribed fees to be charged for oil and gas, electricity, water, and telecommunication sectors. More specifically, the Regulations prescribed a fee of 0.175% of the Free on Board value on hydrocarbon commodities for export. In this regard, one pertinent question is whether the role of the Department statutorily extends to the regulation of hydrocarbon exports and whether the Minister, can, by regulation extend the powers or functions of the Department.

### **THE ROLE OF THE DEPARTMENT**

The Act was enacted to ensure uniformity of standards of measurement throughout Nigeria. The Act sets out the lawful weights and measures applicable in Nigeria and prescribes the mechanism for inspection and enforcement of the use of such weights and measures as well as the manner in which weight and measure equipment or instruments are to be tested, confirmed and approved for use, by authorized inspectors. Under the Act, the Department may on the application of any authority or person and on payment of such fees as may be prescribed, accept for testing as to accuracy or for report or both (a) any article used or proposed to be used as a standard of a

unit of measurement; and (b) any weighing or measuring machine.

The Minister is charged with maintaining secondary and tertiary standards which shall consist of measures or weights provided under the Act which collectively are known as the Nigerian trade standards. The Minister is also empowered under Section 47 of the Act to make regulations prescribing the fees to be paid on the stamping, marking, verifying, repairing or adjusting of any weight, measure, weighing instrument or measuring instrument by an inspector; and prescribing the tests to be applied for the purpose of ascertaining the accuracy and efficiency of weights, measures, weighing instruments and measuring instruments.

The Act makes provision for the Department to weigh or measure any good submitted to it for that purpose, or test the accuracy of any weighing or measuring equipment. It should be noted that such weighing or measuring equipment or instrument can include those used in the petroleum industry. From the provisions of the Act, it can be stated that the Act primarily vests in the Department and the Minister the power to set standards for weights and measures and to certify weighing and measuring equipment or instrument that are used for trade and other activities. All other powers or functions of the Department or the Minister should be related to the primary

function of setting weights and measures' standards and certifying or verifying equipment used for such purposes. It is trite law that a statute should be construed as a whole and should be given an interpretation consistent with the object and general context of the entire statute. In the interpretation of statutes, the courts have adopted a liberal and purposive approach to give effect to the true intention of the lawmakers. In that sense, the entire statute would be considered and the general object meant to be secured by the law should be considered. The courts will therefore consider the provisions of the entire law to determine the scope of the powers and functions of the Minister and the Department.

From the provisions of the Act, there is no express provision that grants the Department or the Minister any role in relation to the export of oil and gas. It is arguable that some role may be implied under the Act regarding the Department in the export of oil and gas or any other good considering the fact that the Department is responsible for setting standards for weights and measures and also certifying weighing and measuring equipment. Assuming the argument on the implied role of the Department is acceptable, such role at best will be limited to certifying any weighing or measuring equipment that is used in the process of exporting oil and gas. In this case, the role of the Department ought not to extend to the actual daily measurement of the quantity of any product to be exported. It is important to note that a subsidiary legislation cannot be used to amend the principal legislation or expand powers granted under the principal legislation.

It is also important to note that the Petroleum Act and the regulations made thereunder have expressly vested the Department of Petroleum Resources with the responsibility of measuring the quantity and quality of oil and gas including at oil terminals and for export purposes. Considering the importance of the oil and gas sector to Nigeria's economy, if it was the intention of the legislature to extend the role of the Department or the Minister to

include the measurement of oil and gas exports, such detail would have been expressly stated in the Act.

## ENTERS THE PRE-SHIPMENT ACT

The Pre-Shipment Inspection of Exports Act, Cap P25, Laws of the Federation of Nigeria 2004 ("Pre-Shipment Act") provides for the inspection of goods in Nigeria prior to their shipment to a place outside Nigeria. Under the Pre-Shipment Act, all oil and non-oil goods are liable to pre-shipment inspection by an inspecting agent with respect to their quality, quantity and price comparison. The Pre-Shipment Act does not define oil goods but defines oil exports. The term Oil exports is defined to include "Crude Oil and Petroleum Products". Section 16(3) of the Pre-Shipment Act provides for the role of the Department in the pre-shipment export process as follows:

***"In addition to the specific function conferred under subsection (2) of this section, the Weights and Measures Division of the Federal Ministry of Commerce shall continue to carry out functions relating to the calibration of crude oil prior to the export thereof in collaboration with the inspecting agents appointed under section 12 of this Act"***.

Neither the word "***calibration***" nor "***calibrate***" was defined in either the Pre-Shipment Act or the Act. However, the Oxfords Dictionary provides one of the meanings of calibrate as "***correlate the readings of (an instrument) with those of a standard in order to check the instrument's accuracy***".

Based on the provisions of Section 16(3) of the Pre-Shipment Act, it can be said that the Pre-Shipment Act does not vest any new role on the Department in the export process of crude oil as the section merely states that the Department "***shall continue to carry out functions***"... It follows therefore that if the

Department was not carrying out such functions or if there is no legal basis for the Department to carry out the certain functions, then the Department cannot use the provisions of Section 16(3) of the Pre-Shipment Act as a basis to assume a role in the export of crude oil. If the Department uses the provisions of Section 16(3) as the only basis for its role in the export of crude oil, then it can be challenged as the provision assumes that the Department already plays a role in the export process. It may also be the case that the role of the Department is a matter of practice.

In any event, it should be noted that the role of the Department is limited to carrying out functions relating specifically to the calibration of crude oil prior to being exported. Although “functions relating to calibration of crude oil” are not specifically provided in the Act, the Regulations which provide for the fees to be paid by all sectors of the Nigerian economy for legal metrology and related services rendered by members of staff of the Department provides that the fees contained therein shall apply to verification or calibration of devices, including flow meters, automatic tank gauges, test meters and other hydrocarbon flow measuring devices or instruments for measurement and weighing of hydrocarbon commodities flow in trade transactions in the upstream sector of the oil and gas industry of Nigeria in accordance with the provisions of Section 16(3) of the Pre-Shipment Act. The Regulations also describes the fee as “a special service driven fee” which can be interpreted to mean that the fee should be service based, for instance when the Department tests or calibrates a weighing or measuring equipment.

From the provisions of Regulation 52 of the Petroleum (Drilling and Production) Regulations with regards to the process for measuring and weighing of crude oil, calibration with regards to crude oil relates to the calibration of equipment or appliances for measuring or weighing crude oil or gas. It appears that the role of the Department, if any, in the export of crude oil or gas should be limited to the calibration of weighing and

measuring equipment or instruments and should not extend to the actual day to day measurement or monitoring of the measurement of the crude oil being exported.

## CONCLUSION

From the provisions of the Act, the primary function of the Minister and the Department is to set standards for weights and measures and in addition, certify weighing and measuring equipment or instruments. The role of the Department does not extend to the actual day to day weighing or measuring of goods including oil and gas exports. The Pre-Shipment Act does not create new powers or extend the powers of the Minister or the Department in relation to their role or duties in the export process of oil and gas. It can therefore be argued that the Act and the Pre-Shipment Act do should be used as the basis for the expansion of the powers of the Department beyond the specific provisions of the law particularly the Act. Neither can such expansion of the powers of the Department or the Minister be achieved through a subsidiary legislation. A judicial construction of the various legislations relating to weights and measures will provide clarity as to the statutory functions and powers of the Minister and the Department and it is hoped that the question will come up before the law courts soon.

***Disclaimer: This article does not constitute legal advice neither is it a substitute for obtaining legal advice from a legal practitioner.***

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