

THE IMPLICATION OF THE PETROLEUM INDUSTRY BILL ON THE BANKABILITY OF UPSTREAM PROJECTS

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OUTLINE

- Current Funding Challenges
- Upstream Risks
- Bankability Issues in Upstream Financing
- Mitigating the Risks: Security
- Upstream Operations under the PIB
- The PIB and Bankability
- Impact on Investment

CURRENT FUNDING CHALLENGES

- Cash call defaults
- Difficulties in obtaining third party funding
 - NNPC assets may only be pledged in limited circumstances (NNPC Projects Act)
 - Suits against the NNPC incompetent unless:
 - A pre action notice was issued; and
 - Filed within 12 months

UPSTREAM PROJECT RISKS

- Government and Political
- Fiscal and Commercial
- Environmental and Social
- Legal and Investment Protection
- Economic
- Regulatory
- Technology
- Reserve
- Production performance

FINANCING STRUCTURES

- SINGLE ASSET FINANCING
- BORROWING BASE FACILITY
- CORPORATE BONDS
- PROJECT FINANCE

BANKABILITY ISSUES IN UPSTREAM FINANCING

- Title to the Assets:
 - ❖ Terms of the License, PSCs...including restrictions on grant of security and default events;
 - ❖ Term, consideration, relinquishment, work obligations, profit sharing;
- Terms of the JOA, particularly, assignment provisions.
- Offtake/Sale Contracts: cash flow, restriction on creating security.

BANKABILITY ISSUES IN UPSTREAM FINANCING II

- Public International Law/Treaties:
 - ❖ Joint Development Areas;
 - ❖ Do Operations comply with treaty provisions?
- Environmental Issues:
 - ❖ Equator Principles;
- Decommissioning Security:
 - ❖ Stifles acquisition finance;

MITIGATING THE RISKS: SECURITY

Charge Over:

- ❖ Borrower's interest in the licence;
 - ❖ The Joint Operating Agreement;
 - ❖ The EPC Contracts;
 - ❖ Marketing Agreements;
 - ❖ Transportation Agreements;
 - ❖ Insurances
 - ❖ Shares
- Lender Direct Agreement
 - Cost of perfecting security: Stamping at 0.375% of secured value; filing at CAC at 1% of secured value.
 - Offshore financing may reduce costs

UPSTREAM OPERATIONS UNDER THE PIB

Structure for Exploitation	Upstream Operations	Award of Acreage	Applicable Licences/Leases	Regulatory Agencies
Production Sharing Contracts	Asset acquisition	- Open Bidding;	Petroleum Prospecting License [PPL]	National Petroleum Directorate [NPD]: - Owns acreage; - recommends the award of licenses/leases to the Minister after due consultation with the NPI;
	Exploration	-License/ Lease to be either for oil or gas not both:	Petroleum Mining Lease [PML]	
Risk Service Contracts		Oil Exploration & Development		National Petroleum Inspectorate [NPI]: - technical audit of E& P operations; - Receives Signature Bonus paid by companies;
	Production	Gas Exploration & Development	Marginal Field Award	
Others	Transportation to terminal	-To indigenous Companies Only		

THE PIB AND BANKABILITY: PLUSES

- Minister must consent to Assignment if specified conditions are met;
- Revocation must be on specified grounds;
- Licence holder has a right to be heard prior to revocation
- PMLs granted for an initial term of no more than 20 years may be renewed indefinitely

THE PIB AND BANKABILITY : PLUSES

- Ministers discretion re renewal of PMLs curbed (265)
 - Renewal to be granted if terms and conditions of licence are fulfilled;
 - Discretionary Awards abolished (270).

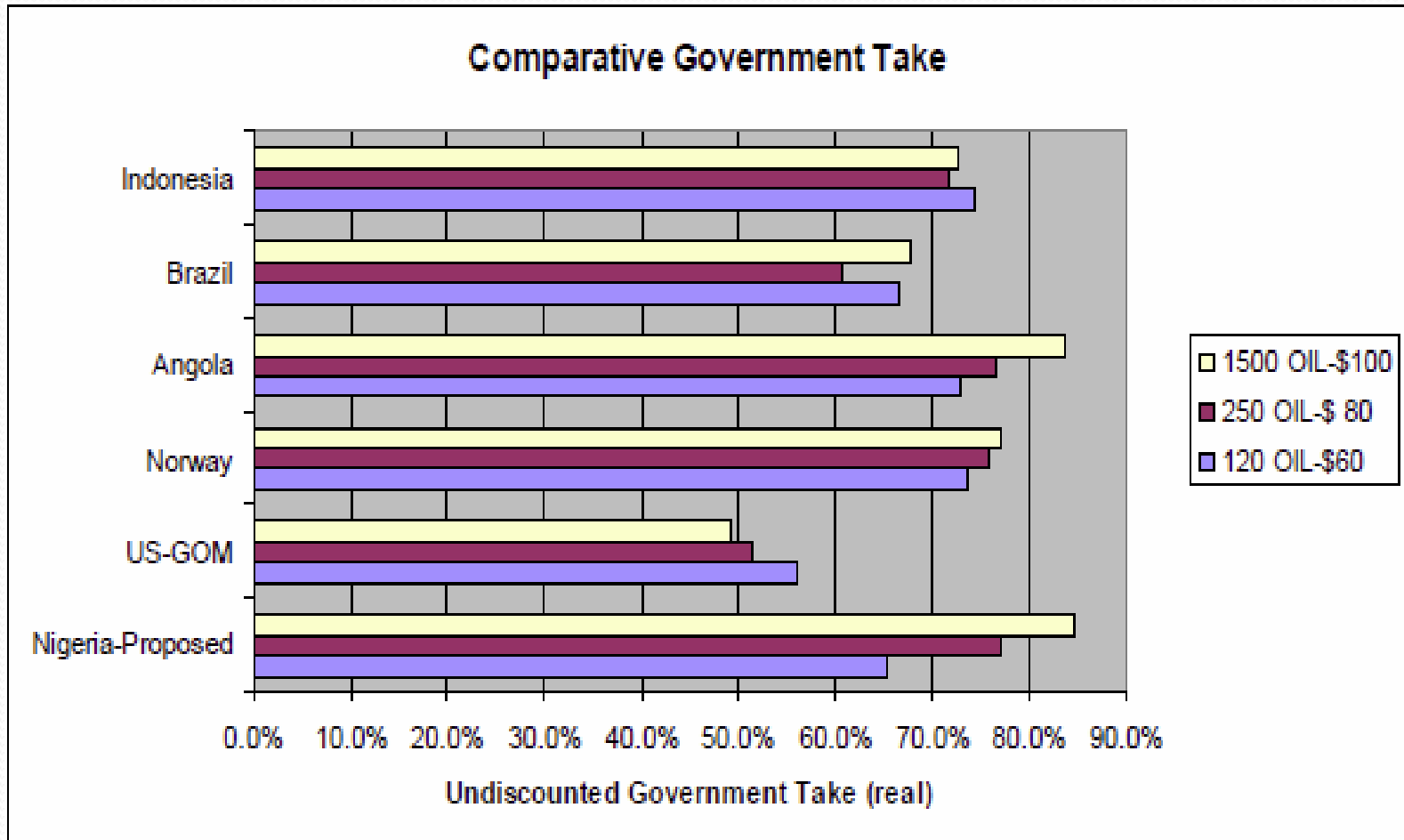
THE PIB AND BANKABILITY : MINUSES

- Use of licence as security not provided for;
- Grant of second PML discretionary: Sapetro;
- Multiple regulators: the Minister, the Inspectorate and the Directorate;
- Compulsory mediation/arbitration
- No timelines for regulators to act

THE PIB AND BANKABILITY : MINUSES

- The role of the Inspectorate in Dispute Resolution not clear; Is its jurisdiction mandatory?
- Incentives envisaged for Marginal Field Operators (MFO) left to regulations to be made by the Minister

COMPARATIVE FISCAL REGIME AMONG PRODUCING COUNTRIES





THANK YOU FOR LISTENING!