

# The Petroleum Industry Act

**Redefining the  
Nigerian oil and gas  
landscape**



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# General overview of the industry



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# General overview of the industry

## Economic context

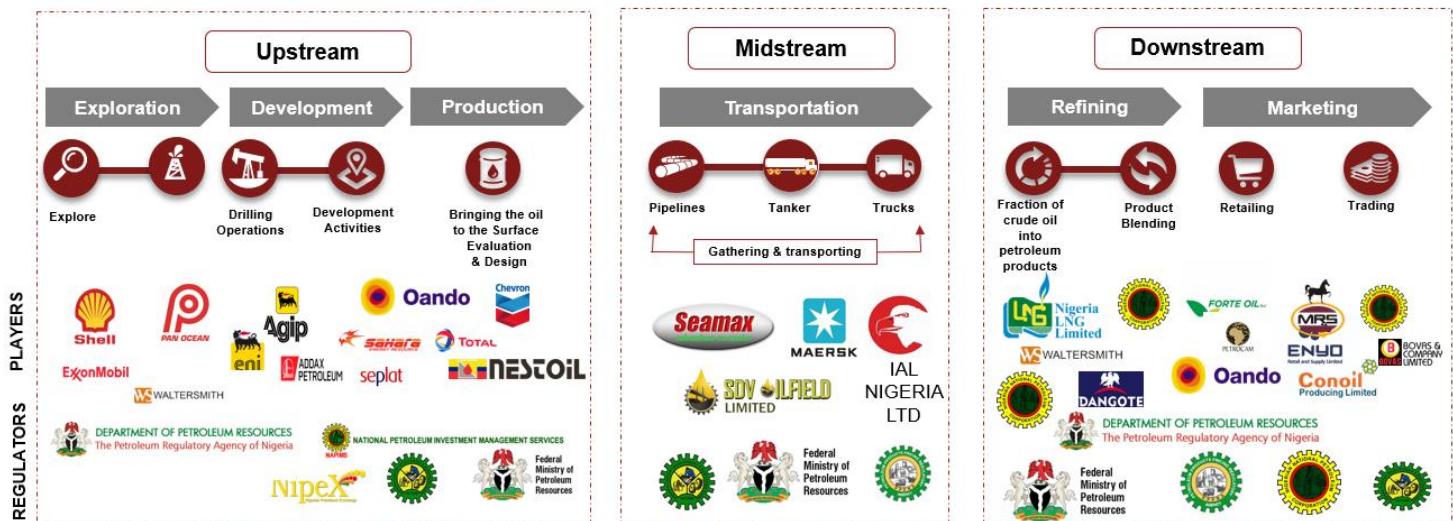
Nigeria is home to about 206 million people (Worldometers, 2020) and is Africa's largest market, with a young, growing and vibrant population. The population is forecast to grow by an average of 2.6% per annum (World Bank, 2020). This population growth is expected to fuel greater energy demand.

Nigeria's economy entered a recession in 2020, reversing three years of recovery, due to fall in crude oil prices as an aftermath of falling global demand and containment measures to fight the spread of COVID-19. The economy lost \$15.8 Billion as a result. The GDP contracted by -6.1% in Q2 and -3.62% in Q3 of 2020 before rebounding to 0.11% in Q4 of 2020. This brought Nigeria's GDP contraction to -1.98% due to the impact of COVID-19. The economy however has seen a recovery to 0.51% in Q1 of 2021 (NBS). The economy is projected to grow by 1.5% in 2021 and 2.9% in 2022, partly based on an expected recovery in crude oil prices and Nigeria's production.

Despite being a major source of revenue, the oil sector lags other sectors in terms of GDP contribution. The relative importance of the oil and gas sector in Nigeria appears to be declining, from 13% of Nigeria's GDP in 2013 to about 7% in 2020, while those of other sectors continue to increase. The federal government continues to seek means of diversifying the economy, particularly sources of government revenue and foreign exchange receipts to include Agriculture, Petrochemical, Refining, Retail, and ICT as priority sectors of the economy. It is clear however that even the oil sector needs to grow and be diversified to stimulate overall economic development.



## Industry structure, players, regulators and roles



Source: Public Information and PwC Analysis

# General overview of the industry

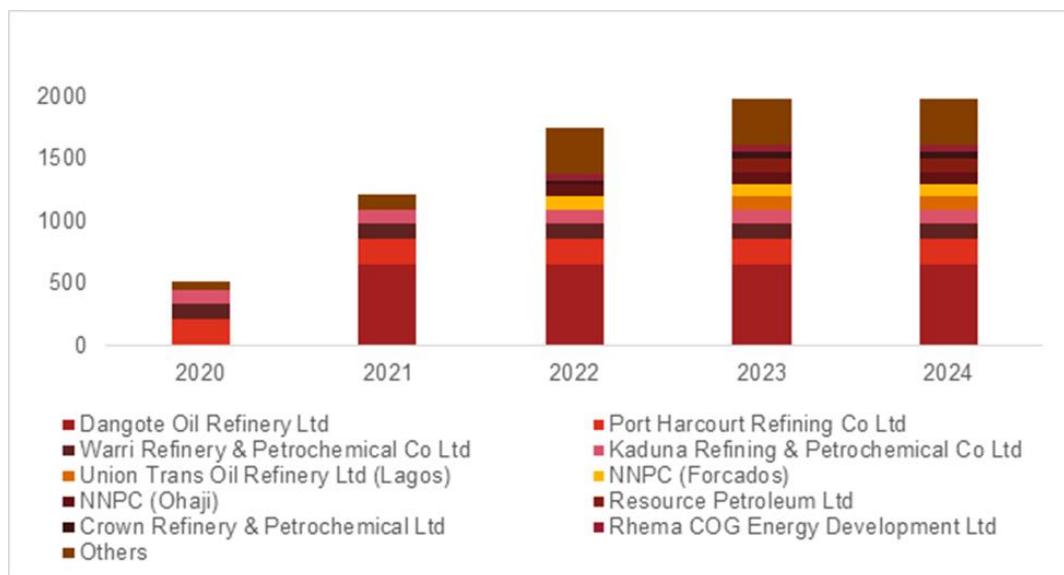
The Nigerian oil and gas industry is segmented into the upstream, midstream and downstream sectors with several players and regulators playing across the value chain.

The upstream oil and gas sector is dominated by international oil companies (IOCs). Shell, Chevron, Mobil, Agip, Addax and Total, currently dominate the oil industry accounting for over 80% of the country's crude oil production. Activities in the sector are carried out under various arrangements including

Joint Ventures (JVs) and Production Sharing Contracts (PSCs) with the Nigerian National Petroleum Corporation (NNPC). Other contractual arrangements include sole risk contracts and risk service contracts. The IOCs also hold more than 90% of the oil reserves and operating assets. Production by IOCs has shrunk over the past ten years by an annual average of 4%, while marginal field players have increased production by up to 15% annual growth rate.

## Key products and derivatives

Refinery capacity in Nigeria is expected to increase by 400% between 2020 and 2024 as new refineries such as Dangote Refinery spring up in addition to the rehabilitation of the Port Harcourt refinery.



Source: Public Information, NNPC, DPR, PwC Analysis

**Major domestic refineries are predominantly government controlled.**

Refinery	Location	Capacity	Capacity Utilization (5-yr Avg)	Refined Products	Crude Source	Refined Products Destination
Kaduna Refinery	Kaduna State	110,000 bpd	7.9%	PMS, AGO, DPK and Fuel oil	Escravos & Forcados terminals; Kuwait, Saudi Arabia & Venezuela	North East, North West and North Central regions
Warri Refinery	Delta State	125,000 bpd	12.7%	PMS, AGO, DPK	Escravos terminal	South-West regions
Port Harcourt Refinery I & II	Rivers State	210,000 bpd	10.8%	PMS, AGO, DPK and Fuel oil	Bonny terminal	Yola, South- East, South –South & North Central regions
Niger Delta Refinery (Private)	Rivers State	1,000 bpd	64.4%	AGO	Ogbele field and Omerelu field	South-East region

Source: DPR

# General overview of the industry

## Major challenges facing the industry

- Policy uncertainty** – The significant delay in enacting the Petroleum Industry Act into law for over a decade created an uncertain business environment which deterred investment into the sector resulting in lost opportunities. While the PIA has addressed many of these concerns, some uncertainties still remain in certain aspects such as price regulation, penalty regime and fiscal provisions.
- Poor infrastructure** - There is a huge infrastructure deficit in the sector, particularly in the midstream and downstream sectors.
- Insecurity** - Between 2019 and 2020, Nigeria experienced over 1,000 points of pipeline vandalism, kidnapping and other forms of insecurity. This has negatively impacted the performance leading to lower investment, high costs and decline in government revenues.
- Impact COVID-19:** The impact of COVID-19 on the oil and gas industry has affected demand globally as well as prices. According to Statista, this has forced a drop in production from 2.07 mbpd Q1 2020 to 1.7 mbpd Q1 2021.

## Industry Regulators

 <b>Ministry of Petroleum Resources (MPR)</b> <p>Responsible for articulating, implementing and regulating policies in the oil and gas industry and ensuring compliance</p>	 <b>Department of Petroleum Resources (DPR)</b> <p>DPR is the technical department of the MPR, responsible for monitoring and regulating the Oil &amp; Gas activities</p>	 <b>Department of Gas Resources (DGR)</b> <p>An MPR department established under the 2008 National Gas Supply and Pricing regulation to allocate domestic gas supply obligations and to regulate the gas sector</p>
 <b>Federal Ministry of Environment</b> <p>The Ministry carries out environmental impact assessments (EIAs) for proposed major projects in line with the 2004 EIA Act.</p>	 <b>Nigerian Content Development Monitoring Board (NCDMB)</b> <p>The board is responsible for the implementation of the Nigerian Oil and Gas Industry Content Development Act.</p>	 <b>National Oil Spill Detection &amp; Response Agency (NOSDRA)</b> <p>NOSDRA responsible for ensuring preparedness, detection and responses to oil spillages in Nigeria and companies' compliance with relevant legislation</p>
 <b>Nigerian National Petroleum Corporation (NNPC)</b> <p>Oversees and promotes the commercial interest of the FGN, with subsidiaries positioned across the Oil &amp; Gas value chain</p>	 <b>Nigeria-Sao Tome &amp; Principe Joint Development Authority (JDA)</b> <p>The JDA is a treaty between both countries to manage activities relating to the exploration of resources in the region of maritime overlap between both countries</p>	 <b>National Environmental Standards &amp; Regulations Enforcement Agency</b> <p>NESREA is charged with the protecting and developing the environment as well as coordinating and liaising with stakeholders within and beyond Nigeria</p>

The ministry of petroleum resources provides the primary oversight function for the industry, with several other agencies acting in different regulatory capacities.

Prior to the PIA, the oil and gas industry had four major regulations. Exploration, production and distribution of petroleum products in Nigeria is regulated by several statutes and subsidiary legislations. The most prominent of these laws

is the Petroleum Act 1969, Petroleum Profits Tax Act, Deep Offshore and Inland Basin Production Sharing Contract Act, and Associated Gas Reinjection Act. Most of the laws and regulations are outdated and inconsistent with present economic and industry realities. The Petroleum Industry Act now provides a more robust framework to drive growth within the sector.



# Energy transition and the future of energy



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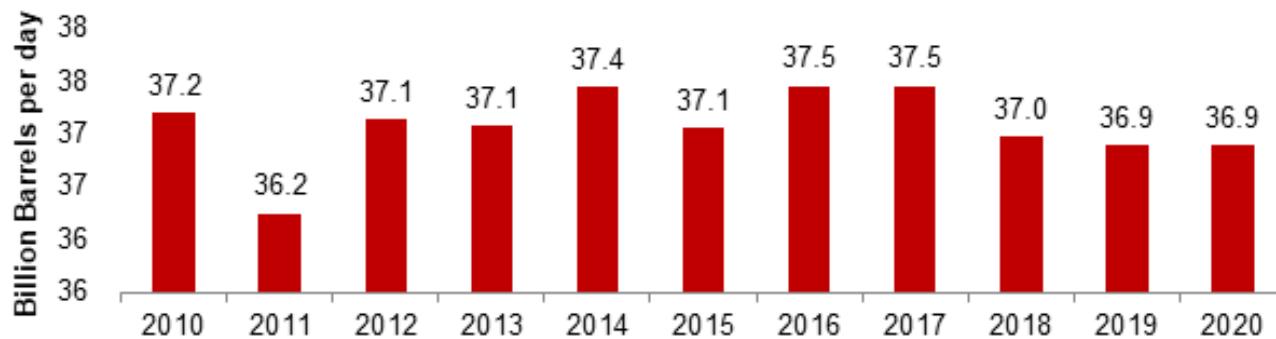


# Energy transition and the future of energy

## Overview

Nigeria's proven reserves has hovered around 37 billion bbl in the past 10 years. More recently, the reserves have declined from 37.5 billion bbl in 2017 to 36.9 billion bbl in 2020.

### Nigeria's Proven Oil Reserves



Data source: BP Statistical review 2021; analysis and presentation by PwC

The delays in the passage of the PIA is one of the main reasons a number of large-scale oil and gas projects have been delayed in Nigeria. Large-scale projects like Bonga Southwest–Aparo (BSWA) and Bonga North and Etan–Zabazaba (EZ) have been on hold largely due to fiscal uncertainties in the oil and gas industry. These projects have the capacity to unlock larger reserves thereby reversing the depleting reserves and boosting production of hydrocarbons in Nigeria. According to Rystad Energy, Nigeria is estimated to have lost \$15 billion annually due to the delays in passing the PIA.

Considering the projected decline in global demand for hydrocarbons, leading oil and gas production companies are cutting back significantly on their oil and gas business and on further investment into fossil fuel. For example, BP has announced that it would be suspending oil and gas exploration in new countries from 2021. It also aims to make a tenfold increase in its spending on low carbon energy. In the case of Shell, based on its new strategy launched in 2021, the company aims to decrease its total oil production by 1-2% per annum and make no new frontier exploration investment by 2025. The broad theme of Shell's strategy is that its upstream petroleum business will generate the cash to fund the growth of its low carbon business. Shell accounts for about 50% of Nigeria's oil and gas production. In connection to its global strategy and plan to have 55% gas in its global portfolio by

2030, Shell has embarked on a full divestment of its onshore and shallow water portfolio in Nigeria. It is expected that similar divestments by International Oil Companies (IOCs) may occur in the coming years.

The PIA by its very essence is hydrocarbon-centered. While the PIA is expected to attract investment into the Nigerian oil and gas sector and serve as a catalyst for the development of the sector, the PIA doesn't say much on the energy transition and its likely impact on the sector and its outlook.

In recent times, clean energy has accounted for the majority of global investments in the energy sector. According to the International Energy Agency (IEA), investments in new power generation are expected to account for 70% of USD 530 billion to be spent on all new generation capacity in 2021. In 2017, the World bank announced that it would no longer finance upstream oil and gas projects. In exceptional circumstances in the poorest countries where there is a benefit to energy access and this is consistent with the countries' NDC commitments, the World Bank Group will consider upstream natural gas projects.

The foregoing puts to question how much investment Nigeria will be able to attract into the oil and gas sector with the signing of the PIA amidst the energy transition.

# Energy transition and the future of energy

## Key Issues

Conversations on energy transition continue to gain ground accelerated by climate change and the renewed focus on Environmental, Social and Governance (ESG). Scientific evidence of climate change risk has triggered a drive to decarbonise every sector of the global economy. This has become one of the key drivers of the global energy transition.

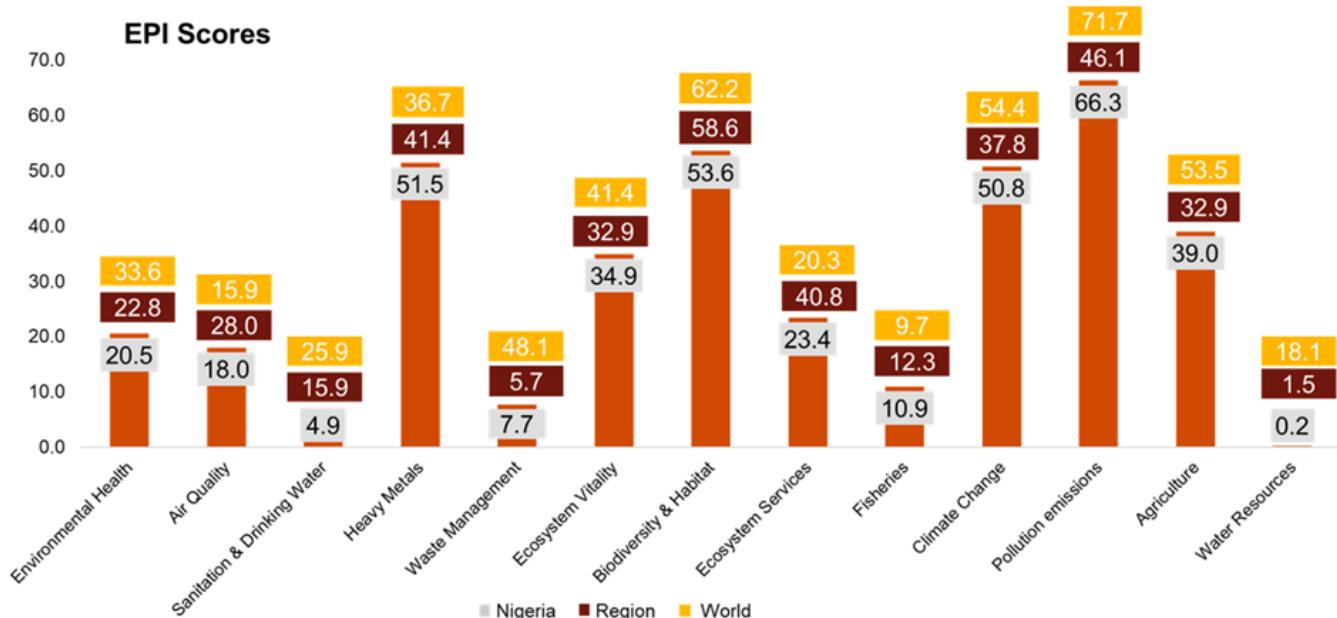
In navigating the journey to decarbonisation, which is now popularly called “Net Zero”, countries across the globe have pledged to slash greenhouse gas emissions. Previously, the European Union, which includes some of the biggest buyers of Nigeria’s crude oil, had pledged to cut carbon emissions by at least 55% by 2030. Moreover, the UK had also pledged to cut carbon emissions by 78% in 2035. Canada had also pledged to cut carbon emissions by 40-45% by 2030. In June 2019 the UK became the first major economy to set a legally binding commitment to reach Net Zero emissions by 2050. Countries like Ukraine and China have unveiled plans to achieve net-zero emissions by 2060.

National Oil Companies (NOCs), such as Statoil, Petrochina, Sinopec and Malaysia’s Petronas have also set net zero commitments. While nations like the UAE and Saudi Arabia

have not set corporate net zero targets, they are already positioning themselves to be hydrogen production and export hubs.

Nigeria has also committed to Intended Nationally Determined Contribution (INDC) to reduce greenhouse gas emissions by 20% compared to the Business as Usual Scenario (BAU) unconditionally and 45% compared to BAU with International support by 2030. The Nigerian Government has also prepared a National Renewable Energy and Energy Efficiency Policy with the vision to generate 30,000 megawatts (MW) of electricity by 2030 from renewable energy contributing 30% of the generation mix.

The Yale Environmental Performance Index (EPI) 2020 rates Nigeria 151 among 180 countries in the world and 25 in Sub-Saharan Africa in environmental performance in 2020. This puts Nigeria among the nations that must redouble national sustainability efforts along all fronts. The low EPI scores indicate the need for greater attention to the spectrum of sustainability requirements, with a high-priority focus on critical issues such as air and water quality, biodiversity, and climate change.



Data Source: Yale University

# Energy transition and the future of energy

## Key takeaway

The silver lining of the PIA on the energy transition is that it appears to focus on gas as the transition fuel for the country. It provides improved regulations and incentives for gas investment with tax holidays of up to 10 years and expansion of incentives to cover midstream gas operations. Section 64 of the act also stipulates that NNPC Limited is to engage in the development of renewable resources in competition with private investors. However, Nigeria needs to do more in providing the enabling infrastructure, regulatory framework and the right level of investment for the energy transition.

According to the World Economic Forum, a country's energy transition readiness is measured by six factors: the availability of investment and capital; effective regulation and political commitment; stable institutions and governance; supportive infrastructure and innovative business environment; highly skilled human capital and consumer participation; and robust energy systems structure. Based on these six factors, Nigeria scores 35% in energy transition readiness. The lack of enabling infrastructure, regulatory framework and governance of energy transition are the major reasons for the low score.

The PIA stipulates that a Frontier Exploration Fund shall be maintained for the exploration of unassigned frontier acreages in Nigeria. The Frontier

Exploration Fund shall be funded by 10% of rents on petroleum prospecting licenses, 10% rent on petroleum mining leases; and 30% of NNPC Limited's profit oil and profit gas in the production sharing, profit sharing, and risk service contracts. NNPC Limited shall transfer the 30% of profit oil and profit gas to the frontier exploration fund escrow account dedicated for the development of frontier acreages *only*.

Exploration is a high-risk endeavour. In addition, raising the needed finance for the development, production and evacuation from the frontier basins might be a tall order as investors are staying away from high-cost emission-intensive assets. These basins will compete for funds with ambitious and more-environment friendly projects like gas, hydrogen, solar and wind.

Rather than a frontier exploration fund, Nigeria could consider setting up a "Future Energy Fund". The amounts being set aside in the PIA for the frontier exploration fund can be applied towards funding the development of Nigeria's future energy potentials, which will include but not be limited to petroleum, in readiness for the energy transition. The fund can also be deployed for funding the development of abatement technologies that can aid carbon neutrality.





# Upstream operations



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# Upstream operations

## Overview

The long-awaited Petroleum Industry Act (“PIA”) is here and it is expected to be a game changer for the petroleum industry in Nigeria. The upstream sector which has suffered low investment over the past decade is expected to be the major beneficiary of the changes in the PIA including the new fiscal regime.

## Key Issues and Changes

### New regulator

Under the PIA, the upstream sub sector will have a separate regulator known as the Nigerian Upstream Regulatory Commission (the “Commission”). The Commission will be responsible for both the technical and commercial regulation of upstream petroleum operations. Some of the proposed functions of the Commission are currently carried on by the Department of Petroleum Resources (DPR). This presupposes that the DPR in its current form will cease to exist. The Minister will have general supervisory powers over the industry and retain the right to order cutbacks in crude oil or condensate production in the context of international oil pricing agreements supported by Nigeria.

### Licensing regime

The PIA also introduces a national grid system to be used for acreage management. The grid will be used to define license and lease areas, relinquishments, identification of well locations, petroleum conservation measures and other regulatory and acreage management procedures.

Upstream operations will now be operated under 3 new classes of licenses to be granted by the Commission namely:

- Petroleum Exploration Licence (“PEL”) which gives the licensee the right to exploratory rights on a non-exclusive basis for a single renewable 3-year term.
- Petroleum Prospecting Licence (PPL) which gives licensees the exclusive right to drill exploration and appraisal wells, do corresponding test production and non-exclusive right to carry out petroleum exploration for a maximum of 6 years for onshore and shallow water acreages and 10 years for deep offshore and frontier acreages.
- Petroleum Mining Lease (PML), granted to qualified applicants to win and dispose of crude oil, condensates and natural gas for a maximum of 20 years.

The administration of the licenses (including approvals and revocation) will be handled by the Commission and no longer solely under the purview of the Minister as is the case under the Petroleum Act.

The PEL will be granted on a discretionary basis while PPL and PML will only be granted after a transparent and competitive bidding process. Where the consents and approvals required under the Act are not provided within the stipulated time, deemed approvals will apply.

### Conversions

Current Oil Prospecting Licence (OPL) or Oil Mining Licence (OML) holders have the option to convert their subsisting interests to a PPL or PML through a Conversion Contract and subsequently enjoy the fiscal incentives under the new regime.

Conversion to the new regime will terminate all un concluded court and arbitration cases; guarantees and stabilisation clauses provided by NNPC including capital allowance on investments enjoyed for gas production. Upon conversion, the OML holders will be required to relinquish up to 60% of their existing acreage.

The conversions shall become concluded or effective at the earlier of expiry dates of the current licenses or 18 months from the effective date of the Act which is February 2023. Where OPL or OML holders choose not to convert to the PIA regime, the current regime will continue to apply to them until the expiration of the licenses. Upon expiration, the new regime will apply to the renewed licenses.

Also, all existing and producing Marginal Fields are to be granted a separate PML. All Marginal Fields (declared prior to 1 January 2021) that are not yet producing or in development are to be converted to PPLs and will benefit from the terms for new acreages under the Act.

### New Fiscal regime

The PIA has introduced new fiscal provisions which would only apply to acreages granted under the PIA and existing acreages that have either been renewed or converted.

### Royalties

New royalty rates will be based on production and price. For royalties based on production, the applicable rates on chargeable volume in the relevant areas will be as follows for production of crude oil and natural gas respectively:

- onshore areas- 15%
- shallow water-12.5 %
- deep offshore (greater than 200m water depth)- 7.5%
- frontier basins- 7.5%

In addition to royalties based on production, the royalty per price for crude oil and condensates are as follows:

- Below USD 50 per barrel – 0%;
- At USD 100 per barrel – 5%;
- Above USD150 per barrel – 10%

# Upstream operations

- Between USD 50 and USD 100 per barrel or USD 100 and USD 150 per barrel, the royalty by price is to be determined based on linear interpolation.

The new royalties based on price will not apply to frontier acreages.

Royalties unpaid after 30days from the due date will be considered a debt to the Commission and subject to interest at prevailing CBN rate

## Taxes

Under the PIA, Petroleum Profit Tax (PPT) will be replaced with Companies Income Tax (CIT) and Hydrocarbon Tax (HT).

The HT is a new tax that applies to crude oil, condensates and natural gas liquids produced from associated gas operations. It is charged and assessed on profits from crude oil on such operations in each accounting period at the following rates for new acreages and converted acreages respectively:

- Converted/renewed Onshore and Shallow Offshore - 30%
- Onshore and Shallow Onshore (including marginal fields) and PPLs - 15%

In addition to the HT, CIT will be applicable to all companies operating in the upstream sector. Companies involved in more than one stream must register and use a separate company for each stream. NHT is nondeductible for determining CIT. Withholding tax on dividends at 10% and Tertiary Education Tax (TET) of 2% of assessable profits will still be applicable however unlike under the PPTA, TET will not be tax deductible. Bank charges have also now been included as expenses which are not tax deductible. This is however contradictory to the general principle for expense deductibility under the Wholly, Reasonable, Exclusive and Necessary (WREN) test.

Hydrocarbon tax will not apply to companies with investments in the deep offshore areas.

The PIA replaces the Investment Tax Allowance (ITA) and Investment Tax Credit (ITC) with a Production allowance per crude oil production which consists of:

- for new acreages- the lower of 20% of the fiscal oil price and USD 8 per barrel volume
- for converted acreages- the lower of 20% of the fiscal oil price and USD 2.50 per barrel for production of up to 500million barrels and USD 4 for post 500million barrels produced.

## Costs

The deductible costs before computing NHT will now be capped at 65% of gross revenue. This includes capital allowances and all operating expenses save for certain exemptions such as rent, royalty etc. Where costs exceed 65%, they will be carried forward to subsequent years of assessment however subject to the same cap.

## Insights

The PIA introduces a new tax regime for the oil and gas industry. It scraps the Petroleum Profits Tax (PPT) regime/rate and replaces it with the National Hydrocarbon Tax. The new rate of taxes will be levied on profits of any company engaged in upstream petroleum operations in relation to crude oil profits related to such operations, while companies in Production Sharing Contracts will be charged and assessed separately on the profits from each petroleum mining lease of which the hydrocarbon tax is payable every accounting period.

The hydrocarbon tax is in addition to the companies' income tax at the rate of 30%. This means that the highest headline rate of tax for a company in the upstream oil and gas industry will be 60% compared to the current rate of 85%.

The new PIA also effectively reduces the tax rate for companies in the deep offshore areas from 50% to about 30%. This seems to be a step in the right direction for companies operating in the industry. However, the combined impact of the fiscal changes should be considered beyond the headline rate to determine the effective tax rate. There is scope in the PIA for an additional chargeable tax based on the fiscal oil price determined by the commission. The Hydrocarbon tax is to be charged and assessed on profits and payable in each accounting period (AYB).

It is worthy to note that the PIA states that the Minister has the right to demand the holder of any lease or license to deliver crude oil to any operator of a refinery at specified quantity and quality as may be required.

The modalities around the conversion contracts for current holders of OPL and OML are not clear, therefore it is expected that guidelines will be issued subsequently to address the practicality of how the conversions will work.

# Upstream operations

## Key takeaway

The PIA segregates the upstream and introduces midstream operations as a standalone industry segment. This is in line with global best practice. However, this should be approached with full cognizance of existing investments and the need for synergy and seamless integration.

It is expected that the new regime introduced by the PIA would attract investment to the upstream industry as the terms seem to address and simplify the regulatory and fiscal issues that have plagued the industry. Exempting the deep offshore from Hydrocarbon Tax should attract investment into this segment if complemented with appropriate regulatory terms.





# Marginal field operations and Local content development



| 04



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# Marginal field operations and Local content development

## Overview

In recent times, the Federal Government of Nigeria has developed various initiatives and strategies to increase indigenous businesses' participation in the Nigeria oil and Gas Industry. This is evidenced by the recently concluded Marginal Field Bid rounds with over 50 marginal fields spanning land, swamp and offshore; being put up for lease by the Federal Government.

It is therefore no surprise that some of the provisions of the PIA are aimed at stimulating local participation in the oil and gas industry.

Section 94 of the Petroleum Industry Act (PIA) defines a marginal field as "*a field or discovery which has been declared a Marginal Field prior to 1st January 2021 or which has been lying fallow without activity for seven years after its discovery prior to the effective date*".

Two categories of marginal fields were identified in the PIA. These are:

### 1. Producing Marginal Fields

These are marginal fields which are already producing prior to 1st January 2021.

For such fields, the PIA allows the operators to continue operating under the original royalty rates and farm out agreements. However, a conversion to a petroleum mining lease (PML) is required within 18 months from the effective date of the PIA.

A PML is granted for a term of 20 years. For renewal of either the whole of the leased area or any part thereof, the holder of a PML can apply to the Commission, not less than 12 months before the expiration of the lease.

### 2. Non-Producing Marginal Fields

These are discovery fields declared as marginal fields prior to 1st January 2021, but which are not producing.

Such fields are required to be converted to a Petroleum Prospecting License (PPL). PPL for onshore and shallow water acreages will be valid for a maximum period of 6 years, consisting of an initial exploration period of 3 years and an optional extension period of 3 years.

For a marginal field that has not been transferred to the government within 3 years from the effective date of the PIA; the holder of the oil mining lease would have to provide a field development plan or in the alternative farmout the discovery (with the consent of the commission). Where none of the conditions mentioned above are fulfilled, such fields will be relinquished.

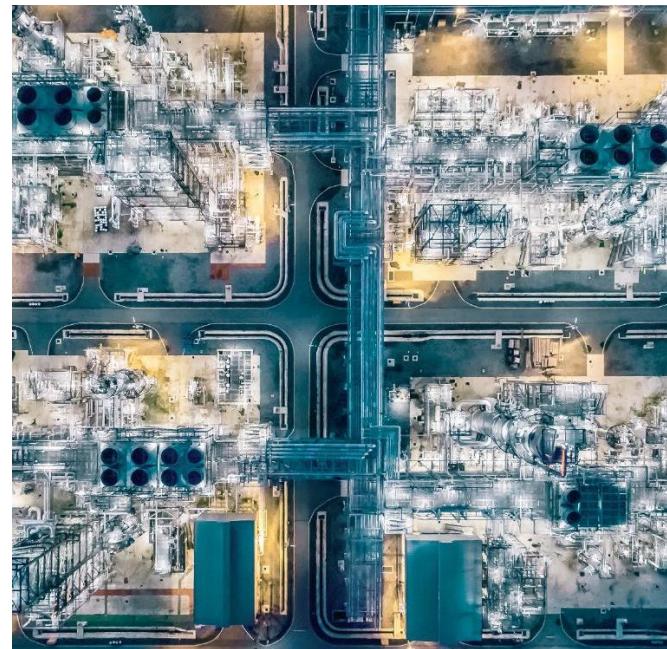
For the fields that have been transferred to the government, the Commission has the right to offer a PPL for the relinquished field under a fresh bid round.

The PIA no longer provides for new discovery fields to be declared as marginal fields. In the long run, this places the upstream players on a more even ground from a fiscal and regulatory standpoint.

## Key Changes

- Taxes and Royalties-** Chargeable tax is assessable at 15% of the crude oil profits for PMLs, and 15% of the crude oil profits for PPLs. Also, the 15% HT rate will apply for any PMLs derived from the PPLs after the effective date of the Act.
- Marginal fields on onshore fields and shallow waters, with production less or equal to 10,000 bopd<sup>1</sup> in a month, are subject to royalty at 5% for the first 5,000 bopd. Royalty will apply at 7.5% for the next 5,000 bopd. Royalty rate applicable to volumes above 10,000 bopd is chargeable as follows:

Terrain	%
Onshore areas	15
Shallow water (up to 200m water depth)	12.5
Deep offshore (greater than 200m water depth)	7.5
Frontier basins	7.5



1. Bopd - barrel of oil per day

# Marginal field operations and Local content development

## Connecting the dots

The PIA provides a new fiscal regime for all marginal field operators in Nigeria, both existing and new license holders. While the reduced tax rate looks attractive for marginal field operators, other newly introduced provisions such as the Cost Price Ratio limit may be a deterrent factor, as this will limit their capacity to maximise returns.

Successful winners of the recently concluded bid rounds for the marginal fields will need to evaluate their investment plan in line with the new fiscal terms and other requirements of the PIA as the changes will have an impact on the original financial projections that formed the basis for their bids.

## Key takeaway

Overall, it is expected that the changes being introduced by the PIA and the specific amendments targeted at encouraging local content will have a positive impact especially in the medium to long term for indigenous players in the Nigerian Oil and gas industry. The fact that no new marginal fields will be declared under the act creates a consistent basis for evaluating projects in the onshore and shallow waters which is a welcome development for investors in that space.

The favorable fiscal regime is expected to stimulate investment, and bring about a significant increase in indigenous oil & gas activities. The specific requirements for

field development plans and farm outs within a specific period will drive the desired growth in the sector as only serious players who have a long term vision and technical capability will participate in bid rounds going forward, and for existing lease holders, they would need to have a plan to meet the requirements.

Nonetheless, marginal field operators will also have to manage the additional requirements such as the Cost Price Ratio limit and other attendant issues such as non-deductible costs for items such as borrowing cost which have been introduced by the Act.





# Midstream operations



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# Midstream operations

## Overview

The PIA introduces clear distinctions between the Midstream and downstream petroleum industry operations. The midstream sector captures the establishment and construction of refineries and facilities for production of lubricants and petrochemicals. The sector also includes construction of

facilities for the transportation and storage of petroleum liquids. The PIA provides players with details of permissible activities in the sector subject to obtaining appropriate licenses or permits.

## Key Issues and Changes

### Introduction of fines and penalties

Section 174(4) of the Act introduces specific penalties for engaging in activities without obtaining approvals to operate within the sectors. Penalties include sealing of office premises, dismantling of unapproved facilities, confiscation of equipment, or imposition of penalties prescribed by regulations under the Act. The promoters of the company may also be prosecuted with imprisonment of up to 1 year or a fine as prescribed in by regulation to the Act. License holders are expected to apply to the authority for appropriate license within 2 years of the effective date of the Act.

### Accessing infrastructure, facilities and transportation network

The Act Introduces right of way permits. It stipulates network codes to govern access to facilities, pipelines and transportation networks between users including applicable charges and tariffs for access. Qualified 3<sup>rd</sup> parties can also gain access rights to any facility and infrastructure used in the midstream sector at commercials rates. Access to facilities should be granted without discrimination and based on availability.

### National strategic stock

Section 181 of the PIA introduces a levy to be charged to operators within the sector for financing the National strategic stock. The costs will form part of the retail price of petroleum products. Designated locations across the country will be allocated for keeping the stock. Companies will also be required to maintain an amount of stock as provided by guidelines. The Act does not provide the rate of the levy but it is expected to be determined and published through a regulation.

### Specific licenses to be obtained to operate in the midstream sector.

Sections 183-202 and section 204 of the PIA provides the specific licenses that an operator will require to play in the various segments of the midstream sector of the petroleum industry. These licenses will be granted subject to the approval of the application and payment of fees. These relate to the following specific activities: crude oil refining, bulk storage, transportation pipeline, transportation network operations, wholesale petroleum liquids supply, petroleum product distribution and operation of facilities for production of petrochemicals. It is notable to mention that the license for crude oil refinery needs to be approved by the Minister. The sections further stipulate the duties of the license holders and

the conditions for granting the licenses. The tenure of each license and the conditions for granting a renewal is expected to be published through a regulation.

### Pricing regime and power to regulate tariff

This eliminates government's regulation on pump price of petroleum products and allows the market forces to determine price. The authority will however regulate prices and tariffs on products in the interest of the public where monopoly exists, or the market is at an infant stage.

Transactions between suppliers and customers are required to be at arm's length. Suppliers will be required to furnish the authority with details of bulk sales within 14 days including the cost of making the supply. False declaration attracts a fine. The authority will be expected to provide guidelines on prices based on guided principles. Licensees will also be required to publish prices for their customers.

### Decommissioning and abandonment Fund

License holders in midstream operations are required to set up a decommissioning and abandonment fund which must be held by a financial institution that is not related to the license holder. The regulator will have access to the funds in settling such obligations where the license holder fails to do so. The amount to be contributed will be based on the decommissioning and abandonment plan provided to the authority.

### Insights - connecting the dots

Players in the petroleum industry are now required to set up separate companies for carrying out their upstream, midstream and downstream operations. This provides clarity of regulation and fiscal regime applicable to midstream activities which are often regarded as incidental to upstream petroleum operations.

Transitioning existing license holders to the new licensing regime should be seamless to avoid negative impacts to current license holders.

It is also important to consider the tax impact of business reorganisations that will be required for companies that currently operate across different streams. Given that they are now mandated to separate these activities, assessment will have to be made on the transfer of tax attributes of the separating entity, the potential VAT, GCT and stamp duties exposures that could result from business separation.

# Midstream operations

There is the argument that separating the business operations help to manage risk by situating assets according to the risk profile of investors, however, the fiscals are not marked differently and the tax leakages on transfer can be significant. In the absence of any group reliefs, ring fenced losses cannot be utilised within group entities.

Pioneer status and gas utilisation are some of the incentives targeted at encouraging investment in midstream operations. Tax leakages and additional costs such as the new levy under the PIA may be counterproductive to achieving this objective

by making investments more expensive. Investors as well as other stakeholders will be on the lookout to see how well the funds generated will be managed to meet the set objectives.

On a positive note, there is the expectation that the introduction of a national strategic stock will help to address price stability and avoid stock outs or unending queues. It can also provide a buffer in the event of vandalizations, unintended incidents etc.

## Key takeaway

With pump prices open to the forces of demand and supply, the expectation is that more players will be willing to invest in these sectors. However this may not play out as expected given the potential disincentive created by increased costs and regulations. Operators are likely to pass their costs on to

customers subject to regulatory restrictions on market based pricing. Potential tax costs resulting from asset transfers will also have a negative impact on current players who are caught in this net.





# Downstream and Services



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# Downstream and services

## Overview

The downstream sector is plagued with many challenges ranging from unsuitable product pricing, irregular gas supply, pipeline infrastructure deficit, insecurity, bridging product supply etc. The lingering issue of subsidy on PMS also poses a strain on the government (currently estimated at N150 billion monthly). The Government controls the industry through its

agencies that dominate the distribution or provision of refined petroleum products. The regulatory environment has also made it difficult for some players in the industry to thrive or to attract major investments. With the enactment of the PIA, the regulatory and competitive landscape of the industry is expected to change significantly.

## Key Issues and Changes

**License Application** - With the exception of licenses where it relates to the establishment of refineries, the PIA gives the Authority the power to grant, renew, modify, extend or revoke licenses and permits (**S.111.1**). This is a positive development considering that in the previous regime, the powers were vested primarily with the Minister. A person cannot undertake certain activities relating to downstream petroleum, gas and petroleum products operations without obtaining an appropriate license or permit from the Authority. Failure which will lead to confiscation of equipment or materials employed or imprisonment (**S.125 & S.174**). The PIA further gives an 18 months timeline to existing License and Permit holders engaged in downstream petroleum operation prior to the effective date to apply for the respective licenses (**S.125.6**). This means players in the industry will need to start putting structures in place in readiness for the deadlines.

The PIA specifies that before a license holder can assign or transfer its license or permit already granted, the Authority's consent must be obtained (**S.117.1**). During the transfer application period, where no response of approval or refusal of assignment or transfer of license is received from the Authority, the application will be deemed approved (**S.117.5**).

**Tariff & Pricing** - The PIA grants the Authority the power to design a pricing framework for transportation, distribution and processing of petroleum (**S.122.1**). The tariffs shall not discriminate between customers with similar characteristics (**S.122.1.c**). The pricing is to be determined in USD but may be paid in NGN (CBN rate for petroleum liquids, SEC rate for gas) (**S.122.1.d**). Tariffs charged by licensees for the use of any licensed facility or infrastructure will be set according to one or more tariff methodologies adopted by the Authority for a particular set of license (**S.123.1**). Stakeholder consultations will also be conducted with interested parties in the subject matter of the proposed tariff methodology prior to establishing a tariff methodology (**S.123.3**).

Furthermore, licensees are required to publish prices as required by the Authority so customers are aware and able to identify and calculate the full charges they will incur (**S.124.1.c**).

and prevent anti-competitive activities subject to the provisions of the Federal Competition and Consumer Protection Act (**S.210 & S.211**). The Authority is charged with the responsibility to monitor, arrest situations of abuse of dominant power and restrictive business practices and ensure compliance with the provisions of the Act and any law or regulation issued in respect of competitions and market regulation (**S.210**). This would promote an environment free of undue influence and encourage investments. Where there are actions that contravene the relevant provisions of the Act, the Authority is empowered to issue cease and desist orders, undertake inquiries and investigations and levy fines up to a maximum of 5% of the annual turnover of such operator/company for the preceding year (**S.211**).

Some other important points for downstream players to note from the PIA are:

- Any downstream company that has midstream operations (e.g. tank farms, storage and/or transport facilities, etc.) would need to carve out the midstream operations from the downstream operations into a separate company (**S.212.1**).
- The establishment of the Authority would result in the consolidation of the functions of the Department of Petroleum Resources (DPR), Petroleum Product Pricing Regulatory Agency (PPPRA) and the Petroleum Equalisation Fund (PEF) into the Authority. Players would need to understand the new structure.
- The new NNPC Limited would likely continue to maintain the refineries and downstream businesses in separate companies, perhaps as subsidiaries.
- NNPC Limited may act as "supplier of last resort" for security reasons in relation to all petroleum products generally (**S.64.m**). Separately, upon request by the Federal Government, NNPC Limited may act as the supplier of last resort to ensure adequate supply and distribution of PMS for a period not exceeding 6 months (**S.317.6**).

# Downstream and services

- The Authority may apply the Backward Integration Policy in the downstream petroleum sector to encourage local refining (**S.317.8**).
- The license to import shortfalls may be assigned to companies with active local refining licences or proven track records of international crude oil and petroleum products trading (**S.317.9**). This provision seems to discriminate against smaller indigenous players in the

industry and players who have investments solely in the downstream sector. However, it would help to maintain sanity and limit the number of participants to a manageable size as well as encourage backward integration. Before the enactment of the PIA, the NNPC (through its subsidiary) had been the sole importer of petrol into the country.

## Connecting the dot

If pricing is not considered as an issue of national security, the PIA will support the final deregulation of PMS and help attract more investors to the downstream sector. However, the issue of the NNPC acting as a last resort on the basis of national security may pose some concern for investors. The shortfall licensing may also preclude some players from participating in

importation of product due to the restrictive eligibility criteria. Full deregulation will lay down an open market for pricing of petroleum products and put an end to fuel subsidy. This will also enable the Federal Government to channel its resources to other pressing needs such as education, healthcare and infrastructure development.

## Key takeaway

The new regime will produce new investment opportunities in this sector. Companies currently operating in more than one stream or type of service in the downstream sector will need to re-evaluate their business model and stay ahead of the changes in the PIA. Most of the changes to the downstream sector focuses on regulating and monitoring the activities of

operators. Operators who wish to apply for licenses or permits must ensure they meet the criteria for application and provide all the required documents stipulated in the Act. There is likely to be more M&A activity in this sector as well as alliances in order to guarantee stock and gain competitive advantage.





# Natural Gas



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# Natural Gas

## Overview

Nigeria has the largest proven gas reserves in Africa and the 9<sup>th</sup> largest in the world with over 200 trillion cubic of natural gas (as at 2018) and unproven reserves of 600 trillion cubic of natural gas.

Notwithstanding the abundant gas resources, the production of gas remains challenged. With the focus on Gas as the transition source of energy and the Federal Government's 2020 Decade of Gas Agenda, the Petroleum Industry Act arrives at a pivotal time to provide the much required governance, regulatory and fiscal framework for the transition.

## Key Issues and Changes

The Petroleum Industry Act introduces many changes which will affect the gas sector. These include:

### Governance and Institutions

- The Nigerian Upstream Regulatory Commission regulates the upstream operations (Commission) while the Nigerian Midstream and Downstream Petroleum Regulatory Authority (Authority) regulates the midstream and downstream operations.
- Establishment of the NNPC Limited to assume the assets, liabilities and responsibilities of NNPC in relation to gas assets.
- Establishment of a progressive cost-reflective pricing framework with a structure for market intervention through Domestic Gas Supply Obligations and a wholesale natural gas market scheme.

### Promote investment in the sector

- The establishment of the Midstream and Downstream Gas Infrastructure Fund (MDGIF) to promote equity investments in midstream and downstream gas infrastructure.
- Grandfathering provisions to ensure that investor's returns on existing Oil Mining Licenses are protected and a framework for voluntary conversion.
- The introduction of the Incorporated Joint Venture for existing Joint Venture Agreements to promote efficiency in the management of gas assets.
- Alignment of the Act with the existing network transport code for gas, existing domestic gas supply obligations and long-term export gas supply arrangements.

### Fiscal environment

- Profits from upstream gas operations will be subject to income tax in line with the provisions of the Companies Income Tax Act (CITA). Hydrocarbon tax will not apply to such profits.
- A royalty rate of 5% will apply for natural gas and natural gas liquids production. This is reduced to 2.5% where the natural gas is produced and utilised in Nigeria.
- For royalty purposes, condensates will be treated as crude oil and natural gas liquids as natural gas.
- 0.5% of the wholesale price of petroleum products sold in Nigeria to fund the Regulatory Authority.
- 0.5% of the wholesale price of petroleum products and natural gas sold in Nigeria to fund the Midstream and Downstream Gas Infrastructure Fund.
- The above stated levies will be remitted by the licensed operator within 21 days of the sale of the relevant products subject to additional regulations to be issued by the Authority.
- Gas flaring penalty will be determined by Regulation. Such penalty will not be tax deductible or cost recoverable. Monies received from gas flaring penalties shall be transferred to the Midstream and Downstream Gas Infrastructure Fund for investment in infrastructure within the host community.
- Tax incentives for midstream petroleum operations, downstream gas and large-scale industries including ten (10) years tax holiday for investment in the gas pipeline.
- Contributions of 3% of annual operating expenditure to a Host Community Trust Fund, approval of an environmental management plan and maintaining an abandonment fund.
- Framework for the public service levy to be introduced by way of regulations which may be imposed on customers where it is deemed to be in the wider public interest.

## Insights

Evaluating Nigeria's value chain, there are numerous challenges in the gas sector such as, regulatory uncertainty, poor infrastructure, price inefficiencies etc. The Act seeks to address these issues head-on with the primary objective of increasing Nigeria's energy supply, diversifying the energy mix, creating jobs and promoting gas-based industries through investment, and powering Nigeria's economic growth.

The fiscal framework is geared towards promoting investment in the sector through tax incentives i.e no hydrocarbon tax, reduced royalty rates, no price reflective royalties and possible tax holidays (up to 10 years for investment in gas pipelines).

# Natural Gas

## Key takeaway

The Act codifies the regulatory, administration and fiscal framework for the sector. We estimate that harnessing Nigeria's proven gas reserves can stimulate an estimated Gross Value Added (GVA) of over \$18 billion annually to the domestic economy. The Act sends a strong message to domestic investors, foreign operators, financiers and the international community of Nigeria's commitment to gas

transformation whilst making strides to achieve its carbon emission commitments.

The potential impediments, especially price control and lack of infrastructure should be promptly addressed to unlock the potential of the gas sector for domestic energy use, foreign exchange earnings and power generation among others.





# Host Community Relations, Sustainability and the Environment



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# Host Community Relations, Sustainability and the Environment

## Overview

The Host communities are an integral stakeholder for successful operations in the petroleum industry and as such, the Act has a Chapter dedicated to the development of host communities. The Act creates a framework to support this development, fosters sustainable prosperity and provides

direct social and economic benefits to the host communities from petroleum operations. It also seeks to enhance harmonious coexistence between the communities and the operating companies.

## Key Issues and Changes

### **Definition of host communities**

The Act defines host community as any community situated in or appurtenant to the Area of Operation of a licensee or leasee (hereafter known as "Settlor"), and any other community as the Settlor may determine. In addition, for Settlors operating in shallow water and deep offshore, host community will be the littoral communities and any other community determined by the Settlor.

### **Establishment and Financing of the host community trust**

The settlor, or operator on behalf of a collective of settlers must incorporate and be responsible for a trust, overseen by a Board of trustees, for the benefit of the host communities. The trust should be incorporated with the Corporate Affairs Commission within 12 months from the effective date of the Act for existing licenses or prior to commencement of commercial operations for new licensees.

The trust will establish a fund which will be financed by an annual contribution of 3% of actual annual operating expenditure of the preceding financial year of upstream companies. The Fund can also be funded through donations, gifts, grants or honoraria and also any profits or interests accruing to the reserve of the Fund.

Any existing host community development projects should be transferred to the trust. Contributions made within the 12 month prescribed for incorporation regarding ongoing projects will be deemed a valid contribution under the Act.

### **Utilisation of host community trust funds, Tax Implications and Permissible Deductions**

The Board of trustees shall in every year allocate funds received in the following proportion:

- 75% to the capital fund for capital projects,
- 20% to the reserve fund to be invested for use where there is cessation in the contributions from the Settlor
- An amount not exceeding 5% for administrative cost of running the trust.

The funds of the trust shall be exempted from taxation. Furthermore, any payment made by the settlors to the fund shall be deductible for tax purposes.

In any year where an act of vandalism, sabotage or other civil unrest occurs which causes damage to petroleum and designated facilities or disrupts production activities within the host communities, the community will forfeit its entitlement to the extent of the cost of repairs.

### **Penalty for non-compliance**

Failure to incorporate a trust will lead to revocation of license or the lease.

### **Financial contribution for remediation of environmental damage**

As a condition for the grant of a license or lease and prior to the approval of the environmental management plan, the licensee or lessee is required to pay a prescribed financial contribution to an environmental remediation fund for the rehabilitation or management of negative environmental impacts of the petroleum operation. The financial contribution will take into account the size of the operations and the level of environmental risk.

## Insights

The objective sought to be achieved by this Chapter of the Act is laudable. It introduces a sustainable framework by which license holders can administer their corporate social and environmental responsibilities.

The definition of host community gives the settlors some level of discretion since they are best placed to determine their host communities. This definition also ensures that impacted communities are catered for even where they are not host communities by ordinary definition.

The introduction of the host community trust may however increase the administrative burden of settlors. The contribution is, in principle, a duplication of the Niger Delta Development Commission (NDDC) levy which is still in force. It may be necessary to collapse the NDDC structure into the Host Community arrangement if the latter turns out to be effective and impactful in bringing about the elusive development in the region.

# Host Community Relations, Sustainability and the Environment

## Key takeaway

The Host Community Trust Fund is expected to drive prosperity in the industry if adequately implemented such that host communities feel a sense of belonging as direct beneficiaries of resources within their domain leading to developments and well deserved prosperity for their people.

The creation of an environmental remediation fund with monies to be set aside by licensees and independently managed is good news for the environment and the people. It will ensure that in the event of pollution or degradation of the environment, measures are taken to promptly remediate the damage and restore the environment as quickly as possible.





# Investments and Competitiveness



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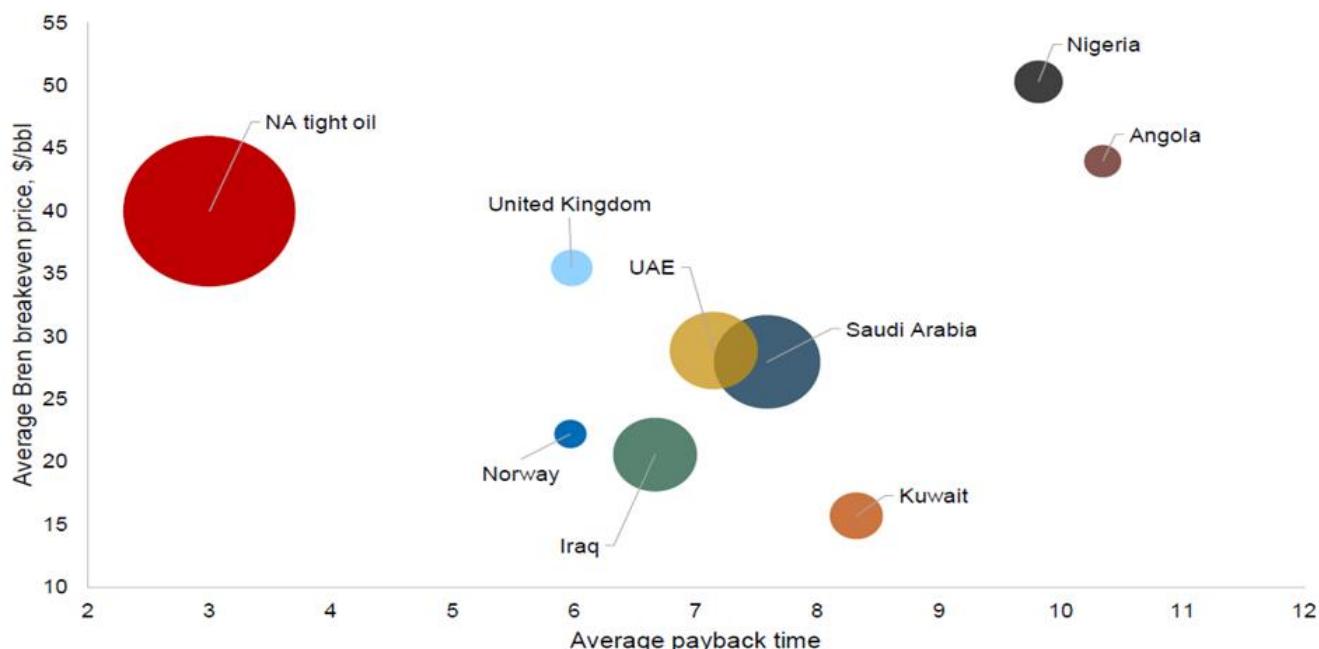


# Investments and Competitiveness

## Overview

The petroleum industry depends largely on foreign direct investment for growth. According to the Oil Producers Trade Section (OPTS) of the Lagos Chamber of Commerce and Industry, Nigeria only attracted about 4% of the \$70 billion oil & gas investment in the continent between 2015 and 2019 financial years. The uncertainty created by the long delay in enacting the PIA coupled with the country's specific risks,

especially insecurity, poor infrastructure, high production cost and unclear fiscal terms, meant that a much higher risk premium would be required for a project to be viable. This is shown in the table below which benchmarks Brent breakeven prices and payback time at \$60 for different sources of new supply.



Nigeria is shown to have one of the highest breakeven prices globally and a high payback period alongside Angola.

The Petroleum Industry Act (PIA) presents an opportunity to reposition the petroleum industry as a viable investment

option for both local and international investors. The PIA seeks to increase investments in the petroleum industry, ensure transparency, alignment with international best practices and promote competition.

## Key Issues and Changes

### **Incorporated Joint Ventures**

Among the key changes introduced by the PIA to encourage investment and competitiveness is the creation of incorporated joint venture companies that are not subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act. This would allow the JV partners to take investment decisions swiftly as such processes will not be required to follow the government bureaucracy thereby creating efficiencies in field development and production.

### **Streamlined regulatory framework**

The PIA seeks to improve ease of doing business in the industry by repealing and harmonising about 10 laws applicable in the petroleum industry. The laws include Associated Gas Reinjection Act; Hydrocarbon Oil Refineries

Act; Motor Spirit Act; NNPC (Projects) Act; NNPC Act (when NNPC ceases to exist); PPPRA Act; Petroleum Equalization Fund Act; PPTA; and Deep Offshore and Inland Basin PSC Act. It also amends the Pre-Shipment Inspection of Oil Exports Act.

### **Host community engagement**

The PIA provides for host communities development funds to be established by the oil firms to foster sustainable prosperity within host communities, provide direct social and economic benefits and enhance harmonious coexistence between the oil and gas companies and the host communities. This is expected to address incidents of vandalism and the attendant costs to petroleum operations.

# Investments and Competitiveness

## **Fiscal regime**

Other key changes include introduction of the Hydrocarbon Tax (which excludes offshore operations and gas) of 15% - 30% on profits from crude oil production. Company Income Tax at 30% is also applicable to companies operating in the upstream industry. These headline rates are lower when compared to the tax regime under The Petroleum Profit Tax Act.

The PIA streamlines and reduces royalties payable. Royalties are payable at the rates of 15% for onshore areas, 12.5% for shallow water, and 7.5% for deep offshore and frontier basins, 2.5% - 5% for natural gas. The new law however introduces a price-based royalty ranging from 0% - 10% which shall be credited to the Nigerian Sovereign Investment Authority (NSIA).

In addition, there are certain provisions that would be of concern to potential investors, such as tax deductibility of costs for tax purposes.

## **Tax deductibility of costs**

Cost available for tax deduction is limited to 65% of the gross revenues at the measurement points i.e tax deduction of costs is limited to 65 cents for every 1 US Dollar sales. The Cost

Price Ratio mechanism will create a barrier for new investments and delay returns of capital investment, especially during a low price regime. However certain costs are excluded from this cap i.e rent, royalty and contributions to the Environmental Remediation Fund, Host Community Trust Fund, Niger Delta Development Commission and other similar contributions.

## ***Business expenses may not be allowable for tax deduction***

The tax principle is that costs incurred Wholly, Reasonably, Exclusively and Necessary (WREN) for business purposes are allowable deductions. However, such costs may be disallowed due to provisions of the Act. Based on section 264 of the PIA, no tax deduction against HT will be granted for the following valid business expenses i.e

1. Financial, bank charges, interest on borrowing;
2. Arbitration and litigation costs;
3. Bad debt;
4. head office or affiliate costs, shared costs, research and development costs
5. Tertiary Education Tax which was previously tax deductible.

## **Insights**

Clearly, a key objective of the PIA is to drive investments in the Nigerian petroleum industry for sustainable growth and development of the Nigerian economy. Investments are largely driven by a clear and stable regulatory framework, as the potential investors are able to appraise projects with less uncertainty.

The PIA seeks to restructure the entire petroleum industry, thus while there has been a lot of focus on the upstream activities, it is expected that there would be significant investments in the mid-stream and downstream operations segments.

## **Key takeaway**

The objectives of the PIA include fostering a business environment conducive for petroleum operations, encouraging and facilitating both local and foreign investment in the petroleum industry. The key approach from the PIA towards achieving these objectives include the reduction of headline tax and royalty rates, creation of host communities development funds for harmonious co-existence and improving ease of doing business by repealing conflicting laws while enhancing the governance and regulatory environment.

While it is expected that the PIA will have a positive impact on the ability of the sector to attract investments, there is a need to monitor the changes and keep the provisions under review in line with evolving business realities and the stiff competitive environment for investments. The transition and implementation phase will be key in ensuring that the objectives of PIA are achieved.



# Deals, Mergers and Acquisitions



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# Deals, Mergers and Acquisitions

## Overview

The petroleum industry is capital-intensive, known for having significant deals running into billions of dollars. The huge cost of acquiring assets or investing in the industry and other regulatory considerations means that mergers, joint ventures, partnerships and other related deals are commonplace in the industry.

The delay in enacting the PIA and the consequent uncertainty has resulted in a reduction in foreign direct investment in the industry with investors preferring to invest in other countries with more predictable regulatory and fiscal frameworks. We have examined below the provisions of the PIA and the effect on deals, mergers and acquisition in the industry.

## Insights

### Powers of the Minister - Section 3(1)(g)

The PIA has introduced the Commission which is to recommend the grant, revocation and assigning of interests in petroleum prospecting licenses and petroleum mining leases to the Minister. This is a departure from the sole power previously exercised by the Minister.

### Transfer of Asset, liability and Interests from NNPC to NNPC Limited (S.53(1),54 (2) and 54(5))

The PIA provides for the incorporation of NNPC limited and the transfer of assets and liabilities of NNPC to NNPC limited. The assets and liabilities not transferred will remain with NNPC until they are extinguished or transferred to the government. Furthermore, any transfer of assets, liabilities and interests from NNPC to NNPC Limited will not create a new cause of action for a creditor or parties to an agreement entered into with NNPC prior to the date of transfer.

### Moving an unincorporated joint venture to an incorporated joint venture (Section 65)

NNPC and other parties to joint operating agreements can voluntarily restructure their agreements into incorporated joint venture companies (IJVC), in the form of limited liability companies (LLC). This LLC will operate independent of the joint venture shareholders. The LLC will also not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act.

### Amortisation of Acquisition Costs (Section 266 (1)(C))

Companies can amortize their acquisition costs of petroleum rights at 20% annual allowance with a 1% retention in the last year until the asset is disposed.

rights to the original cost of the seller has been eliminated. (Schedule 2 of the PPTA – Cost of asset is restricted to original cost of seller, tangible asset almost fully amortised for tax purposes. Intangible sunk cost.)

### Distinguishing between the upstream and the midstream (Section 302(3))

Companies operating in the upstream, midstream and downstream are to register separate companies for each of the stream of operations. However, the law also provides for exemptions from stamp duties and capital gain tax resulting from this reorganisation subject to certain criteria. Companies that produce, process, refine and make wholesale supply of oil and or natural gas products to domestic markets are exempted from creating separate companies for their upstream and midstream operations.

### Deductions of Interest on borrowing (Section 264)

The PIA provides that bad debts and interest on borrowing are not allowable deductions for HT purposes. Considering the fact that the investments in the industry are usually financed by debt, the inability to enjoy tax deductibility for the associated interest expense and other financial charges will increase the cost of those investments.

### Benefiting from Tax Exemptions (Section 271)

The PIA introduces the condition that parties to a group restructuring have to be part of a recognised group for at least 3 years prior to the date of reorganisation to be eligible for certain benefits. The approval of the FIRS is also needed before any restructuring is done.

# Deals, Mergers and Acquisitions

## Key takeaway

The introduction of the Commission promotes transparency and introduces good governance practices in the sector as the Minister no longer has absolute powers.

The provision that court cases instituted against NNPC will continue against NNPC limited will be of comfort to investors who want to acquire companies or assets which have outstanding receivables or other unresolved issues with the NNPC. However, S.92 provides for existing oil prospecting lease or oil mining lease holders to enter into a voluntary conversion contract to enjoy the fiscal provisions under the PIA on the condition that they discontinue all court cases existing in respect of those OPL or OMLs. This seems to be inconsiderate of counterparties to such cases without considering likely impacts on the parties or seeking to address the underlying issues with a view to achieving speedy and amicable resolutions.

Incorporating an IJVC as a distinct entity will resolve many of the issues with the existing structure of the joint operating agreements including failure of the NNPC to fulfill cash call obligations, difficulty in making decisions and getting approvals from the NNPC due to the government's

bureaucratic processes and so on. The IJVC will also be able to access external funding as it will be a more attractive option for investors. The Act has also made the migration to be as painless as possible with exemption of the corporate action from transaction taxes.

In practice, Upstream and Midstream operations are often integrated and there might be some difficulty in separating the streams especially where the assets for the operations are integrated. However, the exemption from stamp duties and CGT (where the qualifying condition is met) is a needed relief for companies who will be compelled to make the separation based on the PIA. This should also spur major deals in the industry as it would open up the midstream market to new investors.

While the Act is clear on some of the benefits to be received from the FIRS on an internal reorganisation including the calculation of the basis period of the new company, the transfer of unutilised capital allowance to the buyer is not clear as the provision can be interpreted to mean that only allowances which have been 'received' by the selling company can be transferred to the buyer.





# Monetary and Fiscal policy



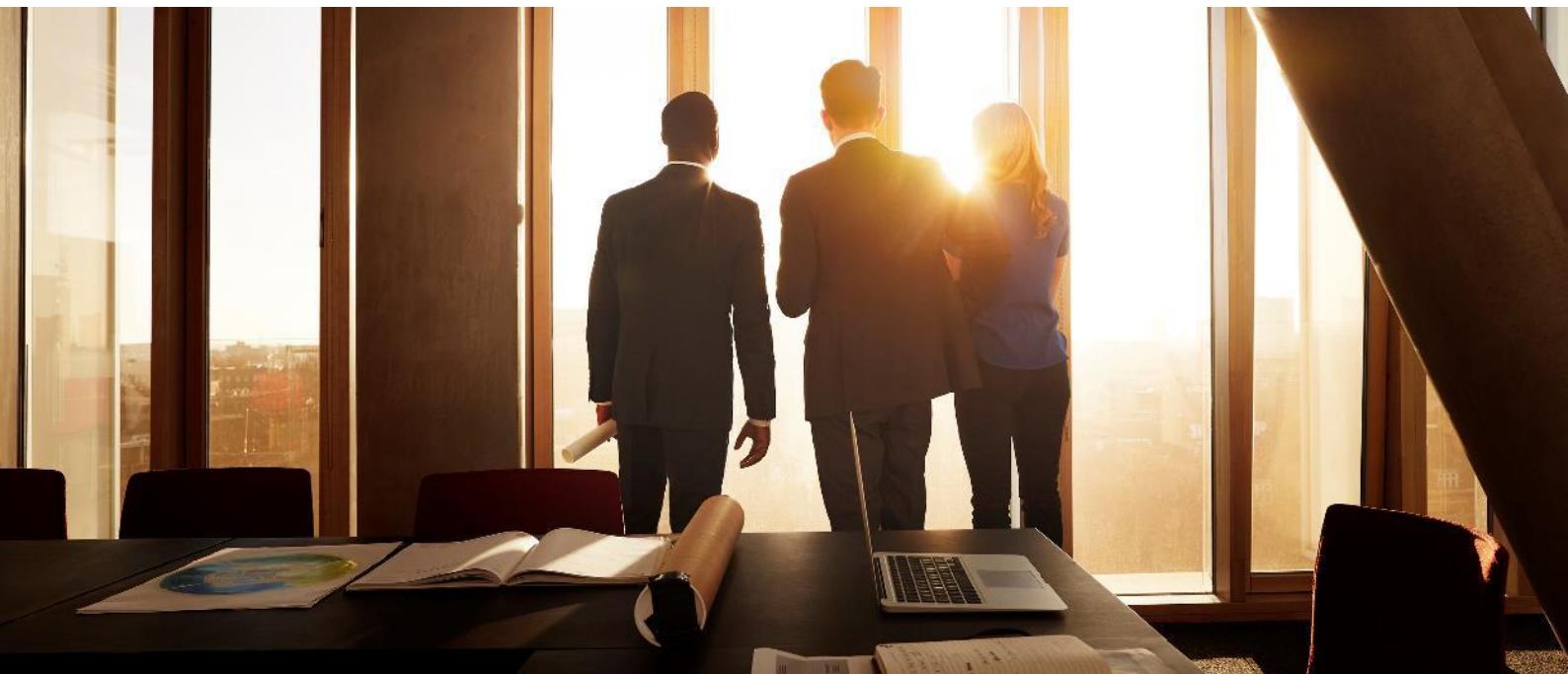
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# Monetary and Fiscal policy

## Overview

The petroleum industry is critical to Nigeria's monetary and fiscal policy environment. Crude oil contributes about 90% of Nigeria's foreign exchange and up to 65% of the government's revenue despite accounting for under 10% of GDP. Hence, the performance of the petroleum industry influences the direction of government's fiscal policy and monetary interventions more than any other sector of the economy. The PIA is a major attempt by the government to

reposition the oil and gas sector for greater but more stable contribution to the Nigerian economy.

Globally, many countries are transitioning to cleaner sources of energy. Similarly, international oil companies are shifting their focus to renewable and environmentally friendly energy sources.

## Key Issues and Changes

### Generate revenue through promoting investments in the oil and gas sector

The enactment of the PIA and the inclusion of grandfathering provisions for existing oil and gas arrangements provides the fiscal stability option to ensure that existing investors are not worse off under the new regime.

A true test of the attractiveness of the PIA will be based on the number of voluntary conversions to the fiscal regime under the PIA where investors otherwise have a choice. This is supported by the reduced corporate tax rates, royalties and tax incentives for midstream operations, downstream gas operations and gas infrastructures. The price-based royalty regime seeks to increase the government's take without increasing the risk to investors.

### Reduce volatility of government revenue through sustained petroleum production

This is anchored on the creation of the Host Communities Development Trust by operating companies thereby

harmonising the interests of the host communities and the respective companies. The utilisation of the frontier exploration fund is expected to expand Nigeria's proven reserves and subsequently lead to increased production at lower costs.

### Protecting the foreign exchange reserves

The focus on local refining and processing of petroleum products will significantly reduce the demand for foreign exchange for the importation of refined petroleum products. In addition, the investment of price-based royalty in the Sovereign Wealth Fund is expected to enhance the Central Bank of Nigeria's ability to achieve its monetary objectives.

### Improve social economic growth

The PIA will create opportunities, improve local capacity and value creation within the industry. This is expected to positively contribute to economic growth and reduction in the country's unemployment rate.

## Insights

In the past three years, the budgetary allocation to the Ministry of Petroleum Resources and the respective percentages to the total budget were NGN 73.1 bn (0.82%), NGN 79.3 bn (0.75%) and NGN 30.2 bn (0.23%). This is likely evidence of the government's intention to reduce its spending in the sector and encourage more investment from the private sector. Unsurprisingly, under the PIA, the NNPC, which currently functions as both a regulator and operator, will be structured into NNPC Limited. The operation of NNPC limited as a commercial/profit-oriented entity instead of relying on cash calls should promote efficiency.

Again, the commercialization of the NNPC limited will mean that fuel subsidies will be gone in the near future. Many believe that fuel subsidy has outlived its relevance and now serves as a breeding ground for corruption. Removal of fuel subsidy should also promote investment, more efficiency and development. However, it will increase the pump price of fuel as this will now be market based and trend in the same direction as oil price. Increase in fuel price will in turn increase inflation even disproportionately – at least in the short term.

Though it is expected that this trend will reverse in the long term as the savings from subsidy is used to develop infrastructure and in other areas of nation building. This is further supported by the expansion of local refining capacity and the commencement of improved operations in the near term..

As the prime foreign exchange earner, increase in production will lead to accretion in foreign reserve leading to a favourable impact on the Naira which has lost significant value in recent times. Substantial increase in Nigeria's ability to earn foreign exchange can stem this negative tide.

Additionally, the increased production will provide additional taxes (direct and indirect) to the Nigerian government. Nigeria currently spends over 70% of the federal government's revenue on debt servicing which is considered unsustainable. The revenue shortage can be stemmed with a multifaceted approach of increasing oil revenue, diversifying the economy and reducing expenditure.

# Monetary and Fiscal policy

The PIA does not address the numerous levies and taxes that burden the industry including NCD, NDDC, NPA pilotage, etc. Instead, it has now included additional contributions like 1% of sale of petroleum products etc. These additional costs reduce the attractiveness of the sector to investors and may not raise more revenue for the Government in the long run.

Nigeria's annual budget has been running at a deficit in recent years, which is clear evidence of the need to improve the country's revenue generation.

Over the years, there has been a lot of focus on increasing Nigeria's tax to GDP ratio, which currently stands at about 6%. In response to this, the 2017 National Tax Policy document was approved. One of its major objectives is to increase Nigeria's non-oil tax revenue and revenue from indirect taxes. These key objectives show that while there is room for improvement in the oil and gas sector, there is arguably more potential for sustainable tax revenue growth in other sectors and from indirect taxes. The now annual enactments of the Finance Acts as well as the 2020 revision of the Companies and Allied Matters Act are all evidence that Nigeria is making efforts to overhaul its tax and regulatory system beyond the oil and gas sector.

## Key takeaway

The enactment of the PIA is a welcome development for many reasons as outlined throughout this article. However, there are still issues left to be addressed in the industry, especially with regards to providing the enabling environment and strategic

initiatives to address energy transition. It is important to continue with stakeholder engagement within and outside the sector and to ensure there is a mechanism for future legislative reviews.





# Banking, Finance and Insurance



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# Banking, Finance and Insurance

## Overview

Some of the provisions in the PIA will disrupt the oil and gas industry, and this will have an impact on some of the biggest stakeholders in the industry - Banks, other Financial Institutions and Insurance companies. The operators in the industry have relied on these stakeholders to provide funds, financial advice, financial solutions and insurance.

The PIA would trigger the need to review all existing transactions, agreements and relationships between the operators and the stakeholders for risk assessment purposes, and to identify new opportunities in the oil industry.

## Key Issues and Changes

There are changes in the PIA that will impact the activities of banks, other finance institutions, and insurance companies. Some of these are highlighted below:

### Fiscal changes impacting future cash flow of borrowers

Prior to the PIA, banks and other lenders provided loans to operators in the O&G sector based on financial models that predicted the cash flows of borrowers. However, certain fiscal changes have been made in the PIA that will require the lenders of funds to review the financial models, revalidate the future cash flows of the borrowers, and review the existing loan agreements. Some of these fiscal changes include:

- the restriction of deductible expenses in upstream petroleum operations to 65% of gross revenue for the year as contained in the sixth schedule to the Act;
- requirement to front-fund asset retirement obligations (ARO);
- establishment of a midstream and downstream infrastructure fund which will be funded through a levy of 0.5% of the wholesale price of petroleum products and natural gas sold in Nigeria as contained in section 52 of the Act;
- another 0.5% of the wholesale price of petroleum products sold in Nigeria for the midstream and downstream regulatory authority fund as contained in section 47 of the Act;
- domestic gas delivery obligations as contained in section 110 of the Act, which requires gas operators to deliver to the local market at low gas prices that might not be cost-reflective etc. This will impact possible revenue from exports of natural gas.

financial advisers will have to review the loan agreement with the affected entities, who will now have to split their operations, with a view to deciding whether to disaggregate or novate the loan agreements. Affected entities will need to assess their shareholding structure in the new or split entities, and the impact of the split on their share price, in the event they are listed on the stock exchange. Any joint assets used as collateral for a loan will be impacted.

Companies with debt obligations that include loan covenants that preclude change of structure (or a requirement for a change of structure to be pre-approved) by the lender would need to work with the lenders to obtain approval to split the operations. The lenders may not be able to enforce the loan covenants to stop a change of structure since it is being driven by change in legislation.

Insurers will also be required to review the assets of the companies post segregation, with a view to re-evaluating the risks associated with each asset, and possibly review their insurance policies with each company.

### Fund Management

The Host Community Trust Funds as well as the Environmental Remediation Funds provide opportunities for banks and fund managers to vie for the custody of these funds and/or to manage the investment of the funds for the benefit of the community. There should be a strategy to engage players in the sector to obtain this new line of business. Financial advisors may provide support to the Trustees in assessing investment risks and compare the returns offered by various investments.

If the host community trust funds are well managed, there is an expectation that oil and gas assets should be more secure and this should make it possible, perhaps in the long-term (subject to performance of the funds) for insurance companies to underwrite security of assets and personnel on oil and gas projects.

### Transfer of assets to NNPC Limited

The PIA provides that NNPC shall transfer its assets to NNPC Limited. Some of these assets which are used in the operational activities may not have been insured by NNPC.

# Banking, Finance and Insurance

Therefore, NNPC Limited and prospective underwriters and brokers may need to carry out a review of all the assets to ensure they are properly insured and at the appropriate value of the assets. Existing insurance contracts may also need to be reviewed for possible updates or termination. Insurance companies would have a big role to play because of the number and the value of the assets in operation in the sector and the local content requirement for oil and gas companies to be insured locally.

The banking requirements and funding needs of NNPC Limited would change. Going forward, the banks would not consider borrowing by NNPC Limited strictly as an exposure

to the government. Banks would need to reassess the risks of lending directly to NNPC Limited or its subsidiaries as cash flows would depend on the viability of the entity and its specific projects.

## Treatment of valid business costs as non tax deductible

Section 264 of the Act provides that interest, finance and bank charges would not be treated as deductible for hydrocarbon tax purposes. This means that the tax shield from interest cost would no longer be available (or be significantly reduced). This may impact on the appetite of upstream companies for loan financing, as equity investment may be preferred.

## Connecting the dot

Some of the issues plaguing the Nigerian oil and gas industry include low investment, excessive cost of funds, uncertainty, lack of transparency etc. The PIA attempts to solve some of these issues by providing the framework for a more conducive

operating environment in the oil and gas industry which will attract investors, banks, other fund providers, financial advisors, increase the number of local players in the industry, increase transparency, accountability and competition.

## Key takeaway

There will be greater trust and transparency in the oil and gas industry which will attract foreign and local investments. The banks will be the vehicles to receive and disburse those funds.

There is also the framework for banks to participate in many areas by providing commercial guarantees, advancing funds to operators - including SMEs, providing financial advisory etc.

Insurance companies also have a big role to play, as they will be involved in insuring the assets utilized in the operating activities of companies in the sector with a view to reducing risks and loss; and also promoting safety of the operators.





# Financial Reporting, Valuation and Audit



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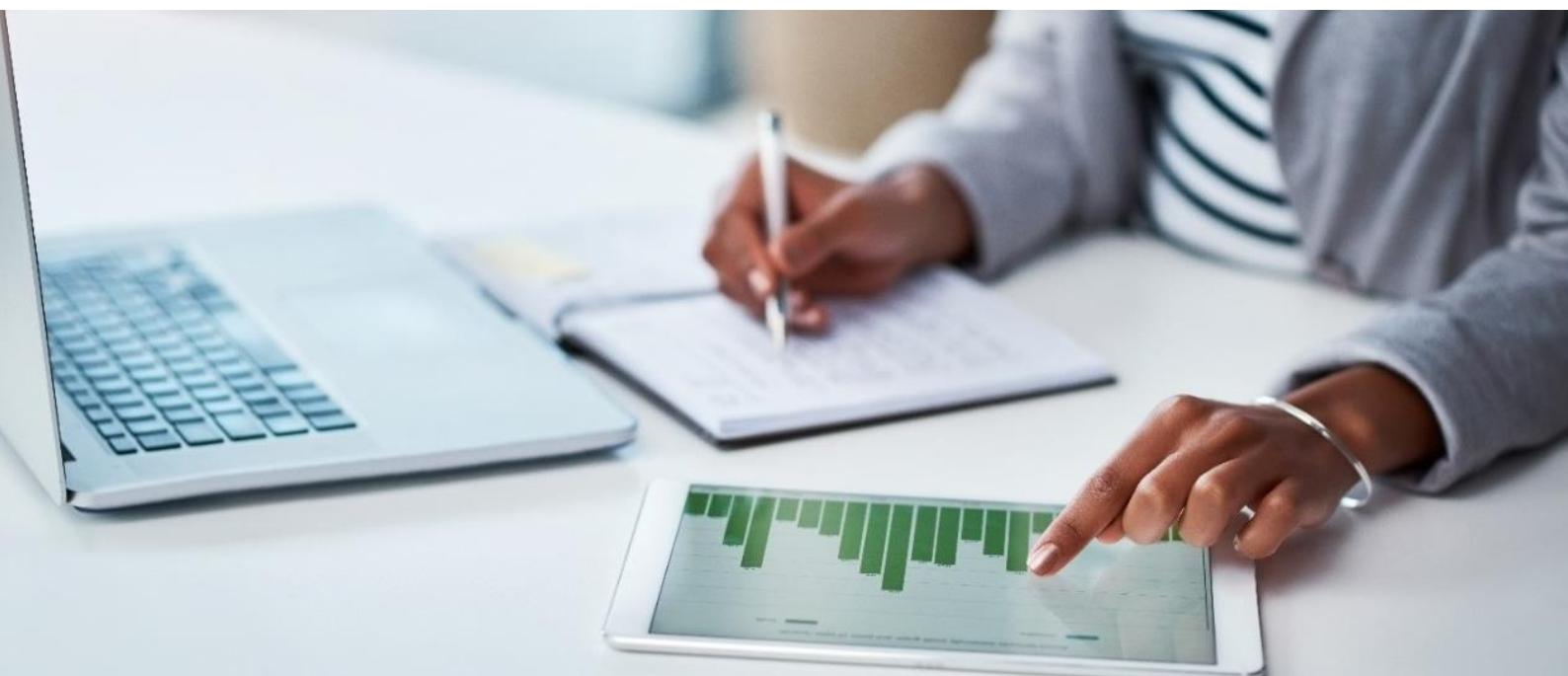
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# Financial Reporting, Valuation and Audit

## Overview

Financial reporting for companies in the petroleum industry will be significantly affected by the amendments brought about by the Petroleum Industry Act. It is imperative that companies carefully assess the impact of these changes and the effect it may have on their financial reporting and valuations.

For example, the change in the tax rates will have an immediate impact on the valuation of deferred taxes in the financial statements as well as a significant impact on the valuation of oil and gas businesses going forward.

## Key Issues and Changes

### **Increased accountability and transparency for NNPC Limited –**

NNPC Limited will be incorporated under the provisions of the Companies and Allied Matters Act 2020 (CAMA). The audited accounts will be prepared in line with the International Financial Reporting Standards and complete compliance with the Nigerian Code of Corporate Governance would be expected without any government interference. This will improve transparency and potential investor confidence in the event of a future listing in the capital market.

### **Deferred tax**

International Accounting Standards 12 states that deferred tax assets and liabilities are to be measured at the tax rates that are expected to apply to the period when the asset is realised or the liability is settled, based on tax rates/laws that have been enacted or substantively enacted by the end of the reporting period. Oil Mining Lease holders entering into a conversion contract and Marginal field operators will need to evaluate this when reporting. The limitation of tax deduction of cost in relation to the cost price ratio, changes to the tax deductibility rules on intangible drilling costs and funded decommissioning and abandonment fund will significantly change the principles for the recognition of temporary differences of assets and liabilities of upstream companies. A company with deferred tax assets would also have to prepare projected tax calculations to determine when the assets would be recovered under the 65% cost price ratio limitation for majority of expenses.

### **Valuation**

The provisions of the PIA will provide the much needed fiscal certainty required by potential investors to make final investment decisions on viable projects. Existing upstream companies will evaluate the impact of the PIA on the valuation of its oil assets.

This will allow management to analyse the impact on shareholder's returns and decide whether or not to convert prior to mandatory conversion. The cashflow required to set up the decommissioning and abandonment fund will also need to be analysed alongside cashflow requirements for field development and working capital. Where a listed company needs to carve out midstream from upstream activities or needs to carve out upstream from midstream, it would have to evaluate which entity would remain as the listed company and the impact of the carve out on share price.

### **Court/Arbitration cases including Tax Appeal Tribunal cases**

Where a company decides to enter a conversion contract. Management will need to consider the financial reporting implications of the termination clause which terminates all outstanding court and arbitration cases in its accounts to stakeholders.

### **Other financial disclosures**

Compliance with IFRS 3, as well as specific disclosures will be required for carving out midstream/upstream activities to a separate company i.e business combination by affected companies. There would also be extensive effective tax rate reconciliation for upstream companies subject to Hydrocarbon Tax and Companies Income Tax in order to comply with IAS 12 disclosures. This would be particularly challenging as the principles for tax deduction and capital allowance claim are different under the two tax regimes. There would also be increased reporting on the various statutory funds i.e host community, environmental remediation and abandonment funds etc. Accounting for asset retirement obligations would need to be revisited based on the requirement for it to be funded going forward.

## Insights

The PIA has introduced increased financial reporting requirements for companies operating within the petroleum industry. This promotes greater transparency within the sector and aligns with a major objective of CAMA 2020. It is expected that following the enactment of the PIA, investors are provided with fiscal certainty that will promote

investments given the transition to cleaner sources of energy has been accelerated by the COVID-19 pandemic. The reduced tax rates will lead to situations where the deferred tax asset/liabilities will be revalued and this will increase/decrease the effective tax rate at the reporting date.

# Financial Reporting, Valuation and Audit

## Key takeaway

Accountants, auditors and investors will need to look out for the impact of these changes and ensure that financial reporting, auditing and valuations accurately reflect the provisions of the PIA as may be applicable to each business.

It is expected that with the increased transparency through the incorporation of NNPC Limited, the industry will attract investments and this will aid a successful future capital raise.





# Transfer pricing



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# Transfer pricing

## Overview

The Petroleum Industry Act (PIA) requires related parties to apply the arm's length principle in their dealings with one another. It also empowers the FIRS to make adjustments to counteract any reduction in tax liabilities that may arise when related parties do not transact at arm's length.

Deals between related parties in the oil and gas sector should be compliant with the provisions of the 2018 Income Tax (Transfer Pricing) Regulations (TP Regulations).

## Insights

### ***Compliance with the arm's length principle and TP Regulations***

Existing companies in the industry and newly setup entities based on the provisions of the PIA (including NNPC Limited, incorporated joint venture companies (IJVs), holders of licenses/leases and companies engaged in integrated strategic projects etc.) are required to transact at arm's length and discharge their TP obligations.

In line with the TP Regulations, an affected entity is required to complete and file annual Transfer Pricing returns (which comprise TP declaration and TP disclosure forms) and prepare a TP documentation report (if its transactions with related parties exceed 300 million naira). Failure to comply with TP obligations attract stiff penalties as contained in the TP Regulations.

The involvement of the Commission with respect to interest on loans obtained by a licensee in order to be tax deductible is contrary to transfer pricing principles.

### ***Potential Safe Harbor opportunity***

The PIA empowers The Nigerian Midstream and Downstream Petroleum Regulatory Authority ("Authority") to set prices for marketable natural gas and may publish market-based prices for petroleum products.

Regulation 22 of the TP Regulations provides that a company may be exempted from TP documentation requirements if the related party transactions are priced in line with guidelines published by the FIRS. Hence, if the FIRS were to adopt the prices established by the Authority in its guidelines, the prices would be a safe harbor for companies transacting with the approved pricing.

### ***Arm's length nature of NNPC Ltd's related party transactions***

Based on the PIA, NNPC Ltd has dealings with related parties which must be in accordance with the arm's length principle. We outline some comments below in this regard.

- NNPC Ltd's remuneration of \$1 for managing the liquidation process appears inadequate and may not be acceptable to an independent party under similar circumstances. However, since it is a legislated price, the remuneration is in line with the law.
- NNPC Ltd will be remunerated on a service fee basis by the Nigerian Upstream Petroleum Regulatory Commission or NMDPRA for any assigned task. This service fee should be compared to an arm's length rate and amended in future to truly make NNPC Ltd a commercial and profit focused entity.

## Key takeaway

The PIA emphasises compliance with the arm's length principle and relevant provisions of the TP Regulations. Companies operating in the oil and gas industry must ensure full TP compliance to avoid penalties.

Also, the PIA provides an opportunity for the FIRS to implement Safe harbor provisions contained in Regulation 22 of the TP Regulations while taxpayers in the industry could potentially use published prices to demonstrate the arm's length nature of their related party transactions.



# Transition and Implementation



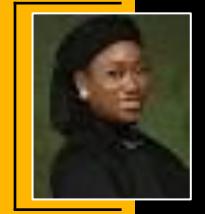
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# Transition and Implementation

## Overview

The aims and objectives of the PIA is to overhaul the existing Nigerian Petroleum Industry by providing a legal, governance, regulatory and fiscal framework for the Industry.

A well-considered transition and implementation framework is important for the success of the PIA and what it seeks to achieve.

Ideally, this transition and implementation framework should be ready by the effective date of the Act i.e. the day the Act comes into force as law. On 18 August 2021, the President, who doubles as the Minister of Petroleum, approved the implementation framework.

## Key Issues and Changes

### ***Key actions by the Government***

- The PIA proposes that within 6 months from the effective date of the law, a new entity, NNPC Limited, will be incorporated to take over the assets, liabilities, interests (including employees) of NNPC;
- The Minister will provide a clear transition plan within 60 days of the effective date of the PIA;
- The NURC publishes all contracts, leases, licenses and arrangements on its website;
- Set up the Frontier Exploration Fund and Midstream and Downstream Gas Infrastructure Fund

### ***Key actions by the Private sector***

- Consider the impact of the fiscals on the valuation of oil and gas assets to determine whether to convert will be beneficial for shareholder value;

- Provide the Commission with the details of existing contracts, licence or licence;
- Natural gas producers should provide the Commission with a Natural Gas Flare elimination and monetisation plan.
- Midstream and Downstream licence holders are to reapply for a new licence.
- Companies operating in the upstream and midstream provide the Commission and NMDPRA with an environmental remediation plan in respect of projects which require environmental impact assessment.
- Incorporate the Host Communities Development Trust within 12 months;
- Set up and maintain a decommissioning and abandonment fund with a financial institution;

## Insights

The PIA recognises the need for an effective implementation framework for the provisions of the law and has vest powers in the Commission and Authority to issue regulations subject to the provisions of the law. The Commission can issue regulations generally for the upstream sector including licensing regulations, penalty regulations, dispute resolution regulations, Host Communities development regulations and such other regulations for the upstream activities that were previously governed by the DPR. The Authority will make regulations generally for the midstream and downstream oil and gas sector including pricing and commercial regulations,

Host Communities development regulations, licensing regulations, penalty regulations, customer protection regulations amongst others.

The PIA is clear that all regulations will be subject to stakeholders' consultations before it is issued, implemented or amended. The transition to the new regime under PIA is expected to take effect from the effective date. The effective date can be the date the Act is assented to by the President or a date thereafter as determined in the Gazetted version of the Act.

## Key takeaway

Realistically, there will be a need for a transitional period from the current regime to the PIA. This is to allow for the development of guidelines and the implementation framework to guide the transition to the PIA. The passage of the PIA is

not the end of the journey, but the start. These considerations – including the requirement to establish the Commission and Authority; finalization of key regulations such as licensing, pricing regulations etc. should be done swiftly in an effective manner to ensure the objectives of the PIA are achieved.



# Resolving disputes under the Petroleum Industry Act

## 2021



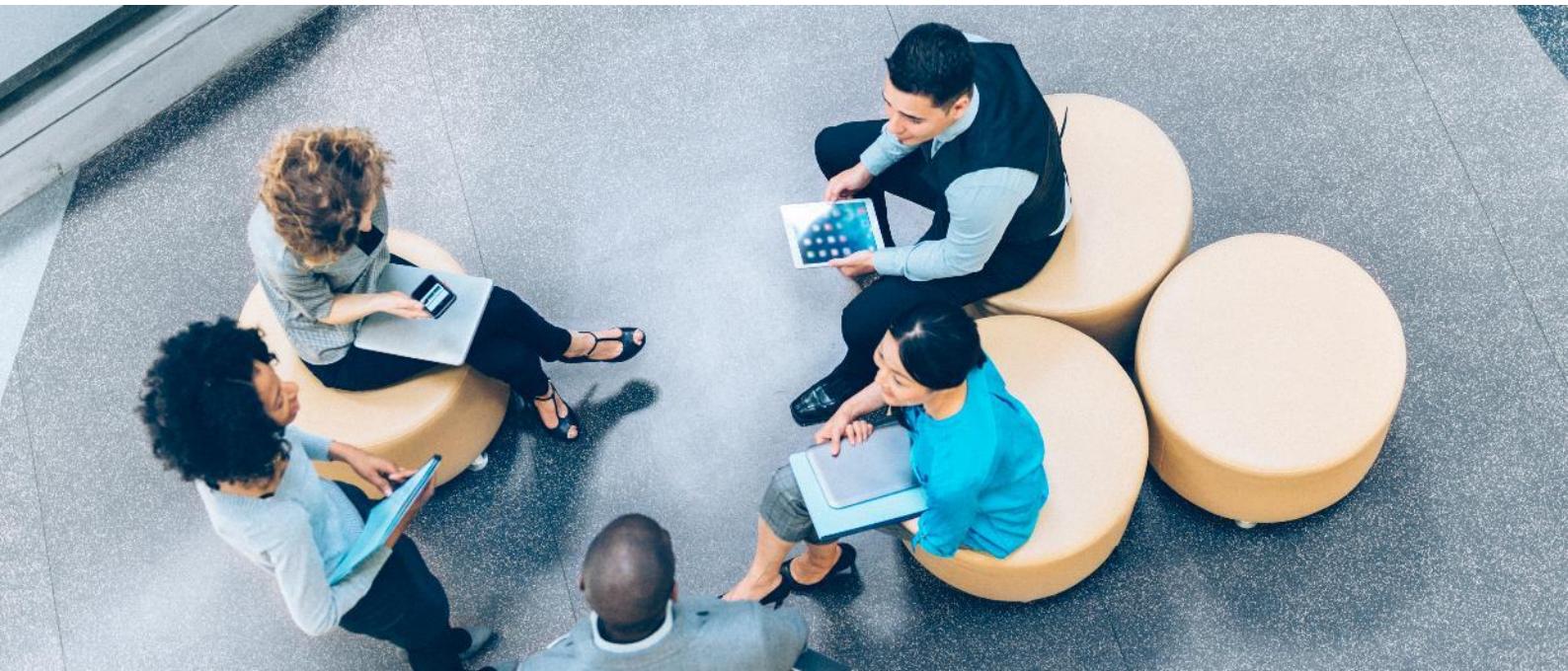
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# Resolving disputes under the Petroleum Industry Act 2021

The new Petroleum Industry Act [Act] repeals about 10 Acts of the National Assembly<sup>1</sup> relating to the oil and gas industry and consolidates those laws into a single Act. There are also sweeping changes relating to the governance and administration as well as the introduction of a new fiscal regime for the industry.

With respect to disputes, the Act prescribes two distinct fora for resolving disputes arising from the operations of the Act – the Federal High Court [FHC] and the Tax Appeal Tribunal [TAT]. In addition, both the Nigerian Upstream Regulatory Commission [Commission] and the Nigerian Midstream and Downstream Petroleum Regulatory Authority [Authority] have powers to resolve certain disputes arising from the operations of the Act.

## The Federal High Court

### **General rule**

By virtue of section 251, particularly 251(1) (n) of the Nigerian Constitution, the FHC has exclusive jurisdiction in relation to matters / disputes arising from *mines and minerals (including oil fields, oil mining, geological surveys and natural gas)*. Therefore, the general rule is that any dispute arising from the operations of the Act should be submitted to the FHC for adjudication.

### **Specific examples under the Act**

#### **Disputes arising from ownership and compensation to legal occupier / owner of land**

One of the instances in which an aggrieved person may file an action at the FHC is under section 101. The section precludes licensees and lessees from entering, occupying or exercising any rights conferred by their licenses / leases over certain sacred, protected or previously occupied land without the written permission of the Commission. Licensees and leases who intend to enter or occupy such land must first write to the Commission specifying the land proposed to be occupied, the purpose for such occupation and amount of compensation paid or proposed to be paid to the legal occupier of the land.

Section 101(1) (d) further provides that in the event of any dispute arising from who the legal occupier is and / or the amount of the compensation payable, the licensee / lessee would be required to deposit with the FHC (within the

jurisdiction of the location of the land) a sum to be determined by FHC as reasonable compensation payable to the rightful owner or occupier of the land.

#### **Disputes arising from refusal to grant, renew, modify or extend applications**

Another instance in which the Act prescribes the FHC as the court of competent jurisdiction is with respect to matters relating to license applications. Under section 111, the Authority is vested with powers to grant, renew, modify or extend individual permits and licences. Where an applicant is not satisfied with the reasons for the refusal of its application, it may appeal to the FHC for judicial review. As distinct from an appeal, in a judicial review, the court's remit is to review the process, rather than the decision itself, by which a decision was reached to assess whether that decision was wrong by some flaw. The court will not impose what it thinks is the "correct" decision. Whilst there is no similar provision relating to the grant of licenses by the Commission, such powers may also be subject to judicial reviews.

#### **Disputes between licensees, lessees or permit holders and the Commission or Authority**

Section 218(7) vests the FHC with exclusive jurisdiction over disputes between licensees, lessees or permit holders and the Commission or Authority. This is in line with the exclusive jurisdiction of the FHC under the Constitution.

## The Tax Appeal Tribunal

### **Tax disputes**

The second forum of resolving disputes is the TAT which is specific to tax disputes with FIRS. This is a novelty under the Act as under the PPTA, tax disputes should, in the first instance, be resolved by the Body of Appeal Commissioners [BAC], the predecessor to the TAT. However, the Court of Appeal in *Cadbury v. FBIR* held that the BAC was unconstitutional because it usurped the jurisdiction of the

FHC, under section 251 of the Constitution, because appeals from the BAC went directly to the Court of Appeal<sup>2</sup>. The BAC was subsequently replaced by the TAT via the Federal Inland Revenue Service (Establishment) Act (FIRSEA).

So, before the introduction of the PIA, taxpayers filed appeals to the TAT in line with FIRSEA. Section 288 of the Act now reflects current practice since there is no longer a BAC.

1. See section 310 of the Act. The Acts include Associated Gas Reinjection Act; Hydrocarbon Oil Refineries Act; Motor Spirits (Returns) Act; Nigerian National Petroleum Corporation (Projects) Act; NNPC Act (when NNPC ceases to exist); Petroleum Products Pricing Regulatory Agency (Establishment) Act; Petroleum Equalisation Fund Act of 1975 and 2004; Petroleum Profits Tax Act; and Deep Offshore and Inland Basin PSC Act.

2. Per section 251 of the Nigerian Constitution, the FHC is the court which has exclusive (and appellate) jurisdiction to hear matters relating to the revenue of the Federal Government. However, the BAC, as an administrative panel, could also hear tax appeals but then. Appeals from the BAC lay directly to the Court of Appeal (instead of the FHC) thereby usurping the jurisdiction of the FHC.

# Resolving disputes under the Petroleum Industry Act 2021

## The Commission and Authority

The Authority has powers under section 33 to issue regulations relating to dispute resolution and consumer protection. However, the Authority must, subject to cases relating to national interest or exigency, consult stakeholders before issuing such regulations (section 216). It is interesting to note that under the Petroleum Industry Bill, the Commission had similar powers but this did not make it into the Act.

Under sections 163, 179 and 180, the Authority has powers to mediate over disputes arising from rights of third parties to access areas for midstream and downstream gas and

petroleum liquids operations as well as open access respectively. In relation to Host Communities, section 234 gives both the Commission and Authority powers to issue regulations which shall contain a grievance mechanism to resolve disputes between settlers and host communities.

Under section 318, where there is a dispute with respect to the date of first sale of chargeable oil or date of cessation of petroleum operations, the Commission is vested with powers to determine the said date. This decision cannot be appealed.

## Other provisions relating to alternative dispute resolution mechanisms

Under section 76(f), model licences and leases shall contain rules for resolution of disputes including arbitration, mediation, conciliation, or expert determination. This is novel but is only a reflection of what obtains in practice. For both upstream and mid/downstream operations, a licence, lease or permit may be

revoked by the Minister if a licensee, lessee or permit holder fails to abide by an expert determination, arbitration award or judgment arising from the dispute resolution provisions in the licence or lease (see sections 96(1)(l) and 120 (j)).

## Key takeaway

With respect to tax and general disputes, the Act does not provide any sweeping changes. For these disputes, it will be business as usual as the forums for hearing tax and general disputes remain the TAT and the FHC respectively. In the case of tax disputes, appeals from the TAT lie to the FHC, Court of Appeal and then the Supreme Court.

For specific examples mentioned in the Act e.g., applications refused by the Authority, businesses can seek judicial review from the FHC whose duty will not be to remake the decision challenged but to review the process by which the decision was reached. With respect to disputes arising from determining ownership and adequate compensation payable

for private land, it is not clear why there is a requirement to pay to the FHC a sum as determined by the FHC except perhaps to hold the funds in escrow (to secure an amount for the owner of the private land) pending the resolution of the question on adequate compensation.

Both the Commission and Authority also play different roles in resolving disputes. One area to pay particular attention to would be the Commission's absolute power to determine the date of first sale and cessation of petroleum operations. This power may be challenged on constitutional grounds and principles of natural justice.



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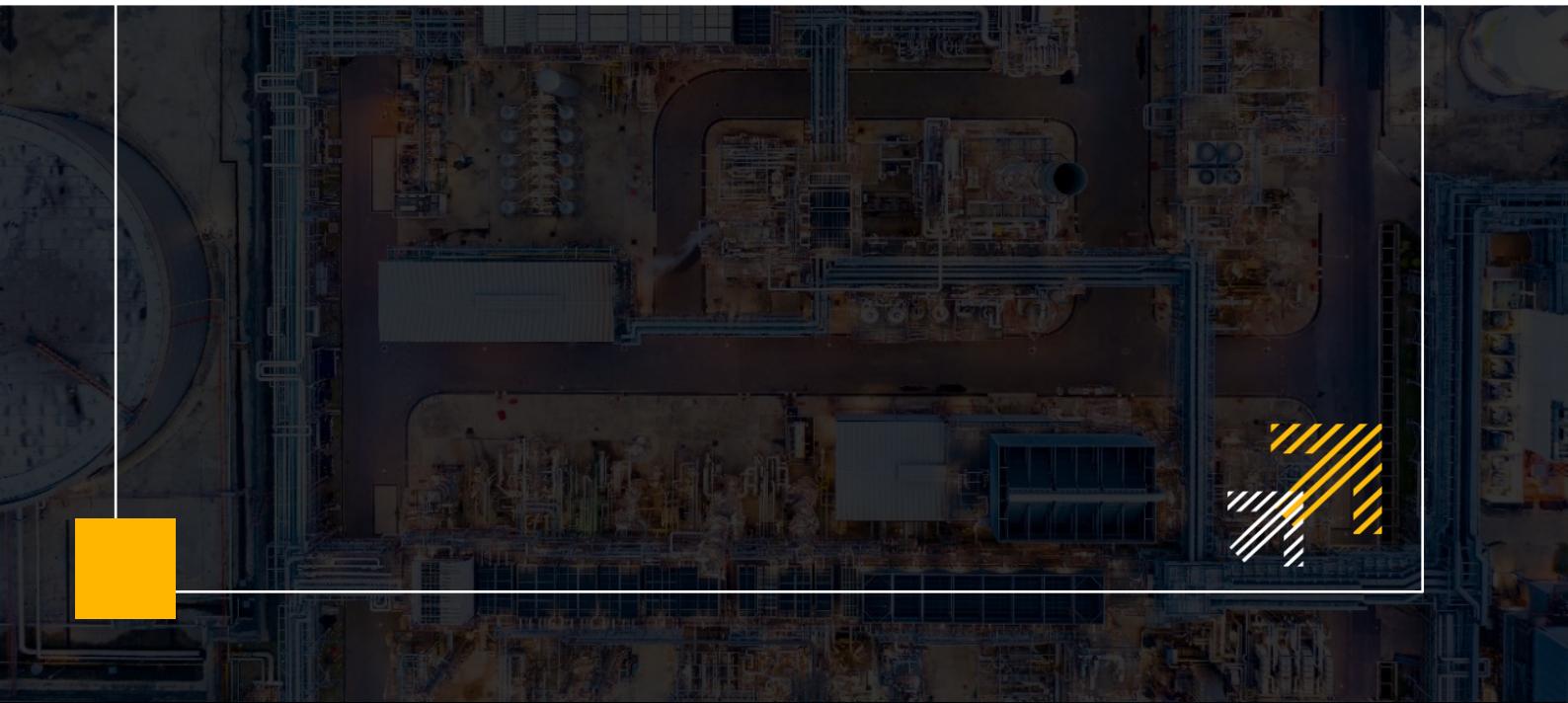
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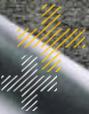


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