



SIGNIFICANCE OF THE PETROLEUM INDUSTRY ACT

Over the last 20 years, there have been various attempts at reforming the petroleum industry in Nigeria. However, none of these attempts has yielded any tangible result until the National Assembly introduced the Petroleum Industry Bill (PIB) 2020. It is worthy of note to state that the oil and gas industry has a significant impact on the Nigeria's economy. Although the industry contributes less than 10% to the country's gross domestic product, it however contributes about 90% of the foreign exchange earnings and 60% of total income. Consequently, any adverse change in the industry will have a big and long-term impact on the economy. This is the reason why successive governments have remained focused on the sector despite various discussions on diversifying the economy. The Petroleum Industry Act establishes legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry, the Host Communities; and related matters.

HIGHLIGHTS OF THE ACT

Governance and Institutions

The key objective of this chapter is to ensure good governance and accountability, creation of a commercially oriented national petroleum company, and fostering a conducive business environment for petroleum operations in Nigeria.

- Creation of the Nigerian Upstream Regulatory Commission ("the Commission") responsible for the technical and commercial regulation of the upstream petroleum operations; and the Nigerian Midstream and Downstream Petroleum Regulatory Authority ("the Authority") responsible for the technical and commercial regulation of the midstream and downstream operations in Nigeria. The Commission and Authority are exempted from the provisions of any enactment relating to the taxation of companies or Trust Funds.
- The Act requires that a company intending to be involved in more than one stream of petroleum operation should register a separate company for each. It further provides an option for the establishment of an Integrated Strategic Project (ISP) for companies in the upstream petroleum sector which seek to produce oil or

gas and refine it for wholesale supply subject to the provisions of section 302(4) of the Act.

- NNPC to be replaced by NNPC Limited (a new limited liability company) within 6 months from the enactment of the PIA. NNPC Limited is to operate on a commercial basis without government funding and must publish annual reports and audited accounts. Government owns all shares in NNPC Limited through the Ministry of Finance & Ministry of Petroleum as shareholders while also controlling the selection of its management team. This structure is expected to pave the way for an invitation to the Nigerian public to own shares in the company in the future.
- All assets, interest and liabilities that are not transferred to NNPC Limited will remain with NNPC until extinguished or transferred to the government after which NNPC shall cease to exist. Transfer and sale of the shares are subject to approval by the government and endorsement by the National Economic Council.
- NNPC Limited will earn 10% of proceeds of the sale on oil and gas operations as management fee while 30% will be remitted to Frontier Exploration Fund for the development of frontier acreages in addition to 10% of rents on petroleum prospecting licences and mining leases.

Petroleum Administration

The main objective of this chapter is the management, promotion, exploration and exploitation of petroleum resources in Nigeria for the benefit of all Nigerians.

- Prevention of economic distortions and ensure a competitive market for the sale and distribution of petroleum products and natural gas in Nigeria; and avoid cross-subsidies among several categories of consumers.
- The Commission is expected to provide a model licence and model lease to include provisions allowing NNPC Limited the right to participate up to 60% in a contract. The Act introduces the following licences and lease:
 - a. Petroleum exploration licence to carry out petroleum exploration on a non-exclusive basis
 - b. Petroleum prospecting licence to carry out petroleum exploration on a non-exclusive basis and drill wells, do corresponding test production on an exclusive basis
 - c. Petroleum mining lease to carry out petroleum exploration on a non-exclusive basis; drill wells, carry out test production, win, work and dispose of crude oil, condensates and natural gas on an exclusive basis.

Host Communities

The Act makes provisions on creation of trust funds, sources of funding within host communities and such other important provisions as it pertains to host communities are also contained in this part.

- A Company that has been issued with an oil prospecting licence or mining lease or an operating company on behalf of joint venture partners is expected to contribute 3% - 5% (upstream Companies) and 2% (other companies) of its actual operating expenditure in the immediately preceding calendar year to the host communities development trust fund. This is in addition to the existing contribution of 3% to the NDDC. Trust funds are exempt from taxation and payments to the trust are deductible for Hydrocarbon tax and CIT purposes.
- The executive members and the Board of trustees of the management committee shall include persons of integrity and professional standing and may not necessarily be an indigene of any of the host communities.
- 75% of the allocated funds is for capital projects, 20% should be set aside as reserve while the remaining 5% is for administrative expenses. However, a community will forfeit the cost of repairs in the event of vandalism, sabotage and other civil unrest causing damage to petroleum facilities or disruption of production activities.
- Failure to comply with host community obligations under the PIA is grounds for licence revocation.

Petroleum Industry Fiscal Framework

This chapter encourages investment in the Nigerian petroleum industry, provides clarity, and enhances revenues for the government while ensuring a fair return for investors:

- The existing Petroleum Profits Tax is replaced by Hydrocarbon tax, at the rate of 15% - 30% along with the application of Companies Income Tax at the rate of 30% at the maximum. This reduces the tax rate for companies in the upstream sector as the highest headline rate of tax will be 60% as opposed to the 85% rate of tax obtainable under the PPT.
- The Commission will collect rents, royalties, and production shares as applicable while the Authority will collect gas flare penalty from midstream operations. Late filing of tax returns will attract N10m on the first day and N2m for each subsequent day the failure continues
- The Commission will set fiscal oil prices on an "export parity" basis, which is used for taxation calculation purposes.

- There is a cost tax deductibility threshold of 65% of gross revenue (but excess can be carried forward). Head office costs are not tax deductible.
- Gas utilisation incentive will apply to midstream petroleum operations and large-scale gas utilisation industries. An additional 5-years tax holiday will be granted to investors in gas pipelines.

COMMENTARY

The significance of the provisions of the PIA on the oil and gas industry cannot be overemphasized. It is an audacious attempt to overhaul the petroleum sector in Nigeria and upon proper implementation, it will drastically redefine the Nigerian oil and gas landscape through its wide-ranging impact on various fundamental aspects of the economy including energy, banking, and insurance, among others.

We however opine that adequate institutional provisions and regulations should be put in place to shape national interests and the government must position itself to be able to generate the needed revenue for infrastructural development from this new regime. All stakeholders should also carefully monitor events as they unfold as this will create desired checks and balances to ensure that the implementation of the provisions of the Act will have the desired effects.

For more information please contact:

Blackwood & Stone LP

info@blackwoodstone.com

+234 903 3501 613