

Chambers

GLOBAL PRACTICE GUIDE

Definitive global law guides offering
comparative analysis from top ranked lawyers

Energy: Oil & Gas

Second Edition

Nigeria

DETAIL Commercial Solicitors

[chambers.com](https://www.chambers.com)

2019

Law and Practice

Contributed by *DETAIL Commercial Solicitors*

Contents

1. General Structure of Petroleum Ownership and Regulation	p.4	3.5 Income or Profits Tax Regime Applicable to Midstream/Downstream Operations	p.13
1.1 System of Petroleum Ownership	p.4	3.6 Special Rights for National Oil or Gas Companies	p.13
1.2 Regulatory Bodies	p.4	3.7 Local Content Requirements Applicable to Midstream/Downstream Operations	p.13
1.3 National Oil or Gas Company	p.5	3.8 Other Key Terms of Each Type of Downstream Licence	p.13
1.4 Principal Petroleum Law(s) and Regulations	p.5	3.9 Condemnation/Eminent Domain Rights	p.13
2. Private Investment in Petroleum: Upstream	p.7	3.10 Rules for Third-party Access to Infrastructure	p.14
2.1 Forms of Allowed Private Investment in Upstream Interests	p.7	3.11 Restrictions on Product Sales into the Local Market	p.14
2.2 Issuing Upstream Licences/Obtaining Petroleum Rights	p.8	3.12 Laws and Regulations Governing Exports	p.14
2.3 Typical Fiscal Terms Under Upstream Licences/Leases	p.8	3.13 Requirements for Transfers of Interest in Downstream Licences	p.14
2.4 Income or Profits Tax Regime Applicable to Upstream Operations	p.9	4. Foreign Investment	p.15
2.5 National Oil or Gas Companies	p.9	4.1 Foreign Investment Rules Applicable to Investments in Petroleum	p.15
2.6 Local Content Requirements Applicable to Upstream Operations	p.9	5. Environmental, Health and Safety (EHS)	p.15
2.7 Requirements for a Licence/Lease-holder to Proceed to Development and Production	p.9	5.1 Principal Environmental Laws and Environmental Regulator(s)	p.15
2.8 Other Key Terms of Each Type of Upstream Licence	p.10	5.2 Environmental Obligations for a Major Petroleum Project	p.17
2.9 Requirements for Transfers of Interest in Upstream Licences	p.10	5.3 EHS Requirements Applicable to Offshore Development	p.17
2.10 Legal or Regulatory Restrictions on Production Rates	p.10	5.4 Requirements for Decommissioning	p.18
3. Private Investment in Petroleum: Midstream/Downstream	p.11	5.5 Climate Change Laws	p.18
3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations	p.11	5.6 Local Government Limits on Oil and Gas Development	p.18
3.2 Rights and Terms of Access to Any Downstream Operation Run by a National Monopoly	p.11	6. Miscellaneous	p.18
3.3 Issuing Downstream Licences	p.11	6.1 Unconventional Upstream Interests	p.18
3.4 Typical Fiscal Terms and Commercial Arrangements for Midstream/Downstream Operations	p.12	6.2 Liquefied Natural Gas (LNG) Projects	p.18
		6.3 Unique or Interesting Aspects of the Petroleum Industry	p.19
		6.4 Material Changes in Oil and Gas Law or Regulation	p.19

DETAIL Commercial Solicitors is distinct as Nigeria's first commercial solicitor firm to specialise exclusively in non-courtroom practice. The firm has a robust oil and gas practice, which cuts across start-ups, bids, asset acquisitions, financing and advisory support. Awarded 2017 Oil & Gas Team of the Year by ESQ Nigerian Legal Awards, DETAIL has developed in-depth and practical knowledge of the sector, a full understanding of the legal and regulatory framework, and the rudiments of optimal risk allocation in

Nigeria's oil and gas sector. DETAIL has advised on various transactions, including the acquisitions of Oil Mining Lease (OML) 29 (Shell's second largest asset worldwide), OML 25 and the Ogedeh marginal field, as well as advising Falcon Corporation on the development of a 4,000 MT LPG storage facility and jetty. The firm offers expertise in the power, infrastructure, finance, corporate and commercial, real estate, technology, IP, capital markets and private equity sectors.

Authors



Ayuli Jemide is lead partner at DETAIL and a highly regarded commercial lawyer in Nigerian legal and business circles, with industry expertise in oil and gas, infrastructure and PPPs. He served as buyers'/borrowers' counsel to Aiteo

Eastern E&P Company on its USD2.85 billion acquisition of Oil Mining Lease 29, Shell's second largest asset worldwide. He also advised LADOL Integrated Logistics Enterprise in negotiating a USD350 million joint venture between LADOL and Samsung Heavy Industries Company for Total's first-in-country fabrication and integration of a floating production storage and offloading vessel (FPSO) for EGINA. He is vice chair of the Nigerian Bar Association Section on Business Law.



Muriel Cookey is a solicitor at DETAIL and a key member of the firm's oil and gas, private equity, and corporate and commercial practices. Her transactional experience includes advising Falcon Corporation on the development of a

4,000 MT LPG storage facility and jetty, advising Waltersmith Gas Company on the development and financing of a 40-30 MW gas to power plant, and advising Falcon Corporation on its gas sale and purchase agreements as well as on the legality of the Gas Pricing Model for the textile and manufacturing sector in Nigeria, and its potential impact on Falcon Corporation's gas supply contracts.



Samson Enikanoselu is an associate partner at DETAIL and heads the firm's oil and gas practice. His transaction experience includes providing legal advisory support to Aiteo Eastern E&P Company following its USD2.85 billion

acquisition of Oil Mining Lease 29, advising Mercuria Energy SA on its crude prepayment agreement with Seplat, advising Waltersmith Gas Company on the financing of a 40-30 MW gas to power plant and advising Falcon Corporation on the development of a 4,000 MT LPG storage facility and jetty in Nigeria. He is a member of the Nigerian Gas Association and the Nigerian Bar Association.



Oluwaseun Ariyibi is a solicitor at DETAIL and a key member of the firm's oil and gas, and corporate and commercial practices. Her transactional experience includes advising Falcon Corporation on the legality of the Gas Pricing Model for

the Nigerian textile and manufacturing sector, and its potential impact on Falcon Corporation's gas supply contracts. She is also advising Falcon Corporation on the development of a 4,000 MT LPG storage facility and jetty, advising Waltersmith Gas Company on the development and financing of a 40-30 MW gas to power plant, and advising Falcon Corporation on its gas sale and purchase agreements.

1. General Structure of Petroleum Ownership and Regulation

1.1 System of Petroleum Ownership

Petroleum in Nigeria is owned by the federal government. This right of ownership is derived from Section 44(3) of the Constitution of the Federal Republic of Nigeria 1999 and from the Petroleum Act 1969, which vests the entire ownership and control of “all minerals, mineral oils and natural gas (Petroleum) in, under, or upon any land in Nigeria, and its territorial waters and Exclusive Economic Zone, in the Federal Government of Nigeria”.

1.2 Regulatory Bodies

Petroleum activities in Nigeria are primarily regulated by the following ministries and agencies.

Ministry of Petroleum Resources (MPR)

The MPR is responsible for the articulation, implementation and regulation of policies in the Nigerian oil and gas sector. The MPR supervises the operators and stakeholders in the industry (ie, operators in the upstream, midstream and downstream sectors) to ensure their compliance with all applicable laws and regulations. The MPR is headed by the Minister of Petroleum Resources (the Minister) appointed by the President, who is empowered under the Petroleum Act. The Minister has the following powers, amongst others:

- to grant licences required for upstream operations (exploration, prospecting and production of crude oil) and downstream operations (operating a refinery, and the importation, storage, sale and distribution of petroleum products);
- to make regulations required for the implementation of petroleum activities; and
- to supervise all operations carried on in the petroleum sector.

Department of Petroleum Resources (DPR)

The DPR is the primary regulator of activities within the Nigerian oil and gas Sector. It is the technical department of the MPR with the statutory responsibility of ensuring that all operators and stakeholders across the value chain comply with all petroleum laws, regulations and guidelines in the oil and gas industry. The main functions of the DPR include:

- supervising all petroleum industry operations being carried out under licences and leases in the country;
- issuing guidelines on the process and requirements for the procurement of licences, permits and other approvals required to undertake petroleum industry activities;
- processing industry applications for leases, licences and permits through which petroleum activities can only be undertaken;
- advising the government and relevant governmental agencies on technical matters and public policies that

may have an impact on the government and petroleum activities;

- ensuring timely and accurate payments of rents, royalties and other revenues due to the government; and
- ensuring that health and safety and environmental regulations conform to national and international best oilfield practices.

Petroleum Product Pricing Regulatory Agency (PPPRA)

The PPPRA (<http://pppra.gov.ng/>) was established pursuant to the PPPRA Act 2003 to monitor and regulate the supply and distribution, and determine the prices, of petroleum products in Nigeria. Its primary functions, provided in Section 7 of PPPRA Act, include:

- determining the pricing policy of petroleum products;
- regulating the supply and distribution of petroleum products in Nigeria;
- moderating volatility in petroleum product prices, while also ensuring reasonable returns to operators;
- maintaining constant surveillance over all key indices relevant to pricing policy and periodically approving benchmark prices for all petroleum products; and
- identifying macro-economic factors with a relationship to the prices of petroleum products and advising the federal government on appropriate strategies for dealing with them.

Nigerian Content Development and Monitoring Board (NCDMB)

The NCDMB was established pursuant to the Nigerian Oil and Gas Industry Content Development Act (Local Content Act) 2010. Its primary objective is to ensure that Nigerian content in terms of human capital, resources and contracts is given priority in the oil and gas industry. The primary functions of the NCDMB include:

- monitoring Nigerian content compliance by operators and service providers in terms of cumulative spending, employment creation and sources of local goods, services and materials utilised on projects and operations;
- reviewing, assessing and approving Nigerian content plans developed by operators within the sector;
- setting guidelines and minimum content levels for project-related activities across the oil and gas value chain;
- engaging in targeted capacity building interventions that would deepen indigenous capabilities in terms of human capital development, infrastructure and facilities, manufactured materials, and local supplier development;
- awarding Certificates of Authorisation for projects that comply with Nigerian content provisions; and
- conducting studies, research, investigations, workshops and training aimed at advancing the development of Nigerian content.

Federal Ministry of Environment

The Ministry of Environment exercises its powers in the areas of policy awareness, enforcement and intervention with respect to pollution and waste management matters, coastal management, and environmental standards and regulations. The Ministry of Environment is also responsible for monitoring activities in the oil and gas sector that affect the environment, and issuing environmental impact assessment certificates with respect to projects in the oil and gas industry. It acts in collaboration with other agencies and departments, such as the DPR, to ensure environmental protection and the sustainable use of natural resources.

National Oil Spill Detection and Response Agency (NOSDRA)

The NOSDRA was established pursuant to the National Oil Spill Detection and Response Agency Act 2006 (NOSDRA Act) as an institutional framework to co-ordinate the implementation of the National Oil Spill Contingency Plan for Nigeria in accordance with the International Convention on Oil Pollution Preparedness, Response and Co-operation. Section 6 of the NOSDRA Act provides the primary functions of the NOSDRA, which include (i) ensuring compliance with all existing environmental legislation and detecting oil spills in the petroleum sector, and (ii) receiving reports of oil spillages and co-ordinating oil spill response activities.

1.3 National Oil or Gas Company

The national oil and gas company of Nigeria is the Nigerian National Petroleum Corporation (NNPC), which was created pursuant to the NNPC Act 1977. The NNPC is the vehicle through which the federal government participates in petroleum activities ranging from E&P of crude oil to the refining, marketing and distribution of petroleum. It is empowered by the NNPC Act to participate in petroleum development by undertaking the following activities:

- exploring and prospecting for, working, winning, or otherwise acquiring, possessing and disposing of petroleum;
- refining, treating, processing and generally engaging in the handling of petroleum for the manufacture and production of petroleum products and its derivatives;
- purchasing and marketing petroleum, its products and by-products;
- providing and operating pipelines, tanker-ships or other facilities for the carriage or conveyance of crude oil, natural gas and their products and derivatives, water and any other liquids or other commodities related to NNPC's operations;
- constructing, equipping and maintaining tank farms and other facilities for the handling and treatment of petroleum and its products and derivatives;
- carrying out research in connection with petroleum or anything derived from it; and
- doing anything required for the purpose of giving effect to agreements entered into by the federal government

with a view to securing participation of the government or the NNPC in activities connected with petroleum.

The NNPC participates in the upstream sector by holding interest in oil assets in the following ways.

- Joint venture operations – the NNPC and private oil company(ies) enter into an agreement (Joint Operating Agreement) for the joint development and production of crude oil from a lease area (an area over which either an Oil Prospecting Licence (OPL) or an Oil Mining Lease (OML) has been granted). Each partner in the joint venture has cash-call obligations under which they are to contribute to the capital and operating costs for the development and production of crude oil, and share the benefits or losses of the operation in accordance with their proportionate interest in the assets.
- Production sharing contracts (PSC) – under this mode, the NNPC retains legal ownership and interest in the concession. However, the NNPC engages a contractor to explore and produce crude oil on behalf of the NNPC and itself, taking all risks. Under this model, the operations are pre-funded by the contractor. Where oil is found in commercial quantities, it is shared between the parties at an agreed percentage after the deduction of barrels allocated for payment of royalties (Royalty Oil), taxes (Tax Oil) and contractor costs (Cost Oil).

The NNPC also participates in the exploration, production and distribution of petroleum products through a number of its subsidiaries, which include:

- Duke Oil;
- Hyson (Nigeria) Limited;
- Integrated Data Services Limited (IDSL);
- Kaduna Refining Petrochemical Company (KRPC);
- National Engineering & Technical Company (NETCO);
- Nigerian Gas Company, which has been split into the Nigeria Gas Processing and Transportation Company (NGPTC) and the Nigerian Gas Marketing Company (NGMC);
- Nigerian Petroleum Development Company (NPDC);
- Port Harcourt Refining Company (PHRC);
- Pipelines and Product Marketing Company (PPMC);
- Warri Refining and Petrochemical Company Limited (WRPC); and
- NNPC Retail.

1.4 Principal Petroleum Law(s) and Regulations

The Petroleum Act 1969 is the principal petroleum law in force governing the exploration, production and distribution of petroleum in Nigeria. The key points addressed in the legislation are as follows:

- pursuant to Section 1 of the Petroleum Act, the entire ownership and control of all petroleum in, under or upon

- any land in Nigeria, under the territorial waters of Nigeria or forming part of the Exclusive Economic Zone is vested in the State; ie, the federal government of Nigeria;
- the Act empowers the Minister to grant the licences required for upstream operations (the exploration, prospecting and production of crude oil) and downstream operations (operating a refinery, and the importation, storage, sale and distribution of petroleum products), and to provide regulations for the upstream and downstream petroleum activities; and
 - the Act provides the operational framework for the licences required to operate in both the upstream and downstream sectors of the petroleum industry.

Regulations are issued by the Minister pursuant to his powers under the Petroleum Act to regulate different activities within the sector, including the procedures and terms for obtaining various licences and approvals. The following are some of the key regulations issued by the Minister:

- the Petroleum Regulations 1967;
- the Petroleum (Drilling and Production) Regulations 1969 (as amended by the Petroleum (Drilling and Production) (Amendment) Regulations 2006);
- the Petroleum Refining Regulations 1974;
- the Oil Prospecting Licences (Conversion to Oil Mining Leases, etc) Regulations 2003; and
- the National Gas Supply and Pricing Regulations 2008.

The Petroleum Profits Tax Act (PPTA) 1958 is the primary legislation that deals with the taxation of petroleum activities in the upstream petroleum sector. The key points addressed in the legislation are as follows.

- Pursuant to Section 21, assessable tax is charged at 85% of the chargeable profits of the company for an accounting period. However, for companies that have not fully amortised their pre-production capitalised expenditure, the PPTA imposes a tax rate of 65.75%.
- Under Section 9, a mechanism for the ascertainment of adjusted, assessable and chargeable profits is provided.
- The Act provides for the deductions allowable in ascertaining the adjusted, assessable and chargeable profits of a company. Such deductions include:
 - (a) rents incurred by the company in respect of land or buildings occupied under an OPL or an OML;
 - (b) royalties payable by the company on the chargeable value of natural gas, crude oil and casing-head petroleum spirit produced in Nigeria;
 - (c) interest payable on amounts borrowed where such sums borrowed are used in the carrying on of petroleum operations; and
 - (d) expenses incurred in the repair of premises, plant, machinery or fixtures for the carrying on of petroleum operations.

- Sections 11 and 12 provide the incentives for companies engaged in the utilisation of associated and non-associated gas.

Note that there is a bill (Petroleum Industry Fiscal Bill) pending before the national assembly that, if passed, will repeal the PPTA.

The Companies Income Tax Act is the primary legislation governing the taxation of companies in Nigeria and applies to companies operating in the downstream petroleum sector. The current companies' income tax rate is 30% of the profits of a company.

The Oil Pipelines Act 1965 provides the framework for the establishment and maintenance of pipelines incidental and supplementary to oilfields and oil mining. The key points addressed in this legislation include (i) the power of the Minister to grant permits to survey routes for oil pipelines and (ii) the power of the Minister to grant licences to construct, maintain and operate oil pipelines.

The Deep Offshore and Inland Basin Production Sharing Contract Act 1993 provides for the fiscal terms and incentives given to companies operating in the deep offshore and inland basin area under PSCs with the NNPC. The applicable petroleum profit tax rate for these companies is a flat rate of 50% of the chargeable profits made for the duration of the PSC.

DPR Guidelines

As part of its functions as the regulator for the petroleum sector in Nigeria, the DPR is empowered to provide regulatory guidelines for operations across the entire oil and gas value chain. There are several DPR guidelines on the process, fees and terms for obtaining and maintaining the various licences required for petroleum operations in Nigeria. The following are examples of guidelines issued by the DPR:

- upstream – Procedure Guide for the Design and Construction of Oil and Gas Surface Production Facilities;
- midstream – Guidelines for the Establishment of Hydrocarbon Process Plants (Petroleum Refinery and Petrochemicals Plant); and
- downstream – Guidelines for Approval to Construct and Operate Petroleum Products Filling Station.

New Developments in the Petroleum Sector

It is important to note that the Nigerian petroleum industry is undergoing some legislative changes with the passage of the Petroleum Industry Governance Bill (PIGB) by the legislative arm of government, although the President has so far declined assent. The key highlights of the PIGB include:

- the establishment of a single and independent regulator that will replace the DPR, and the Petroleum Product Pricing Regulatory Agency;
- some provisions of the Petroleum Act will be repealed as some of the duties of the Minister will be transferred to the new regulator;
- the powers of the Minister will be restricted to the determination, formulation and monitoring of government policy in the petroleum industry; and
- the NNPC will be unbundled into two new entities incorporated as companies limited by shares, known as the National Petroleum Company (NPC) and the Nigeria Petroleum Assets Management Company (NAPAMC).

Other bills pending before the National Assembly include the Petroleum Host Communities Bill, the Petroleum Industry Fiscal Bill and the Petroleum Industry Administration Bill.

2. Private Investment in Petroleum: Upstream

2.1 Forms of Allowed Private Investment in Upstream Interests

The primary means by which private investors can participate in the upstream oil and gas sector in Nigeria are as follows:

- through the procurement of a licence (Oil Exploration, Oil Prospecting or Oil Mining Licence) from the Minister;
- through the acquisition of interest in an existing licence or in a company with an existing licence; or
- through the acquisition of a marginal field during a marginal field bid round.

Procurement of a Licence from the Ministry of Petroleum

A private investor will be required to procure an OML from the Minister in order to develop and produce petroleum in Nigeria. However, prior to being qualified for the grant of an OML, an investor must first obtain an Oil Exploration Licence (OEL) and OPL, and must have fulfilled any conditions imposed under both licences. The nature of the rights granted under each licence is set out below.

The OML grants the holder the exclusive right to conduct exploration and prospecting operations, and to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the leased area in Nigeria (Schedule 1 paragraph 11 of the Petroleum Act). In order to be eligible for the grant of an OML, the OPL licensee must have fulfilled all conditions imposed under the OPL and discovered oil in commercial quantities (ie, at least 10,000 barrels of crude oil per day). An OML is granted for an initial

period of 20 years and may be renewed in accordance with the provisions of the Act. Upon the grant of an OML, the federal government may exercise its right to participate in the field through the NNPC; therefore, a percentage of the interest in the OML will be held by the NNPC. Furthermore, the NNPC and the private party will enter into agreements for the operation of the field, depending on the participating structure adopted by the NNPC. The key participating structures adopted by the NNPC are as follows.

- Unincorporated joint venture (JV): under this structure, the private investor(s) and the NNPC hold an interest of specified proportions in the OML and contribute to the operations and production costs of the lease area (Cash Calls) in the proportion of their respective interests and share production in the same proportion.
- Production sharing contracts: under this structure, the NNPC retains a 100% interest in the OML (as the concessionaire) while the private investor is appointed as the contractor, who pre-finances production and other field operations. The private investor recovers its cost from a portion of the petroleum produced (production cost oil) and receives an agreed share of the production as profits (Profit Oil) after deducting oil allocated for the payment of royalties (Royalty Oil) and taxes (Tax Oil) to the federal government.

Acquisition of Interest in an Existing Licence, or in a Company with an Existing Licence

A private investor can acquire an upstream interest through the direct acquisition of an interest in the licence, or as an indirect acquisition, through the acquisition of shares of a company with an interest in a licence (farm-in).

Acquisition of a Marginal Field During a Marginal Bid Round

Another way to acquire interest in upstream assets is for an investor to bid for the acquisition of an interest in a marginal field during marginal field bid rounds conducted by the federal government of Nigeria (FGN). A marginal field is a field that has (oil and gas) reserves booked and reported annually to the DPR, and has remained unproduced for a period of more than ten years. The FGN has the authority to take the unattended/unproduced land and award it to an eligible individual through an approved bidding process.

The last bid round was conducted in 2003-04 and resulted in the award of 24 marginal fields to 31 indigenous companies. Since the last bid round, there has been an announcement of the government's intention to conduct new bid rounds in 2013 and 2017 but these were postponed and the timeline for the next bid round cannot be estimated. However, it should be noted that the objective behind the award of marginal fields is to increase the participation of indigenous oil and gas companies in the upstream petroleum sector, so any for-

foreign investor looking to participate in a bid round will need to partner with an indigenous company.

2.2 Issuing Upstream Licences/Obtaining Petroleum Rights

In order to obtain an upstream licence/lease, a private investor must apply to the Minister through the DPR, pay the prescribed fees and annex to the application all the requisite documents prescribed by the DPR, which include:

- evidence of financial and technical capabilities;
- a survey description;
- annual reports; and
- ten copies of a map on the DPR-approved scale (Section 1 of the Petroleum (Drilling and Production) Regulations 1969).

Furthermore, all applicants must be duly incorporated in Nigeria and meet the requirements of the Local Content Act (see **2.6 Local Content Requirements Applicable to Upstream Operations** regarding local content requirements applicable to upstream operations by private investors).

Marginal Fields

For the allocation of marginal fields, the federal government of Nigeria conducts a bid licensing round. To ensure that the bid rounds are conducted in a fair and transparent manner, the Minister issues guidelines that prescribe the pre-qualification requirements necessary for the successful grant of a marginal field.

Other Permits

The other permits required to conduct operations include the following.

- *Pipeline Licence*: this grants the holder the power to construct and operate a pipeline in Nigeria for the transportation of crude oil from the field to a designated point or export terminal.
- *Export Permits*: the holder of a licence is not permitted to export any sample or specimen of petroleum abroad without the prior written consent of the DPR (Section 7 of the Petroleum (Drilling and Production) Regulations 1969). In view of this, the licence-holder will be required to obtain an export permit from the DPR by fulfilling the requirements set out in the DPR Guidelines for Processing of Crude Oil Export Permit Applications.
- *Approval to design, construct and commission oil and gas surface production facilities*: this approval is granted by the DPR to the licensee for the construction of surface production facilities. The requirements for obtaining this permit include the following:
 - (a) the local content of the project execution shall be at least 30% of the total financial commitment;
 - (b) the project management structure shall be composed in a manner that reflects technology transfer

to Nigerians; and

- (c) the project gas utilisation plan shall comply with the government directive on the eradication of gas flaring.

- *Approval of Field Development Programme*: upstream operators are required to obtain DPR approval for their field development programmes, which shall give details of the estimated size of the pool, the known physical parameters, reservoirs or structures, intended drilling patterns, production or drainage patterns, etc.
- *Storage Licence*: this is required if the applicant intends to store the crude oil in depots.

2.3 Typical Fiscal Terms Under Upstream Licences/Leases

The main sources from which revenue is derived through the operations of upstream petroleum companies by the federal government of Nigeria are as follows.

Bonuses

These are premiums payable to the federal government as part of the monetary considerations for the grant of OPLs and OMLs, and the allocation of marginal fields.

Royalties

These are sums of money payable by companies operating in the upstream oil and gas industry on the quantity of petroleum produced. Royalty payments in Nigeria are governed by the Petroleum (Drilling and Production) Regulations 1969 (as amended by the Amendment Regulations 2006) and the Deep Offshore and Inland Basin Production Sharing Contracts Act, depending on the applicable contractual regime.

For upstream assets under the JV structure, onshore PSC assets and offshore PSC assets in water depths of up to 200 metres, the royalty rates are set out in the Petroleum (Drilling and Production) Regulations 1969.

For PSCs, the royalties for onshore and offshore fields up to 200 metres water depth are set out in Regulation 62 of the Petroleum (Drilling and Production) Regulations 1969, while the royalties for offshore PSCs in water depth over 200 metres are set out in the Deep Offshore and Inland Basin Production Sharing Contracts Act.

For gas, the royalty is charged at a percentage of the price received by a licensee or lessee in the relevant area and sold, but does not include any flare or waste gas appropriated by the government for its own use (Regulation 61 (b) of the Petroleum (Drilling and Production) Regulations 1969):

- onshore areas – 7%; and
- offshore areas – 5%.

Rents

These are amounts paid by oil-producing companies in exchange for the OPL and OML granted. The rents are charged in accordance with Regulation 60 of the Petroleum (Drilling and Production) Regulations.

Other Levies

- Niger Delta Development Commission (NDDC) Levy: 3% of the total annual budgets for upstream operations.
- Tertiary Education Tax: pursuant to the Tertiary Education Tax Act 2011, the FGN has mandated all companies registered in Nigeria to pay 2% of their assessable profit as Tertiary Education Tax.

2.4 Income or Profits Tax Regime Applicable to Upstream Operations

The applicable tax regime for upstream operations is the Petroleum Profit Tax (PPT), which is a direct tax on the profits of companies operating in the upstream oil and gas industry in Nigeria, charged pursuant to the Petroleum Profit Tax Act. PPT is charged as follows.

- Companies that have commenced crude production: 85% of the chargeable profits of the company. However, for companies that have not fully amortised their pre-production capitalised expenditure, the applicable tax rate is 65.75%.
- For companies operating in the deep offshore and inland basin areas under PSCs with the NNPC, the applicable tax rate is 50% of the chargeable profits.

2.5 National Oil or Gas Companies

Several rights are granted to the NNPC with respect to the grant of upstream licences, including the following.

- *Pre-emptive rights*: by virtue of Section 7 of the Petroleum Act and the Second Schedule to the Act, the Minister has pre-emptive rights over all petroleum and petroleum products obtained under any licence or lease in Nigeria, in the event of a national emergency. The Minister may exercise this right through the NNPC.
- *Back-in rights*: by virtue of the provisions of the Deep Water Block Allocations to Companies (Back-In Rights) Regulations 2013, the NNPC retains the right to obtain a participating interest in the Deep Water Allocation of OMLs and OPLs in Nigeria, and this has been exercised in many cases.
- *Operatorship*: the NNPC reserves the right to operate oilfields and/or appoint an operator over its oilfields. However, most oilfields are operated by private sector partners.

2.6 Local Content Requirements Applicable to Upstream Operations

The Nigerian Oil and Gas Industry Content Development Act 2010 is a codified document that encompasses the local

content requirements applicable to all persons operating within the oil and gas industry in Nigeria. The local content requirements prescribed in the Act can be classified in the following manner.

- *Oil blocks, oilfield licences, oil lifting licences*: by virtue of Section 3(1) of the Local Content Act, first consideration must be given to independent Nigerian operators in the award of oil blocks, oilfield licences and oil lifting licences, and in all projects where a contract is to be awarded in the Nigerian oil and gas industry.
- *Training and employment*: the Act stipulates that Nigerians must be given priority for training and employment in the Nigerian oil and gas industry. Any Nigerian content plan or project executed by an operator or project promoter in the industry must ensure that only Nigerians are employed for junior and intermediate roles (Section 35 of the Local Content Act).
- *Local goods and services*: the Act requires operators and contractors in the industry to indicate in their Nigerian Content Plan how first consideration will be given to Nigerian goods and services (Section 12 of the Local Content Act). The Act prescribes specific mandatory quantum of Nigerian content across a wide range of services to be provided within the sector; for example, 85% of man-hours for production drilling service, 90% of man-hours for performance services (T and P) and 85% of the length of 2D seismic data acquisition services.
- *Legal, financial and insurance services*: priority must be given to Nigerian organisations offering financial, legal or insurance services in Nigeria.

To ensure that operators comply with the local content requirement, Section 7 of the Local Content Act provides that “in any bidding for any licence, permit or interest and before carrying out any project in the Nigerian oil and gas industry, an operator shall submit a Nigerian Content Plan (“the Plan”) to the Board demonstrating compliance with the Nigerian content requirements of this Act.”

2.7 Requirements for a Licence/Lease-holder to Proceed to Development and Production

Once a commercial discovery is made within the area covered by an OPL, the holder of the OPL shall apply to the Minister for the grant of an OML over the lease area. The OPL-holder must demonstrate to the satisfaction of the Minister that:

- the level of activity undertaken within the licence period is sufficient for the grant of an OML;
- it has the required financial and technical capabilities; and
- the terms and conditions for the award of an OML have been accepted.

Upon satisfaction of the above-mentioned requirements, the licence-holder will be required to pay the signature and production bonus, and to adhere to the Minister's requirements in order to successfully convert the OPL to an OML.

The OPL-holder is also required to submit a field development plan to the DPR, and all fields, structures, reservoirs and other oil traps are required to be developed and produced in strict accordance with a field development plan.

There is currently no codified procedure for the right to appeal denials of approval.

2.8 Other Key Terms of Each Type of Upstream Licence

The other key terms of each type of upstream licence are provided below.

Oil Exploration Licence

An OEL is non-exclusive and valid from the date it is granted until December 31st of the year following the date of the grant. However, the licensee will have an option to renew the licence for one further year if:

- the licensee has fulfilled all obligations imposed upon him by the Act;
- the Minister is satisfied with the work done and the reports submitted by the licensee in pursuance of the licence; and
- an application for renewal has been made at least three months before the date of expiry of the licence.

Oil Prospecting Licence

- *Duration*: an OPL confers an exclusive right on the licensee to explore and prospect for petroleum within the area of the licence, and its duration is determined by the Minister, subject to a maximum period of five years (inclusive of any renewals).
- *Minimum work obligations*: Section 32 of the Petroleum (Drilling and Production) Regulations 1969 requires an OPL licensee to commence drilling no later than 18 months after the date of the grant of the OPL. The licensee is also required to drill an average of one well each year from the second year of the issuance of the licence.
- *Assignment*: the holder of an OPL may not assign or transfer any of its interest in the licence by exchange or transfer of shares, private or public listing, merger, or any other means without the prior written consent of the Minister (Section 14 of the Petroleum Act).
- *Revocation of an OPL*: the Minister has the right to revoke an OPL if, in its opinion, the licensee is not conducting operations, fails to comply with the Act, fails to pay rent or royalties due, or fails to submit reports on its operations (paragraph 25 of the First Schedule to the Petroleum Act).

Oil Mining Lease

- *Duration*: an OML is valid for 20 years and may be renewed subject to the provisions of the Act.
- *Relinquishment*: by virtue of paragraph 12(1) of the First Schedule to the Petroleum Act, an OML licensee is required to relinquish one half of the area covered by the OML, ten years after the grant. The shape and size of the area to be retained and the area to be relinquished shall be approved by the Minister.
- *Renewal*: the lessee of an OML is entitled to apply in writing to the Minister for a renewal of the OML no less than twelve months before the expiration of the lease, and the Act provides that such renewal shall be granted if the lessee has paid all rent and royalties due, and has otherwise performed all obligations under the OML (paragraph 13 (1) of the First Schedule to the Petroleum Act).
- *Termination and revocation of an OML*: in order to terminate an OML, an OML licensee is required to give the Minister at least three months' notice in writing (paragraph 18 of the First Schedule to the Petroleum Act). The Minister also has the right to revoke an OML if, in its opinion, the licensee is not conducting operations or fails to comply with the Petroleum Act.

2.9 Requirements for Transfers of Interest in Upstream Licences

The Petroleum Act stipulates that the holder of an upstream licence or lease cannot assign or transfer any of its rights, obligations or interest without the prior consent of the Minister (paragraph 14 of the First Schedule to the Petroleum Act). The requirements for obtaining such consent are codified in the DPR Guidelines and Procedures for Obtaining Minister's Consent to the Assignment of Interest in Oil and Gas Assets 2014 (Guidelines).

Under the Guidelines, an asset is defined as all surface facilities and sub-surface resources in an OPL, OML or marginal field, while an interest in a licence is defined as "any arrangement such as PSC, PSA, farm-in or farm-out agreement, sale, purchase, mortgage or other business arrangements by which a right, privilege, power, benefit, gain or advantage in a licence or lease is transferred to, or conferred directly or indirectly on a third party." Based on the provisions of the Guidelines, 'interest' covers both direct and indirect interest in the licence (eg, a shareholding in a company that owns the licence). Therefore, any transaction that alters the ownership structure of the company with the licence – such as a merger, takeover or divestment – will require Ministerial consent.

2.10 Legal or Regulatory Restrictions on Production Rates

There are currently no local legal or regulatory restrictions on production rates in Nigeria. However, being a signatory to the Organization of the Petroleum Exporting Countries (OPEC) Declaration of Cooperation (DOC), Nigeria has an obligation to adjust its production levels in line with the

production targets set by members of OPEC and other non-OPEC signatories to the DOC.

3. Private Investment in Petroleum: Midstream/Downstream

3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations

There are no national monopolies in petroleum downstream operations. However, most of the available infrastructure is owned by the NNPC (through its subsidiaries) and some international oil companies.

Private investment in downstream operations is allowed, subject to the existing licensing regime. The Minister has the power to grant licences to private investors to participate across the entire spectrum of oil and gas downstream operations (Sections 2 and 3 of the Petroleum Act 1969). This power is currently exercised through the Department of Petroleum Resources. Subject to licensing requirements, every segment of the oil and gas industry is open to investors, so investors may participate in any downstream petroleum activities.

To provide guidance on the procedure for obtaining downstream licences and on the legal and technical requirements and standards for constructing downstream infrastructure, the DPR has issued regulatory guidelines for operations across the oil and gas downstream sector.

3.2 Rights and Terms of Access to Any Downstream Operation Run by a National Monopoly

Downstream companies, including the NNPC, operate as private entities; therefore, third-party access to downstream infrastructure is arranged on a contractual basis, and the terms and conditions of access are negotiated privately. For instance, any person seeking access to Nigeria Gas Processing and Transmission Company (NGTC) pipelines to transport gas would need to enter into a gas transportation agreement (GTA) with NGTC.

Entities requiring access to NGTC's gas pipelines, such as owners and operators of thermal power plants and industrial companies, are able to transport their gas by entering into agreements with NGTC.

In terms of rates, the power sector and industries classified as strategic industrial sectors enjoy regulated rates that are sometimes substantially cheaper than the commercial rates paid by the other private companies.

3.3 Issuing Downstream Licences

Downstream licences are issued by the Minister, through the Department of Petroleum Resources. The Minister has

issued regulations and the DPR has published guidelines on the process and specific requirements for the issuance of licences for downstream operations. Therefore, the starting point for any company looking to obtain a downstream licence is to engage the DPR for guidance on the process and requirements for obtaining such licence.

The requirements and applicable guidelines for obtaining licences for some key downstream activities are summarised below.

Licensing Framework for the Construction of Oil Pipelines and Ancillary Services

The Oil Pipelines Act 1968 (Pipeline Act), the Oil and Gas Pipeline Regulations 1995 (Oil Pipeline Regulations) and the DPR Guidelines and Procedure for the Construction, Operation and Maintenance of Oil and Gas Pipelines and their Ancillary Facilities (DPR Pipeline Guidelines) are the key pieces of legislation governing the operation and construction of pipelines in Nigeria.

Licensing framework for pipelines

The licences, permits and approvals required to undertake the construction of a pipeline are as follows.

- *Permit to Survey Route:* Section 1 of the Oil Pipelines Act requires the proposed route of the pipeline to be surveyed prior to the grant of an oil pipeline licence. Therefore, the first step in obtaining an oil pipeline licence is to make an application to the DPR for a permit to survey the route of the pipeline.
- *Licence to Construct and Approval to Operate a Pipeline:* Regulation 1.3.0 of the DPR Pipelines Regulations refers to a licence to construct and an approval to operate a pipeline as an 'Oil Pipeline Licence'. The DPR requires a holder of a permit to survey to apply for an Oil Pipeline Licence, within the validity of the permit, before it can construct and commence operation of the pipeline. The Oil Pipeline Licence grants the licensee the right to enter and take possession of any land and/or route specified in the licence to construct, maintain and operate an oil pipeline.

Licensing Framework for Refining

Section 3 of the Petroleum Act requires any person intending to establish a refinery in Nigeria to obtain a refiner's licence from the Minister. There are two types of refiner's licence: the conventional refiner's licence and the modular refiner's licence. The Guidelines for the Establishment of Hydrocarbon Process Plants (Petroleum Refinery and Petrochemicals Plants) (Hydrocarbon Refineries Guidelines) and the Ministry of Petroleum's General Requirements and Guidance Information for the Establishment of Modular Refineries in Nigeria (Ministry Guidelines) set out the procedure for obtaining a refiner's licence in three stages.

Licence to establish (LTE)

This approval stage is to confirm the feasibility of the proposed project, market plan, products specification, site selection, proposed crude oil (or feedstock) supply plan, evacuation plan, etc. Section 6.3 of the Hydrocarbon Refineries Guidelines requires the payment of the prescribed application fee of USD50,000 and the service charge of NGN500,000. Furthermore, the section requires an additional refundable deposit of USD1 million per 10,000 bpd refining capacity (this deposit is only required for conventional refineries). For modular refineries, the fees payable for the licence to establish are USD50,000 and NGN500,000 as licensing and service fees respectively. Section 2.3 of the Hydrocarbon Refineries Guidelines states that the term of the licence is two years.

Approval to construct a petroleum process plant (ATC)

This licence enables the licensee to proceed with the procurement and construction phase of the project. To obtain an ATC, the applicant must submit to the DPR the detailed engineering design of the refinery, which must satisfy the provisions of Section 2.4 of the Hydrocarbon Refineries Guidelines. The applicant must also submit a comprehensive presentation on the project design to the DPR. In the case of a modular refinery, the Ministry Guidelines provide that a processing fee of NGN500,000 will be paid to the DPR; note that the payment of licensing fees is not required for an approval to construct a conventional refinery. Section 3.4 of the Hydrocarbon Refineries Guidelines states that an ATC is valid for 24 months.

Licence to operate a refinery (LTO)

Upon completion of mechanical construction, the DPR carries out a physical inspection of the plant to ascertain its conformity with the approved design. Upon the receipt of a satisfactory inspection report, the Minister will grant the approval to commission and operate the plant.

Licensing Framework for Setting Up a Filling Station (Marketing and Retail)

The application to set up a filling station is made to the DPR in line with the DPR Guidelines for Approval to Construct and Operate Petroleum Products Filling Station (Station Guidelines). The procedure is as follows.

- The applicant shall apply for a site suitability inspection from the DPR. The considerations during the applications are contained in Section 2 of the Station Guidelines.
- Following the successful inspection outcome, the applicant will proceed to apply for approval to construct in accordance with Section 2 of the Station Guidelines. This is done by submitting an application letter addressed to the operations controller of the nearest DPR Zonal office along with the relevant documents, such as two photocopies of the deed of conveyance, the Certificate of Incorporation and an environmental impact assessment

report where the underground tank capacity is greater than 270,000 litres. If satisfactory, the DPR will grant an approval to construct.

- After the ATC is granted, an application for a storage and sales licence must be made, to enable the holder to store and sell petroleum products. This is done by satisfying the requirements contained in the Station Regulations and submitting the required documents.

Licensing Framework for the Storage of Petroleum Products

Section 4 of the Petroleum Act provides that the storage of petroleum products can only be done under a licence issued by the Minister. The procedure for the grant of a storage licence is contained in the Procedure Guide for the Construction and Operation of Petroleum Products Depots and Facilities 2009 (DPR Storage Guidelines).

3.4 Typical Fiscal Terms and Commercial Arrangements for Midstream/Downstream Operations

The fiscal terms applicable to the downstream sector include:

- Companies Income Tax – this is governed by the Companies Income Tax Act 1961 (as amended), and the current income tax rate payable by downstream companies is 30% of the assessable profits;
- Education Tax – governed by the Tertiary Education Tax Act 2011, which requires every company registered in Nigeria to pay 2% of its assessable profit as Tertiary Education Tax; and
- licence fees – the government also generates revenues from downstream operations via application fees, processing fees for licences and licence renewal fees, as may be determined by the DPR.

Pricing for premium motor spirit (PMS) is currently regulated and determined by the Petroleum Product Pricing Regulatory Authority using a pricing template that factors in landing costs, margins for marketers, and other taxes and charges.

Pricing of domestic utilised gas is somewhat regulated depending on the purpose for which the gas is to be utilised. The pricing framework is underpinned by the National Domestic Gas Supply and Pricing Regulations 2008, which categorise the gas sector into three demand sectors and prescribe an applicable pricing regime for each sector.

- *Strategic Domestic Sector*: mainly gas to power, wherein the price of gas is determined by the Minister for Petroleum Resources in consultation with the electricity sector regulator. The pricing is usually based on a cost of supply approach and capped by export parity price.
- *Strategic Industrial Sector*: mainly industries that utilise gas as feedstock for the production of value-added prod-

ucts. The floor price of gas is set based on the netback on the product price.

- *Commercial Sector*: mainly sectors that utilise gas as fuel. The floor price of gas is set based on the price of alternative fuel.

Other contractual arrangements are based on the contract terms between the parties, and most private sector gas supply contracts are concluded on this basis.

3.5 Income or Profits Tax Regime Applicable to Midstream/Downstream Operations

The income or profit tax legislation that applies to downstream operations in Nigeria includes:

- the Companies Income Tax Act 1961 (as amended) – the current income tax rate payable by downstream companies is 30% of the assessable profits;
- the Tertiary Education Tax Act 2011 – every company registered in Nigeria is mandated to pay 2% of its assessable profit as Tertiary Education Tax; and
- Value Added Tax (VAT) – this is charged at 5% of the value of all taxable goods and services.

3.6 Special Rights for National Oil or Gas Companies

The national oil and gas company of Nigeria (the NNPC) has no special rights of its own, but the Minister has absolute authority over the petroleum resources in Nigeria. In the event of a national emergency, the Petroleum Act grants the Minister a right of pre-emption over all petroleum and petroleum products obtained, marketed or otherwise dealt with under any licence or lease granted under the Petroleum Act.

3.7 Local Content Requirements Applicable to Midstream/Downstream Operations

The local content requirements for the oil and gas sector are provided in the Nigerian Oil and Gas Industry Content Development Act, 2010 (Local Content Act). The legislation is of universal application, as Section 2 of the Local Content Act compels all operators (both indigenous and non-indigenous) to comply with the local content regulation. The local content requirements are set out in **2.6 Local Content Requirements Applicable to Upstream Operations**.

3.8 Other Key Terms of Each Type of Downstream Licence

The terms and conditions attached to licences issued in the downstream sector are outlined below.

Oil Pipeline and Ancillary Service Licence

Section 17(2) of the Oil Pipelines Act provides the tenure of a pipeline licence at a maximum of 20 years. Under Section 28 of the Pipelines Act, the Minister shall have the right to purchase the pipeline and its ancillary installations when

the licence expires. Where the Minister does not exercise his right to purchase, the licensee may remove the pipeline and any ancillary installations.

Licence to Build a Filling Station

Other than the requirements contained in the Station Guidelines for the approval of the licence to own and operate a filling station, there are no special conditions for the operation of a filling station.

Oil Refinery Licence Terms

By virtue of Section 4.3 of the Hydrocarbon Refineries Guidelines, all licensed refineries must comply with the Petroleum Refining Regulations 1974 (Refineries Regulations) during operation. The conditions and obligations tied to the refiner's licence in the Refineries Regulations include the operation of the refinery in accordance with international standards, the training of employees on safety and the dangers of operating machinery, the submission of annual reports stating the activities in the year reported, and the submission of monthly production reports stating monthly occurrences such as details of any shutdown and any major work done during the shutdown.

Storage Licence Terms

Section 3.1 of the DPR Storage Guidelines provides the following as terms in the operation of a storage licence:

- the presence of competent persons during all operations;
- frequent observation on ship-to-shore connections and pressure gauges; and
- appropriate warning signs must be properly displayed.

Other terms and conditions are contained in Section 3.2 to Section 3.9 of the DPR Storage Guidelines.

3.9 Condemnation/Eminent Domain Rights

An oil pipeline licence confers on the licensee the right to enter upon, take possession of or use a strip of land of a width not exceeding 200 feet or of such other width(s) as may be specified in the licence, and construct, maintain and operate an oil pipeline and ancillary installations (Section 11(1) of the Oil Pipelines Act). Therefore, the licence confers on the licensee a right of way over the pipeline route.

However, the licensee is required to pay compensation to any person whose land or interest in land is affected by the exercise of the rights conferred by the licence.

Conversely, a licence to construct a refinery or other facilities does not confer similar rights on the licensee and, as such, any person holding an interest over the land upon which the licensee seeks to construct the refinery is not under compulsion to give up the land, so the licensee would have to enter into private agreements (assignment or long lease) with the person holding an interest over the land.

3.10 Rules for Third-party Access to Infrastructure

Section 18 of the Oil Pipelines Act 1956 provides that any person, other than the owner of a pipeline, who seeks to have access to the pipeline may apply to the Minister. If the Minister is satisfied that the capacity of the pipeline is sufficient to convey the applicant's petroleum then the Minister shall grant the application on such terms as the Minister deems fit.

However, it should be noted that, in practice, parties typically negotiate the terms of access privately, and an application to the Minister is only made when parties are unable to agree on the terms of access.

With respect to refineries and other infrastructure for downstream operations, the terms and conditions of access are also typically negotiated by the owners of the infrastructure and the third parties seeking access. However, there is no regulatory provision for the involvement of the Minister if parties are unable to agree on the terms of access.

A single private entity may participate in multiple segments of the market as there is no requirement for the unbundling of services. However, under the National Gas Policy approved by the Federal Executive Council on 28 June 2017, the government seeks to separate ownership of downstream gas infrastructure from marketing.

3.11 Restrictions on Product Sales into the Local Market

The restrictions on product sales into the local market are as follows.

Restriction on Control of Petroleum Products

Pursuant to Section 4(1) of the Petroleum Act 1969, no person is allowed to import, store, sell or distribute any petroleum product in Nigeria without a licence granted by the Minister. The DPR processes the applications for licences made by persons seeking to engage in the importation, storage, sale or distribution of any petroleum product in Nigeria, and issues licences to qualified persons.

Price Control

Under Section 6(1) of the Petroleum Act 1969, the Minister may issue an order, published in the Federal Gazette, fixing the prices at which petroleum products or any particular class or classes of petroleum products may be sold in Nigeria or in any particular part or parts. Persons licensed to sell petroleum products in Nigeria are required to comply with any order issued by the Minister in respect of product prices. This function is carried out on behalf of the Minister by the Petroleum Products Pricing Regulatory Agency, which was established by the PPPRA Act 2003. Currently, the price of premium motor spirit is regulated, while markets for other petroleum products – such as kerosene, aviation turbine fuel (ATF) and automotive gas oil (AGO) – are deregulated.

3.12 Laws and Regulations Governing Exports

The primary laws and regulations governing export of crude oil, natural gas and petroleum products in Nigeria include:

- the Pre-shipment Inspection of Exports Act, which requires, amongst other things, that goods (including petroleum products) to be exported from Nigeria should be inspected by an inspecting agent (appointed in accordance with the provisions of the Act), who then issues a Clean Certificate of Inspection in respect of such goods;
- the Petroleum (Drilling and Production) (Amendment) Regulations 2006, which provides that the holder of a licence is not permitted to export any sample or specimen of petroleum abroad without the prior written consent of the DPR;
- the DPR Guidelines for Processing of Crude Oil Export Permit Applications, which sets out the requirements and documents to be submitted to the DPR for the procurement of a Crude Oil Export Permit (set out in **2.2 Issuing Upstream Licences/Obtaining Petroleum Rights**); and
- the Export Guidelines, which sets out the detailed procedure to be followed by companies looking to export goods (including crude, gas and other petroleum products) from Nigeria and administrative steps to be taken by all federal government agencies involved.

In respect of duties or levies, the exporter is required to pay a Nigerian Export Supervision Scheme (NESS) administrative charge of 0.15% of the free on board (FOB) value of the intended crude oil, gas or petroleum products export.

3.13 Requirements for Transfers of Interest in Downstream Licences

The requirements for the transfer of interest in downstream licences are outlined below.

Assignment of an Oil Pipeline Licence

By virtue of Section 17(5) of the Pipeline Act, the consent of the Minister is required for the assignment of an Oil Pipeline Licence. The process for such assignment is outlined in Section 4.0 of the 2014 Guidelines and Procedures for Obtaining Minister's Consent to the Assignment of Interest in Oil and Gas Assets (the Consent Guidelines).

Assignment of a Refiner's Licence

There is no specific provision on the assignment of a refiner's licence under the Refiner's Regulation 1974 or the Hydrocarbon Refinery and Guidelines. However, the consent of the DPR may be required, as the assignee will be required to meet the criteria and requirements set out in Section 6.1 of the Hydrocarbon Refinery Guidelines. This is particularly so if the refinery is to be relocated.

Assignment of a Filling Station Licence

There is no specific provision on the assignment of a filling station licence in the DPR Station Guidelines or the Petroleum Regulations. However, for the purpose of acquiring the licence held by one entity, the licensee entity can be acquired as a whole. This method will simply involve the execution of deeds of assignment or a sale and purchase agreement.

Assignment of a Storage Licence

There are no provisions on the assignment of a storage licence in the DPR Storage Guidelines, but the consent of the DPR will be needed for any assignment as the assignee will be required to fulfil the conditions for the grant of the licence.

4. Foreign Investment**4.1 Foreign Investment Rules Applicable to Investments in Petroleum**

A non-Nigerian may invest in any enterprise in Nigeria, including oil and gas operations (Section 17 of the Nigerian Investment Promotion Commission Act 1995). Pursuant to Section 15(4) of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995, such investment may be with capital imported into Nigeria through any bank licensed under the Banks and Other Financial Institutions Act 1991, or through another specialised bank issued with a licence to deal in foreign exchange (Authorised Dealer). Upon importation of the capital, whether in the form of equity or debt, the Authorised Dealer issues a Certificate of Capital Importation to the investor. An investor who imports foreign currency into Nigeria and invests in any enterprise in compliance with this provision is guaranteed unconditional transferability of funds through an Authorised Dealer in freely convertible currency, relating to:

- dividends or profits (net of taxes) attributable to the investment;
- payments in respect of loan servicing where a foreign loan has been obtained; and
- the remittance of proceeds (net of all taxes) and other obligations in the event of the sale or liquidation of the enterprise or any interest attributable to the investment.

Furthermore, pursuant to Section 25 of the Nigerian Investment Promotion Commission Act, foreign investors are guaranteed freedom from expropriation or nationalisation of their enterprise except where the acquisition of the enterprise is in the national interest or for a public purpose, and under a law that makes provision for (i) the payment of fair and adequate compensation, and (ii) a right of access to the courts for the determination of the investor's interest or right, and the amount of compensation to which he is entitled.

It should be noted that, in the oil and gas sector in Nigeria, first consideration is given to companies that have at least 51% Nigerian ownership in the award of oil blocks, oilfield licences, oil lifting licences and all projects for which contracts are to be awarded in the Nigerian oil and gas industry (Section 3 of the Nigerian Oil and Gas Industry Content Development Act 2010). In order to meet the local content requirement, foreign investors seeking to invest in Nigeria often partner with Nigerian investors.

Nigerian law does not prohibit the selection of foreign law as the governing law of a contract between parties and it is not unusual in the Nigerian petroleum industry for parties to a contract to select a foreign law (usually English law) as the governing law of their contract.

Also, given that Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, which was ratified in Nigeria by the Arbitration and Conciliation Act 1998, foreign investors in Nigeria may choose to resolve disputes arising from their contracts and operations through international arbitration. Any award arising from such international arbitration is enforceable through the Nigerian courts (Section 51 of the Arbitration and Conciliation Act 1998).

5. Environmental, Health and Safety (EHS)**5.1 Principal Environmental Laws and Environmental Regulator(s)****Principal Environmental Laws*****The Environmental Impact Assessment Act 1992 (the EIA Act)***

Section 2 of the EIA Act sets out the legal framework for the procedure and methods of carrying out an environmental impact assessment (EIA), which should be taken into consideration before the implementation of certain public or private projects. An EIA is required to be carried out on any project that may significantly affect the environment, including oil and gas projects, prior to commencing the project.

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA Act) 2007

Section 1 of the NESREA Act establishes the National Environmental Standards and Regulations Enforcement Agency (NESREA – www.nesrea.gov.ng). Pursuant to Section 2 of the NESREA Act, NESREA is responsible for the protection and development of the environment, biodiversity conservation and the sustainable development of Nigeria's natural resources and environmental technology.

The Oil in Navigable Waters Act 1968

The Oil in Navigable Waters Act was enacted to give effect to the International Convention for the Prevention of Pollution of the Sea by Oil 1954 to 1962. Section 1(2) prohibits the discharge of oil from a Nigerian ship into a prohibited sea area and the discharge of oil into Nigerian waters by any vessel, place on land or machine used for the transfer of oil from one vessel to another, and further provides for instances where a discharge of oil will be excused. Regulation 2 of the Oil in Navigable Waters Regulations, issued pursuant to the act, provides for specific equipment to be installed in every Nigerian ship other than a tanker, in order to prevent oil pollution.

The International Convention for the Prevention of Pollution from Ships (ICPPS), 1973 and 1978 Protocol (Ratification and Enforcement) Act

This Act ratifies the ICPPS, giving it legal effect in Nigeria. The ICPPS was established with the aim of reducing the accidental release of oil and other harmful substances from ships, and eradicating pollution of the marine environment caused by the release of harmful substances.

The Harmful Wastes (Special Criminal Provisions) Act 1988 (Harmful Wastes Act)

The Harmful Wastes Act was enacted to prohibit the disposal of harmful waste on land and territorial waters, and broadly prohibits the dumping, depositing, transportation, importation and sale of any harmful waste.

The National Oil Spill Detection and Response Agency (Establishment) Act 2006 (NOSDRA Act)

Section 1 of the NOSDRA Act provides the legal framework for the management of waste discharged from oil E&P in order to curb negative effects on the environment and establishes the National Oil Spill Detection and Response Agency (the Agency). The Agency is under the Federal Ministry of Environment and is responsible for co-ordinating the implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria in line with the International Convention on Oil Pollution Preparedness, Response and Co-operation.

The International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act 2006

This act was enacted to give effect to the International Convention on Civil Liability for Oil Pollution Damage 1969, which was established in recognition of the risks posed by the transportation of oil in large quantities. It provides for the determination of pollution liability and compensation to parties who have suffered damage resulting from the discharge of oil from ships.

The International Fund for Compensation of Oil Pollution Damage Ratification and Enforcement Act 2006

This act was established to give effect to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the Convention), which is applicable to pollution damage caused in the territory and territorial sea of Nigeria, and to any preventative steps taken to minimise pollution damage. Article 2 of the Convention states that the purpose of the Convention is to create a fund to compensate contracting states that have been victims of oil pollution damage.

The Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2018

The EGASPIN was issued by the DPR, pursuant to Section 9(1)(b) of the Petroleum Act 1969, which empowers the Minister to make regulations geared towards the prevention of pollution of water courses and the atmosphere. The EGASPIN seeks to establish the standards for environmental quality control, provide a comprehensive document on pollution abatement technology, and to standardise the environmental pollution abatement and monitoring procedure. This is sought to be achieved by monitoring the discharges into the environment in the seven stages of operations; ie, exploration, drilling and development, production, terminal operations, hydrocarbon processing, oil transportation and marketing operations.

The Flare Gas (Prevention of Waste and Pollution) Regulations 2018

The regulations are aimed at the reduction of the environmental and social impact of gas flare, protection of the environment, prevention of the waste of natural resources and the creation of social and economic benefits from gas. Section 2(1) of the Flare Gas Regulations authorises the federal government to take all flare gas without payment of any cost or royalty. The Flare Gas Regulations in Section 12(1) expressly prohibit the flaring of natural gas except pursuant to a certificate issued by the Minister.

Principal Environmental Regulators

The Federal Ministry of Environment

The Ministry of Environment exercises its powers in the area of policy awareness, enforcement and intervention with respect to pollution and waste management matters, coastal management and environmental standards and regulations. The Ministry is also responsible for conducting environmental impact assessments in respect to projects in the oil and gas industry. It acts in collaboration with other agencies and departments, such as the DPR, to ensure environmental protection and the sustainable use of natural resources.

The National Oil Spill Detection and Response Agency (NOSDRA)

The NOSDRA is an agency under the Federal Ministry of Environment with the responsibility of co-ordinating the

implementation of the National Oil Spill Contingency Plan for Nigeria in line with the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990. Its main role is to ensure rapid and efficient response to oil spills, and to identify and protect high risk/priority areas in oil-producing environments.

The Department of Petroleum Resources

The DPR is a parastatal of the Ministry of Petroleum Resources with the responsibility of regulating activities in the oil and gas industry. It works in collaboration with the Ministry of Environment and other agencies to ensure that petroleum industry participants comply with environmental laws in carrying out their activities.

5.2 Environmental Obligations for a Major Petroleum Project

An environmental impact assessment must be undertaken before commencing a major petroleum project. Under Section 2 of the Environmental Impact Assessment Act, it is required that an EIA should be undertaken where a proposed project may have the effect of significantly impacting the environment, and that projects shall not be undertaken without prior consideration of their environmental effects. An application for an assessment is to be made to the Federal Ministry of Environment, and the assessment involves the identification of issues that may have a negative impact on the environment. An Environmental Impact Assessment Certificate will be issued by the Ministry, evidencing that the EIA with respect to the project has been completed.

Although the provisions of the EGASPIN mirror the provisions in the EIA Act, the former is more elaborate on the obligations to be satisfied before commencing a major petroleum project. Part VIII-A Section 3 of the EGASPIN sets out a more detailed process for obtaining an EIA Report.

Part VIII-K Section 4.1.4 of the EGASPIN also provides that licences and permits are to be obtained from the DPR for all aspects of oil-related effluent discharges from all sources (ie, gaseous, liquid and solid) and oil-related project development.

Other Environmental Obligations

Regulation 8 of the Oil and Gas Pipelines Regulations 1995 requires a pipeline licensee to implement emergency plans to ensure prompt action for protecting the environment.

Section 25 of the Petroleum (Drilling and Production) Regulations 1969 requires operators in the industry to put practicable precautions in place to prevent pollution of the waters in Nigeria.

Section 3(1) of the Associated Gas Re-Injection Act 1979 provides that gas operators are to obtain the consent of the Minister before flaring gas produced in association with oil.

There is no legislative requirement for a social survey or any community action to be taken prior to undertaking a petroleum project.

Local Community Actions

Currently, project sponsors engage local communities and, in many cases, enter into a memorandum of understanding with such communities to mitigate against community risks such as vandalism or disruption of operations.

However, a Petroleum Host Community Bill is pending before the National Assembly that seeks to establish a pool of funds for the development of petroleum host communities, which will be utilised for the infrastructure and socio-economic development of the communities, amongst other matters.

5.3 EHS Requirements Applicable to Offshore Development

Environmental Impact Assessments for Fixed Offshore Platforms

The DPR Guidelines for the Construction and Maintenance of Fixed Offshore Platforms 1992 provides that an environmental impact assessment should be carried out before the construction of an offshore platform. The programme for construction is to be in accordance with the National Environmental Guidelines and Standards for the Petroleum Industry in Nigeria.

Part VIII Section 1.6 provides for the type of activities that would require an EIA. These activities include seismic operations, laying of crude oil pipelines, construction of petroleum product depots, and construction and installation of waste treatment and disposal facilities.

Environmental Permit for the Operations of Drilling Rigs

Part II Section 5.4.2.1 of the EGASPIN provides that an Environmental Permit from the DPR is required prior to the commencement of any drilling operations in Nigeria.

Spill Contingency Plan

The EGASPIN in Part VIII-B Section 1.1 requires all oil and gas operators to adopt a Spill Contingency Plan that contains a pre-established course of action to be taken in the event of a spill of oil, gas, chemical or other hazardous substances.

The Offshore Safety Permit (OSP)

The DPR recently released a new guideline titled the “Guidelines and Procedure for Travel to Offshore/Swamp Location and Obtainment of Offshore Safety Permit”, which provide for an online application process for an OSP as well as safety requirements to be complied with for travelling to offshore facilities.

The OSP was designed and established by the DPR as a personnel accountability system for monitoring personnel working in onshore and offshore locations, and for managing installations owned by operators in Nigeria, and contains records of the holder, such as personal details, medical fitness, training certification and competence assurance status.

Any person travelling to an offshore/swamp facility, a marine vessel, a barge or a rig being operated in the Nigerian oil and gas industry must possess a valid OPS card. An application for an OSP may be made under any of the seven types of OSPs set out in Section 3.4 of the guideline. The permit is issued by the DPR and takes the form of a barcode strip on the E-card issued by the DPR (<https://dpr.gov.ng/brief-on-offshore-safety-permit-osp/>).

5.4 Requirements for Decommissioning

The decommissioning of oil and gas facilities and pipelines is primarily regulated by the Petroleum (Drilling and Production) Regulations, which provide, under Regulation 36(1) (2), that the written permission of the DPR is required prior to the abandonment or decommissioning of a borehole or an existing oil well.

Under Part VIII-H Section 1 of the EGASPIN, lessees and licensees are required to appropriately dismantle and remove structures from oil and gas installations after such installations and facilities have been abandoned. Decommissioning activities are to be commenced at least one year after such facilities have been abandoned, and such decommissioning activities should be completed within six months.

For pipelines, the Oil Pipeline Act provides that the holder of an Oil Pipeline Licence is permitted to remove a pipeline within three months of expiry of the licence upon giving notice to the Minister, provided that the Minister does not intend to purchase the pipeline or any connected installation.

Decommissioning Plan Report

Part VIII-H Section 1 of the EGASPIN provides that decommissioning programmes are to be planned during the initiation and design phase of a project. Pursuant to Part VIII-H Section 1.1.1.1, prior to the commencement of decommissioning activities, a licensee or an operator shall be required to provide, amongst other things, a Decommissioning Plan Report, which should contain information such as the peculiarity of the project, degree of abandonment, methods for the removal of the structure and the disposal of the removed structures.

Security and Liability

Holders of interests in OPLs, OMLs and PSCs are jointly and severally liable for joint operations and all liabilities arising therefrom, including decommissioning or abandonment liabilities. There are no statutory requirements for the security.

5.5 Climate Change Laws

There are currently no special climate change provisions relating to the oil and gas industry in Nigeria.

However, the National Environmental Standards and Regulations Agency established under Section 1 of the NESREA Act is responsible for enforcing compliance with the provisions of international agreements, conventions, protocols and treaties on climate change.

Also, there is a Climate Change Commission Bill (the CCC Bill) being reviewed by the House of Representatives, which seeks to provide the legal framework for climate change that attracts investors and enables the domestication and implementation of international climate change agreements to which Nigeria is a party.

5.6 Local Government Limits on Oil and Gas Development

Local governments in Nigeria are not permitted under the law to limit oil and gas development, and have no powers to legislate on, or regulate, any of the activities within the sector. This is because the oil and gas sector is exclusively governed by laws passed by the national legislature and is regulated by federal agencies.

6. Miscellaneous

6.1 Unconventional Upstream Interests

Currently, there is no special scheme relating to the upstream development of unconventional upstream interests, including shale, heavy oil or coal-bed methane.

6.2 Liquefied Natural Gas (LNG) Projects

The Liquefied Natural Gas Project being undertaken by Nigeria LNG Limited (NLNG) is the major LNG project in Nigeria. NLNG is a limited liability company incorporated in 1989 to produce LNG and natural gas liquids (NGLs) for export, and is partly owned by the NNPC.

The establishment of NLNG is backed by the Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) Act 1989 (NLNG Act), which, amongst other incentives, granted NLNG tax relief for ten years from the date of production.

However, it should be noted that the incentives under the NLNG Act apply only to NLNG and its investors. Other private entities involved in the production and marketing of LNG projects are granted the incentives under Section 39 of the Companies Income Tax Act 1961 (as amended).

Apart from the NLNG Act, there are no special laws, regulations or licences that apply to the development of LNG projects.

6.3 Unique or Interesting Aspects of the Petroleum Industry

The Nigerian oil and gas sector is undergoing a lot of development across subsectors that present investment opportunities. However, the legislative framework of the industry will undergo significant changes as the Petroleum Industry Governance Bill and other petroleum industry-related bills, when passed, will transform the industry as many of the existing laws governing the industry will be repealed. For instance, the Petroleum Industry Fiscal Bill will drastically change the fiscal terms of the industry, while the PIGB will change the regulatory framework.

Therefore, whilst the sector presents a lot of investment opportunities, the likely changes to the regulatory and fiscal framework should be considered by any investors looking to invest in the sector.

6.4 Material Changes in Oil and Gas Law or Regulation

The Flare Gas (Prevention of Waste and Pollution) Regulations was issued by the Minister and published on 9 July 2018. One of the key objectives of the Flare Gas Regulations is the creation of social and economic benefits from gas flare capture. This is to be achieved through the Nigerian Gas Flare Commercialization Programme (NGFCP), an established framework for the commercialisation of Flared Gas, and implementation of the Flare Gas Regulations and the supporting guidelines.

Section 3(1) of the Flare Gas Regulations authorises the Minister to grant a Permit to Access Flare Gas to an applicant through a bid process.

DETAIL Commercial Solicitors

DCS Place, 8 DCS Street
Off Remi Olowude Way
Lekki Phase 1, Lagos
Nigeria

Detail

Tel: +234 0 1 2771400-5
Email: stella@detailsolicitors.com
Web: www.detailsolicitors.com

A summary of the impact of the guidelines issued pursuant to the regulations on the operations of upstream producers is as follows:

- routine gas flaring is absolutely prohibited from green-field projects, while for other projects, a producer can only flare gas if it obtains a Certificate for Continued Flaring from the Minister;
- an increase of gas flaring penalties, which will now be based on level of production within the lease area, irrespective of whether the gas flare is routine or non-routine; and
- penalties for non-compliance, such as failure to comply with reporting obligations, and failure to maintain and provide accurate records.

National Domestic Gas Supply and Pricing Regulations 2019

The current gas pricing framework for the gas sector will undergo significant changes as the National Domestic Gas Supply and Pricing Regulations 2008 will be repealed by the National Domestic Gas Supply and Pricing Regulations 2019 when passed. The 2019 regulations will transform the current gas pricing framework by introducing new sector-based gas pricing mechanisms and the export parity price as a Nigerian reference marker price for the domestic gas market, and introduce a new domestic gas aggregator, amongst other changes.

Other developments in the pipeline that are likely to change the landscape of the industry over the next few years include the following: (i) the passage of the Petroleum Industry Governance Bill 2017, as discussed in **6.3 Unique or Interesting Aspects of the Petroleum Industry**; and (ii) the passage of the Petroleum Industry Fiscal Bill, as also discussed in **6.3 Unique or Interesting Aspects of the Petroleum Industry**.