A. Introduction

For over five decades, the petroleum industry in Nigeria has remained the bedrock of the Nigerian economy (it accounts for 90% of foreign exchange earnings and about 80% of recurrent and capital expenditures). In spite of this, there have been calls from stakeholders for the reform of the industry.

After the return to civilian rule in 1999, the journey to reform the oil and gas sector began. The various efforts culminated in the drafting of the Petroleum Industry Bill (PIB). The PIB sought to completely overhaul the petroleum sector through the enforcement of a single all-encompassing legislation, focused on maximizing economic benefit to the nation through efficient management of resources. The proposed legislation was designed to enhance social and economic development whilst meeting the nation’s energy needs at a competitive cost and in an environmentally acceptable manner.

The PIB has been fraught with unprecedented delays. As a result, the bill’s intended goals of tackling issues of overregulation and the dominant presence of the government in the industry have not been realised. The current administration of President Muhammadu Buhari has, therefore, adopted the approach of unbundling the legislation into the following bite-sized bills to enable timely engagement, review and passage by the eight National Assembly:

(i) Petroleum Industry (Governance & Institutional Reforms) Bill;
(ii) Petroleum Industry (Downstream Petroleum Administration Reforms) Bill;
(iii) Petroleum Industry (Upstream Petroleum Administration Reforms) Bill;
(iv) Petroleum Industry (Fiscal Framework & Reforms) Bill;
(v) Petroleum Industry (Revenue Management Reforms) Bill.

The bills are being considered as a matter of urgency, with the Governance and Institutional Reforms Bill being given the highest priority on account of the need to first tackle the more foundational industry issues such as corruption, functional overlaps and institutional inefficiencies. Exactly 17 years after the commencement of the industry reforms, the Petroleum Industry Governance Bill 2017 (the Bill), was passed by the Nigerian Senate on the 26th of May, 2017, leaving high expectation for the corresponding passage by the lower house (the House of Representatives) and setting the stage for the much-anticipated industry overhaul.

This article reviews and highlights the key legislative changes in the Bill in light of the petroleum sector reform objectives of the current
administration. It also provides recommendations that may further assist the government in achieving the objectives of the Bill.

B. Highlights of the PIGB

The key objectives of the Bill include promoting transparent administration of petroleum resources; enabling a single, independent industry regulator; creating a conducive environment for petroleum operations; unbundling the NNPC into efficient commercial entities; streamlining the overreaching powers of the minister; and redefining and delineating the roles and responsibilities of institutions across the value chain.

We have considered below the substance of the reform measures proposed in the Bill, and the potential issues that may arise from their implementation:

1. **Introduction of a new Regulator**

The Bill establishes the Nigeria Petroleum Regulatory Commission (the Commission). The Commission is to become the sole regulator of the petroleum industry. It assumes the interests, rights, obligations, and liabilities of the Department of Petroleum Resources (DPR) and the Petroleum Products Pricing Regulatory Agency (PPPRA) (Section 4 PIGB 2017), and will be principally responsible for licensing, monitoring, supervision of petroleum operations, including enforcement of laws, regulations and standards within the sector.

It is expected that this move would eliminate administrative overlaps, bureaucratic bottlenecks and undue political influence in the licensing and regulatory processes. It must be noted that the Bill attempts to limit the right to institute proceedings against the Commission to twelve months (Section 31 PIGB 2017). This implies that any action against the Commission becomes statute barred after 12 months.

The Commission will also have a Special Investigations Unit (SIU), which will be responsible for keeping surveillance on oil and gas installations. It will, in collaboration with the Nigerian Police, be permitted to arrest persons who carry out illegal petroleum operations (Section 34 PIGB 2017). With the current surge in pipeline vandalism and product theft, the collaboration of the SIU and the Nigerian police will provide the appropriate measure to deter illegal petroleum activities. This will allay the apprehensions of stakeholders and potential investors in the industry.

2. **Curtailing the Powers of the Minister of Petroleum Resources**

The current regulatory regime concentrates enormous discretionary powers in the Minister of Petroleum Resources (the Minister), including the powers to grant, amend, revoke and extend Oil Prospecting Licences and Oil Mining Leases. The Minister, who seats on the Boards of NNPC and DPR, wears both the hats of the Principal Regulator and the Principal Industry Participant (holding Government’s interest in the JVs and PSCs). In response to calls from stakeholders to curtail the excessive powers wielded by the Minister, the Bill limits the scope of powers of the Minister to policy formulation and monitoring, (Section 2 (1) PIGB 2017) whilst transferring the powers and other functions of the Minister under the Petroleum Act and the Oil Pipelines Act to the Commission. This implies that there will be less political influence in the issuance of licences and the Minister will no longer exercise regulatory oversight within the sector.

Notwithstanding these limitations, it is interesting to note that the Minister has been granted a right of pre-emption over petroleum and petroleum products within the country irrespective of ownership or subsisting beneficial interests whenever a state of emergency is declared (Section 6(1) PIGB 2017). Though potent and only exercisable where a state of emergency is declared – many stakeholders may view this as a subtle expropriation threat.

3. **Unbundling of NNPC into Three Commercial Entities**

The Bill sets out to unbundle the NNPC into smaller and more efficient commercial entities. The Bill, when signed into law, will birth the following commercial entities:

1. **Nigeria Petroleum Asset Management Company (NPAMC):** The NPAMC will act as an Asset Manager to the government; holding and managing the Production Sharing Contracts and Back-in Right assets currently
held by NNPC (Section 37(2)(a) PIGB 2017). It will be a limited liability company to be wholly owned by government as follows: Ministry of Petroleum Incorporated (40%), Ministry of Finance Incorporated (40%), and Bureau of Public Enterprises (20%) (Section 38(1) PIGB 2017). To foster transparency and accountability, the NPAMC is required to publish its annual reports and accounts on its website and at least three national newspapers. The company will be governed by the Code of Corporate Governance of the Securities and Exchange Commission (SEC) (Section 55 (1) PIGB 2017).

II. Nigeria Petroleum Company (NPC): The NPC will remain as the National Oil Corporation, which will hold and manage all petroleum assets of the Federal Government excluding those transferred to the NPAMC. It is to be run as a private company registered under the Companies and Allied Matters Act and governed by its Articles of Association (in other words it is expected to run as an independent business vehicle). Unlike the current practice where the government’s share of crude sale proceeds is paid into the federation account and appropriated between the Federal and State Government without any reserves to meet the cash call obligations of the Federal Government under its JVs, the NPC is, by the law, permitted to retain its revenue and utilize same to meet its operating costs and external liabilities such as cash calls. (The National Petroleum Company will only pay dividends to the government out of its profits.)

III. Nigeria Petroleum Liability Management Company: The NPLMC will serve as a holding vehicle which will assume the liabilities of the NNPC and the pensions liabilities of the DPR (There is currently an estimated $5-10 billion funding shortfall per annum, due to government’s inability to fully fund its JV investment cash calls). Upon the discharge of these liabilities, the NPLMC is expected to be wound up. It appears from all indication that the NPLMC will be funded by its shareholders (NPRC, NPC and NPAMC) who will hold shares in NPLMC in proportion to their respective liabilities. This is unlike the power sector’s Nigeria Electricity Liability Management Company, which is funded from budgetary allocations from the Federal Government. The NPLMC will allow the commercial entities to achieve financial stability by ring-fencing them from the current liabilities of the NNPC. This gives guarantee against value erosion to potential investors in the NPC.

4. Repeal of the Petroleum Equalization Fund (Management) Act and Establishment of the Petroleum Equalization Fund (PEF)

The Bill repeals the Petroleum Equalization Fund (Management) Act but retains the PEF, which will be managed and administered by its governing board. The Fund will be capitalized from the 5% fuel levy on fuel sold in the federation and any net surplus revenue recovered from petroleum marketing companies. The Fund is to be utilized solely for financing infrastructural development within the sector as well as to reimburse any losses incurred by oil marketing companies on account of the sale of petroleum products at the fixed uniform price.

Even though the Bill is silent on the nature of infrastructure developments to be funded by the PEF, we expect that it will be channeled towards the development of oil pipelines, refurbishment of refineries, and such other infrastructure that may bolster the production capacity of the industry. The utilization of the PEF for reimbursement of losses to oil marketing companies appears to have re-introduced petroleum subsidy, against the popular clamour for full deregulation of the sector.

5. Divestment of Shares in the Nigerian Petroleum Company to the Public

The Bill makes provisions for the nation to follow the precedents of other oil producing countries, such as Russia (which recently sold a 19.5% stake in its national oil company Rosneft) and Saudi Arabia (which is considering divesting a minor stake in Saudi Aramco), by mandating a phased divestment of 40% stake in the NPC to the public to enable private sector participation, and enhance institutional efficiency.
The offer of 40% of the shares of the NPC to the public trumps similar divestment efforts of other National Oil Corporations by a huge margin (Saudi Arabia intends to divest only 5% stake in Saudi Aramco and only 23% of the Norwegian Statoil was divested to the public).

To pave way for the NPC to be run as a publicly-listed commercial entity devoid of bureaucracies and undue government interest, it has been exempted from complying with the provisions of the Fiscal Responsibility Act 2007 (FRA) and the Public Procurement Act 2007 (PPA). It will, however, be required to comply with the code of corporate governance of SEC and will become an entity regulated by SEC following the proposed divestments, which we expect will be conducted by way of a public offering of its shares.

6. **Increased Stakeholder Participation in Promulgation of Regulations**

The Bill, in a bid to forestall the enforcement and implementation of unpopular regulations and to fetter the powers of the Commission, provides that Regulations promulgated by the Commission pursuant to this Bill shall be subject to public hearings. Any regulation made without the requisite public hearing will only be valid for six (6) months. This allows for more active engagement with stakeholders in the promulgation of regulations (Page 59 https://www.oecd.org/gov/regulatory-policy/1910833.pdf). It is expected that these broad engagements will foster cooperation between the regulators and industry participants, and also increase compliance.

C. **Recommendations**

1. **Health, Safety and Environment:** Following the passage of the Bill by the Senate, there has been a major outcry about the inadvertent omission of health, safety and environmental provisions, which are critical issues plaguing the petroleum sector. Having given overriding regulatory powers to the Commission, it is uncertain whether this does not fetter the powers of the Ministry of Environment to ensure environmental and safety compliance in the operations of the industry participants. Given the potential impact of pollution and other environmental violations in the oil producing regions, it is recommended that the House of Representatives take steps to reinforce the health, safety and environment provisions in the bill before it is finally signed into law.

2. **The Petroleum Equalization Fund:** The Bill has reintroduced the Petroleum Equalization Fund with very little direction on how this fund is to be managed and administered by its governing Board. We recommend that this fund be administered by a private sector, SEC-licenced fund manager and that appropriate anti-corruption safeguards be introduced with respect to its management and administration.

3. **Policy Formulation:** Potential conflicts could arise on account of the Minister’s power to formulate policies, which the Commission has the discretion not to implement if in its opinion such policies conflict with the Bill (Section 15 PIGB 2017). This sets the Minister and the Commission on a path of conflict before the reforms have even taken off. We recommend that the roles and responsibilities of the Commission with respect to policy formulation and enforcement be redefined in a way that is more collaborative.

4. **Limitation of Right to Institute Proceedings:** The attempt by the PIGB to limit the period within which an action may be brought against the Commission and the PEF to 12 months could be viewed as counterintuitive and meddlesome, especially given the wide powers of the Commission and the functions of the PEF. We, therefore, recommend that appropriate amendment be made to this provision to allow for adequate checks on the powers of the Commission and the Governing Board of the PEF through unhindered resort to the judicial system.

5. **Downstream Regulation:** The functions of the Commission seem quite broad and extensive, having to regulate both segments of the market each with its own complexities and wanton demands. It may, therefore, be a more efficient approach to take a cue from
neighbouring Ghana, which established separate entities to regulate its upstream and downstream sectors.

D. CONCLUSION

We applaud the efforts of the current administration and the National Assembly in tackling the issues of lack of accountability and the overbearing powers of the Minister, which were identified as inhibitors of growth in the petroleum industry. It is our expectation, however, that the House of Representatives will take decisive steps to address some of the other imminent concerns of stakeholders before passing the Bill in order to restore the confidence of investors, industry stakeholders and the nation at large in the ongoing reform efforts.

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