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Energy: Oil & Gas 2019

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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) (http://petroleumresources.gov.ng/)

The MPR is responsible for the articulation, implementation and regulation of policies in the Nigerian oil and gas sector. It supervises the operators and stakeholders in the industry (ie, operators in the upstream, mid-stream and downstream sectors), in order to ensure their compliance with all applicable laws and regulations. The MPR is headed by the Minister of Petroleum Resources (the "Minister"), who is appointed by the President. 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 importing, storing, 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) (https://dpr.gov.ng/)

The DPR is the primary regulator of activities within the Nigerian oil and gas sector. It is the technical department of the MPR and has 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 that are required to undertake petroleum industry activities;
- processing industry applications for leases, licences and permits without which petroleum activities cannot be undertaken;
- advising Government and relevant Government agencies on technical matters and public policies that may have an impact on the Government and petroleum activities;
- ensuring the timely and accurate payments of rents, royalties and other revenues due to the Government; and
- ensuring that Health & Safety and Environment regulations conform with national and international best oil field practices.

Petroleum Product Pricing Regulatory Agency (PPPRA) (http://pppra.gov.ng/)

The PPPRA was established pursuant to the PPPRA Act 2003, in order to monitor and regulate supply and distribution, and to determine the prices of petroleum products in Nigeria. Its primary functions, provided in section 7, include the following:

- to determine the pricing policy of petroleum products;

- to regulate the supply and distribution of petroleum products in Nigeria;
- to moderate volatility in petroleum product prices, while also ensuring reasonable returns to operators;
- to maintain constant surveillance over all key indices relevant to pricing policy, and to periodically approve benchmark prices for all petroleum products; and
- to identify macro-economic factors with a relationship to the prices of petroleum products, and advise the Federal Government on appropriate strategies for dealing with them.

Nigerian Content Development and Monitoring Board (NCDMB) (https://www.ncdmb.gov.ng/)

The NCDMB was established pursuant to the Nigerian Oil and Gas Industry Content Development Act(Local Content Act) 2010. Its primarily 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:

- to monitor 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;
- to review, assess and approve Nigerian content plans developed by operators within the sector;
- to set guidelines and minimum content levels for project-related activities across the oil and gas value chain;
- to engage in targeted capacity building interventions that would deepen indigenous capabilities in terms of Human Capital Development, Infrastructure & Facilities, Manufactured Materials & Local Supplier Development;
- to award Certificates of Authorisation for projects that comply with Nigerian content provisions; and
- to conduct studies, research, investigation, workshops and training aimed at advancing the development of Nigerian content.

Federal Ministry of Environment (http://environment.gov.ng/)

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 is also responsible for monitoring activities in the oil and gas sector that affect the environment, and for 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, in order to ensure environmental protection and the sustainable use of natural resources.

National Oil Spill Detection and Response Agency (NOSDRA) (http://www.nosdra.gov.ng/)

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:

- to ensure compliance with all existing environmental legislation and detect oil spills in the petroleum sector; and
- to receive reports of oil spillages and co-ordinate 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 and is the vehicle through which the Federal Government participates in petroleum activities ranging from the exploration and production 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 and its products and by-products;
- providing and operating pipelines, tanker-ships or other facilities for the carriage or conveyance of crude oil and natural gas and their products and derivatives, water and any other liquids or other commodities related to the corporation'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 Corporation in activities connected with petroleum.

The NNPC participates in the oil sector in the following ways:

- **Joint Venture operations –** the NNPC and an operator (typically an international oil company) 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 OPL or 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 its 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 (typically an international oil company) 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 (this has been split into Nigeria Gas Processing and Transportation Company (NGPTC) and 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.

The web address for the NNPC is www.nnpcgroup.com.

1.4 Principal Petroleum Law(s) and Regulations

The principal petroleum laws and regulations in Nigeria are as follows:

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 of Petroleum Resources to grant the licences required for upstream operations (the exploration, prospecting and production of crude oil) and downstream operations (operating a refinery and the importing, storing, 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 its 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 made by the Minister:

- Petroleum Regulations 1967;
- Petroleum (Drilling and Production) Regulations 1969 (as amended by the Petroleum (Drilling and Production) (Amendment) Regulations 2006);
- Petroleum Refining Regulations 1974;
- Oil Prospecting Licences (Conversion to Oil Mining Leases etc.) Regulations 2003; and
- 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 commenced crude oil production (ie, have not made a sale or disposal of crude oil and have not fully amortised their pre-production capitalised expenditure), the PPTA imposes a tax rate of 65.75%, which increases to 85% upon the commencement of crude oil production;
- 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:
    - rents incurred by the company in respect of land or buildings occupied under an Oil Prospecting Licence (OPL) or an Oil Mining Lease (OML);
    - royalties, payable by the company on the chargeable value of natural gas, crude oil and casing-head petroleum spirit produced in Nigeria;
    - interest payable on amount borrowed where such sums borrowed are used in the carrying out of petroleum operations; and
    - 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 which, 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:

- the power of the Minister to grant permits to survey routes for oil pipelines; and
- 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 PPT 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;
- **Mid-Stream:** Guidelines for the Establishment of Hydrocarbon Process Plants (Petroleum Refinery and Petrochemicals Plant); and
- **Downstream:** Guideline 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 currently undergoing some legislative changes with the passage of the Petroleum Industry Governance Bill (**PIGB**), which is currently awaiting Presidential 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 (PPPRA);
- 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 of Petroleum Resources 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 AssetsManagement 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 of Petroleum;
- 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 Licence from the Ministry of Petroleum

A private investor will be required to procure an Oil Mining Lease (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 and Oil Prospecting Licence, and must have fulfilled any conditions imposed under both licences. The nature of the rights granted under each licence is set out below.

- **Oil Exploration Licence (OEL) –** this is a non-exclusive licence issued by the Minister of Petroleum Resources (the Minister) through the DPR, pursuant to Schedule 1 section 1-4 of the Petroleum Act, to an applicant to undertake exploration activities over a specified parcel of land. Once granted, the OEL terminates on the 31st December following the date it was granted.
- **Oil Prospecting Licence (OPL) –** this licence grants the holder the exclusive right to explore and prospect for petroleum within the area covered by the licence (Schedule 1, section 5 of the Petroleum Act). It also grants the licensee the right to possess and dispose of petroleum won during prospecting operations, subject to provisions of the Act or any special terms imposed by the Minister. The tenure of the OPL is determined by the Minister, subject to a maximum duration of five years (Schedule 1, section 7 of the Petroleum Act).
- **Oil Mining Lease (OML) –** this lease is issued by the Minister through the DPR, which 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, section 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, the licensee must be capable of producing 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 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 (JVs)**: 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. The JV members appoint an operator (usually the private entity) to be responsible for the management of the field operations and dealing with third parties on behalf of the JV members. The parties to the JV enter into a Joint Operating Agreement, which will set out the terms on which the lease area will be operated.
    - **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 also 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. It should be noted that private investors are always pre-informed of this structure (ie, the lease area is usually offered to the investor on PSC terms).
    - **Embedded PSCs (Hybrid)**: under this structure, the OML is operated under two contracting structures. It occurs where the federal government exercises its right

to participate but opts not to participate as a JV partner; it is not common and currently only applies to a few OMLs. The interest held by the NNPC is governed by a PSC, while the interest held by the private investors is governed by a Production Sharing Agreement and a Joint Operating Agreement (similar to a JV structure). Note that this structure does not entail a physical demarcation of the field, and the field is usually managed by a private investor appointed by the parties as the Operator for the entire field.

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).

- Direct Interest in a Field: this would involve the licence holder acquiring an interest in an existing licensee's OPL or OML. This transaction is usually consummated by entry into a Sale and Purchase Agreement or Farm-in Agreement, pursuant to which the assignor will assign its interest or a portion of its interest in the OML to the investor, subject to the procurement of ministerial consent.
- Indirect Acquisition: this would involve the acquisition of shares in a company that has an interest in an OML or OPL. This transaction is consummated by the execution of a share sale agreement pursuant to which shares in the company with the OML interest are transferred to the investor. Ministerial consent is required in order for the assignment to be valid.

Acquisition of 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 un-produced 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 2003/4 and resulted in the award of 24 Marginal Fields to 31 indigenous companies. Since the last bid round, there were announcement of the government's intention to conduct a new bid round in both 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 foreign investor looking to participate in a bid round will need to partner with an indigenous company.

2.2 Issuing Upstream Licences

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;
- survey description;

- annual reports; and
- ten copies of a map on the DPR-approved scale (section 1 of Petroleum (Drilling and Production) Regulation 1969).

Amongst other factors, the applicant must show that it has the technical and managerial capabilities to undertake the licensed activities. This is to ensure that the applicant will be able to operate effectively if granted a licence. 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** below regarding local content requirements applicable to upstream operations by private investors).

Marginal Fields

For the allocation of Marginal Fields, the FGN 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 the Marginal Field. The key requirements contained in the last guideline (Pages 11- 18 of the Ministry of Petroleum Resources 2013 Guidelines for Farmout And Operation of Marginal Fields) include the following:

- evidence of payment of the application fee, data prying fee and bid processing fee;
- evidence of the company's financial strength;
- evidence of the company's technical and managerial capability (applicants are also required to submit a technical proposal);
- evidence of adherence to the local content requirement;
- evidence of ability to pay signature bonus; and
- plans for host community/state.

Other Permits

The other permits required to conduct operations include the following:

- **a 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. The documents required to be submitted include corporate documents, a copy of crude handling agreements, evidence of participation in PSCs (for equity lifters), evidence of Federal Government's approval of arrangement (for other lifters such as partners in strategic alliances), a copy of calibration tables of all relevant Custody Transfer facilities (Meters, Storage Tanks etc.), and a copy of the approval to commence test production and date of commencement.
- **Approval to Design and Construct Oil and Gas Surface production facilities:** this approval is granted by DPR to the licensee for the construction of surface production facilities. The requirements for obtaining this permit include the following:

- the local content of the project execution shall be at least 30% of the total financial commitment;
- the project management structure shall be composed in a manner that reflects technology transfer to Nigerians; and
- 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

The main sources from which revenue is derived through the operations of upstream petroleum companies by the Federal Government of Nigeria (FGN) are as follows:

- **Bonuses:** these are premiums payable to the Federal Government as part of the monetary considerations for the grant of OPL and OML Licences and the allocation of Marginal Fields. Bonuses may be paid as:
  - a Signature Bonus, paid by a company upon execution of the contract; and
  - a Production Bonus, paid when production reaches a mutually agreed level.
- **Royalties:** these are sums of money payable by companies operating in the Upstream Oil & 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 PSCs assets in water depths of up to 200 metres, the royalty rates are set out in the Petroleum (Drilling and Production) Regulations 1969 (as amended by the Amendment Regulations 2006), as follows:

- 20% of the chargeable value of crude oil and casing head petroleum spirit (**"petroleum products"**) produced in onshore areas;
- 18.5% of the chargeable value of petroleum products produced in areas up to 100 metres water depth;
- 16.5% of the chargeable value of petroleum products produced in areas up to 200 metres water depth;
- 12% of the chargeable value of petroleum products produced in areas from 201 to 500 metres water depth;
- 8% of the chargeable value of petroleum products produced in areas from 501 to 800 metres water depth;
- 8% of the chargeable value petroleum products produced in areas from 801 to 1000 metres water depth;
- 8% of the chargeable value of petroleum products produced in areas beyond 1000 metres water depth; and
- 10% of the chargeable value of petroleum products produced in inland basins.

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 PSC in water depth over 200 metres are set out in the Deep Offshore and Inland Basin Production Sharing Contracts Act. The royalties are as follows:

- **Onshore** (Regulation 62(a) Petroleum (Drilling and Production) Regulations 1969 as amended)
  - 5% for production below 2,000 barrels of oil per day (bpd);
  - 7.5% for production between 2,000 and 5,000 bpd;
  - 15% for production between 5,000 and 10,000 bpd; and
  - 20% for production above 10,000 bpd.
- **Offshore up to water depth of 100 metres** (Regulation 62(b) Petroleum (Drilling and Production) Regulations 1969 as amended)
  - 2.5% for production below 5,000 bpd;
  - 7.5% for production between 5,000 and 10,000 bpd;
  - 12.5% for production between 10,000 and 15,000 bpd; and
  - 18.5% for production above 15,000 bpd.
- **Offshore between water depth of 100 and 200 metres** (Regulation 62(c) Petroleum (Drilling and Production) Regulations 1969 as amended)
  - 1.5% for production below 5,000 bpd;
  - 3% for production between 5,000 and 10,000 bpd;
  - 5% for production between 10,000 and 15,000 bpd;
  - 10% for production between 15,000 and 25,000 bpd; and
  - 16.67% for production above 25,000 bpd.
- **Royalty rates for Deep Offshore and Inland Basin Acreages** (section 5(1) Deep Offshore and Inland Basin Production Sharing Contract Act 1993)
  - 12% in areas from 201 to 500 metres water depth (mwd);
  - 8% in areas from 501 to 800 mwd;
  - 4% in areas from 801 to 1,000 mwd;
  - 0% in areas in excess of 1 000 mwd; and
  - 10% for Inland Basin.

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 charged under Regulation 60 of the Petroleum (Drilling and Production) Regulations are as follows:
  - A rent of NGN500 shall be payable for each calendar year for which an oil exploration licence is in force; where the licence is in force for only part of a calendar year, that part shall be regarded as a calendar year.
  - The annual rent payable on an OPL or an OML is:
    - USD10 for each square mile or part thereof for an oil prospecting licence;

- USD20 for each square km or part thereof of a producing oil mining lease for the first ten years; and
- thereafter USD15 for each square km or part thereof until the expiration of the lease and on renewal.

- **Other Levies**
  - **Niger Delta Development Commission (NDDC) Levy**: 3% of 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 income or profit 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 (PPTA). PPT is charged as follows:

- companies that have commenced crude production: pursuant to section 21 of the PPTA, 85% of the chargeable profits of the company for an accounting period (ie, a period of one year commencing on 1 January and ending on 31 December of the same year or any shorter period commencing when the company makes its first sale or bulk disposal of chargeable oil);
- companies operating in the Deep Offshore and Inland Basin areas under PSCs with the NNPC: pursuant to section 3(1) of the Deep Offshore and Inland Basin Production Sharing Contract Act 1993, 50% of the chargeable profits made for the duration of the PSC.

2.5 Special Rights for National Oil or Gas Companies

Several rights are granted to the NNPC with respect to the grant of an upstream licence, including:

- 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 oil fields and/or appoint an operator over its oilfields. However, most oil fields are operated by private sector partners; and.
- Pre-emption Rights under Joint Ventures: the NNPC has contractual pre-emptive rights under joint venture arrangements in the event a private company wishes to divest its interest in the assets.

2.6 Local Content Requirements Applicable to Upstream Operations

The Nigerian Oil and Gas Industry Content Development Act 2010 (the Local Content Act) 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, Oil Field Licences, Oil Lifting Licences: by virtue of section 3(1) Local Content Act, first consideration must be given to independent Nigerian operators in the award of oil blocks, oil field 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 Local Content 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 Local Content Act). The Act further prescribes a limit of 5% for expatriates in management positions, which are subject to prior approval from the Nigerian Content Development Monitoring Board (NCDMB) (sections 32 and 33 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 Local Content Act). The operators/contractors must indicate how locally manufactured goods that meet the industry specifications will be utilised. The Act prescribes the specific mandatory quantum levels of Nigerian content across a wide range of services, with which operators in the oil and gas industry are required to comply – 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 of Licence Holder to Proceed to Development and Production

Once a commercial discovery is made within the area covered by an OPL licence, the holder of the OPL that is eligible for conversion (ie, the holder has satisfied all the requirements imposed by the Petroleum Act and discovered oil in commercial quantities of more than 10,000 barrels per day) shall apply to the Minister for the grant of an OML over the lease area (section 1 of Oil Prospecting Licenses - Conversion to Oil Mining Leases, etc. - Regulations 2004). The OPL holder must in the minister’s opinion show that:

- the quantum level of activity undertaken within the licence period is sufficient for the grant of an OML;
- the licence holder and its contractor have demonstrated the right financial and technical capabilities; and

- the terms and conditions for the award of an OML have been accepted by the holder and the contractor.

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 (sections 2, 3 and 4 of Oil Prospecting Licences (Conversion to Oil Mining Leases, etc.) Regulations 2003).

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. The plan must contain details of the estimated size of the pool, the known physical parameters of the pools, reservoirs or structures at the time of drawing up the programme, the intended drilling pattern (if any), the production or drainage pattern, and the anticipated drive mechanism (section 38 of the Petroleum (Drilling and Production) Regulations 1969). The licence holder will need to obtain all other approvals required for it to undertake operations.

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
  - **Duration:** an OEL is valid from the date it is granted until the 31st of December 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.
  - **Non-exclusivity:** the grant of an OEL does not confer exclusivity over the licence area on the licensee. It also does not confer any right to the grant of an oil prospecting or oil mining lease. Therefore, it is possible for the Minister to grant an OEL over the same area to more than one licensee.
- 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. Whilst the Petroleum Act is silent on the effect of non-compliance of the specified timeframe, the licensee will be unable to convert the OPL to an OML if the requirements of the Petroleum Act are not fulfilled.
  - **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 (section 25 of First Schedule to the Petroleum Act).

- Oil Mining Lease
  - **Duration**: an OML is valid for a period of 20 years and may be renewed subject to the provisions of the Act.
  - **Relinquishment**: by virtue of section 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 12 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 (section 13 (1), 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 (section 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, fails to comply with the Petroleum Act, fails to pay rent or royalties due, or fails to submit reports of its operations (section 25 of the First Schedule to 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 (section 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 provision of guidelines, interest covers both direct or 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, take-over or divestment, etc, will require Ministerial consent.

To validly transfer interest in the licence, the licensee must follow the procedure stipulated in the guideline. Under the guidelines, the application for the minister's consent can be broken down into three stages:

- Pre-Application Stage

The holder of the licence will be required to notify the DPR of its intention to transfer the upstream licence, and must obtain authorisation from the DPR prior to the commencement of the transaction. Under the notice, the holder must state the rationale for the transfer, any value the assignment would bring to the operation of the licence/lease, and the method for conducting the transfer (ie, open bidding process, selective tendering or negotiated transfer). Thereafter, the DPR will undertake a preliminary due diligence on the qualified technical candidates in order to determine whether the candidate is acceptable to the Federal Government of Nigeria. If the holder of the licence/lease fails to submit the list of qualified candidates to the DPR, they will not be eligible for Ministerial consent (section 4.6 of the Guidelines).

- Application Stage

Once the licence holder has successfully completed the pre-application stage, they will be required to make a written application to the DPR for the Minister's consent. The application must be accompanied by three copies of the following documents:

- the Deed of Assignment;
- the existing Joint Operating Agreement (JOA) or Production Sharing Contract (PSC), where applicable;
- the Farm-in Agreement between the Assignor and Assignee (if applicable);
- the Applicant’s Exploration and Production activities carried out in the asset to date;
- the Assignee’s technical and financial track records in Exploration & Production operations;
- the Assignee’s incorporation documents;
- the Technical Service Agreement;
- the Sales Purchase Agreement (SPA);
- the approvals, documents and rules governing any private or public listing on a Stock Exchange, and a copy of the approvals, documents and rules governing any merger or acquisition involving a publicly or privately quoted company, in the relevant approving jurisdiction;
- details of any Court Judgment or details of the legal administration of the estate or Will or Deed of Gift if the interest is being transferred by Operation of Law; and
- evidence of payment of the prescribed fee (NGN500,000 for a transfer of an OPL, OGPL or OML, and NGN50,000 for a transfer of interest in a Marginal Field).

- Approval Stage

Once the application has been submitted to the minister, the minister shall conduct due diligence on the assignee, within three months, in order to ensure that it has the right technical and financial capability. If in the minister’s opinion the assignee has a good reputation, is acceptable to the FGN and has the right technical or financial capability, the minister will grant the application. In doing so, the minister reserves the right to impose a fee or premium or both, which shall range from 1% to 5% of the total value of the transaction (section 6.0 of the Guidelines).

3. Private Investment in Petroleum - Downstream

3.1 Forms of Allowed Private Investment

There are no national monopolies in petroleum downstream operations. However, the majority of the available infrastructure is owned by the NNPC (through its subsidiaries) and some international oil companies. For instance, four of the major operational refineries in Nigeria are owned and operated by the NNPC, while the main gas pipeline distribution networks are owned by the Nigeria Gas Processing and Transmission Company (formerly Nigerian Gas Company), which is a subsidiary of the NNPC.

Private investment in downstream operations is allowed, subject to the existing licensing regime. The Minister in charge of Petroleum Resources 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 Petroleum Act 1969). This power is currently exercised through the Department of Petroleum Resources ("**DPR**").

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, including:

- the construction and operation of oil and gas pipelines;
- the construction and operation of refineries;
- the transportation and storage of petroleum and petroleum products;
- the importation and marketing of petroleum products; and
- the construction and operation of depots and petroleum storage facilities.

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. These guidelines include the following:

- **Guidelines and Procedure for the Construction, Operation and Maintenance of Oil and Gas Pipelines and their Ancillary Facilities**, issued pursuant to section 31 of the Oil Pipelines Act to prescribe the procedure for obtaining licences and approvals to construct oil and gas pipelines and the guidelines to comply with during the construction, commissioning, operation and maintenance phases of pipelines and their ancillary installations;
- **Guidelines for the Importation of Petroleum Products into Nigeria**, which define the regulatory requirements for the issuance of a Petroleum Products Importation Permit;
- **Guidelines for Approval to Construct and Operate Petroleum Products Filling Stations**, which set out the procedure and conditions for granting approval for the construction and operation of petroleum filling stations by persons seeking to market petroleum products in Nigeria;
- **Guidelines for the Establishment of Hydrocarbon Process Plants (Petroleum Refinery and Petrochemicals Plants) in Nigeria**, issued pursuant to sections 2 and 3 of the Petroleum Refining Regulations to set out the procedure for obtaining a licence to construct and operate petroleum refineries and petrochemical plants in Nigeria; and
- **Procedure Guide for the Construction and Operation of Petroleum Products Depots and Facilities**,issued pursuant to section 9 of the Petroleum Act to set out the procedure and conditions for the grant of an approval to construct/modify petroleum product depots and facilities.

It is important to note that the conditions for the grant of a licence will depend on the specific licence being sought.

Private investors may also invest in the downstream sector by acquiring shareholding interests in other entities that have obtained the requisite licences to carry out downstream operations.

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. These entities often construct their own secondary pipelines connecting their project sites to NGTC pipelines in order to take delivery of the gas transported.

In terms of rates, the price payable by companies in the power sector is regulated and restricted to the amount factored in the power sector tariffs. Currently, the power sector pays USD2.50/MMBTU for gas and USD0.80/MMBTU for gas transportation. Furthermore, other companies – particularly industrial companies – that are categorised by the Minister for Petroleum Resources as part of the Strategic Industrial Sector also enjoy a concessionary regulated rate for both gas and transportation cost. However, most companies do not fall under these categories and therefore pay for gas at commercial rates negotiated between the parties.

3.3 Issuing Downstream Licences

Downstream licences are issued by the Minister of Petroleum, through the Department of Petroleum Resources (DPR). 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.

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. This permit grants the holder the right to enter (with any equipment and vehicles) any land covered by the permit, to do anything which may be necessary to ascertain the suitability of establishing an oil 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 a route to apply for an Oil Pipeline Licence, within the validity of the permit, before it can construct and commence operation of the pipeline. It is important to note that the holder of a licence to construct is mandated to give the DPR notice prior to the commencement of construction of the pipeline, and to inform the DPR of its intention to commence inspection and testing of the pipeline, with no less than one month's notice.

Pursuant to section 5 of the Pipeline Act, 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 of Petroleum. 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).

With modular refineries, the Ministry Guidelines set the fees payable for the licence to establish at USD50,000 and NGN500,000 as licensing and service fees respectively.

When applying for the LTE, section 2.1 of the Hydrocarbon Refineries Guidelines requires the submission of a preliminary investment and support package containing, amongst other things, a financial plan, a preliminary market plan and the community development programme.

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 in charge of Petroleum will grant the approval to commission and operate the plant.

The considerations of the inspection are set out in section 4.2 of the Hydrocarbon Refineries Guidelines. For modular refineries, the Ministry Guidelines sets the approval fee for LTO as USD1,000 per 1,000 barrels per day, up to 30,000 barrels per day, and a DPR processing fee of NGN500,000. The application fee for more than 30,000 barrels per day is USD100,000.

For conventional refineries, the Hydrocarbon Refineries Guidelines set the approval fee as USD100,000 only, and a service charge of NGN500,000 only.

- **Licensing framework for setting up a filling station (Marketing and Retail)**

The application to set up a filing 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 (ATC) 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 csqm. 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 Guideline). To operate and construct a petroleum storage system in Nigeria, the following must be obtained:

- **Licence to construct**: section 1.1 of the DPR Storage Guidelines requires applicants for a licence to construct storage depots to submit a proposal for the licence, which shall adequately provide the following information: codes, standards to be adopted in the design of the plant, and a detailed description of laboratory facilities and equipment to be used for product quality. The application is to be accompanied by the relevant documents, such as the corporate documents of the company, the effluent and solid waste disposal management plan, etc. Pursuant to Section 1.1.5 of the DPR Storage Guidelines, a service charge of NGN500,000 and an application fee of NGN150,000) must be paid.
- **Licence to operate:** This is applied for following the completion of construction of the depot, in accordance with section 1.5 of the DPR Storage Guideline. Considerations for the licence include satisfactory integrity test results, verified stock list of three years maintenance spares for all strategic equipment, and copies of the manufacturer data and maintenance book for all critical equipment.

Section 1.1.5 of the DPR Storage Guidelines further provides that a licence to operate a petroleum depot facility will be granted if the constructed depot fulfils all the stipulated statutory requirements and has been inspected and recommended for an operating licence by scheduled officials of the DPR.

3.4 Typical Fiscal Terms Under Downstream Licences

The fiscal terms under the downstream sector include:

- the **Companies Income Tax Act 1961 (as amended)**, which is the primary legislation governing the taxation of companies operating in the downstream petroleum sector. 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
- **licence fees –** the Government obtains revenue from downstream operations via application fees, processing fees for licences and licence renewal fees, as determined by the DPR.

3.5 Income or Profits Tax Regime Applicable to Downstream Operations

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

- the **Companies Income Tax Act 1961 (as amended)**, which is the primary legislation governing the taxation of companies operating in the downstream petroleum sector.

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. It is important to note that, in the Federal Inland Revenue Service (FIRS) circular "Notification of Guidelines on the Implementation of VAT Deduction No 02/2007", it was provided that companies operating in the oil and gas sector should withhold the VAT due on all contracts awarded to its contractors at source and remit to the FIRS.

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 of Petroleum Resources 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. Given that the Minister is empowered to delegate any power conferred on him under the Petroleum Act, it is likely that this right will be delegated to the NNPC, as it is the vehicle through which the government participates in the industry.

3.7 Local Content Requirements Applicable to 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 Nigerian Oil and Gas Content Board ("NCDMB") is established under Section 4 of the Local Content Act, to regulate and implement the Local Content Act.

A key provision of the Local Content Act is the requirement that regulators must give priority to Nigerian companies for the grant of licences provided in section 3 of the Act.

The local content obligations of stakeholders in the industry include the following:

- all applications for licences in the industry must be accompanied by a Nigerian content plan supplied to the NCDMB, demonstrating compliance with the Nigerian content requirements;
- section 18 requires project developers to ensure compliance with the threshold for local participation set in the Schedule. Compliance is to be assessed in consideration of the utilisation of Nigerian human material resources and services;
- section 28 states that all operators must give priority to Nigerian employment;
- under sections 37, 38 and 39, operators are required tosubmit a programme for the promotion of education attachments, training, research and development in Nigeria;
- under Section 44, operators are required to submit an annual plan to the NCDMB, setting out a programme of planned initiatives aimed at promoting the effective transfer of technologies from the operator and alliance partners to Nigerian individuals and companies;
- all operators, project promoters and contractors engaged in the Nigerian oil and gas industry must carry out all fabrication and welding activities in the country, as required

by Section 53 of the Local Content Act;
- sections 49, 51 and 52 require operators to use Nigerian companies for insurance, legal and financial services; and
- pursuant to Section 60, operators are also expected to give periodic reports on their compliance with the Act to the Board.

The Schedule to the Local Content Act sets out the threshold for local participation for various services provided in the sector. For instance, the provision of consultancy services require 80% local content, pipe laying services require 50% local participation, and some services – such as the carrying out of Geophysical and Hydrographic Site Surveys – can only be provided by wholly owned Nigerian companies.

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. The section also requires the licensee to restore the right-of-way of the pipeline and any disturbed land area to good condition upon the expiration of the licence.

By the provisions of section 17(5c) of the Oil Pipelines Act, licensees have the responsibility to indemnify the Minister against any claims of injury or damage to private or public property occasioned by acts of the licensee. The licence granted may be revoked by the Minister, pursuant to section 27(2) of the Oil Pipelines Act, if the licensee fails to comply with some provisions of the licence or continues to be in breach of the licence.

- **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 filing station. Section 5 of the Station Guidelines provides some of the operational requirements of a filling station, including the provision of functional fire-fighting gadgets, the sale of products at approved prices, ensuring a station manager/supervisor is always at the station, the display of the sales licence and current storage at stations office, and the provision of at least three pumps for the sale of diesel, kerosene and petrol. The section also requires that DPR officials are allowed unrestricted access to carry out statutory functions.

- **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 shut-down and any major work done during the shut-down, etc.

Under Regulation 31 of the Refineries Regulations, at least 30 days' notice must be given to the DPR where there is a planned discontinuance in operation. Also, where a refinery is to be abandoned, written notice must be given to the Minister or the Director of Petroleum Resources, in line with Regulation 32 of the Refineries Regulations.

- **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 two hundred feet or of such other width or widths as may be specified in the licence, and construct, maintain and operate an oil pipeline and ancillary installations (section 11(1) 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. If the licensee and the person having interest in the land are unable to agree on the amount of compensation to be paid, then the compensation amount will be fixed by a court (section 11(5) Oil Pipelines Act).

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 had 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 in charge of Petroleum Resources. 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.

It should, however, 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 to have 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 28th June 2017, the Government seeks to separate ownership of downstream gas infrastructure from marketing. The Government has taken the lead on this policy by unbundling the Nigerian Gas Company ("**NGC**") into two entities: Nigerian Gas Processing & Transportation Company ("**NGPTC**"), which will own and operate the government-owned gas transmission network and process plants, and Nigerian Gas Marketing Company ("**NGMC**"), which will own all the supply contracts and operate the NNPC's gas supply business. It is unclear when this will be implemented for the private sector.

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 in charge of Petroleum Resources. 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.

The DPR's Guidelines for Approval to Construct and Operate Petroleum Products Filling Station, and the Guidelines for the Importation of Petroleum Products into Nigeria, set out the procedure for obtaining approval to construct retail outlets and engage in the marketing of petroleum products and the importation of petroleum products into Nigeria.

- 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 ("**PPPRA**"), which was established by the PPPRA Act 2003. Currently, the price of Premium Motor Spirit ("**PMS**") is regulated, while markets for other petroleum products, such as kerosene, Aviation Turbine Fuel (ATF) and Automotive Gas Oil ("**AGO**"), are deregulated.

An entity may obtain licences to participate across the entire spectrum of the downstream sector. There is currently no limitation on concurrent ownership of other aspects of the value chain, and there is no requirement to use intermediaries.

3.12 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). Pursuant to section 4.2 of the Consent Guidelines, the licensee shall notify the DPR prior to the commencement of the transaction, and shall not proceed with any process incidental to the transaction until so authorised by the DPR. The notification to the DPR shall state the reason for the proposed assignment, the method for conducting the assignment, and the possible economic and technical effect of the assignment.

The assignor shall also submit to the DPR the list of such qualified candidates for preliminary due diligence, in order to prevent unacceptable persons from moving to the commercial stage. If the assignor fails to send a list of the potential assignee, no consent shall be given. Where interest is to be transferred, priority will be given to Nigerian companies (as assignees) in order to satisfy the local content requirement.

Pursuant to section 5.2 of the Consent Guidelines, a written application for the assignment is made with specific documents attached, including the deed of assignment, the incorporation documents of the assignee, etc. Section 6.1 of the Consent Guidelines further states that the Minister's consent will be granted if the assignee has a good reputation, and sufficient technical knowledge and financial resources to work the licence being assigned. Section 6.3 of the Consent Guidelines empowers the Minister to impose a fee or premium, or both, ranging from 1% to 5% of the total value of the assignment.

Assignment of 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 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 Storage Licence

There are no provisions on the assignment of a storage licence in the DPR Storage Guideline, 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 Nigerian Investment Promotion Commission Act 1995). Pursuant to section 15(4) 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 which makes provision for:

- the payment of fair and adequate compensation; and
- 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, oil field 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 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 purpose of an EIA, as specified in section 1 of the EIA Act, is to:

- identify activities that may affect the environment to a significant extent;
- highlight the potentially significant issues that are likely to affect the environment; and
- encourage the development of procedures that enhance information exchange between persons when proposed activities are likely to have significant environmental effect.

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. Its functions, as enumerated in section 7, include enforcing compliance with laws and regulations on environmental matters, facilitating the performance of obligations emanating from international agreements and treaties on the environment, including oil and gas, hazardous waste and pollution, and enforcing compliance with guidelines and legislation on the sustainable management of the development of Nigeria's natural resources.

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. Pursuant to section 11, the Minister of Transport is empowered to appoint inspectors to ensure compliance with the provisions of the Oil in Navigable Waters Act, and to issue regulations requiring Nigerian ships to be installed with equipment for the purpose of preventing or reducing discharges of oil and oil mixtures into the sea (Section 5(1)). 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 Convention provides regulations that address the issue of pollution caused by oil spillage and other substances released from ships, such as the detection of pollution and the settlement of disputes between parties to the Convention.

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. Section 1(2) specifically prohibits the dumping of any harmful waste on any land or in any territorial waters, contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways. In accordance with section 10(1)(a)(b), a police officer is authorised to conduct searches of a carrier, perform tests on any substances where it is believed that a crime has been committed, and arrest any person who it is reasonably believed has acted in contravention of the provisions of the Act. Also, the Minister of Environment is authorised to seal up an area being used directly or indirectly to deposit or dump any harmful waste, under section 11(1) of the Harmful Wastes Act.

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 production and exploration 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 main function of the Agency provided under section 6 of the NOSDRA Act, is to ensure compliance with all existing environmental legislation, to detect and respond to oil spillages in the petroleum sector, to receive reports of oil spillages and to co-ordinate oil spill response activities throughout the country.

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. It is applicable to pollution caused in the territory and territorial sea of Nigeria, to pollution caused in the Exclusive Economic Zone of Nigeria and to any preventive steps taken to minimise pollution damage (Article II of the International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act).

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 preventive 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. Under Article 6 of the Convention, any claim for compensation is to be made within three years of the damage being done, and an action cannot be instituted after six years from the date of the incident.

The Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002

The EGASPIN was issued by the DPR, pursuant to section 9(1)(b) of the Petroleum Act 1969, which empowers the Minister of Petroleum Resources 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, to 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 six stages of operations – ie, exploration, production, terminal operations, hydrocarbon processing, oil transportation and marketing operations.

Principal Environmental Regulators

The Federal Ministry of Environment

The Ministry of Environment (http://environment.gov.ng/) 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 monitoring activities in the oil and gas sector that affect the environment, and for conducting Environmental Impact Assessments 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.

The National Oil Spill Detection and Response Agency (NOSDRA)

The NOSDRA (www.environment.gov.ng/index.php/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 (NOSCP) 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 the oil-producing environments. The agency is also responsible for ensuring compliance with legislation among operators in the industry, handling complaints of oil spillage from affected communities, and supervising the clean-up of oil-impacted sites.

The Department of Petroleum Resources

The DPR (https://dpr.gov.ng/) 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 (EIA) must be undertaken before commencing a major petroleum project. Under section 2 of the Environmental Impact Assessment Act (EIA Act), it is required that the 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. The EIA Act also provides the parameters used to determine whether an activity is likely to significantly affect the environment. 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. In accordance with sections 6 and 7 of the EIA Act, the Ministry shall undertake an examination of the assessment and receive comments from interested groups on the impact of the project on the environment before a decision is made with respect to the project. An Environmental Impact Assessment Certificate will be issued by the Ministry, evidencing that the EIA with respect to the project has been completed.

Section 4 of the EIA Act provides the content of an EIA as follows:

- a description of the proposed activities;
- a description of the potential affected environment;
- a description of the practical activities;
- an assessment of the likely or potential environmental impacts on the proposed activity and alternatives, including all the possible effects;
- an identification of gaps in knowledge;
- an indication of whether the environment or any other state in Nigeria or area outside Nigeria is likely to be affected by the proposed activity; and
- a non-technical summary of all information provided above.

Although the provisions of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (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. It provides that an EIA Report is required for oil and gas field developments onshore, nearshore, offshore and deep offshore. The EIA Report serves as a basis for evaluating the effects of a project on the environment, and should contain an assessment of all activities with respect to the project that may potentially cause a change in the environment. Pursuant to Item 3.3.1 of the EGASPIN, an EIA Report is to be issued by persons who hold a Certificate of Eligibility issued by the DPR.

The process for obtaining an EIA Report is outlined in Part VIII A 3.0 of the EGASPIN guidelines as follows:

- the project or activity is conceptualised by an operator or licensee;
- an initial assessment/environmental screening and scoping of significant issues are carried out on the concepts, by the initiator and the DPR;
- an Environmental Screening Report (ESR) of all optional concepts being evaluated is produced and reviewed with the DPR;

- a Preliminary Assessment of Impacts, focused on the selected project option, is carried out, involving a detailed screening by the project initiator, the DPR and other stakeholders for potential significant and adverse environmental effects. The Preliminary Environmental Impact Assessment Report (PAIR) shall be approved by the DPR before an approval of the project conceptual plan is granted to the initiator;
- if there are no potentially significant impacts, following the review of the PAIR, the project/activity may proceed with appropriate mitigation measures and post EIA monitoring;
- if the PAIR identifies potentially significant impacts, the process is as follows:
    - the DPR and project initiator draw up the scope of work for the detailed EIA study;
    - a Draft EIA is produced by the initiator and submitted to the DPR for review;
    - Mitigation Measures (including design mitigation) are analysed and considered;
    - the Draft EIA forms the basis of approval for the detailed engineering design of the project;
    - the Final EIA is produced by the initiator and submitted to the Director of Petroleum Resources at the end of the detailed engineering design;
    - project implementation/construction approval is given by the DPR;
    - the implementation of mitigation measures (constructional and operational) and environmental strategies is firmed up; and
    - post-EIA monitoring and post-auditing programmes are approved and implemented.

Part IX 3.1 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. It is important to note that, prior to the issuance of any permit in respect of a project, the DPR will also require an EIA.

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 of Petroleum 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, which seeks to establish a pool of funding 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 Assessment 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. All offshore platforms are to be equipped to handle spillages and other possible occurrences, and should be designed to allow for liquid disposal in line with environmental guidelines. The Guidelines also contain specific requirements with respect to living quarters located offshore.

Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002

Item 3.7 of the EGASPIN provides that it is mandatory for a licensee or lessee to conduct an EIA for every development activity carried out onshore, nearshore or offshore, such as development drilling (a seabed survey is to be obtained before offshore development drilling), the construction of flow lines, delivery lines and pipelines over 20 km long, and the construction of flow stations and production stations.

The Offshore Safety Permit (OSP)

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. The permit is issued by the DPR, while the infrastructure required for the implementation of the OSP is provided by the carrier. The OSP currently costs USD680 for every offshore worker, and is renewable on a yearly basis for USD135. Amongst other things, the OSP is aimed at ensuring that employees of operators in the industry have basic safety and survival training before deployment (https://dpr.gov.ng/brief-on-offshore-safety-permit-osp/).

The DPR also released 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.

5.4 Requirements for Decommissioning

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-G clause 2.1 of the EGASPIN, Oil Pipeline Licensee operators and Oil Mining Licensee operators are required to commence decommissioning activities at least one year after such facilities have been abandoned, and such decommissioning activities should be completed within six months. Also, pursuant to Part VIII-G clause 2.2 of the EGASPIN, the public should be consulted in the community where the decommissioning is to take place, where possible.

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 of Petroleum, provided that the Minister does not intend to purchase the pipeline or any connected installation. A licensee or lessee is also required to repair any damage caused to land covered by the licence through the removal of a pipeline or ancillary installation.

Section 23(1) of the Oil and Gas Pipelines Regulations 1995 also provides that an operator can apply for the removal and discontinuation of a pipeline system or ancillary facility by providing three months' notice to the DPR, after which an approval may be granted.

Decommissioning Plan

Part VIII-G Item 1.0 of the EGASPIN requires that a decommissioning plan detailing the objectives and the implementation strategy of the decommissioning process is to be created during the initiation phase of an oil project. It also requires an Environmental Impact Assessment to be carried out before the implementation of a project; where an Environmental Impact Assessment Report was not prepared prior to the implementation of the project, the operator is required to submit an Environmental Evaluation (post-impact) Report to the DPR. Pursuant to Part VIII-G clause 2.4 and Part VIII-G clause 3.2 of the EGASPIN, the strategies to be adopted for the decommissioning activities are also to be approved by the DPR, and a decommissioning certificate will be issued to the operator by the DPR when the decommissioning process is satisfactorily implemented.

Security and Liability

The Guidelines for Farmout and Operation of Marginal Fields released by the Ministry of Petroleum Resources in 2013 require parties to a Farm-Out Agreement to negotiate the cost of abandonment. The Farmee is required to deposit an agreed percentage of its budget into an escrow account fund, or to provide a performance bond to serve as security for abandonment. Also, prior to any exploration or development activities, some parties may enter into a separate Abandonment Security Agreement, which would contain terms on the security arrangement between the parties.

5.5 Climate Change Laws

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

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (the NESREA Act) is the primary law regulating climate change in Nigeria. The National Environmental Standards and Regulations Agency was established under section 1 of the NESREA Act and is responsible for enforcing compliance with the provisions of international agreements, conventions, protocols and treaties on climate change.

Although Nigeria is a signatory to the United Nations Framework on Climate Change (UNFCCC), the Kyoto Protocol and the the Marrakesh Accords, these agreements have not been domesticated in Nigeria and, as a result, are not currently being enforced. However, the Climate Change Commission Bill (the CCC Bill) has been passed by the House of Representatives and promises 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. The CCC Bill seeks to establish a council responsible for spearheading the climate change administration, and to facilitate the adoption of the appropriate climate change measures across all sectors to ensure the preservation of the environment.

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 Liquified 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 owned by four shareholders: the Federal Government of Nigeria (represented by the NNPC), Shell Gas BV, Total Gaz Electricite Holdings France, and Eni International (N.A.) N.V.S.a.r.l; the NNPC has a majority shareholding of 49%.

The establishment of NLNG is backed by the Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) Act 1989 ("**NLNG Act**"), which granted NLNG tax relief for ten years from the date of production. It also exempts any interest payable by NLNG to any company other than a Nigerian company from withholding tax (section 6(1) NLNG Act). The NLNG Act further exempts NLNG and its contractors and sub-contractors from the payment of import duties, taxes and all other charges in respect of the import of machinery for use in the construction of or incorporation in the plants, jetties, shipping, transmission facilities and ancillary works used in its business (section 7 NLNG Act).

Under the second schedule to the NLNG Act, the Federal Government also grants certain guarantees and assurances to investors in NLNG to protect their investments.

However, it should be noted that the above incentives and special provisions apply only to NLNG and its investors. Other private entities involved in the marketing and distribution of natural gas LNG projects are granted the following incentives under section 39 of the Companies Income Tax Act 1961 (as amended):

- an initial tax-free period of three years, which may, subject to the satisfactory performance of the business, be renewed for an additional period of two years;
- an additional investment allowance of 35% as an alternative to the initial tax-free period;
- accelerated capital allowances after the tax-free period; and
- tax-free dividends during the tax-free period, where the investment for the business is in a foreign currency or where the introduction of imported plant and machinery

during the period was not less than 30% of the equity share capital of the company.

Apart from the NLNG Act, there are no special laws or regulations or special licences that apply to the development of LNG projects. A holder of an oil mining lease is entitled to extract gas and produce LNG, subject to obtaining requisite approvals. Also, any person seeking to transport, store and market LNG would be required to obtain the requisite licences to transport, store and sell petroleum products from the DPR.

6.3 Unique or Interesting Aspects of the Petroleum Industry

There are a lot of investment opportunities in the Nigerian oil and gas sector. A key investment opportunity in the sector is the setting up of private refineries. Nigeria is currently trying to curb its importation of refined petroleum product. As such, the country is looking to improve its domestic refining capacity by issuing new refiner's licences (both conventional and modular) to qualified investors, which will reduce the current dependence on imported petroleum products and increase private sector participation in the refining sector.

In addition, the legislative framework of the industry will undergo change 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 and repeal the Petroleum Profit Tax Act. The PIGB seeks to dissolve the DPR and restructure the NNPC into two commercially driven entities. Also, a new and independent regulator to be known as the National Petroleum Regulatory Commission (NPRC) will be established as the sole regulator of the sector, and will take over key functions of the Minister, including the granting of petroleum licences and leases.

6.4 Material Changes in Oil and Gas Law or Regulation

There have been no material changes in oil and gas laws or regulations in the past year. However, there are some developments that are likely to change the landscape of the industry over the next few years, including the following:

- The passage of the Petroleum Industry Governance Bill 2017 (PIGB): the PIGB was passed by the National Assembly in March 2018 and is currently awaiting presidential assent. Upon its passage into law, a single independent regulator will be established to regulate the entire oil industry and undertake most of the responsibilities of the Minister of Petroleum, and the national oil company (the NNPC) will be unbundled and split into two separate entities that will operate as private entities regulated by Nigeria's Companies and Allied Matters Act and comply with the Securities and Exchange Commission (SEC) Code of Corporate Governance.
- The Petroleum Industry Fiscal Bill: this bill is currently being considered by the National Assembly and there is no timeline on when it will be passed. However, upon its passage into law, it will introduce a new fiscal regime. The mode of computation of taxes and royalties paid by upstream oil and gas companies will be changed, and the current tax law (the Petroleum Profits Tax Act) will be repealed.

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