



HIGHLIGHTS OF THE PETROLEUM INDUSTRY BILL AS PASSED BY THE NATIONAL ASSEMBLY

Detail



INTRODUCTION

Since the enactment of the Petroleum Act in 1969 (now adjudged by industry experts to be outdated), particularly from 2008, successive governments in Nigeria have attempted to enact an all-encompassing Petroleum Industry Bill (“**PIB**”) that addresses the shortcomings of the Petroleum Act with a view to bringing it in line with modern realities. The 9th National Assembly, made up of the Senate and the House of Representatives, recorded a remarkable milestone on 1st July, 2021 by passing the PIB. The PIB seeks to fundamentally overhaul and restructure the oil and gas industry in Nigeria by creating various regulatory bodies for the industry, recharacterizing the existing licensing regime as well as changing the fiscal framework in the industry to mention a few.

There were, however, discrepancies in the various versions of the PIB passed by the Senate and the House of Representatives respectively, which necessitated the harmonization of these versions so that the PIB can receive presidential assent. To this effect, both chambers of the National Assembly set up their respective Conference Committees to meet and to harmonize the PIB so that it can speedily receive the President’s assent. Consequently, the Senate on 13th July, 2021 adopted and passed its Conference Committee’s report on PIB while the House of Representatives did the same on 16th July, 2021. The PIB will now be transmitted to the President for his assent.

This article is the first of its series, highlighting the salient provisions of the PIB as passed by both chambers of the National Assembly.



KEY HIGHLIGHTS OF THE PETROLEUM INDUSTRY BILL

The key provisions of the PIB are set out as follows:

1. Powers of the Minister of Petroleum

The powers and functions of the Minister of Petroleum (the “**Minister**”) are now specifically and comprehensively delineated in the PIB unlike the position under the Petroleum Act, 1969. These functions include: the formulation, monitoring and administration of government policies in the petroleum industry; grant of Petroleum Prospecting Licences (“**PPL**”) and Petroleum Mining Leases (“**PML**”) upon the recommendation of the Nigerian Upstream Regulatory Commission (the “**Upstream Commission**”).

2. Establishment of the Nigerian Upstream Regulatory Commission:

The PIB establishes the Upstream Commission which will be responsible for the technical and commercial regulation of upstream segment of the Nigerian petroleum industry.

3. Establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority:

In a bid to ensure proper regulation of the midstream and downstream segment of the petroleum sector, the PIB establishes the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the “**Authority**”) which will be responsible for the technical and commercial regulation of midstream and downstream oil and gas operations in the petroleum industry.

Essentially, the Authority will regulate both the petroleum segment and the gas segment of the oil and gas industry.

4. Establishment of the Nigerian National Petroleum Company Limited:

The PIB establishes the Nigerian National Petroleum Company Limited (“**NNPC Limited**”) to takeover the assets, interests and liabilities of the currently existing NNPC. The NNPC Limited will operate as a government-owned private limited liability company registered under the Companies and Allied Matters Act and no longer as a statutory corporation established under the NNPC Act such that it will operate under a robust corporate governance regime. As the national oil company, NNPC Limited will act as the concessionaire in all Production Sharing Contracts and Production Sharing and Risk Service Contracts and will have a right to a share of the natural gas under these arrangements.

5. Upstream Licenses and Leases

The PIB recognises the following licenses and leases in the upstream sector to be issued and further provides for the duration of the licenses as follows:

Type of Licence	Nature of Licence	Term
Petroleum Exploration Licence	Empowers the licensee to carry out petroleum exploration operations on a non-exclusive basis. ¹ The PIB vests the Upstream Commission with the responsibility of granting petroleum exploration licences. ²	Three (3) years and renewable for an additional term of three (3) years. ³
Petroleum Prospecting Licence	Empowers the licensee to drill and carry out well appraisal and petroleum exploration operations on an exclusive basis. ⁴ A petroleum prospecting licence is issued by the Minister upon recommendation by the Upstream Commission. ⁵	Six (6) years and renewable for an additional term of six (6) years for onshore and shallow water acreages. ⁶ Five (5) years and renewable for an additional term of five (5) years for offshore and frontier acreages. ⁷
Petroleum Mining Lease	Empowers the lessee to win, work, carry away and dispose of crude oil, condensates and natural gas on an exclusive basis in addition to the activities covered under a petroleum exploration licence and petroleum prospecting licence. The Minister grants PMLs upon recommendation by the Upstream Commission.	Maximum period of 20 years

1. Section 70(1)(a) of the PIB
2. Section 71(1) of the PIB
3. Section 71(3) of the PIB
4. Section 70(1)(b) of the PIB
5. Section 3(1)(g) of the PIB
6. Section 77 (1) of the PIB
7. Section 77 (2) of the PIB

6. Midstream and Downstream Licenses

The PIB empowers the Authority to issue licences for the midstream and downstream petroleum liquid operations.⁸ Petroleum liquid operations will include activities such as the supply of petroleum products to retail customers, construction and operation of facilities for upgrading of heavy oil and lubricants. In the same vein, the Authority is also tasked with issuing licences for midstream and downstream gas operations.⁹

7. Conversion

The PIB permits holders of existing Oil Prospecting Licence (“OPL”) or Oil Mining Leases (“OML”) under the current regime to voluntarily convert them to PPL or PML, respectively.¹⁰ Upon conversion, such licensees and lessees will start benefitting from the fiscal terms under the PIB.¹¹ In the absence of a conversion, the fiscal regime prior to the PIB will continue to apply to the OPL and OML until the termination of the respective OPL or OML.¹²

8. Section 174(1) and (2) of the PIB

9. Section 125, 129 of the PIB.

10. Section 92(1) of the PIB.

11. Section 93(2) of the PIB.

12. Section 303(1) of the PIB



GAS SECTOR CONSIDERATIONS IN THE PIB

The PIB treats natural gas as a stand-alone resource¹³, as opposed to treating it as a by-product of oil operation that currently exists in the extant Petroleum Act. Accordingly, the following are the salient gas provisions in the PIB:

1. Domestic Gas Delivery Obligations and Demand Requirements

The PIB authorizes the Upstream Commission to prescribe and allocate, pursuant to a regulation or guideline, the domestic gas delivery obligation among all lessees before 1st of March of each year based on the domestic gas demand requirements determined or updated by the Authority.¹⁴

2. Gas Network Code

The PIB empowers the Authority to modify existing network code or create new network codes.¹⁵

3. Gas Utilization Incentive

Companies engaged in midstream petroleum operations, downstream gas operations and large-scale gas utilization industries will enjoy the gas utilization incentives set out under Section 39 of the Companies Income Tax Act (“CITA”).¹⁶

4. Establishment of the Midstream Gas Infrastructure Fund

The PIB establishes the Midstream Gas Infrastructure Fund as a body corporate with a Governing Council led by the Minister of Petroleum to make investments in infrastructure related to midstream gas operations. These investments are aimed at the reduction of gas flaring as well as increasing the domestic consumption of natural gas in projects which are partly financed by private investment amongst others.

13. Part IV of the PIB

14. Sections 110(1)(a) and 173(1) of the PIB.

15. Section 160 of the PIB.

16. Section 302(5) of the PIB

THE FISCAL REGIME UNDER THE PIB

1. Introduction of Hydrocarbon Tax and Extension of Applicability of Companies Income Tax to All Companies

The PIB splits the tax payable by oil and gas companies into two broad categories namely: Hydrocarbon Tax and Companies Income Tax (“CIT”).

Hydrocarbon Tax is payable by companies engaged in upstream petroleum operations undertaken in onshore and shallow water (deep offshore is excluded) and applies to crude oil, field condensates and liquid natural gas liquids derived from associated gas.

However, the fiscal terms will apply upon:

- a. conversion of existing OPLs to PPLs and OMLs to PMLs;
- b. termination or expiration of unconverted licenses, and
- c. renewal of OMLs.

Accordingly, holders of OPLs and OMLs that do not convert to PMLs will continue to be liable to the current Petroleum Profit Tax Act pending the expiration of their licences.¹⁷

On the other hand, CIT applies to all companies, concessionaires, licensees, lessees, contractors or subcontractors involved in the upstream, midstream or downstream petroleum operations.¹⁸

17. Section 311(9) of the PIB

18. Section 302(1) of the PIB

2. Tax Rates

The rate of Hydrocarbon Tax and CIT payable are as follows:

Hydrocarbon Tax Rate

Type of Contract		Hydrocarbon Tax Rate
Petroleum Mining Lease		30% of profits with respect to onshore and shallow water operations
Petroleum Lease	Prospecting	15% profits with respect to onshore and shallow water operations

CIT Rate

The current rate of CIT is as follows:

Type of Company	Basis of Categorisation (Turnover)	CIT Rate
Small Company	N25 million or less	0%
Medium-Sized Company	Over N25 million and less than N100 million	20%
Large Company	N100 million and above	30%

THE FISCAL REGIME UNDER THE PIB

3. Other Fees and Levies Imposed under the PIB

Type of Tax or Levy	Person or Activity Liable	Rate
Frontier Exploration Fund ¹⁹	Payable as a percentage of rents due on Petroleum Prospecting Licences	10%
	Payable as a percentage of rents due on petroleum mining leases	30%
Nigerian Midstream and Downstream Petroleum Regulatory Authority Fund ²⁰	Payable on the wholesale price of petroleum products sold in Nigeria and collected from wholesale customers	0.5%
Host Community Development Trust Fund ²¹	Holder of interests in petroleum prospecting licences or petroleum mining leases (i.e. settlers) in upstream petroleum operations	3%

19. Section 9(4) of the PIB

20. Section 47(2c) of the PIB

21. Section 240(2) of the PIB

22. Section 6 of the 7th Schedule to the PIB.

23. Section 10 of the 7th Schedule to the PIB

24. Section 10(4)(a) of the 7th Schedule to the PIB

25. Section 10(4)(b) of the 7th Schedule to the PIB

4. Royalties

The table below outlines the royalties payable by upstream companies into the Federation Account upon verification of same by the Upstream Commission²² under the PIB: ²³

Royalties Based on Production of Crude Oil and Condensate	
Terrain	Royalty Rate
Onshore	15%
Shallow water (up to 200m in water depth)	12.5%
Royalties for onshore fields and shallow water fields, including marginal fields, with production not more than 10,000 barrels per day (" bpd ") for the first 5,000 bpd. ²⁴	5%
Royalties for onshore fields and shallow water fields, including marginal fields, with production for the next 5,000 bpd but not more than 10,000 bpd. ²⁵	7.5%

THE FISCAL REGIME UNDER THE PIB

Royalties Based on Production of Crude Oil and Condensate

Deep Offshore (greater than 200 meters in water depth with production above 50,000 bpd)	7.5%
Deep Offshore (greater than 200 meters in water depth with production of not more than 50,000 bpd)	5%

Royalties Based on Production of Gas ²⁶

	Rate
Production of natural gas and natural gas liquid	5%
Natural gas produced and utilised domestically	2.5%

- Based on price, the table below sets out the Royalty rates under the PIB²⁷

Royalties Based on Price for Onshore, Shallow Water and Deep Offshore as it Relates to Crude Oil and Condensates

Price	Rate
Below \$50 per barrel	0%
At \$100 per barrel	5%
Above \$150 per barrel	10%

26. Section 10 (5) of the 7th Schedule to the PIB

27. Section 10 (11) of the 7th Schedule to the PIB

CONCLUSION

With oil and gas accounting for around 90% of Nigeria's export earnings and the Ministry of Petroleum declaring a decade of gas from the year 2020, a more efficient regulatory regime is key to driving growth in Nigeria's oil and gas resource exploration, development and utilization initiatives. While the deficiencies in the Petroleum Act of 1969 have been addressed over the years using various regulations and guidelines issued by the Minister of Petroleum and other relevant regulatory agencies in the oil and gas sector, investors have always insisted that these changes be incorporated in a more robust and holistic law to be enacted by the National Assembly. This is to create legal certainty and mitigate discretionary changes in the legal and regulatory framework as it relates to the oil and gas sector.

The jury is out as to whether the long awaited enactment of the PIB is the desired push to take Nigeria's oil and gas industry forward, or if it is a little too late given that the international and investing community is moving away from hydrocarbons but towards net zero emissions. It remains to be seen what impact the PIB will have on Nigeria's oil and gas sector and the country in general.



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