

Detail



Oil and Gas Guide, 2021

PETROLEUM INDUSTRY ACT FOCUSED



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Abbreviations

CAMA	Companies and Allied Matters Act
DPR	Department of Petroleum Resources
FCCP Act	Federal Competition and Consumer Protection Act, 2019
FCCPC	Federal Competition and Consumer Protection Commission
FIRS	Federal Inland Revenue Service
FMF	Federal Ministry of Finance
PML	Petroleum Mining Lease
PPL	Petroleum Prospecting Licence
HCDT	Host Communities Development Trust
PEL	Petroleum Exploration Licence
PIA	Petroleum Industry Act, 2021
OML	Oil Mining Lease
OPL	Oil Prospecting Licence
OEL	Oil Exploration Licence
NAPIMS	National Petroleum Investment Management Services
NOSDRA	National Oil Spill Detection and Response Agency
NESREA	National Environmental Standards and Regulations Enforcement Agency
NCDMB	Nigerian Content Development and Monitoring Board
NAPIMS	National Petroleum Investment Management Services
NNPC Limited	Nigerian National Petroleum Company Limited
PPRA	Petroleum Product Pricing Regulatory Agency



Executive Summary

On 16th of August 2021, President Muhammadu Buhari signed the Petroleum Industry Act, 2021 (“PIA”) into law. The PIA introduces a new legal regime for the Nigerian oil and gas industry. The objectives behind the PIA are to create efficient and effective governing institutions with clear and separate roles in the Nigerian petroleum industry; promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria and to foster a business environment conducive for petroleum operations, amongst many other laudable objectives.¹ The PIA further ushers in far-reaching reforms to the governance, administrative, regulatory, licensing and fiscal framework of the Nigerian petroleum industry.

This Guide therefore aims to provide an overview of the pertinent changes and introductions made by the PIA in relation to the oil and gas business in Nigeria.

Accordingly, in Chapter 1 of this Guide, the petroleum ownership structure in Nigeria and the governance institutions in the oil and gas industry were

considered. In Chapter 2, we examined the licensing framework under the PIA while in Chapter 3, we took a dive into the investment frameworks available to investors wishing to operate in the Nigerian oil and gas industry. On the other hand, the divestment options opened to investors exiting the oil and gas business in Nigeria are treated in Chapter 4 of this Guide.

The PIA introduces some reforms in the regulatory framework for the gas sector of the petroleum industry which are x-rayed in Chapter 5 of this Guide. Furthermore, the PIA makes elaborate provisions for the development of oil and gas host communities which are examined in Chapter 6. In Chapter 7 of this Guide, the new fiscal regime introduced by the PIA are examined.

Finally, in Chapters 8 and 9 of this Guide, we provided insight on the principal petroleum and environmental laws and regulations now regulating activities in the oil and gas industry.

¹Section 2 of the PIA



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OWNERSHIP STRUCTURE AND GOVERNANCE INSTITUTIONS IN THE PETROLEUM INDUSTRY

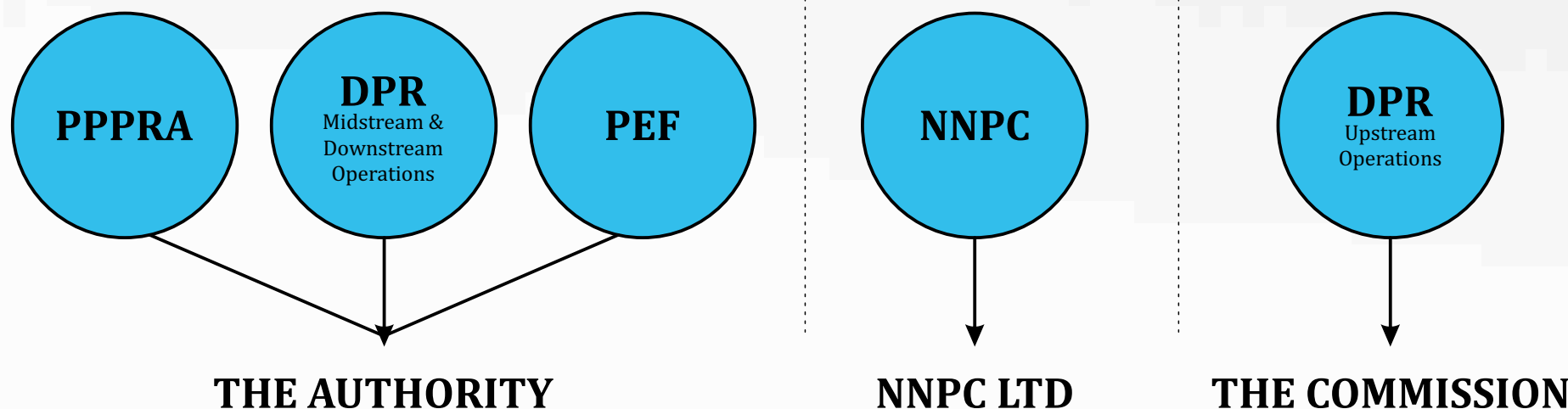
1. OWNERSHIP STRUCTURE AND GOVERNANCE INSTITUTIONS IN THE PETROLEUM INDUSTRY

The Petroleum Industry Act, 2021 defines “Petroleum” as hydrocarbons and associated substances as they exist in their natural state in strata, and it includes crude oil, natural gas, condensate and mixtures of any of them, but does not include bitumen and coal.

Section 44(3) of the Constitution of the Federal Republic of Nigeria 1999, Section 1 of the PIA and other Nigerian territorial legislation vest the entire property and ownership of petroleum, all minerals, mineral oils and natural gas within Nigeria and its territorial waters, continental shelf and exclusive economic zone, in the federal government of Nigeria.

Previously, various activities and distinct segments in the petroleum industry were regulated by different agencies. However, the enactment of the PIA has brought about some streamlining in the governance and regulations of the oil and gas industry. The PIA abrogates the Department of Petroleum Resources (“DPR”), the Petroleum Products Pricing Regulatory Agency (“PPPRA”) and the Petroleum Equalisation Fund (Management Board) (“PEF”). In lieu of the defunct agencies, the PIA creates new regulatory agencies which are the Nigerian Upstream Regulatory Commission (the “Upstream Commission”) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the “Authority”) to assume the roles of these other agencies.

The schematic below highlights the agencies that will no longer exist in the petroleum industry and the newly created agencies that will assume their roles:



DPR - Department of Petroleum Resources; **PEF** – Petroleum Equalization Fund;

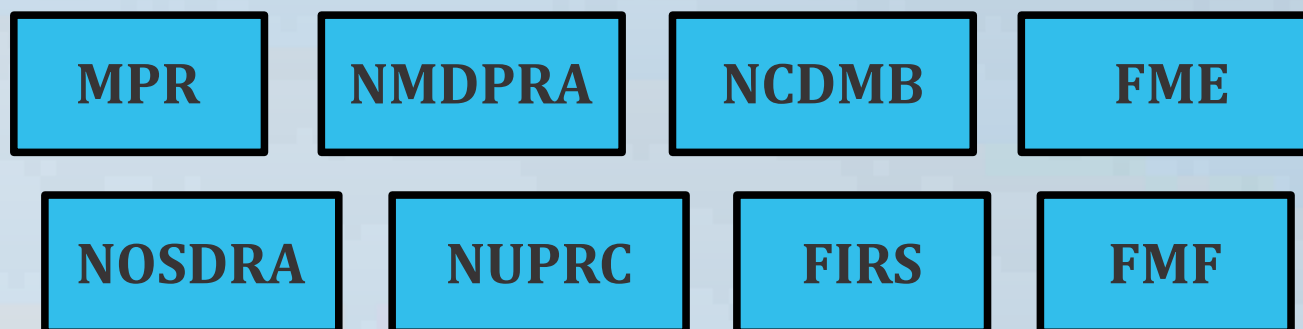
PPPRA – Petroleum Products Pricing Regulatory Agency; **NNPC** – Nigerian National Petroleum Corporation;

NNPC LTD – Nigerian National Petroleum Company Limited; **THE COMMISSION** - Nigerian Upstream Regulatory Commission;

THE AUTHORITY - Nigerian Midstream and Downstream Regulatory Authority.

Accordingly, the following ministries, departments and agencies are charged with varying responsibilities in the petroleum industry.

Key Regulatory Agencies



LEGEND:

MPR: Ministry of Petroleum Resources, **NUPRC:** Nigerian Upstream Regulatory Commission
NMDPRA: Nigerian Midstream and Downstream Regulatory Authority, **NCDMB:** Nigerian Content Development and Monitoring Board
FME: Federal Ministry of Environment, **NOSDRA:** National Oil Spill Detection and Response Agency
FIRS: Federal Inland Revenue Service, **FMF:** Federal Ministry of Finance

1.1 Ministry of Petroleum Resources

The Ministry of Petroleum Resources is responsible for the articulation, implementation and regulation of policies in the Nigerian oil and gas sector and is headed by the Minister of Petroleum Resources (the “**Minister**”).

Under the newly enacted PIA, the powers of the Minister which were available under the previous petroleum regime were substantially altered. For instance, the Minister's wide and discretionary powers

in the award, assignment and revocation of licenses and leases under the Petroleum Act regime has been whittled down by the PIA which introduces greater objectivity and transparency in the award, assignment and revocation process. In addition, the power to award such licenses and leases (excluding Petroleum Exploration License (“**PEL**”)) can only be exercised by the Minister upon the recommendations of the Upstream Commission or the Authority where applicable.

Accordingly, the powers at the disposal of the Minister under the new petroleum regime include:

- a** to formulate, monitor and administer government policy in the petroleum industry;
- b** to exercise general supervision over the affairs and operations of the petroleum industry;
- c** to request license/lease holders to provide petroleum products to the Federal Government or crude oil to third parties who own licenses to operate refineries;
- d** to grant petroleum prospecting licenses and petroleum mining leases upon the recommendation of the Upstream Commission;
- e** to revoke and assign interests in petroleum prospecting licenses and petroleum mining leases upon the recommendation of the Upstream Commission;
- f** to suspend petroleum operations in any area upon the recommendation of the Upstream Commission or the Authority;
- g** delegate in writing to the Chief Executive of the Upstream Commission or the Authority any power conferred on the Minister by or under the PIA.



1.2 Nigerian Upstream Regulatory Commission

In terms of governance of activities in the petroleum industry, the PIA formally segments the oil and gas industry into the upstream sector on the one hand and the midstream and downstream sectors on the other hand. In the case of the upstream sector, the PIA established the Upstream Commission with the primary objective of ensuring efficiency in the upstream segment of the Nigerian petroleum industry through regulating technical and operational activities in the upstream segment of the petroleum industry in Nigeria.

*The technical functions of the Upstream Commission include:*²

- a** to conduct bidding rounds for the award of Petroleum Prospecting Licences ("PPL") and Petroleum Mining Leases ("PML");
- b** administering and enforcing compliance with terms and conditions of leases and licenses granted and permits and authorizations issued to companies in the upstream segment; and
- c** to approve and monitor the execution of field development plans for upstream petroleum operations.

*The commercial functions of the Upstream Commission include:*³

- a** to review and approve the commercial aspects of field development plans in the upstream petroleum operations; and
- b** allocating petroleum production quotas to curtail export of petroleum in collaboration with the NNPC Limited.

As regards frontier basins, the Upstream Commission is responsible for developing exploration strategies and portfolio management as well as promoting investments in the frontier basins of Nigeria.⁴

Further to its administrative functions, the Upstream Commission is empowered to:

- a** enforce, determine and collect royalties, signature bonuses, rents and related payments recoverable from upstream petroleum operations;⁵ and
- b** make rules and regulations concerning fees, rents, royalties and payments due to Government other than taxes and duties.

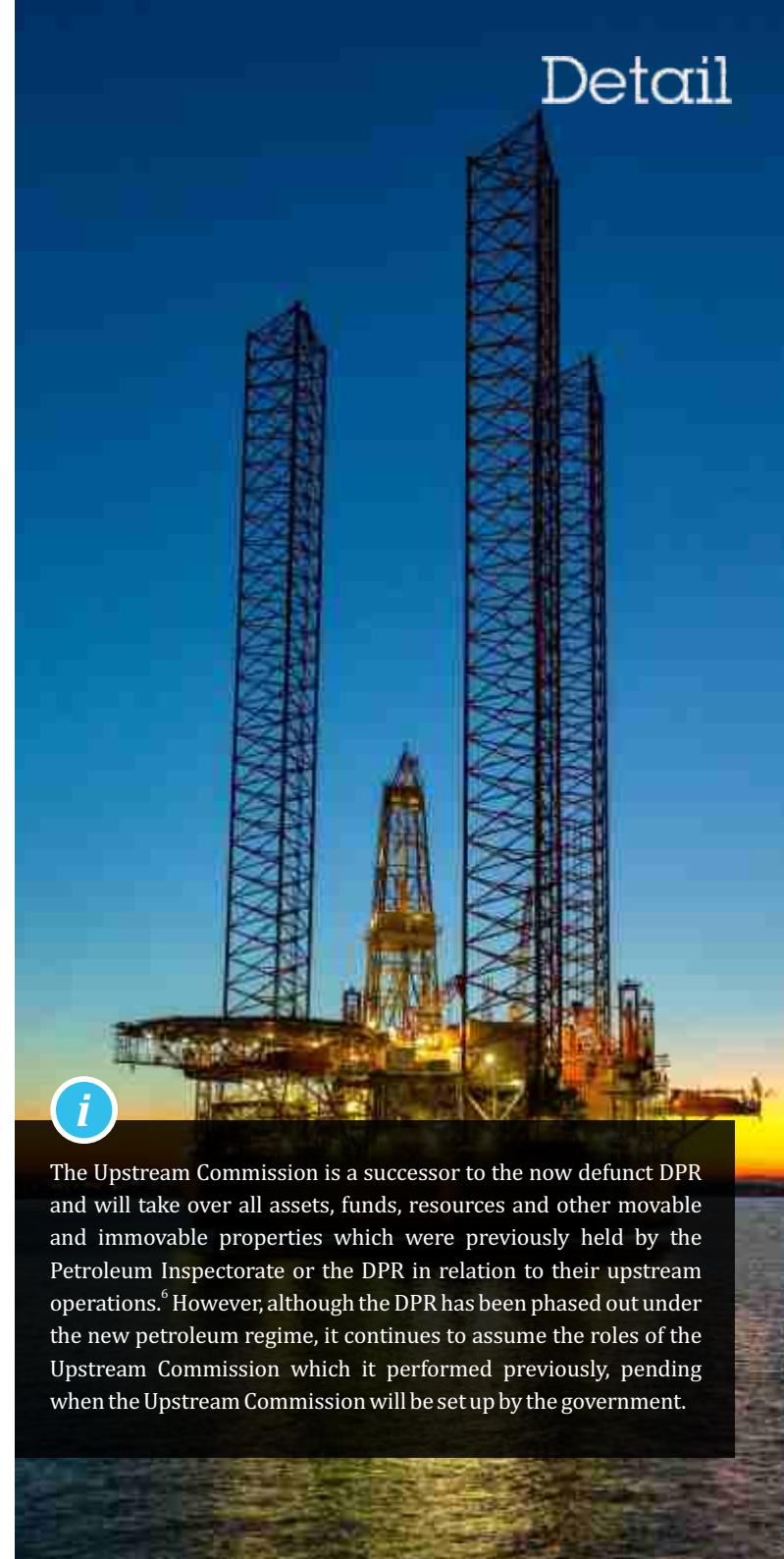
²Section 7 of the PIA.

³Section 8 of the PIA.

⁴Section 9 (1) of the PIA.

⁵Section 259 (b) of the PIA.

⁶Section 312 (1) of the PIA.



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The Upstream Commission is a successor to the now defunct DPR and will take over all assets, funds, resources and other movable and immovable properties which were previously held by the Petroleum Inspectorate or the DPR in relation to their upstream operations.⁶ However, although the DPR has been phased out under the new petroleum regime, it continues to assume the roles of the Upstream Commission which it performed previously, pending when the Upstream Commission will be set up by the government.

1.3 Nigerian Midstream and Downstream Petroleum Regulatory Authority

The Authority is the successor to the now defunct DPR, PEF (Management Board) and will take over all their assets, funds, resources and other movable and immovable properties. In the case of DPR, these assets, funds, resources and other movable and immovable properties previously held by the DPR are expected to relate to DPR's midstream and downstream operations.⁷

The primary objective of the Authority is to regulate the midstream and downstream petroleum operations, including technical, operational, and commercial activities in that sector while its functions include:

- a** to grant, renew, suspend or terminate licenses, permits and authorizations for midstream and downstream petroleum operations;
- b** to establish consumer protection measures;
- c** determine the domestic natural gas base price and the prices applicable to wholesale customers of the strategic sectors and gas distributors;
- d** to regulate supply, distribution, marketing and retail of petroleum products;
- e** to issue certificate of quality and quantity to exporters of crude oil, liquefied natural gas and petroleum products;
- f** to determine appropriate tariff methodology for processing, transmission and transportation of natural gas, transportation of crude and bulk storage of crude and natural gas; and
- g** to determine, collect and enforce gas flare penalties arising from midstream operations.

⁷Section 313 (1) of the PIA.

1.4 Nigerian National Petroleum Company Limited

The PIA establishes the Nigerian National Petroleum Company Limited ("**NNPC Limited**") as the national oil and gas company of Nigeria to replace the Nigerian National Petroleum Corporation ("**NNPC**") established by the NNPC Act of 1977. In this regard, the PIA directs the Minister to within 6 months of the commencement of the PIA from 16th August 2021 to cause the incorporation of NNPC Limited under the Companies and Allied Matters Act ("**CAMA**").

The ownership of all shares in NNPC Limited will be vested in the government of the federation at incorporation and held by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated in equal portions on behalf of the Federation. The PIA mandates the NNPC Limited and any of its subsidiaries to conduct their affairs on a commercial basis in a profitable and efficient manner without recourse to government funds.

NNPC Limited will act as the winding up agent of the NNPC and will take over the assets, interests and liabilities of the NNPC upon the determination of the assets, interests and liabilities by the Minister. Assets, interests and liabilities of NNPC not transferred to NNPC Limited or its subsidiary will remain the assets, interests and liabilities of NNPC until they become extinguished or transferred to the Government. Where no determination of which assets, interests and liabilities to be transferred has been concluded within the 18 months of the effective date of the PIA, all the assets, interests, liabilities of NNPC will be deemed to be transferred to NNPC Limited after the 18 months effective date.

The NNPC Limited, when formed, will be the vehicle through which the federal government will participate in petroleum activities ranging from Exploration and Production ("**E&P**") of crude oil to the refining, marketing and distribution of petroleum. It is empowered by the PIA to participate in petroleum development by undertaking the following activities:

- a** carry out petroleum operations on a commercial basis;
- b** act as concessionaire of all Production Sharing Contracts (PSCs), Profit Sharing and Risk Service Contracts as the national oil company;
- c** carry out test marketing to ascertain the value of crude oil and report to the Upstream Commission;
- d** lift and sell royalty oil and tax oil on behalf of the Upstream Commission and the Federal Inland Revenue Service ("**FIRS**") respectively for an agreed commercial fee;
- e** remit the proceeds from sale of profit oil and profit gas to the Federation less its 30% management fee and the Frontier Exploration Fund;
- f** be vested with the rights to natural gas under production sharing contracts;
- g** engage in the business of renewables and other energy investments; and
- h** carry out management of production sharing contracts for a fee based on the profit oil share or profit gas share.



1.5 Nigerian Content Development and Monitoring Board

The Nigerian Content Development and Monitoring Board (“NCDMB”) was established under the Nigerian Oil and Gas Industry Content Development Act 2010 (“Local Content Act”).

The primary responsibilities of NCDMB include:

- a** supervising, coordinating, administering, monitoring and managing the development of Nigerian Content in the Nigerian oil and gas industry.
- b** reviewing, assessing and approving Nigerian content plans developed by operators within the sector;
- c** setting guidelines and minimum content levels for project-related activities across the oil and gas value chain;
- d** assisting local contractors and Nigerian companies to develop their capabilities and capacities to further the attainment of the goal of developing Nigerian content in the Nigerian oil and gas industry;
- e** awarding Certificates of Authorisation for projects that comply with Nigerian content provisions; and
- f** conducting studies, research, investigations, workshops and training aimed at advancing the development of Nigerian content.



The Local Content Act and the efforts of the NCDMB has led to an increase in the number of indigenous oil companies participating in the oil and gas sector.

It is important to note the provisions of Section 309 of the PIA, which provides that the provisions of the PIA will prevail where they conflict with any other law, except for the 1999 Constitution as amended and the Local Content Act.



1.6 Federal Ministry of Environment

The Ministry of Environment exercises its powers in the areas of formulating environmental policy, promoting policy awareness, enforcement and intervention with respect to pollution and waste management matters, coastal management, and environmental standards and regulations.

In the case of the oil and gas industry, the Ministry of Environment is responsible for issuing Environmental Impact Assessment Certificate with respect to projects in the industry. It acts in collaboration with other agencies and departments, such as the Upstream Commission and the Authority, to ensure environmental protection and the sustainable use of natural resources. The Ministry of Environment acts in collaboration with other environmental bodies such as the National Oil Spill Detection and Response Agency ("NOSDRA") to ensure environmental protection and the sustainable use of natural resources.



1.7 National Oil Spill Detection and Response Agency

The NOSDRA was established pursuant to the National Oil Spill Detection and Response Agency Act 2006 (NOSDRA Act) as part of the institutional framework responsible for coordinating and implementing 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:

- a** ensuring compliance with all existing environmental legislation and detecting oil spills in the petroleum sector; and
- b** receiving reports of oil spillages and coordinating oil spill response activities.




1.8 Federal Inland Revenue Service (“FIRS”)

The Federal Inland Revenue Service is responsible for the administration and collection of federal government revenue in the petroleum industry. The FIRS also performs functions which include:

- a** to assess and collect hydrocarbon tax and to enforce the provisions of the PIA relating to hydrocarbon tax assessment and revenue collection;⁸
- b** to assess and collect Companies Income Tax and Tertiary Education Tax in accordance with the PIA relating to taxable petroleum operations;⁹
- c** to make regulations for ascertaining the amount of tax to be charged upon companies engaged in upstream petroleum operations by way of partnership or joint venture;¹⁰ and
- d** to make rules specifying the form of returns, claims, statements, and notices to be used in assessing petroleum operations.¹¹

⁸Section 259 (a) (i) of the PIA.
⁹Section 259 (a) (ii) of the PIA.

¹⁰Section 273 (5) of the PIA.
¹¹Section 304 (1) of the PIA.

An illustration on a teal background showing two hands in business suits. One hand holds a yellow document with horizontal lines representing text and a small square placeholder. The other hand is using a black stamp to mark the document. A blue circle with the number '2' is positioned above the title.

LICENSING FRAMEWORK UNDER THE PIA

2. LICENSING FRAMEWORK UNDER THE PIA

2.1 Overview and Key Changes

The PIA introduced major changes to the licensing framework in the oil and gas industry, such as a transparent and competitive license award process and clearly delineating the broad categories of licenses and permits that can be issued in the oil and gas industry as well as the key terms of such licenses – apparently, with a view to guiding investors' expectations. The PIA licensing framework differs considerably from the licensing regime under the Petroleum Act, especially by fettering the wide discretionary powers of the Minister in the award and revocation of licenses or leases.

Furthermore, the PIA recharacterized the nature of licenses/leases that are granted in the upstream sector from "oil licenses or leases" to "petroleum licenses or leases". This is perhaps in recognition of the fact that the term "petroleum" is broader than "oil" (which is restrictive) and includes oil and natural gas. By so doing, the PIA has given the gas sector of the petroleum industry its much deserved recognition.



2.2 Licensing of Upstream Operations

Activities in the upstream sector of the Nigerian oil and gas industry are subject to licenses or leases. These licenses or leases are granted only to companies that are incorporated and validly existing in Nigeria under the CAMA.¹² In this regard, companies seeking to operate or operating in the upstream sector may be granted any of the following licenses or leases under the PIA:

a Petroleum Exploration Licence (“PEL”)

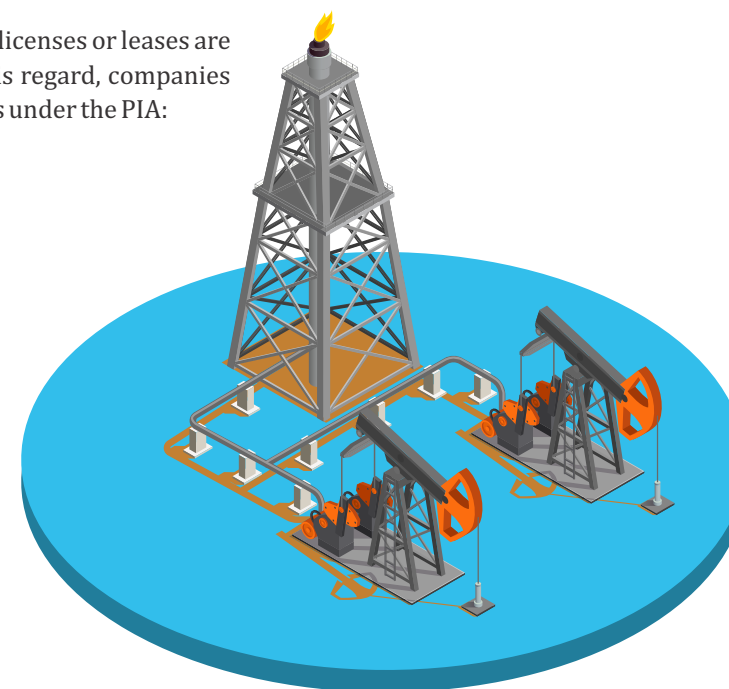
This permits the licensees to carry out petroleum exploration operations on a non-exclusive basis.¹³ PEL has 3 years tenure and may be renewable for additional period of 3 years subject to fulfilment of prescribed conditions.¹⁴ PEL is granted by the Upstream Commission.¹⁵

b Petroleum Prospecting Licence (“PPL”)

This permits the licensees to drill exploration and appraisal wells and perform corresponding test production on an exclusive basis in addition to the activity in (a) above.¹⁶ The licensee also has the right to carry away and dispose of crude oil or natural gas won or extracted during the drilling of exploration or appraisal wells as a result of production tests, subject to the fulfilment of obligations imposed by the PIA.¹⁷ PPL is granted by the Minister on the recommendation of the Upstream Commission.¹⁸

Acreage/Area of Operation	Tenure
Onshore and shallow water acreages	A tenure of 6 years, comprising of an initial exploration period of 3 years and an optional extension period of 3 years ¹⁹
Deep offshore and frontier acreages	A tenure of 10 years, comprising of an initial exploration period of 5 years and an optional extension period of 5 years ²⁰

However, in both instances above, where a significant gas discovery or significant crude oil discovery has been declared by the licensee, the licensee will be entitled to retain the area of such significant gas discovery or significant crude oil discovery for a retention period of 10 years.



c Petroleum Mining Lease (“PML”)

This permits 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 in (a) and (b) above. PML has a maximum term of 20 years which term includes the development period of the leased area.²¹ However, a PML that continues to produce in paying quantities may be renewed by the Upstream Commission for one or more successive additional terms of not more than 20 years each subject to the provisions of the PIA.²²

¹²Section 70(2) of the PIA

¹³Section 70(1)(a) of the PIA

¹⁴Section 71(3) of the PIA

¹⁵Section 71(1) of the PIA

¹⁶Section 70(1)(b) of the PIA

¹⁷Section 72(1)(b) of the PIA

¹⁸Section 72(5) of the PIA

¹⁹Section 77(1) of the PIA

²⁰Section 77(2) of the PIA

²¹Section 86(1) of the PIA

²²Section 86(6) of the PIA

2.3 Marginal Fields

A marginal field is essentially an oil or gas field that has been lying fallow without activity for seven (7) years after its discovery prior to the effective date of the PIA or a field or discovery which has been declared a marginal field prior to 1st January 2021.²³

Within 3 years of the effective date of the PIA, any marginal field that has not been transferred to federal government will be subject to the following processes and the holder of the Oil Mining Lease (**"OMLs"**) must either:²⁴

- a** present a development plan for the field; or
- b** with the consent of the Upstream Commission and on terms and conditions as the Upstream Commission may approve under regulations, farm out the discovery to another person; or
- c** relinquish the field in accordance with the provisions of the PIA.

However, all producing marginal fields will be allowed to continue to operate under the original royalty rates and farm out agreements but must convert to PMLs within 18 months from the effective date of the PIA and enjoy the PIA fiscal regime.²⁵ On the other hand, a discovery declared as a marginal field prior to 1st January, 2021 that is not producing is required to convert to PPL and will benefit from the PIA fiscal regime.²⁶

PIA further provides that no new marginal fields will be declared under the PIA.²⁷

²³Section 94(8)(a) of the PIA
²⁴Section 94(4) of the PIA
²⁵Section 94(1) of the PIA

²⁶Section 94(2) of the PIA
²⁷Section 94(9) of the PIA

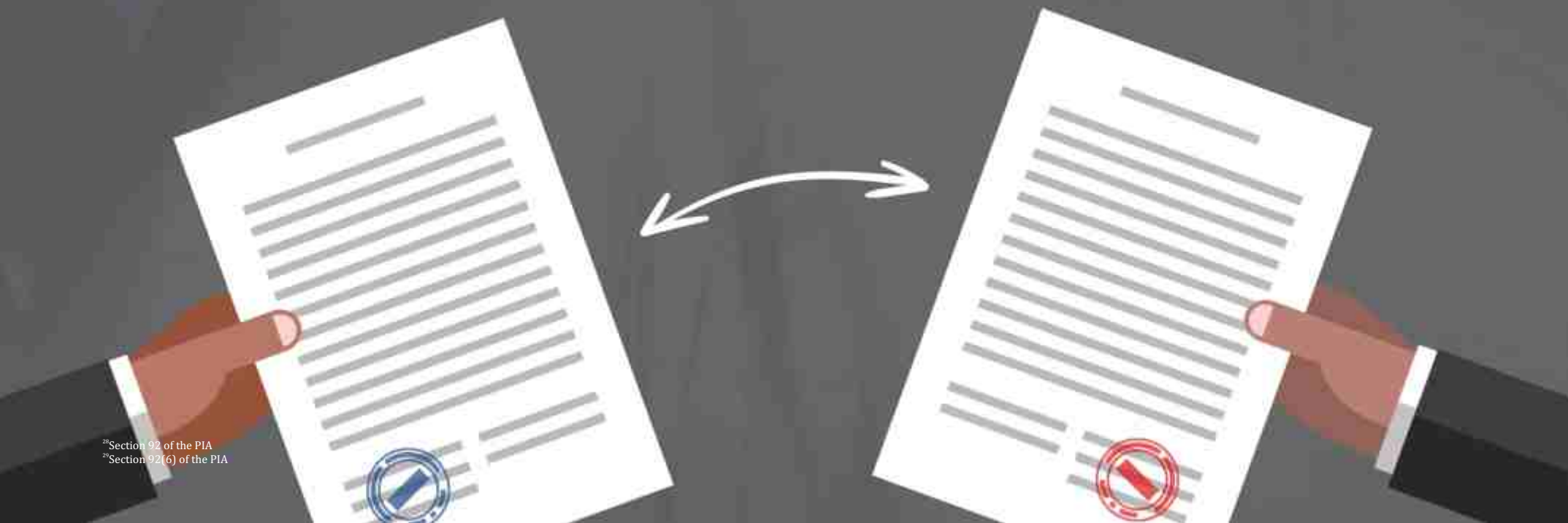
2.4 Conversion of Existing Oil Prospecting License and Oil Mining Lease to PPL and PML Respectively

Under the PIA framework, all existing Oil Prospecting Licenses (“OPLs”) and OMLs will automatically be converted to PPLs and PMLs upon their expiration. The effect of conversion is that the holders of the PPLs or PMLs will be subject to the fiscal regime and incentives under the PIA²⁸ from the conversion effective date. On the other hand, where the OPL or OML holder does not convert to PPL or PML respectively, the fiscal regime in the Petroleum Act will continue to apply to such licensee or holder but subject to the following exceptions where the PIA terms will apply to the holder irrespective of the non-conversion²⁹:

- a Where the holder is engaged in activities in midstream or downstream gas operations, its operations will be subject to tariff reviews, confirmations or modification made by the Authority. The Authority is mandated to make such tariff review, modification or confirmation within 24 months of the PIA effective date;
- b Where the holder is engaged in activities in midstream or downstream gas operations or in activities in midstream or downstream petroleum liquid operations, its shall within 18 months of the PIA effective date apply to the Authority for the appropriate licence or permit for its operations amongst others.



In the interim, holders of existing OPLs and OMLs have the option of voluntarily converting their existing interest to PPLs and PMLs respectively through a Conversion Contract or continue to operate under the terms of their existing OPLs and OMLs until the expiration of the licenses and leases.



²⁸Section 92 of the PIA

²⁹Section 92(6) of the PIA

2.4.1 Conversion Risk

The PIA states some condition precedents that will be contained in the Conversion Contracts. One of such conditions is that holders of OML will need to designate their acreages into 5 broad classes namely:

- a** parcels that merit an appraisal and which the holder is prepared to present appraisal program for exploration;
- b** parcels the holder is prepared to make a declaration of commercial discovery for which a field development plan is to be submitted;
- c** parcels the holder is prepared to make a significant gas discovery or significant crude oil discovery;
- d** parcels which already have development programs underway; and
- e** parcels in which regular commercial production is occurring.

The PIA states that where the total acreage/parcels selected under (a) to (e) above is less than 40% of the OML area, then the holder is entitled to select additional areas within the OML area (i.e. not the areas covered under (a) to (e) above) for conversion to a PPL.

The selection should be done in such a manner that the total area selected (i.e. the areas covered in (a) to (e) above on one hand and the addition area to be converted to PPL on the other hand) will not be more than 40%.

The remaining 60% of the OML area not selected will be relinquished by the OML holder. On the other hand, where the total acreage/parcels selected under (a) to (e) above is more than 40% of the OML area (e.g. 65% of the OML area), then the holder is entitled to keep such larger area (i.e. the 65% of the OML area), consisting solely of the selected areas and relinquished the areas not selected.

2.5 Licensing of the Midstream and Downstream Operations

Activities in the Midstream and Downstream Operations are subject to licenses or permits issued by the Authority provided that where the activity relates to establishment of a refinery, the Minister will be charged with the responsibility of

granting such a license on the recommendation of the Authority.³⁰ These licenses and permits are issued either under the gas operations category or petroleum liquid operations category as highlighted below:

2.5.1 Licensing of the Midstream and Downstream Gas Operations

The PIA provides that no person can undertake any of the activities below in the midstream gas sub-sector without licenses or permits issued by the Authority³¹:

- a** establishment, construction or operation of a facility for the processing of natural gas;
- b** establishment, construction or operation of a facility for the storage of natural gas;
- c** establishment, construction or operation of a gas transportation pipeline;
- d** engagement in bulk transportation of natural gas by rail, barge or other means of transportation;
- e** operation of a gas transportation network;
- f** establishment, construction or operation of a terminal, jetty, or other facility for the export or importation of natural gas;
- g** engagement in wholesale gas supply; or
- h** engagement in the construction or operation of petrochemical or fertilizer plants.

Also, the following activities in the downstream gas sub-sector are licensed activities and require licenses or permits issued by the Authority:³²

- a** retail trading of natural gas;
- b** establishment, construction or operation of a gas distribution network; or
- c** establishment, construction or operation of a facility for the supply or trading of natural gas.



However, the Authority may, by regulation, prescribe additional activities that can be undertaken only on the basis of a licence or permit issued by the Authority.³³ The PIA also imposes an obligation on holders of subsisting leases, licences or permits who are engaged in activities in midstream or downstream gas operations prior to the effective date of the PIA to apply to the Authority within 18 months from the effective date of the PIA for the appropriate licences or permits, as applicable.

³⁰Section 111(1) of the PIA
³¹Section 125(1) of the PIA

³²Section 125(2) of the PIA
³³Section 125(3) of the PIA

2.5.2 Licensing of the Midstream and Downstream Petroleum Liquids Operations

The PIA provides that no person can undertake any of the activities below in the midstream petroleum liquids sub-sector without licenses or permits issued by the Authority:³⁴

- a** establishment, construction or operation of a terminal or other facility for the export or importation of crude oil or petroleum products;
- b** establishment, construction or operation of a crude oil refinery;
- c** establishment, construction or operation of a pipeline for the bulk transportation of petroleum liquids;
- d** engaging in bulk transportation of petroleum liquids by rail, barge or other means within Nigeria;
- e** establishment, construction or operation of a facility for the bulk storage of petroleum liquids;
- f** establishment, construction or operation of a liquids transportation network;
- g** engaging in the bulk sale of petroleum liquids, or
- h** undertaking the construction or operation of any facility for the production of lubricants or petrochemicals based on petroleum products.

Also, the following activities in the downstream petroleum liquids sub-sector are licensed activities and require licenses or permits issued by the Authority:³⁵

- a** construction or operation of any facility for the distribution or sale of petroleum products to retail customers;
- b** establishment, construction or operation of a depot for the storage of petroleum products; or
- c** undertake distribution, marketing or retail

However, the Authority may, by regulation, prescribe additional activities that can be undertaken only on the basis of a licence or permit issued by the Authority³⁶

³⁴Section 174(1) of the PIA

³⁵Section 174(2) of the PIA

³⁶Section 174(3) of the PIA



3

PRIVATE INVESTMENT FRAMEWORK

3. PRIVATE INVESTMENT FRAMEWORK

3.1 Private Investment in the Upstream Sector

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

- a** through the procurement of a licence or lease in a licensing bid round; or
- b** through the acquisition of participatory interest in an existing licence/lease, or acquisition of indirect participatory interest in a company with an existing licence/lease; or
- c** through the acquisition of economic interest in an existing licence of a company.

3.1.1 Participation through Procurement of a Licence or Lease in the Upstream Sector During a Licensing Bid Round

As earlier highlighted, an investor may operate under a PEL, PPL or PML. However, a private investor seeking to undertake full-scale commercial production of oil and gas in an area will have to apply for a PML in order to produce petroleum in Nigeria. PPL and PML are granted by the Minister on the recommendation of the Upstream Commission following a fair, transparent and competitive bidding process and in compliance with the provisions of the PIA, regulations made under the PIA and licensing round guidelines issued by the Upstream Commission.³⁷ The requirement of competitive bidding was introduced by PIA as same was not contained in the old Petroleum Act. However, where there is a bilateral or multi-lateral agreement between Nigeria and another country, the federal government may, for strategic purposes and in return for substantive benefits to the nation, direct the Upstream Commission to negotiate and award a PPL or a PML to a qualified investor identified in the agreement or treaty.³⁸

The licensing round for the grant of the PML or PPL must be accompanied with a model PPL or PML the winning bidders are expected to sign. Furthermore, this PPL or PML will not be granted by the Minister unless the appropriate model contract is contained/attached to the licence or lease as a guide on the relevant fiscal obligations the winning bidders will be subject to. The following are the model contracts provided in the PIA:³⁹

- a** a concession agreement for exploration, development and production of petroleum, which may include an incorporated or unincorporated joint venture with NNPC Limited;
- b** production sharing contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs from a share of production as established in the contract from the applicable area;
- c** a profit sharing contract which is a production sharing contract whereby the profit oil is provided in cash to Government;
- d** a risk service contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs by a payment in cash or in kind from petroleum produced from the applicable area; and
- e** any contract being a variation of the contracts framework listed in (a), (b) (c) or (d) above or a contract which, at the time, is an internationally recognised form of contract for the exploration and production of petroleum.

The concession model contract in (a) above (analogous to a joint venture arrangement) must include a carried interest provision, whereby the federal government through the NNPC Limited has the right to participate up to 60% in the contract. In the same vein, the right to participate must be from any time upon the grant of the licence or lease amongst other conditions.⁴⁰

³⁷Section 73(1) of the PIA
³⁸Section 74(3) of the PIA

³⁹Sections 75 and 85(2) of the PIA
⁴⁰Section 85(4) of the PIA

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

Other than an application for a PPL or an PML in a licensing bid round, another means by which a private investor can hold rights to oil and gas interest is by acquisition of the license or interest held by another company with an existing licence either wholly or partly. Alternatively, the company may make an indirect acquisition of that interest through the acquisition of shares of the company with an interest in a licence.

However, the acquisition of oil and gas interest in any of the circumstances above is subject to Ministerial consent. In this regard, the PIA provides that a holder of a PPL or PML will not assign, novate or transfer his licence or lease or any right, power or interest or a shareholder of an incorporated joint venture shall not sell or transfer its shares without prior written consent of the Minister which consent is granted upon the recommendation of the Upstream Commission.⁴¹ In the case of PEL, only the consent of the Upstream Commission is required.

Similarly, a Change of Control in the holder of a licence or lease is deemed as an assignment and requiring Ministerial consent. The terms Change of Control is defined in PIA to mean any person or persons acting jointly or in concert, to acquire direct or indirect beneficial ownership of a percentage of the voting power of the outstanding voting securities of the holder, by contract or otherwise, that exceeds 50% at any time.⁴²

Accordingly, the PIA gave an expansive definition of transactions that require Ministerial consent beyond the language employed by the drafters of the Petroleum Act and the Oil Pipeline Act by specifically extending the consent requirement to direct acquisition of participatory interest in licenses and leases and indirect acquisition of such interest through share purchase or Change of Control.

⁴¹Section 95(1) and (2) of the PIA

⁴²Section 95(14) of the PIA

(A) Requirements on Sale of Business

(A)(I) Consent Procedure and Documentation Requirement

The procedure for obtaining the Minister's consent is by an application to the Upstream Commission in the format prescribed by the Upstream Commission for the approval of the transfer. The application should be accompanied with any other information that may be determined pursuant to any regulations published by the Upstream Commission. At this time, the Upstream Commission is yet to issue any consent regulations in this regard. However, the DPR Guidelines and Procedures for Obtaining Minister's Consent to the Assignment of Interest in Oil and Gas Assets 2021 require that the following documents are submitted in the event of an application for consent:

- a** Deed of Assignment;
- b** Copy of existing Joint Operating Agreement or production sharing contract, where applicable;
- c** A catalogue of the assignor's exploration and production activities carried out in the asset to date;
- d** The assignee's technical and financial track records in exploration and production operations;
- e** The Sale and Purchase Agreement (SPA) between the parties;
- f** In the case of an assignment by way of a reorganisation of a company (through merger, acquisition, takeover, etc), a copy of relevant approvals, documents and rules governing the re-organisation in the relevant jurisdiction.

The Upstream Commission is required to act on the application within 60 days of the receipt of same and thereafter forward the application to the Minister. Within 60 days of the receipt of the Upstream Commission's recommendation, the Minister is mandated to consider same for approval and the approval should not be unreasonably withheld.

The key considerations for the grant of the license by the Minister include the following:⁴³

- a** is the applicant a company incorporated in Nigeria?
- b** is the applicant of good reputation and standing?
- c** does the applicant has sufficient technical knowledge, experience and financial resources to enable it effectively carry out all responsibilities of a licensee or lessee under the licence or lease; and
- d** will the applicant comply with the Federal Competition and Consumer Protection Act, 2018?

Where the Minister rejects the recommendation of the Upstream Commission, the Minister shall provide the reason for such rejection. Where no response on the application has been received within 60 working days from the receipt of the recommendation of the Upstream Commission, the consent of the Minister will be deemed to have been granted.

Where the consent of the Minister is granted in respect of the application for a transfer, the Upstream Commission will promptly record the transfer in the appropriate register and communicate the refusal or approval of the application to the applicant in writing.

In the case of refusal of the application, the Upstream Commission must inform the applicant of the reasons for the refusal and may give the applicant or a relevant third party reasonable time to make further representations in respect of the application.

⁴³Section 95(11) of the PIA

(A)(II) FIRS Approval of the Business Sale

Section 271(7) of the PIA provides that no merger, take-over, transfer or restructuring of a trade or business carried on by an upstream company will take place without the approval and having obtained direction of the FIRS on any tax that may be due and payable. Similar provision is also contained in section 29(12) of the Companies Income Tax Act applicable to midstream and downstream companies.

(A)(III) Federal Competition and Consumer Protection Commission's Notification and Approval of the Business Sale

Under the Federal Competition and Consumer Protection Act, 2019 ("FCCP Act"), the notification and the approval of the Federal Competition and Consumer Protection Commission ("FCCPC") is required before an undertaking can conclude a "merger" that is within the notification threshold set by the FCCPC in a regulation.⁴⁴

In this regard, Regulation 1.1 of the FCCPC *Notice of Threshold for Merger Notification Pursuant to Section 93(4), 2019* provides that mergers will be notifiable before implementation if in the financial year preceding the merger, the combined annual turnover of the acquiring company and the target company in, into or from Nigeria equals or exceeds NGN1,000,000,000 (one billion naira or the annual turnover of the target company/undertaking in, into or from Nigeria equals or exceeds NGN500,000,000 (five hundred million).

The term "merger" on the other hand is defined in a wide sense under the FCCP Act to the effect that it occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking through any of the following means⁴⁵:

- a** the purchase or lease of the shares, an interest or assets of the other undertaking in question;
- b** the amalgamation or other combination with the other undertaking in question, or
- c** a joint venture.

An undertaking has control over the business of another undertaking above if it:

- a** beneficially owns more than one half of the issued share capital or assets of the undertaking;
- b** it is entitled to cast a majority of the votes that may be cast at a general meeting of the undertaking or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that undertaking;
- c** is able to appoint or to veto the appointment of a majority of the directors of the undertaking;
- d** is a holding company, and the undertaking is a subsidiary of that company as contemplated under CAMA amongst others.

3.1.3 Acquisition of Economic Interest in an Existing Licence of a Company

An economic interest is acquired in cases where a private investor invests in the petroleum activities of a company that has a licence (e.g. by provision of funding and technical support) in return for a share in the production accruing from the company's oil or gas well. Under this arrangement, the investor does not make a direct acquisition of the existing company's participation interest in the license/lease or acquire indirect participation interest through purchase of the shares of the company with the existing license but rather acquires an economic interest through provision of financial and technical support to the company's development and production activities.

It is noteworthy to mention that this type of participation in the oil and gas industry does not require Ministerial consent.

⁴⁴Section 93(1) and (6) of the FCCP Act

⁴⁵Section 92(1) of the FCCP Act

3.2 Private Investment in the Midstream and Downstream Petroleum Operations

Similar to the investment framework discussed above with respect to investment in the upstream sector, an investor can participate in the midstream or downstream sectors through any of the following means:

- a** through the procurement of a licence or permit applicable to the activities the investor wishes to undertake; or
- b** through the acquisition of interest in an existing licence, or by indirect acquisition through the acquisition of shares of a company with an interest in a licence.

The legal principles underpinning the above investments frameworks are similar to the investment framework in the upstream sector save for the following notable differences:

- a** Application for license to conduct midstream or downstream operations is made to and granted by the Authority. The only exception is in the case of application for refinery license which is granted by the Minister upon the recommendation of the Authority;
- b** Upon transfer of any interest in a license, the Authority is the relevant regulator that grants the consent for such a transfer.

3.3 Creation of Security Over Upstream License or Lease or Interest

Oil and gas business is capital intensive and therefore it is typical for holders of petroleum licenses and assets to raise debt funding and seek to charge their assets as security for the debt. With specific regard to the creation of securities over a PEL, PPL or PML, the PIA states that a holder of such license or lease may by way of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interests under the applicable licence, lease or grant a security interest in respect of the interest, provided that the consent of the Upstream Commission shall be obtained.

Therefore, the Upstream Commission's consent is a condition precedent to the creation of security interest over petroleum licenses or lease in Nigeria.





4

DIVESTMENTS

4. DIVESTMENTS

4.1 Sale of Participatory Interest in an Existing Licence, or Sale of Indirect Participatory Interest in a Company with an Existing Licence

Divestment of interests in the oil and gas sector in Nigeria is typically done through the assignment of the relevant licence/lease and assets or through sale of shares in the divesting entity.

The legal requirements for this type of divestment are considered in Chapter 3 above and need no repetition.

Other forms of divestment captured in the PIA include the following: relinquishment of licence (both compulsory or voluntary) and license surrender.

4.2 Compulsory Relinquishment

The PIA generally emphasizes the concept of “drill or drop” which essentially requires an operator to drill a well within a certain length of time or give up the licence area. The PIA therefore does not encourage a situation where operators will leave oil and gas wells idle (except in circumstances like a force majeure situation) since such actions results in loss of revenue to the government.

The circumstances under which PPL and PML holders will have to relinquish their licence/leases are as follows:

PPL Holders

Prior to the expiration period of the license, a PPL holder must relinquish every area that is not an appraisal area (i.e. an area where petroleum discovery have been made and which the licensee considers merit appraisal), retention area (i.e. an area where significant crude oil or gas discovery has been made and retained by the licensee for further drill appraisal) or lease area. Relinquishment is made on the basis of parcels or sub-parcel.⁴⁶

In the same vein, PPL holders shall upon the expiration of the 10 years retention period immediately relinquish the retention area he has not declared a commercial discovery.⁴⁷

PML Holders

The lessee will after 10 years of the commencement of his PML relinquish all parcels which do not fall within the boundary of its producing field and any formation deeper than the deepest producing formation shall be relinquished, and the deep rights shall vest in the government.

4.3 Voluntary Relinquishment

PPL holder may voluntarily relinquish parcels and sub-parcels of its license areas provided that he has complied with the obligations imposed on him in the PPL and the shape of the relinquished block is approved by the Upstream Commission.

4.4 Surrender

Holders of PEL, PPL or PML may surrender part or the whole of the licensed or leased area, provided that such a holder has complied with the obligations imposed on him under the applicable licence or lease and has given three (3) months' notice in writing to the Upstream Commission prior to the surrender.



⁴⁶Section 88(1) and (2) of the PIA.

⁴⁷Section 78(13) of the PIA.



5

GAS SECTOR PROVISIONS

5. GAS SECTOR PROVISIONS

5.1 Overview

Unlike the Petroleum Act, 1969 which treated gas a by-product of oil operation, the PIA considers natural gas as a stand-alone resource and makes abundant provisions on the regulation and unlocking of the gas sector. Some of the provisions on the regulation of the gas sector include the following:



5.2 The Gas Aggregator

The PIA provides that the Authority will issue to any qualifying person a domestic gas aggregation license to support the implementation of the domestic gas delivery obligation amongst other.⁴⁸ The domestic gas aggregation license will be issued for a period of 2 years and subject to renewal for a further period of 2 years in each instance until the attainment of liquidity in the domestic gas market, whereupon gas aggregation will cease, and the domestic gas aggregation licence will be terminated by the Authority.⁴⁹ It follows therefore that upon attainment of liquidity in the domestic gas market, the Gas Aggregation Company Nigeria Limited (“GACN”) will cease to exist.

The domestic gas aggregator will be a not-for-profit company limited by guarantee and established under the CAMA.⁵⁰ Given that GACN is currently a limited liability company, it follows that it will need to wind up and re-register as a company limited by guarantee. Also, the PIA states that the ownership of the company may be by a combination of licensees or lessees, wholesale customers and other interested parties, such as licensees of gas transportation pipelines and gas transportation networks. Provided that the company shall not be affiliate of these entities or be controlled by them.⁵¹

5.3 Domestic Gas Delivery Obligations

The PIA empowers the Upstream Commission to, by a regulation or guideline made under the PIA to prescribe and allocate domestic gas delivery obligation among all OML and PML holders before 1st March of each year, based on the domestic gas demand requirements as well as to enforce compliance of this obligation by these lessees.⁵²

These lessees may voluntarily conclude contracts for the supply of gas to the wholesale customers of the strategic sectors, or with wholesale gas suppliers supplying the strategic sectors on a “free market basis” and notify the Upstream Commission accordingly of such contracts. The term “strategic sectors” is not defined in the PIA but the National Domestic Gas Supply and Pricing Policy, 2008 defined the terms “strategic domestic sector” and “strategic industrial sector” to essentially mean the power sector and industries that utilise gas as feedstock in their production such as the fertilizer companies. The consequence of this is that where the volume of the gas contracts with these strategic sectors customers is equal to or higher than the domestic gas delivery obligations for the lessees, then such a lessee⁵³:

- a** will be deemed to have fulfilled its domestic gas delivery obligation;
- b** not be a producer client of the gas aggregator GACN and must also inform the gas aggregator; and
- c** may deliver further supplies of marketable natural gas to the domestic market on a willing seller - willing buyer basis.⁵⁴

Also, lessees/gas producers that wish to supply wholesale customers who are not part of the strategic sectors may deliver further supplies of marketable natural gas to the domestic market on a willing seller - willing buyer basis.⁵⁵

A lessee who fails to comply with its domestic gas delivery obligation will be liable to penalty of **US\$3.50 per MMBtu** which amount is subject to adjustment by the Upstream Commission through a regulation or the penalty imposed on the gas purchase contract between the lessee and the wholesale supplier of the strategic sector.⁵⁶

⁴⁸Sections 153(1) and 154(a) of the PIA

⁴⁹Section 153(2) and (3) of the PIA

⁵⁰Section 155(1) of the PIA

⁵¹Section 155(2) of the PIA

⁵²Section 110(1) of the PIA

⁵³Section 110(2) of the PIA

⁵⁴Section 110(3) of the PIA

⁵⁵Section 110(3) of the PIA

⁵⁶Section 110(8) and (9) of the PIA

5.4 Gas Pricing

The Authority is empowered to determine the domestic base price for natural gas including the prices for the power sector, commercial sector, and gas based industries in accordance with the provisions of section 167 and the Third Schedule to the PIA. This price determination shall be done yearly⁵⁷ and the Authority will continue to determine the price for these sectors above if in its opinion, the control of prices for natural gas is required.⁵⁸

However, the price control and the corresponding role of the domestic gas aggregator will not be required when the entire domestic gas demand requirement (i.e. the total amount of marketable natural gas required for all wholesale customers of the strategic sectors) has been met, or where the domestic market for natural gas is largely characterized by free market based contracting for natural gas between willing buyers and willing sellers.⁵⁹

The table below highlights the price of gas payable by the different sectors under the PIA⁶⁰:

Sector	Gas Price
Power Sector	Domestic base price at the marketable natural gas delivery point
Commercial sector	Domestic base price at the marketable natural gas delivery point plus US\$0.50 per MMBtu
Gas distributors	Price determined through negotiation provided that such price shall not exceed the commercial sector price
Gas based industries	Price determined in accordance with the pricing principles and formula specified in the Fourth Schedule to the PIA. However, the floor price is US\$0.90 per MMBtu while the ceiling price is the domestic base price applicable for any particular year.

5.5 Establishment of the Midstream and Downstream Gas Infrastructure Fund

The PIA establishes the Midstream and Downstream Gas Infrastructure Fund as a body corporate with a Governing Council that supervises and make investments decisions over the Fund. The purpose of the Fund is to make equity investments of government-owned participating or shareholder interests, in infrastructure related to midstream and downstream gas operations aimed at reducing or eliminating gas flaring; increasing the domestic consumption of natural gas in Nigeria in projects which are financed in part by private investment and encouraging private investment through risk sharing by participating initially in selected high risk projects and in such other equity investments that encourage investment in midstream and downstream gas infrastructure.

⁵⁷Section 167(1) of the PIA

⁵⁸Section 167(2) of the PIA

⁵⁹Section 167(3) of the PIA

⁶⁰Section 167(5), (6),(7) and section 168 of the PIA

5.6 Gas Flaring

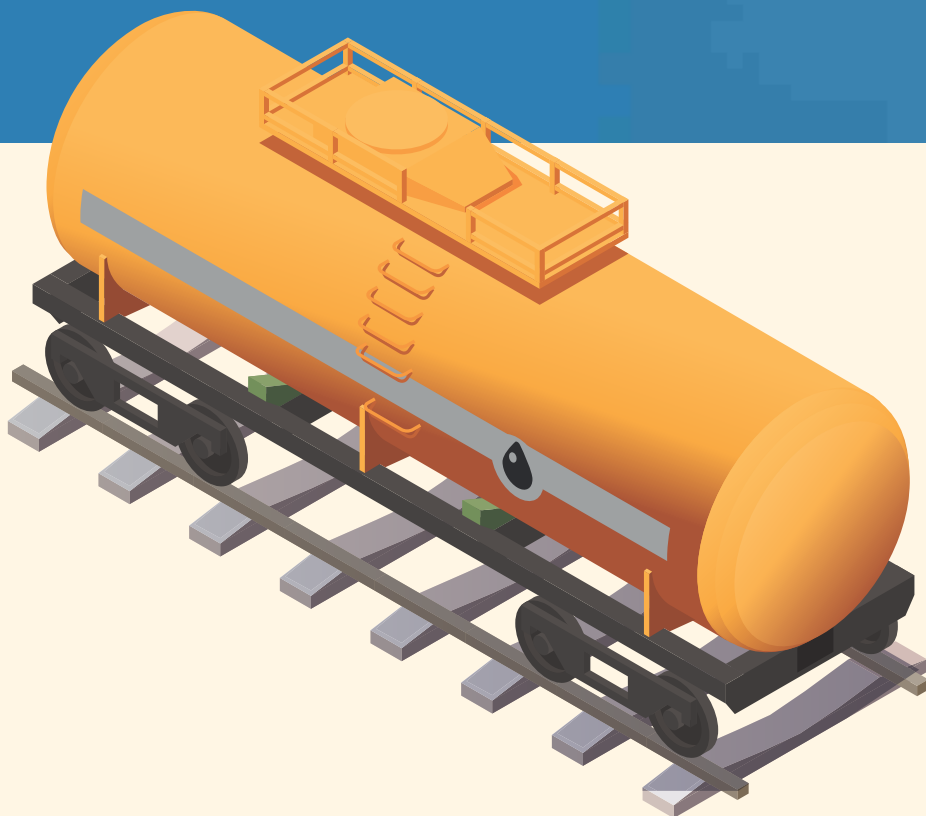
Gas flaring has been a major environmental issue plaguing petroleum operations in Nigeria for many decades. Due to the huge costs of producing and commercializing natural gas in Nigeria vis-à-vis the dearth of gas infrastructure in Nigeria and the unfavourable gas pricing amongst others, operators are willing to choose the option of flaring or venting associated gas they do not require in the course of their crude oil production.

In response to the above issue, the PIA has upheld the prohibition of gas flaring in existing regulations by stating that a licensee, lessee or marginal field operator that flares or vents natural gas, except in the case of an emergency, pursuant to an exemption granted by the Upstream Commission, or as an acceptable safety practice under established regulations, commits an offence and is liable to a fine as prescribed by the Upstream Commission in regulations under the PIA.

5.7 Gas Network Code

The PIA recognizes and validates the existing Nigerian Gas Transportation Network Code (“Network Code”) which became effective on 10th February 2020. Essentially, the Network Code prescribes the operational, contractual, and commercial framework that would apply to transactions between gas transporters and gas shippers in relation to the existing and prospective gas transportation network system in Nigeria.

Notwithstanding, the PIA empowers the Authority to modify the existing Network Code, or establish new codes following appropriate consultations with stakeholders in midstream and downstream gas operations.



6

HOST COMMUNITIES DEVELOPMENT



6. HOST COMMUNITIES DEVELOPMENT

6.1 Establishment of the Host Communities Development Trust

Oil and gas host communities suffer so much from the negative impact of petroleum operations and therefore the need to compensate them by the oil and gas companies operating in these communities cannot be overemphasized. In recognition of this fact, the PIA provides for the establishment of the Host Communities Development Trust ("HCDT") with the objectives of financing execution of projects for the benefit and sustainable development of the host communities, facilitate economic empowerment opportunities in the host communities amongst others.

The PIA further mandates holders of interest in PPLs or PMLs (i.e Settlers) or owners of designated facilities as defined in the PIA, whose area of operations are located in or appurtenant to any community or communities to incorporate and operate HCDT within the timeline below:

S/N	Nature of Interest	Timeline
1	Existing OMLs	Within 12 months from the effective date of the PIA
2	Existing designated facilities	Within 12 months from the effective date of the PIA
3	New designated facilities under construction on the effective date of the PIA	Within 12 months from the effective date of the PIA
4	Existing OPLs	Prior to the application for the field development plan
5	PPLs and PMLs	Prior to the application for the field development plan
6	Licensees of designated facilities ⁶¹ granted under the PIA	Prior to commencement of commercial operations

Such holders are further required to allocate 3% of their actual annual operating expenditure of the preceding financial years in upstream petroleum operations to the host communities via the Host Community Development Trust scheme;

⁶¹The term "designated facilities" is defined in section 318 of the PIA to mean petroleum terminals, crude oil and natural gas transportation pipelines, bulk storage tank farms, refineries, and gas processing plants in midstream petroleum operations and petrochemical plants.

The key organs of Host Communities Development Trust are as follows:

S/N	Entity	Key Responsibility
1	Upstream Licensees/Lessees (i.e. Settlers)	a) Setting up the HCDT and appointment of the Board of Trustees of HCDT; and b) Conducting host community needs assessment to determine the needs of each host community.
2	Upstream Commission and the Authority	a) Making regulations on host communities issues; and b) Approval of the Board of Trustees members.
3	Board of Trustees of HCDT	a) Approval of projects for which the host community development fund will be utilized; and b) Setting up the Management Committee of the HCDT and appointment of its members.
4	Management Committee	a) Prepare and submit the budget of the host communities development trust to the Board of Trustees for approval; and b) Develop and manage the contracting process for awarding projects on behalf of the host communities development trust, subject to the approval of the Board of Trustees.
5	Advisory Committee	a) Monitoring and making reports on the progress of projects being executed in the community to the management committee; and b) Advising the management committee on activities that improve the security of infrastructure and promotion of peacebuilding within the community and entire area of operation.
6	Fund Managers	a) Managing and investing the reserve fund.

The failure of a Settlor to establish the HCDT may be grounds for revocation of the applicable licence or lease.

The PIA limits the scope of application of funds in the HCDT to use exclusively for the implementation of the applicable host community development plan. In doing so, the Board of Trustees are required to undertake an annual allocation of funds received in the following ratio:⁶²

- a** 75% to the capital fund for capital projects;
- b** 20% to the reserve fund to be invested for use where there is cessation in the contributions from the Settlor; and
- c** An amount not exceeding 5% for administrative cost of running the trust.

While the entitlement of the host communities to the benefits of the HCDT arrangement may appear absolute, a host community will forfeit its entitlement to any contribution to extent of the expenses incurred to repair damage to petroleum and designated facilities or disruptions to production activities within the host community caused by an act of vandalism, sabotage, or civil unrest.⁶³

⁶²Section 244 of the PIA

⁶³Section 257 (2) of the PIA

7

FISCAL REGIME UNDER THE PIA

7. FISCAL REGIME UNDER THE PIA

The PIA introduces significant changes to the fiscal framework envisaged under the previous Petroleum Act 1969, Deep Offshore and Inland Basin Production Sharing Contracts Act, Petroleum Profits Tax Act (“PPTA”) and the Petroleum (Drilling and Production) Regulations 1969. The changes cut across, the administration of fiscal regime, applicable taxes, computation, and incentives applicable to players in the petroleum industry. The changes introduced under the PIA have the objectives of establishing a fiscal framework that encourages investments in the Nigerian petroleum industry, balancing rewards with risks and enhancing revenues to the Federal Government of Nigeria.⁶⁴ The key changes under the PIA are as follows:

7.1 Administration of the Fiscal Regime⁶⁵

The administration and collection of Government revenue under the PIA is vested in the FIRS, the Upstream Commission and the Authority with the following respective obligations:

- a** FIRS is responsible for collection, assessment and enforcement of hydrocarbon tax, companies’ income tax and tertiary education tax with respect to taxable petroleum operations.⁶⁶
- b** The Upstream Commission is responsible for the determination and collection of royalties, rents, signature bonus and other related payments as well as production shares in model contracts which involve production sharing, profit sharing or risk sharing.
- c** The Authority is responsible for the determination, collection and enforcement of gas flare penalties arising from midstream and downstream operations.

⁶⁴Section 258 1(a) of the PIA

⁶⁵Section 259 of the PIA

⁶⁶Section 259(1) of the PIA



7.2 Hydrocarbon Tax⁶⁷

The PIA introduces a hydrocarbon tax regime which applies to upstream companies carrying out onshore and shallow water operations.⁶⁸ The petroleum products subject to hydrocarbon tax are⁶⁹; crude oil, field condensates and liquid natural gas liquids derived from associated gas and produced in the upstream of the measurement points.

In contrast with the above, the following petroleum products are not subject to hydrocarbon tax:⁷⁰

- a** Associated natural gas, including gaseous natural gas liquids produced in the field and contained in the rich gas, and non-associated natural gas.
- b** Condensates and natural gas liquids produced from non-associated gas in fields or gas processing plants, to the extent that the related volumes are ascertainable at the measurement points or at the exit of the gas processing plant, regardless of whether the condensates or natural gas liquids are subsequently commingled with crude oil.
- c** Any condensates and natural gas liquids produced from associated gas at gas processing or other facilities downstream of the measurement points.

In addition to the above, deep offshore petroleum operations and operations in frontier acreages which are yet to be reclassified under Section 68(3) of the PIA are not subject to hydrocarbon tax.⁷¹

The table below highlights the hydrocarbon tax applicable in the PIA⁷²

Type of License	Hydrocarbon Tax Rate
Petroleum Mining Leases	30% of chargeable profits from crude oil with respect to onshore and shallow water
Petroleum Prospecting Licenses	15% of chargeable profits from crude oil for onshore and shallow water operations.



⁶⁷Part II of the PIA
⁶⁸Section 260 (1) of the PIA
⁶⁹Section 260 (1a) of the PIA

⁷⁰Section 260 (1b) of the PIA
⁷¹Section 260 (3) of the PIA
⁷²Section 267 (1 a and b) of the PIA

7.3 Companies Income Tax

Under the PPTA regime, upstream petroleum operations were liable to payment of only petroleum profits tax and do not pay companies income tax. However, under the PIA, in addition to hydrocarbon tax, upstream petroleum operations are now subject to companies income tax⁷³ but provided that upstream companies that do not convert their OPLs to PPLs or OMLs to PMLs will continue to be subject to the PPTA regime.

In line with the above, companies' income tax applies to all companies, concessionaires, lessees, contractors or subcontractors involved in the upstream, midstream or downstream petroleum operations.⁷⁴

The table below highlights the current rate of companies income tax applicable to all companies operating in Nigeria:

Type of Company	Basis of Categorization (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%

7.4 Royalties

All production of petroleum including production tests are subject to royalties on a non-discriminatory basis with respect to all licensees and lessees. The royalties are payable monthly into the Federation Account and verifiable by the Upstream Commission.⁷⁵

Royalties are determined monthly at the measurement point.⁷⁶ The chargeable volume for royalty is calculated by ascertaining the quantity of natural gas, crude oil, condensates, and natural gas liquids produced in the relevant month for each field operated by a licensee or lessee.⁷⁷

The following are not included in the ascertainment of the chargeable volume with respect to royalties under the PIA⁷⁸:

- a** volumes burned, flared, vented with the approval of the Upstream Commission;
- b** volumes re-injected by a lessee into reservoirs for the purpose of improving or enhancing production of crude oil or for conservation of natural gas;
- c** volumes used in the upstream petroleum operations to produce electricity or heat for exclusive use in the operations of the lessee; and
- d** water or sediments.

Royalties may however be paid in cash or in kind subject to the discretion of the Upstream Commission. Royalties paid in cash are ascertained based on the fiscal oil price and the fiscal gas price.⁷⁹



⁷³Section 260(5) of the PIA

⁷⁴Section 302 (1) of the PIA

⁷⁵Sections 6 and 9(2) of the 7th Schedule to the PIA.

⁷⁶Section 7(1) of the 7th Schedule to the PIA.

⁷⁷Section 7(2) of the 7th Schedule to the PIA.

⁷⁸Section 7(5) of the 7th Schedule to the PIA

⁷⁹Section 9(1) of the 7th Schedule to the PIA

Crude oil and condensates, the applicable royalties are based on price and on production. Whereas the royalties for natural gas and natural gas liquids produced are based on production.⁸⁰

The table below outlines rate for royalty payable by production for crude oil and condensate⁸¹:

Royalty payable by production of crude oil and condensate	Rate
Onshore areas	15%
Shallow water (up to 200m depth)	12.5%
Deep offshore (greater than 200m) water depth	7.5%
Deep offshore fields (greater than 200m) with a production during a month of not more than 50,000 barrels per day	5%
Frontier basins	7.5%
Onshore and shallow water field (including marginal fields) with a production of not more than 10,000 barrels per day during a month, for the first 5000 barrels per day	5%
Onshore and shallow water field (including marginal fields) with a production of not more than 10,000 barrels per day during a month, for the next 5000 barrels per day for the share of production over 5000 barrels per day.	7.5%

The table below outlines the rates for royalty payable based on production of gas⁸²:

Royalty payable based on production of gas	Rate
Production of natural gas and natural gas liquid	5%
Natural gas produced and utilized domestically	2.5%

The table below outline the rate for royalty payable by price⁸³:

Royalty based on price of crude oil and condensate as applicable to onshore, shallow water and deep offshore operations	Rate
Below US \$50 per barrel	0%
At US \$ 100 per barrel	5%
Above US \$ 1.50 per barrel	10%
Between US \$50 and US \$100 per barrel and between US \$100 and US \$150 per barrel.	Determined based on linear interpolation

Frontier acreages⁸⁴ are not subject to royalty by price.

⁸⁰Section 9(2a and b) of the 7th Schedule to the PIA

⁸¹Section 10(2-4) of the 7th Schedule to the PIA.

⁸²Section 10(6) of the 7th Schedule to the PIA

⁸³Section 11 of the 7th Schedule to the PIA

⁸⁴Section 318 of the PIA "means any or all acreages in an area on land in Nigeria defined as a frontier in a regulation issued by the Commission"

7.5 Rents and Fees

In addition to royalties, holders of PPL or PML are required to pay to the Government rents and production and profit shares in the amount and time prescribed in the license or lease in the PIA or regulations made by the Upstream Commission.⁸⁵

7.6 Other Fees and Levies Imposed Under the PIA

In addition to royalties, holders of PPL or PML are required to pay to the Government rents and production and profit shares in the amount and time prescribed in the license or lease in the PIA or regulations made by the Upstream Commission.

Type Tax or Levy	Person or Activity Liable	Rate
Frontier Exploration Fund ⁸⁶	Payable as a percentage of NNPC Limited's profit oil and profit gas as in the production sharing, profit sharing and risk service contracts	30%
Nigerian Midstream and Downstream Petroleum Authority Fund ⁸⁷	Payable by wholesale customers on the wholesale price of petroleum and natural gas sold in Nigeria	0.5%
Midstream and Downstream Gas Infrastructure Fund	Payable by wholesale customers on the wholesale price of petroleum and natural gas sold in Nigeria ⁸⁸	0.5%
Host Community Development Trust Fund ⁸⁹	Payable by holders of PPL and PML with areas of operations located in or appurtenant to communities.	3% of the actual annual operating expenditure for the preceding financial year with respect to upstream operations affecting the host community for which the HCDF was established
Signature Bonuses ⁹⁰	Payable by successful bidders of PPL or PML upon grant of the license or lease. ⁹¹	As directed by the Upstream Commission

⁸⁵Section 100(1) of the PIA

⁸⁶Section 9(4) of the PIA

⁸⁷Section 47(2c) of the PIA

⁸⁸Section 52(7) of the PIA

⁸⁹Section 240(2) of the PIA

⁹⁰Section 318 of the PIA.

⁹¹Section 74(2)(a)(i) of the PIA

⁹²Section 92(3)(a) of the PIA

⁹³Section 302(6) of the PIA

⁹⁴Section 302(6) of the PIA

7.7 Other Fiscal Provisions

a Stability Clauses

Any stability provision or guarantee provided by NNPC with respect to OPLs or PMLs to be converted is null and void.⁹² To this extent fiscal stability clauses provided by the NNPC in any Production Sharing Contract in relation to OPLs and OMLs upon such conversion will be null and void under the PIA.

b Gas Utilization Incentive

Companies engaged in midstream petroleum operations, downstream gas operations and large-scale gas utilization industries enjoy the gas utilization incentives set out under Section 39 of the Companies Income Tax Act which includes an initial tax-free period of 3 years, to be renewed for 2 years subject to satisfactory performance of the business.⁹³

In addition to the above, companies investing in gas pipeline enjoy an added benefit of a tax-free period of 5 years upon the expiry of the gas utilization incentives set out above.⁹⁴





LAWS AND REGULATIONS

8

PRINCIPAL PETROLEUM LAWS AND REGULATIONS

8. PRINCIPAL PETROLEUM LAWS AND REGULATIONS

With the PIA in force, the laws regulating activities in the oil and gas industry in Nigeria have changed. In this Chapter, we considered the applicable laws and regulations regulating the Nigerian petroleum industry. These laws and regulations are as follows:

8.1 The PIA 2021

The PIA is the principal petroleum law in force governing the exploration, production, and distribution of petroleum in Nigeria amongst others. The new legislation was introduced with an objective of establishing a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, provides clarity, enhances government revenue as well as ensuring a good return for investors.

The PIA has repealed the following pieces of legislation:

- a** Associated Gas Reinjection Act, 1979 and its amendments;
- b** Hydrocarbon Oil Refineries Act 1965;
- c** Motor Spirits (Returns) Act;
- d** Nigerian National Petroleum Corporation (Projects) Act;
- e** Nigerian National Petroleum Corporation Act, 1977 as amended but provided that the repeal will not take effect until when NNPC ceases to exist under section 54 (3) of the PIA;
- f** Petroleum Products Pricing Regulatory Agency (Establishment) Act, 2003;
- g** Petroleum Profit Tax Act will be repealed upon the completion of the conversion of OPLs and OMLs to PPLs and PML respectively in accordance with section 92 of the PIA but provided that the repeal will apply from the effective date to any new acreage granted under the PIA; and
- h** Deep Offshore and Inland Basin Production Sharing Contract Act will be repealed upon the completion of the conversion of OPLs and OMLs to PPLs and PML respectively in accordance with section 92 of the PIA but provided that the repeal will apply from the effective date to any new acreage granted under the PIA.

Section 311 of the PIA provides that any Act, subsidiary legislation or regulation, guideline, directive and order made under any principal legislation repealed above or amended by the PIA, will in so far as it is not inconsistent with the PIA, will continue to be in force as if they had been issued by the Upstream Commission or Authority under the PIA until revoked or replaced by the PIA or any subsidiary legislation made under the PIA. Accordingly, an OML granted under the Petroleum Act will remain valid and continue to have effect subject to the terms and conditions under the PIA.

8.2 The Department of Petroleum Resources Guidelines and Regulations

The DPR Guidelines and Regulations form integral part of the body of laws regulating the petroleum industry in Nigeria. By the provisions of section 311 of the PIA highlighted above, these Guidelines and Regulations will continue to have effect as existing laws in so far they do not conflict with the PIA pending when they are repealed, revoked or replaced by the PIA or any subsidiary legislation made under the PIA.

There are several DPR Guidelines regulating the different petroleum industry value chains and some include:

a Upstream

Procedure Guide for the Design and Construction of Oil and Gas Surface Production Facilities;

a Midstream

Guidelines for the Establishment of Hydrocarbon Process Plants (Petroleum Refinery and Petrochemicals Plant); and

a Downstream

Guidelines for Approval to Construct and Operate Petroleum Products Filling Station.

More details on other applicable DPR Guidelines can be obtained from this link [DPR Guidelines – Department of Petroleum Resources](#)

8.3 The Companies Income Tax Act

The Companies Income Tax Act is the primary legislation governing the taxation of all companies in Nigeria including companies undertaking upstream, midstream or downstream petroleum operations.⁹⁵

⁹⁵Section 302 (1) of the PIA





9

ENVIRONMENTAL, HEALTH AND SAFETY LAWS

9. ENVIRONMENTAL, HEALTH AND SAFETY

In this Chapter, we highlight the principal environmental laws regulating environmental issues in the Nigerian petroleum industry following the enactment of the PIA. These laws and regulations include as follows:

9.1 Principal Environmental Laws

a The PIA 2021

The PIA is the principal law that regulates environmental issues in the oil and gas sector. In this regard, section 304(3) of PIA provides that where matters relate to the environment, the Upstream Commission and Authority shall have responsibility over all environmental matters in respect of upstream petroleum operations and midstream and downstream respectively except in relation to environmental impact assessment which shall be in accordance with applicable laws

b The Environmental Impact Assessment Act 1992

Section 2 of the Environmental Impact Assessment Act 1992 (the “EIA Act”) sets out the legal framework for the procedure and methods of carrying out an 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.

c The Oil in Navigable Waters Act 1968

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

d 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.

e 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.

f 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 exploration and production in order to curb negative effects on the environment and establishes NOSDRA. NOSDRA is under the Federal Ministry of Environment and is responsible for coordinating 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.

g 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.

h 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 provides preventive measures that may be taken to minimize damage caused by pollution. 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.

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

The EGASPIN provides standards for environmental quality control, provide a comprehensive document on pollution abatement technology, and to standardize the environmental pollution abatement and monitoring procedure. This is sought to be achieved by monitoring the discharges into the environment in the seven stages of operations, i.e., exploration, drilling and development, production, terminal operations, hydrocarbon processing, oil transportation and marketing operations.

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

The Regulations are aimed at the reduction of the environmental and social impact of gas flare, protection of the environment, prevention of the waste of natural resources and the creation of social and economic benefits from gas. The PIA gives the Upstream Commission, the right to take free of charge natural gas that is destined for flaring at the flare stack.⁹⁶

⁹⁶Similar provision is found in section 2(1) of the Flare Gas Regulations authorizes the federal government to take all flare gas without payment of any cost or royalty.

9.2 Principal Environmental Regulators

a The Upstream Commission

The PIA confers on the Upstream Commission with the responsibility of regulating all environmental matters in respect of upstream petroleum operations except in relation to environmental impact assessment.

b Nigerian Midstream and Downstream Petroleum Regulatory Authority

The PIA confers on the Authority with the responsibility of regulating all environmental matters in respect of midstream and downstream operations except in relation to environmental impact assessment.

c The Federal Ministry of Environment

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

d The National Oil Spill Detection and Response Agency

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



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For further information or to learn more about our oil and gas capabilities, please contact:

Ayuli Jemide | *Lead Partner*

ayuli@detailsolicitors.com

Mobile: +234 (0) 803-3100-549

DL: +234 (0) 1 2710104

Office: +234 (0) 1 2771400-5

Dolapo Kukoyi | *Managing Partner*

dolapo@detailsolicitors.com

Mobile: +234 (0) 805-4720-067

Mobile: +234 (0) 805-8202-832

DL: +234 (0) 1 2771407

Office: +234 (0) 1 2771400-5

Anthony Ezeamama | *Senior Associate*

anthony@detailsolicitors.com

Mobile: +234 (0) 803-3482-067

Office: +234 (0) 1 2771400-5

Team Members

Matthew Phillip-Awolu | *Associate*

Oghenekevwe Ibodje | *Solicitor*

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Detail Commercial Solicitors
DCS Place, 8, DCS Street,
Off Remi Olowude Way
Lekki Phase 1, Lagos, Nigeria
+234(0) 12771400-5
www.detailsolicitors.com