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Practical cross-border insights into oil and gas regulation

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# Nigeria

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## 1 Overview of Natural Gas Sector

**1.1 A brief outline of your jurisdiction's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.**

Nigeria has immense gas resources. The country as at 2021 has proven gas deposits of 206.53 trillion cubic feet, making Nigeria the largest gas reserve holder in Africa and one of the largest globally.

These resources are distributed between associated and non-associated gas. Nigeria holds more non-associated gas in its reserves than associated gas; however, the latter accounts for more than half of the total gas produced every year. Despite its abundant natural gas reserves, Nigeria's natural gas reserves are underutilised. The average production of natural gas per day in 2021 stood at 7,177.53 million standard cubic feet ("MMscf") of gas per day, the majority of which is exported as liquefied natural gas ("LNG").

As at 2020, Nigeria produced 22 million tonnes per year ("tpy") of LNG annually. In May 2020, Nigeria LNG Ltd ("NLNG") signed a USD 3 billion corporate loan to finance the construction of its seventh LNG train. Currently, NLNG operates a liquefaction complex with six existing liquefaction trains and associated facilities such as export jetties, 23 dedicated LNG ships and a materials offloading jetty with a combined capacity of 22 million tpy of LNG and 5 million tpy of liquefied petroleum gas ("LPG") and condensates. Train 7 will add approximately 8 million tpy of LNG and increase NLNG's overall capacity to 30 million tpy, and is expected to feed gas purchases and further reduce the level of gas flaring in the country.

The main natural gas pipeline transportation infrastructure in Nigeria are: the Alakiri–Obigbo–Ikot Abasi Pipeline (the Eastern Network); the Escravos–Lagos Pipeline System (the Western Network); and the Ajaokuta–Kaduna–Kano Gas Pipeline (currently under construction). These pipelines are all owned by the Nigerian Gas Processing and Transportation Company ("NGPTC"), a subsidiary of the Nigerian National Petroleum Company Limited ("NNPC Limited"). Some upstream natural gas pipelines, gas-processing facilities and other related infrastructure have also been developed by independent gas producers for their operations.

Furthermore, the NNPC Limited has entered into contractual arrangements with private participants for certain oil and gas projects. Such projects include a 300 MMscfd capacity ANOH gas processing plant located at OML 53 in Imo State. The ANOH plant is being built by AGPC, an incorporated joint venture owned equally by Seplat Energy and the Nigerian Gas Company Limited ("NGC"), a wholly owned subsidiary of the NNPC Limited.

### 1.2 To what extent are your jurisdiction's energy requirements met using natural gas (including LNG)?

Nigeria's energy needs are met by a varied mix of energy sources which include firewood (used predominantly as cooking fuel in rural areas), hydro energy, refined petroleum products and natural gas. With respect to energy requirements for power generation, 80% of the on-grid power generation requirements is met using gas, while most of the remainder comes from hydro power. However, for off-grid power generation, the primary energy sources are Premium Motor Spirit ("PMS") and diesel. On the other hand, PMS is the predominant energy source for transportation in Nigeria.

### 1.3 To what extent are your jurisdiction's natural gas requirements met through domestic natural gas production?

Despite Nigeria's abundant natural gas resources, Nigeria continues to import anywhere from 40–60% of its LPG/cooking gas needs; however, NLNG has recently committed to supplying 100% of the LPG it produces to the Nigerian domestic market. Currently, the United States of America ("USA"), Algeria and Equatorial Guinea are regular exporters of LPG to Nigeria.

### 1.4 To what extent is your jurisdiction's natural gas production exported (pipeline or LNG)?

In 2015, Nigeria exported 929,844 MMscf of natural gas which represented 31% of its natural gas production.

However, as at December 2020, export of Nigeria natural gas was reported at 35,586.138 million cubic metres. LNG was exported to countries including Portugal, China, Spain, Brazil and the USA. In addition, through the West African Gas Pipeline, Nigeria supplies gas to some member countries of the Economic Community of West African States including Ghana, Benin and Togo.

## 2 Overview of Oil Sector

### 2.1 Please provide a brief outline of your jurisdiction's oil sector.

The Nigerian oil sector consists of upstream, midstream and downstream segments. The activities in the upstream segment include the exploration for, development and production of crude oil; the midstream segment encompasses operation of transportation pipelines and import or export of oil and related products and the downstream segment encompasses the refining of crude oil as well as the marketing, retailing and sale of petroleum products.

Nigeria's crude oil production capacity as at November 2021 was reported to be 1.4 million barrels per day ("bpd") (the Organization of the Petroleum Exporting Countries ("OPEC") Monthly Oil Market Reports – November 2021), which ranks Nigeria as Africa's largest producer of oil and a global top oil producer. Nigeria produces only high-value, low-sulphur content, light crude oils such as Bonny Light, Bonny Medium, Brass Blend, Escravos Light, Forcados Blend and Qua-Iboe Light.

### 2.2 To what extent are your jurisdiction's energy requirements met using oil?

Data relating to the extent to which oil is used in meeting Nigeria's energy needs is sparse. However, data from the United States Energy Information Administration states that petroleum and other liquids accounts for about 55.7% of the primary energy consumption in Nigeria as at 2019.

### 2.3 To what extent are your jurisdiction's oil requirements met through domestic oil production?

Nigeria has an estimated daily oil consumption of 60,000,000 litres of PMS, 14,133,866 litres of automotive gas oil, and 740,316 litres of household kerosene. Despite having a combined installed local refining capacity of 445,000 bpd, the refineries recorded 0.00% production in 2020, a sharp fall from the 2.56% production of 9,402 bpd recorded in 2019. Nigeria imports almost all the refined petroleum products used to meet its domestic oil requirements.

### 2.4 To what extent is your jurisdiction's oil production exported?

According to OPEC, Nigeria produced a total of 1,228 million barrels of crude oil per day in October 2021 and, within the same month, Nigeria's oil exports were estimated at 1,118 million bpd. This indicates that about 91% of Nigeria's oil production was exported within this period.

Top export destinations in the above regions were India, Spain, the Netherlands, South Africa, China, France, Portugal and the USA.

## 3 Development of Oil and Natural Gas

Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of oil and natural gas reserves including: principal legislation; in whom the State's mineral rights to oil and natural gas are vested;

Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

The Constitution of the Federal Republic of Nigeria and the Petroleum Industry Act ("PIA"), which are the principal oil and gas regulations, vest the entire property and ownership of petroleum, mineral oils and natural gas reserves in Nigeria and its territorial waters on the Federal Government of Nigeria ("FGN").

The key government agencies charged with the responsibility of regulating the oil and gas industry are:

- (i) The Ministry of Petroleum Resources: The Ministry of Petroleum Resources is headed by the Minister of Petroleum Resources ("Minister"), who is responsible for policy formulation and issuing applicable upstream licences.
- (ii) The Nigerian Upstream Petroleum Regulatory Commission ("Upstream Commission"): The Upstream Commission is charged with regulating activities in the upstream sector.
- (iii) The Nigerian Midstream and Downstream Petroleum Regulatory Authority ("Authority"): The Authority is charged with the responsibility of regulating activities of the midstream and downstream sector.
- (iv) The Federal Ministry of Environment ("FME"): The FME issues Environmental Impact Assessment Certificates with respect to projects in the oil and gas industry.
- (v) The Federal Inland Revenue Service ("FIRS"): The FIRS is responsible for the administration and collection of FGN revenue in the petroleum industry.
- (vi) The Nigerian Content Development and Monitoring Board ("NCDMB"): The NCDMB monitors and manages the development of Nigerian content in the Nigerian oil and gas industry.

The FGN has rolled out initiatives to boost oil and natural gas development. Such initiatives include the enactment of the PIA in August 2021, which overhauls the entire regulation of the oil and gas industry. Also, in March 2021, the FGN declared 2020–2030 the "Decade of Gas Development for Nigeria". The aim of this initiative is for Nigeria to entirely power its economy with gas by the year 2030. Furthermore, the FGN recently launched the National Gas Expansion Programme, which focuses on the distribution of compressed natural gas and LPG across gas stations operated by the NNPC Limited.

3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

Rights to develop oil and gas reserves in Nigeria are transferred through acquisition of the following statutory licences/leases: the Petroleum Exploration Licence ("PEL"), which is granted by the Upstream Commission (Section 71(1) of the PIA); the Petroleum Prospecting Licence ("PPL"); and Petroleum Mining Leases ("PML") which are granted by the Minister upon the recommendation of the Upstream Commission Section 3(1)(G) of the PIA. PPLs and PMLs may also be acquired from existing holders, subject to the consent of the Minister upon recommendation of the Upstream Commission. As regards PELs, it is the consent of the Upstream Commission that will be required to transfer the interest to the transferee.

These licences/leases are only issued to companies and may be operated under several model petroleum arrangements, which include:

- (i) Production Sharing Contracts (“PSCs”) for the exploration, development and production of petroleum on terms under which the financial-risk-bearing party recovers their cost from a share of production;
- (ii) Profit Sharing Contracts, a PSC whereby profit oil is provided in cash to the Government;
- (iii) Risk Service Contracts for the exploration, development and production of petroleum on terms under which the financial risk-bearing party recovers costs by payment in cash or in kind from the petroleum produced in the area;
- (iv) Concession Agreements for the exploration, development and production of petroleum, which may include an incorporated or unincorporated joint venture with the NNPC Limited; and
- (v) any other internationally recognised form of contract for the exploration and production of petroleum.

**3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).**

The different authorisations required in a typical field development process in Nigeria are as follows:

- (1) A PEL is obtained for the initial appraisal of an acreage. PEL holders have non-exclusive rights to explore for petroleum over the areas specified in the licence. It is granted for a period of three years and is renewable for a further period of three years subject to fulfilment of prescribed conditions, and it does not confer the right to win, extract, store or carry away petroleum discovered in the licensed area (Section 71(3) of the PIA).
- (2) A PPL is obtained, which permits the holder to drill exploration and appraisal wells and perform corresponding tests on an exclusive basis. A 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 (Section 72(1)(b) of the PIA). For onshore and shallow water acreages, PPLs are granted for a term not more than six years, comprising an initial exploration period of three years and an optional extension period of three years (Section 77(1) of the PIA). For deep offshore and frontier acreages, PPLs are granted for a term of not more than 10 years, comprising an initial exploration period of five years and an optional extension period of five years (Section 77(2) of the PIA).
- (3) A PML is obtained, which confers the exclusive right for the holder to carry out development and production of petroleum in the area defined in the lease. It is granted to a holder of a PPL who has satisfied all the conditions imposed on the licence and made commercial discovery. PMLs are valid for a maximum term of 20 years, which includes the development period of the leased area (Section 86(1) of the PIA) and may be renewed where certain conditions in the PIA are met.

**3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?**

Prior to the enactment of the PIA, the FGN’s participation in the development of oil and natural gas reserves was carried out through the Nigerian National Petroleum Corporation, established pursuant to the Nigerian National Petroleum Corporation Act 1977. However, the PIA has now replaced the Nigerian National Petroleum Corporation with the NNPC Limited, which will operate as a commercial entity as opposed to being a statutory corporation.

Although oil and gas companies may be given exclusive exploration and production rights over acreages for the periods specified under their licences/leases, the FGN, through the NNPC Limited, has the right to participate up to 60% in the contract.

**3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?**

Nigeria derives value from oil and natural gas development through taxes, royalties, rents and participation in exploration and production activities either solely or under a petroleum arrangement structure with private investors.

**Taxes:** Under the PIA, hydrocarbon tax is payable by upstream companies carrying out onshore and shallow water operations at the varied rates of between 15% and 30% (Section 260(1) of the PIA). The petroleum products subject to hydrocarbon tax are crude oil, field condensates and natural gas liquids derived from associated gas and produced in the upstream of the measurement points (Section 260(1)(a) of the PIA).

In addition, Companies Income Tax applies to all companies involved in the upstream, midstream and downstream petroleum operations at a varied rate of between 0% and 30%, depending on the companies’ turnover (Section 302(1) of the PIA). However, upstream companies that do not convert their Oil Prospecting Licences (“OPLs”) to PPLs or Oil Mining Leases (“OMLs”) to PMLs will continue to be subject to the Petroleum Profit Tax Act regime. Other applicable taxes include the Tertiary Education Tax at 2.5% of assessable profits.

**Royalties:** All production of petroleum, including production tests, is subject to royalties. The royalties are payable at their applicable rates monthly into the Federation Account and verifiable by the Upstream Commission (Sections 6 and 9(2) of the Seventh Schedule to the PIA). For crude oil and condensates, the applicable royalties are based on price and production, whereas the royalties for natural gas and natural gas liquids produced are based on production.

**Rents and fees:** In addition to royalties, holders of PPLs or PMLs are required to pay rents and production profit shares to the Government; rents are payable in the amount and time prescribed in the licence or lease in the PIA or regulations made by the Upstream Commission (Section 100(1) of the PIA).

**Other fees and levies imposed under the PIA:** Other fees and levies payable by companies depends on the segment where they operate, including:

- (i) contributions to the Host Community Development Trust Fund;
- (ii) signature bonuses;
- (iii) levy to the Nigerian Midstream and Downstream Petroleum Authority Fund;
- (iv) payments to the Frontier Exploration Fund; and
- (v) contribution/levy to the Midstream and Downstream Gas Infrastructure Fund.

### 3.6 Are there any restrictions on the export of production?

Under the PIA, gas producers are restricted from exporting gas except when they meet their domestic gas supply obligation (Section 110(14) of the PIA). Where a gas producer supplies natural gas to midstream gas export operations in violation of this provision, the Upstream Commission may impose other sanctions as prescribed under its regulations.

### 3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

The inflow and outflow of foreign capital is principally governed by the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (“FEMM Act”) and the various guidelines and circulars issued by the Central Bank of Nigeria (“CBN”) and the CBN Foreign Exchange Manual (“Manual”). The FEMM Act and the Manual require all exporters, including petroleum producers, to open, maintain and operate a foreign currency domiciliary account in Nigeria, into which export proceeds from sold crude oil will be paid.

Nigerian law requires every foreigner investing in a local business to procure a Certificate of Capital Importation (“CCI”) representing an inflow either in the form of cash (equity or loan) plant and machinery, or any combination into Nigeria for investment or otherwise in a Nigerian entity. The CCI facilitates unlimited repatriation of capital outflows, dividends, profits, interest/coupon and capital or other investments by foreign investors, at official foreign exchange market rates in any convertible currency, subject to payment of all relevant taxes.

Specifically, the PIA also subjects the transfer overseas of any funds by an incorporated joint venture company to the regulations and policies of the CBN (Section 6 of the Second Schedule to the PIA).

### 3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

Essentially, transfer of oil and gas interests are subject to consent and approvals of applicable regulators as highlighted in questions 3.2 above and 7.6 below.

### 3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

Yes, participants are obliged to provide guarantees in relation to oil and natural gas development. Specifically, the PIA requires that a model licence or lease in a bid round must include a clause detailing guarantees to be provided by such licensee or lessee regarding the performance of its licence or lease obligations.

### 3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

Rights to develop oil and natural gas reserves may be pledged as security. This is permitted by Section 95(5) of the PIA, which provides that a holder of a licence or lease may, by way

of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interests under the applicable licence or lease, or grant a security interest in respect of the interest, provided that the consent of the Upstream Commission is obtained.

### 3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

In addition to the authorisation issued to develop oil and gas reserves in Nigeria, PML holders must acquire the following approvals from the Upstream Commission depending on the nature of their operations:

- (i) an Oil and Gas Surface Facility Operating Permit; and
- (ii) an Offshore Safety Permit.

Other applicable authorisations include:

- (i) an Environmental Impact Assessment Certificate obtained from the FME;
- (ii) a Building/Development Permit from the town planning authorities; and
- (iii) a Nigerian Content Plan approved by the NCDMB.

### 3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

The decommissioning and abandonment of oil and natural gas facilities is regulated by the PIA, other applicable international conventions such as the 1982 United Nations Convention on the Law of the Sea and contractual obligations on decommissioning.

Accordingly, Section 232(2) and (3) of the PIA provide that decommissioning and abandonment shall not take place without the written approval of the Upstream Commission or the Authority, as the case may be. The Upstream Commission or the Authority shall, by written notice, require a lessee, licensee or permit holder to commence the decommissioning and abandonment of a well, installation, structure, utility and/or pipeline, where such decommissioning and abandonment is required under good international petroleum industry practices or guidelines.

Furthermore, Section 233 of the PIA requires lessees and licensees in the upstream and midstream segments of the petroleum industry to prepare a decommissioning and abandonment plan (where none exists) and to set up, maintain and manage a decommissioning and abandonment fund, which will be held by a financial institution not affiliated with the holder of such lease or licence. This fund will be used to cover the costs associated with the decommissioning and abandonment of wells, installations, structures, utilities, plants and/or pipelines used in oil and natural gas development.

### 3.13 Is there any legislation or framework relating to gas storage? If so, what are the principal features/requirements of the legislation?

The principal piece of legislation that governs bulk storage activities is the PIA. By virtue of the PIA, in order to undertake the bulk storage of natural gas, one must obtain a bulk gas storage licence (Section 132(1) of the PIA). The provision of

the law is administered by the Authority. Under the PIA, a key factor to be considered by the Authority before granting a bulk gas storage licence is the economic case for a bulk gas storage facility, including the potential demand for use (Section 132(2) of the PIA).

The specific guidelines on gas storage are the Guidelines for the Establishment and Operations of Gas Storage and Utilisation Facilities in Nigeria 2020 (“Guidelines”), issued by the defunct Department of Petroleum Resource (“DPR”) (now replaced by the Authority). The Guidelines prescribe LPG storage vessel specifications and requirements, applicable storage conditions for LPG retailers’ outlets/locations, minimum requirements for storage vessel/tanks in respect of autogas refuelling stations and add-on gas facilities in Nigeria.

**3.14 Are there any laws or regulations that deal specifically with the exploration and production of unconventional oil and gas resources? If so, what are their key features?**

There are no laws that deal specifically with the exploration and production of unconventional oil and gas resources. The provisions of applicable oil and gas laws, including the PIA, the Environmental Impact Assessment Act, the Nigerian Oil and Gas Industry Content Development Act and regulations issued by the various applicable regulators will apply here.

**3.15 What has been the impact, if any, of the “energy transition” on the oil and gas industry in your jurisdiction, and are there any policies or laws/regulations that require the oil and gas industry to decarbonise? Are there any policies or laws/regulations relating to the development of low-carbon hydrogen and its use in conjunction with on in place of natural gas, or the development of carbon capture and storage?**

Nigeria appears unprepared for a comprehensive energy transition at this time, given its over-dependence on fossil fuels as a major source of revenue. Oil and gas revenue in 2021 accounted for about 86% of the country’s total exports revenue according to OPEC. Accordingly, a displacement of petroleum (particularly crude oil) as the main energy source may adversely affect the Nigerian economy.

However, major oil companies are shifting their investment strategy and refocusing their business optimisation process on energy transition, and this will impact heavily on the Nigerian oil and gas industry. As an example, Shell’s strategy to diversify into other forms of energy besides fossil fuels will potentially have a significant impact on Nigeria’s petroleum industry, considering Shell’s role as the largest investor in the Nigeria’s oil and gas industry. However, Shell’s strategy to grow its alternative energy businesses while consolidating its leading position in natural gas production aligns with the Nigerian Government’s plan to use gas as bridge fuel towards a clean energy future. Other energy transition action points taken by these companies include changing their names to reflect their energy transition goals, such as Total Nigeria Plc changing its name to Total Energies and Seplat Petroleum Development Company Plc changing its name to Seplat Energy Plc.

In another vein, on 24 September 2021, during the COP26 summit in Glasgow, Nigerian President Muhammadu Buhari pledged that Nigeria will cut its carbon emissions and reach net-zero by 2060, underlining the key role of gas in Nigeria’s energy transition plan.

The most recent legislative support on energy transition is found in the PIA, which prohibits the flaring or venting of

natural gas (Section 105(1) of the PIA) and prescribes fines and penalties for gas flaring (Section 104 of the PIA). The PIA also requires producers of natural gas to, within 12 months of the effective date of the PIA, submit a natural gas flare elimination and monetisation plan to the Upstream Commission (Section 108 of the PIA).

## 4 Import / Export of Natural Gas (including LNG)

**4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).**

In addition to question 3.6 above, cross-border sales or deliveries of natural gas are typically regulated by the contract between the parties. It should be noted that Section 2 of the Pre-shipment Inspection of Exports Act requires that crude oil exports (including petroleum products) from Nigeria be inspected by pre-shipment inspection agents. Exporters of petroleum products are also required to maintain and operate a foreign currency domiciliary account in Nigeria, into which all export proceeds must be paid.

Furthermore, based on VAT (Modification) Order 2020, locally produced LPG is exempt from Value-Added Tax (“VAT”), whilst natural gas and imported LPG attracts VAT at the rate of 7.5%.

## 5 Import / Export of Oil

**5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.**

See question 4.1 above on pre-shipment inspection requirements. Furthermore, in accordance with Section 174 of the PIA, a licence from the Authority is required in order to establish, construct or operate a terminal or other facility for the import or export of crude oil. Exporters of oil and petroleum products are also required to obtain a certificate of quality and quantity (Section 32(ii) of the PIA), as well as a wholesale petroleum liquids supply licence (Section 197 of the PIA) from the Authority.

Section 1 of the Oil Terminal Dues Act requires the payment of terminal dues by vessels evacuating crude oil at terminals in Nigeria. In addition, while evacuating crude at oil terminals, ocean tankers must comply with the Crude (Transportation and Shipment) Regulations, which require the verification of all declarations concerning the capacity of vessels used in lifting crude.

## 6 Transportation

**6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).**

Natural gas pipelines and infrastructure, such as gas processing and storage facilities, can be owned by public and private parties. Section 135 of the PIA provides that a gas transportation pipeline licence will be required in order to own, construct, operate and maintain a gas transportation pipeline. Prior to the grant of such licence, the Authority will consider whether an economic case can be made for the gas transportation pipeline and whether there is a potential demand for its use.

In addition to the above, the Nigerian Gas Transportation Network Code (“Network Code”) was issued in August 2020

by the DPR. The Network Code is a set of legal and contractual rules that specifies the terms for the use of the gas transportation system covered in the Network Code, which currently comprises the Escravos–Lagos Pipeline System and the Oben–Ajaokuta System (“Transportation Network”).

The key objectives of the Network Code are to: ensure non-discriminatory access to the Transportation Network; introduce uniform and standard contract terms that will govern the relationship between the parties to the gas transportation arrangements, which is mainly the transporter/operator (i.e. the NGC and the shippers); ensure cost-reflective tariffs for pipeline services; enhance competition; guarantee discipline in the use of the Transportation Network; and support the growth and development of the domestic gas market.

Currently, the NGC or its transportation subsidiary, the NGPTC, owns and operates several gas-transportation systems.

Several franchise arrangements exist between the NGPTC and private parties, including Shell Nigeria Gas Limited, Gaslink Nigeria Limited and Falcon Corporation Limited, for the development of gas distribution infrastructure in specified markets on different public-private partnership contract models.

**6.2 What governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?**

The PIA, Oil Pipelines Act, Oil and Gas Pipelines Regulations and the DPR Guidelines for the Design, Construction, Operation and Maintenance of Oil and Gas Pipeline Systems provide the legal and regulatory framework for the construction and operation of oil and gas pipelines as well as associated infrastructure.

The PIA requires a person seeking to construct and operate oil and natural gas transportation pipelines in Nigeria to obtain either a Gas Transportation Pipeline Licence or Petroleum Liquids Transportation Licence from the Authority. These licences confer exclusive rights to own, construct, operate and maintain an oil and gas transportation pipeline within the specified routes as defined in the licence.

The procedure for applying for these licences is provided in the DPR Guidelines for the Design, Construction, Operation and Maintenance of Oil and Gas Pipeline Systems, which has been adopted by the Authority. The process includes obtaining a permit to survey the routes for pipelines and a licence to construct.

**6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?**

Under the provisions of Section 127 of the PIA, a licensee or permit holder is entitled to rights of way for the purpose of the laying, operation and maintenance of pipelines through or across the areas that the licence or permit holder may require for carrying on gas operations under the applicable licence or permit. This licence confers on the holder the right to enter upon the land, take possession of, or use a strip of land of such width as specified in the licence upon the route specified in the licence.

However, it should be noted that pursuant to Section 115 of the PIA, the licence or permit is issued subject to the applicant’s compliance with the provisions of the Land Use Act relating to compensation for acquisition of land. Accordingly, the licensee must acquire third-party lands where applicable in order to carry out the pipeline operations. Government authorities

may facilitate access to land through compulsory acquisition, provided that such acquisition is carried out for overriding public interest in accordance with Section 28 of the Land Use Act. Furthermore, depending on the proposed pipeline route, a licensee may also require the consent of a state governor to lay pipelines across state lands.

Licensees may also be required to obtain development permits under the urban and regional town-planning laws of the various states to lay pipelines or build infrastructure.

**6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?**

Access rights to oil and gas transportation pipelines are generally regulated by law. In this regard, Sections 32(o) and 133(3) of the PIA empower the Authority to ensure third-party access to facilities and pipelines operated under a gas processing licence, transportation pipelines and transportation networks.

Gas transportation pipeline licences are granted with third-party access right provisions. Furthermore, pursuant to the Network Code, shippers are required to enter into suites of contracts with the pipeline operator for the purpose of delivering and off-taking gas from the Transportation Network.

**6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?**

Gas transportation systems in Nigeria are generally owned by the NGC/NGPTC. These pipelines include the Escravos–Lagos Pipeline system, the Oben–Ajaokuta Pipeline system and the Obiafu/Obrikom–Oben Pipeline system (“System”). Interconnection is regulated through the Network Code and Network Entry/Exit Agreements which specify the terms and conditions for delivery or offtake of gas from the System.

Private entities such as Falcon Corporation and Shell Nigeria Gas Limited have constructed interconnected distribution pipelines for the purpose of delivery and offtake of gas from the System. Most of these pipelines are operated by the private entities on terms that they will be transferred to the NGPTC upon expiration of their franchise.

**6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?**

Gas transportation pipeline licences issued by the Authority carry an obligation to commit to third-party access (Section 135(1) of the PIA). Section 136(a) of the PIA provides that the holder of a transportation pipeline licence is obliged to make available in its offices the procedure for obtaining and terminating transmission, and interconnection services for natural gas on a third-party access or open-access basis as determined in the licence, and to publish the tariffs established by the Authority in this regard. The holder of a licence is also required to provide access to third parties non-discriminatorily where the licence is granted on a common-carrier basis.

### 6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

Parties are free to enter into agreements such as Crude Oil Transportation Agreements and Gas Transportation Agreements, which set out the terms, tariff rate and delivery points. It should be noted that the Authority is empowered to set tariffs applicable to the transportation of oil and natural gas. Thus, tariffs charged by licensees for the use of their facilities must conform with the tariff set by the Authority (Section 123 of the PIA). The tariff applicable to the natural gas transmission network under the Gas Pricing for Textile and Manufacturing Sector Notice 2019 is USD 0.8/thousand cubic feet (“kcf”). The Authority may approve negotiated tariffs where one or more wholesale customers connect with a pipeline to a transportation network, where justified in the opinion of the Authority (Section 122(4) of the PIA).

The tariff set by the Authority is arrived at on a cost-reflective basis, considering the transportation, distribution and processing of petroleum. The tariff shall permit a reasonable return on investments by licensees. The tariff shall be non-discriminatory between customers with similar characteristics and will be determined in US dollars or other foreign currency as applicable, with a view to attracting foreign investment. Tariff payments may be made in the respective foreign currency or equivalent value of Naira at the open market rate published by the CBN.

## 7 Gas Transmission / Distribution

### 7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

There are no restrictions on private ownership of natural gas distribution networks in Nigeria.

The NGC, a subsidiary of the NNPC Limited, appears to maintain a dominant position in the Nigerian gas distribution network, considering that they are the owners of three major transportation pipelines in the country. The NGC has been unbundled into a gas processing and transportation company – the NGPTC – and a marketing and distribution company – the Nigerian Gas Marketing Company (“NGMC”).

Private parties such as Shell Nigeria Gas Limited, Gaslink Nigeria Limited and Falcon Corporation Limited operate franchises for the development of gas distribution infrastructure in specified markets.

### 7.2 What governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

In order to operate a gas distribution network, a gas distribution licence is required; this authorises a holder to develop, operate and maintain an economical gas distribution network for the safe and reliable conveyance of natural gas, distribute and sell natural gas on request to customers willing and able to pay for connection to the gas distribution network.

Where it is economically practicable, the holder of a gas distribution licence may connect all customers within its local distribution zone, in accordance with regulations.

Licence holders will be required to offer and publish terms and conditions of access to its gas distribution network and publish gas prices applicable to different classes of customers, which have been approved by the Authority.

In addition to the gas distribution licence, an Environmental Impact Assessment Certificate and Building/Development Permit will be required for the construction of the distribution network infrastructure.

### 7.3 How is access to the natural gas distribution network organised?

Access rights to gas distribution networks are generally regulated by law. The PIA empowers the Authority to ensure third-party access to facilities and pipelines operated under a gas processing licence, transportation pipelines and transportation networks.

Gas distribution licences may contain provisions which require giving third-party access to the gas distribution network to a gas retailer or gas distributor on its own initiative. The licence may also contain provisions permitting access to a gas retailer for the purpose of connecting to a gas distribution network under terms and conditions agreed to by the parties.

### 7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

In accordance with the PIA, gas distribution licensees are obligated under their gas distribution licence to connect all customers within their local distribution zone if economically practicable to do so. There appears to be no element of compulsion in the law where it is not economically practicable for the licensee to accommodate new customers within its gas distribution network.

Furthermore, pursuant to the contracts between NGMC and the different gas distribution franchisees, these franchisees are mandated to carry out activities for gas market development, construction of necessary infrastructure and marketing of gas within the distribution zone, in a bid to grow the customer base within the franchise areas. This invariably implies that gas distribution franchisees will be required to expand their network to connect new customers within their franchise areas.

### 7.5 What fees are charged for accessing the distribution network, and are these fees regulated?

Gas distribution licensees may charge tariffs for accessing the distribution network. The tariffs charged for accessing the gas distribution network must conform with those set by the Authority.

The tariff set by the Authority is arrived at on a cost-reflective basis, considering the transportation, distribution and processing of petroleum. The tariff shall permit a reasonable return on investments by licensees. The tariff must also be non-discriminatory between customers with similar characteristics and will be determined in US Dollars or other foreign currency as applicable, with a view to attracting foreign investment. Tariff payments may be made in the respective foreign currency or equivalent value of Naira at the open market rate published by the CBN.

### 7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

In terms of acquisition of assets forming part of the distribution network, the notification and approval of the Federal

Competition and Consumer Protection Commission (“FCCPC”) will be required to acquire such asset from another entity where it is within the notification threshold set by the FCCPC in its regulation.

For transfer of an interest in an asset, the following will be required:

- (i) consent of the Authority;
- (ii) notification and approval of the FCCPC as stated above; and
- (iii) direction of the FIRS on the applicable taxes.

## 8 Natural Gas Trading

**8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.**

The NGMC acts as marketer and distributor of natural gas within the country. The NGMC purchases gas from gas producers for sale to end customers, whilst the Gas Aggregation Company of Nigeria is a domestic intermediary responsible for ensuring and managing adequate supply of gas to the domestic market and acts as a liaison between gas producers and wholesale gas offtakers. In addition, NLNG is the major producing company and trader of LNG for export. The company has announced plans to enter into the Nigerian domestic LNG supply space from July 2022.

Furthermore, the Authority is empowered to develop arrangements and regulations for the safe and efficient trading of wholesale gas. Furthermore, the industry is beginning to experience a rising number of virtual gas pipeline companies that transport and trade gas through compressed natural gas and mini-LNG systems to underserved parts of the country. On a general note, Nigeria’s oil and gas market is not as sophisticated as other developed markets in terms of natural gas trading.

**8.2 What range of natural gas commodities can be traded? For example, can only “bundled” products (i.e., the natural gas commodity and the distribution thereof) be traded?**

We are not aware of any restrictions on the types of commodities that can be traded.

## 9 Liquefied Natural Gas

**9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.**

NLNG is the major producing company of LNG in Nigeria. The company is an incorporated joint venture owned in the following proportions: the NNPC Limited (49%); Shell Gas B.V. (25.6%); TotalEnergies Gaz & Electricité Holdings (15%); and Eni International N.A. N.V. S.à.r.l (10.4%). It owns a dedicated gas transmission system and liquefaction facility as well as a fleet of LNG vessels.

There are also other private sector players, such as Greenville Oil and Gas Company Limited, who produce LNG and supply to end customers located across Nigeria. The activities of these players and NLNG are regulated under the PIA and other applicable laws and regulations.

**9.2 What governmental authorisations are required to construct and operate LNG facilities?**

Approvals required include:

- (i) Gas Processing Licence issued by the Authority.
- (ii) Bulk Gas Storage Licence issued by the Authority.
- (iii) Nigerian Content Plan Approval issued by the NCDMB.
- (iv) Environmental Impact Assessment Certificate issued by the FME.
- (v) Building/Development Permit by the Town Planning Authority.

**9.3 Is there any regulation of the price or terms of service in the LNG sector?**

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 will be carried out annually, 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.

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 characterised by free market-based contracting for natural gas between willing buyers and willing sellers.

In turn, the Upstream Commission is also empowered to determine the pricing method to be utilised for gas supply to the domestic market under the domestic delivery obligations (Third Schedule, Paragraph (2)(ii), PIA).

**9.4 Outline any third-party access regime/rights in respect of LNG facilities.**

Under the PIA, the Gas Processing Licence issued to the LNG facility operator for the operation of its facilities requires that such operator is to operate its facilities subject to open-access commitments or, where the licence is issued for operations on the operator’s own account, provide third-party access in an equitable manner (Section 130(f) of the PIA).

## 10 Downstream Oil

**10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.**

The primary regulator of the downstream oil sector in Nigeria is the Authority.

The following activities in the downstream segment are subject to licences or permits issued by the Authority (Section 174(2) of the PIA):

- (i) the construction or operation of any facility for the distribution or sale of petroleum products to retail customers;
- (ii) the establishment, construction or operation of a depot for the storage of petroleum products; or
- (iii) undertaking distribution, marketing or retail trading of petroleum products.

The Authority may, by regulation, prescribe additional activities that can be undertaken only on the basis of a licence or permit issued by it (Section 174(3) of the PIA).

## 10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

The PIA establishes that retail trading of petroleum products may only be exercised by companies that have obtained a licence from the Authority in that regard. In relation to export activities, holders of a wholesale petroleum liquids supply licence can sell and deliver petroleum liquids to bulk customers in Nigeria or export the petroleum liquids to foreign entities.

Where there are petroleum product shortfalls in Nigeria, a licence to import any product shortfall may be assigned to companies with active local refining licences or proven track records of international crude oil and petroleum products trading.

Generally, the NNPC Limited is vested with the responsibility of selling the Nigerian Government's crude entitlements (Section 64(e) of the PIA).

## 11 Competition

### 11.1 Which governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

The FCCPC is vested with the authority to regulate and penalise anti-competitive practices in Nigeria by the Federal Competition and Consumer Protection Act 2018 ("FCCPA"). However, the PIA vests the Authority with sectoral responsibility to prevent anti-competitive behaviour with respect to midstream and downstream petroleum operations, subject to the provisions of the FCCPA (Section 211(1) of the PIA. See also Section 169(1) of the PIA).

### 11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The FCCPA generally empowers the FCCPC to tackle issues related to predatory pricing, monopoly, restrictive agreements and other antitrust-related practices that are intended to limit competition in the Nigerian market.

#### Anti-competitive agreements

Specifically, Section 59(1) of the FCCPA provides that any agreement among undertakings or decisions of associations of undertakings that cause or are likely to result in the prevention, restriction or distortion of competition in any market shall be unlawful and void. The prohibited acts include dividing markets by allocating customers, suppliers, territories or specific types of goods and services and limiting or controlling production or the distribution of any goods or services, markets, technical development or investment (Section 59(2) of the FCCPA).

#### Abuse of market dominance

Abuse of a dominant position occurs where an "undertaking enjoys a position of economic strength enabling it to prevent effective competition being maintained on the relevant market and having the power to behave to an appreciable extent independently of its competitors, customers and ultimately of the consumers" (Section 70(2) of the FCCPA).

### 11.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

The FCCPC has a broad range of powers to apply and enforce the FCCPA (Section 18 of the FCCPA). These powers include the ability to:

- (i) prohibit the making or performing of an agreement or arrangements in respect of which the FCCPA relates (Section 18(3)(a) of the FCCPA);
- (ii) order the termination of any agreement or arrangement that pertains to withholding of supplies (Section 18(3)(b) of the FCCPA);
- (iii) prohibit the withholding of supplies or any threat relating thereto (Section 18(2)(c) of the FCCPA);
- (iv) declare any business practice as abuse of dominant position of market power and prohibit the same, after carrying out the necessary investigation (Section 18(2)(d) of the FCCPA); and
- (v) prohibit the discrimination of preferences in prices in other related matters (Section 18(2)(f) of the FCCPA).

### 11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

Under the FCCPA, the notification and the approval of the FCCPC is required before an undertaking can conclude a "merger" that is within the notification threshold set by the FCCPC in a regulation (Section 93(1) and (6) of the FCCPA). 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/undertaking and the target company/undertaking in, into or from Nigeria equals or exceeds NGN 1 billion or the annual turnover of the target company/undertaking in, into or from Nigeria equals or exceeds NGN 500 million.

The term "merger" on the other hand is defined in a wide sense under the FCCPA 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 means (Section 92(1) of the FCCPA):

- (i) the purchase or lease of the shares, an interest or assets of the other undertaking in question;
- (ii) the amalgamation or other combination with the other undertaking in question; or
- (iii) a joint venture.

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

- (i) beneficially owns more than one half of the issued share capital or assets of the undertaking;
- (ii) 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;
- (iii) is able to appoint or to veto the appointment of a majority of the directors of the undertaking; and
- (iv) is a holding company, and the undertaking is a subsidiary of that company as contemplated under the Companies and Allied Matters Act ("CAMA").

Furthermore, where there is a change of control in a PPL or PML, pursuant to Section 95(1), (3) and (14) of the FCCPA, the consent of the Minister is required.

## 12 Foreign Investment and International Obligations

**12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?**

A foreign company may invest in any enterprise in Nigeria, including oil and gas operations. They are required to register with the Nigerian Investment Promotion Commission (“NIPC”). A Business Permit Certificate will also be required for a non-Nigerian to establish a business or trade in Nigeria and this must be obtained from the Honourable Minister of the Interior before establishing any such business. Pursuant to Section 25 of the NIPC Act, foreign investors are guaranteed freedom from expropriation or nationalisation of their enterprise except where the acquisition of the enterprise is in the national interest or for a public purpose, and under a law that makes provision for (i) the payment of fair and adequate compensation, and (ii) a right of access to the courts for the determination of the investor’s interest or right, and the amount of compensation to which he is entitled.

In accordance with the PIA, a licence or lease will only be granted to a company incorporated and validly existing in Nigeria under the CAMA. Thus, foreign companies seeking to acquire interests in the natural gas sector will be required to incorporate the Nigerian subsidiary. Furthermore, a company with foreign shareholding is required to have a minimum share capital of NGN 10 million.

In order to import capital into Nigeria, a CCI must be obtained, which will aid repatriation through the authorised dealer in freely convertible currency of dividends and profits (net of taxes) attributable to the investment, payments in respect of loan servicing where a foreign loan has been obtained, and the remittance of proceeds (net of all taxes) and other obligations in the event of the sale or liquidation of the enterprise or any interest attributable to the investment.

It should be noted that, in accordance with the Nigerian Oil and Gas Industry Content Development Act, first consideration is given to companies that have at least 51% Nigerian ownership in the award of oil blocks, oilfield licences, oil lifting licences and all projects for which contracts are to be awarded in the Nigerian oil and gas industry.

**12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?**

Nigeria maintains membership of several international organisations such as OPEC which drive petroleum-related policies. As an OPEC member state, Nigeria’s production output has historically been influenced by the production quotas imposed on member countries by OPEC. The outcome of imposing these production quotas is to influence the price of crude oil in the global market.

Furthermore, Nigeria operates a dualist system to the effect that treaties must undergo domestication before they can be

applied in Nigeria (Section 12 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)). Thus, only treaties that have been signed and ratified can influence regulatory policy in respect of the oil and natural gas sector. Notably, some of the conventions which have been ratified include the International Convention on Civil Liability for Oil Pollution Damage 1969, the International Convention for the Prevention of Pollution from Ships 1973 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

## 13 Dispute Resolution

**13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.**

The PIA provides for two venues for the resolution of disputes arising from the operations of the PIA, namely the Federal High Court (“FHC”) (Section 218(7) of the PIA, see also Section 101) and the Tax Appeal Tribunal (“TAT”). Section 218(7) of the PIA vests the FHC with exclusive jurisdiction over disputes between licensees, lessees or permit holders and the Upstream Commission or Authority, whilst the TAT is empowered to resolve tax disputes with the FIRS. In addition, both the Upstream Commission and the Authority have powers to resolve certain disputes arising from the operations of the PIA. The Authority has powers under Section 33 of the PIA to issue regulations relating to dispute resolution and consumer protection. See also Sections 163, 179 and 180 of the PIA.

The PIA also provides for alternative dispute resolution mechanisms including arbitration, mediation and conciliation. Specifically, under Section 76(f) of the PIA, model licences and leases shall contain rules for resolution of disputes, including arbitration, mediation, conciliation or expert determination.

In addition, in 2021 the defunct DPR instituted the oil and gas industry Alternative Dispute Resolution Centre, which offers arbitration, mediation and conciliation services to the oil and gas industry.

**13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”)?**

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified by Nigeria on 17 March 1970 and was adopted into the Second Schedule of the Arbitration and Conciliation Act of Nigeria.

Nigeria became a signatory to the ICSID Convention on 13 June 1965 and has adopted the Convention in the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act 2004.

**13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?**

The PIA provides that any suit to be instituted against the Upstream Commission or the Authority or officers or employees of the Upstream Commission or Authority can only be instituted within three months of the act or omission complained of (Section 307(1) of the PIA). Furthermore, a written notice of intention to commence the suit must be served on the Upstream Commission or the Authority before a suit can be commenced against the Upstream Commission and the Authority or any officer of the Upstream Commission or Authority (Section 307(2) of the PIA).

**13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?**

Yes, there are instances where multinational oil and gas companies have successfully litigated cases against the Government of Nigeria. Such cases include *CNOOC v. AGF & 2 Ors* (2011) 4 TLRN 185, where the FHC held against the FIRS to the effect that an interest in an OML was not subject to VAT as it was neither a good nor a service. In addition, in the case of *Niger Delta Development Commission (“NDDC”) v. Nigeria Liquefied Natural Gas Limited* (of which 51% is owned by foreign

companies) (2010), the NDDC took the view that NLNG, as a gas-producing company operating in the Niger Delta Area, is liable to contribute 3% of its annual budget to the NDDC statutory fund. The Court of Appeal found in favour of NLNG that the NDDC Act and the Nigeria Liquefied Natural Gas Act were in conflict, but they are private special Acts giving special interests and cannot be enforced against each other.

## 14 Updates

**14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in your jurisdiction.**

The recent enactment of the PIA is expected to attract investment into the Nigerian oil and gas sector and serve as catalyst for the development of the sector and, ultimately, the Nigerian economy. Changes brought about by the PIA include the unbundling of the DPR to create the Upstream Commission and the Authority. Another significant development is that the NNPC will become the NNPC Limited, a limited liability company that will operate fully as a commercially oriented and profit-driven national petroleum company. Furthermore, in connection to its global strategy and plan to have 55% gas in its global portfolio by 2030, Shell has embarked on a full divestment of its onshore and shallow water portfolio in Nigeria, and it is expected that similar divestments by international oil companies may occur in the coming years.



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