

THE PETROLEUM INDUSTRY ACT, 2021

KEY HIGHLIGHTS

INTRODUCTION



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The long awaited Petroleum Industry Act, 2021 (the PIA or the Act) has been passed into law. Predictably, this development has elicited much interest given its protracted legislative journey and the far reaching changes it introduces to the legal and regulatory landscape of Nigeria's oil and gas sector.

The Act, which is divided into five (5) Chapters and three hundred and nineteen (319) Sections, contains landmark provisions which include the restructuring of the regulatory framework, commercialization of the Nigerian National Petroleum Corporation, introduction of new fiscal regimes for operators in the industry, social and economic benefit for host communities and so on. The Act professes lofty objectives including global competitiveness and development of strategic infrastructure.

Our publication takes a comprehensive look at the impact of these provisions on governance and institutions, administration, host communities, fiscal framework and miscellaneous matters like legal proceedings and transfer of assets.

Admittedly, the Petroleum Industry Act may not have addressed all the concerns by various stakeholders, ranging from the general concern that the mere

“For Africa’s top oil and gas producer, the Petroleum Industry Act, 2021 is much more than a mere legal and regulatory framework....it is an economic law that has significant implications for the Nigerian economy”

passage of the Act will not guarantee the much needed investments as well as issues pertaining to the declining relevance of fossil fuels as an energy source. Regardless, the enactment of the PIA should mark a turning point for Nigeria's petroleum industry and will address some of the challenges bedevilling it, foremost of which is the absence of a cohesive legal framework, particularly for the midstream and the downstream oil and gas sectors. In addition, the PIA provides an opportunity to update the diverse laws that the PIA replaces, some of which are now out of touch with current economic realities.

Our publication is not exhaustive. It merely provides a broad overview of the PIA whilst also highlighting key provisions, particularly where there is a marked departure from the pre-existing legal framework.

It is also useful to note that this publication is merely the first in a series, as we would also be issuing subsequent publications where we would be taking a a more detailed, deep-dive into select themes in the PIB.

I hope that you find this an enjoyable and enriching read. Please contact us if you have any queries or if you would like to explore how the PIA affects you.

Thank you.

GOVERNANCE AND INSTITUTIONS



Key Regulatory Institutions

While the Minister of Petroleum Resources (the Minister) retains its supervisory role over the oil and gas sector, his regulatory powers and functions is now devolved in large measure, to two principal regulatory bodies –

- Nigerian Upstream Regulatory Commission (the Commission)
- Nigerian Midstream and Downstream Regulatory Authority (the Authority)



MINISTER - POLICY FORMULATION

Formulation, monitoring and administering of government policy in the petroleum industry, as well as general supervision.



COMMISSION - UPSTREAM

Regulator for all upstream petroleum operations including technical, operational and commercial activities.

Vested with assets, funds, rights and liabilities of the Petroleum inspectorate or the DPR.



AUTHORITY - MIDSTREAM & DOWNSTREAM

Regulator for all midstream and downstream operations including operational, technical and commercial activities.

Vested with assets, funds, rights and liabilities of the DPR, PPPRA and, the PEF.

The Minister of Petroleum Resources

Whittling down of the Minister's Regulatory Powers

The powers of the Minister to make regulations with respect to the upstream, midstream or downstream sector has now been ceded to the Commission and the Authority respectively.

In addition, the exercise of certain powers by the Minister is now subject to the complimentary role of the Commission. Instances include the power of the Minister to grant, assign and revoke interests in Petroleum Prospecting Licenses and Petroleum Mining Leases, which is now subject to the recommendation of the Commission.

The position is now slightly different as it relates to the midstream and downstream, where the Authority is now vested with powers to issue, suspend or revoke, impose conditions for transfer, cancel, extend, and renew licences, permits and authorisations for midstream and downstream petroleum operations.

The Minister may however give general policy directives to the Commission on matters relating to upstream petroleum operations, and to the Authority on matters relating to midstream and downstream petroleum operations, as the case may be.

As it relates to commercial functions, the Minister is vested with a pre-emption right over petroleum and petroleum products in the event of a national emergency.

The Minister may also order a cutback of the levels of crude oil or condensate production in the context of international oil pricing agreements supported by Nigeria.



The Commission & The Authority



..... The Commission

Now assumes the regulatory functions hitherto performed by the DPR in the upstream, and regulates the technical, operational and commercial aspects of upstream petroleum operations, including implementing environmental laws, regulations and policies for the upstream.

May, with the approval of the Minister, renew and suspend licenses and leases, and issue guidelines pursuant to the PIA or regulations made thereunder, in respect of upstream petroleum operations



Technical Functions :

- Implementing policies and applicable laws and regulations for upstream petroleum operations.
- Issuing of permits for upstream activities and conducting bidding rounds for award of PPLs.
- Setting and enforcing approved standards and regulations for plants and installations used in upstream operations



Commercial Functions :

- Approving commercial aspects of FDPs for all licensees, lessees or permit holders.
- Ensuring cost control in upstream operations as well as implementing cutbacks of crude oil or condensate production ordered by the Minister.
- Developing cost studies and benchmarks for the evaluation of upstream petroleum operations.

..... The Authority

Assumes the DPR's technical, operational and commercial regulatory functions in the midstream and downstream petroleum industry as well as licensing of players in that sector.



Has power to determine the domestic base price and the prices applicable to wholesale customers of the strategic sectors and gas distributors, and may develop and enforce a framework on tariff and pricing for natural gas and petroleum products, based on the fair market value (which is indicative of a gradual transition to a market-led pricing model). The Authority would also be responsible for setting the DSO for gas and domestic crude oil supply obligations.

Administration of existing regulations and Codes such as the Natural Gas Transportation Network Code issued by the DPR (which provides for open and non-discriminatory access to gas pipeline infrastructure).

A **Midstream and Downstream Gas Infrastructure Fund** has been set up for the purpose of making equity investments of Government owned participating or shareholder interests in midstream and downstream gas operations, which may give a boost to projects aimed at increasing domestic consumption of natural gas such as the ANOH Gas Project. This would be funded via a levy chargeable by the Authority (via regulation) on 0.5% wholesale price of petroleum products and natural gas sold in Nigeria with added cost implications for operators in the sector.

Nigerian National Petroleum Company Ltd.

NNPC Limited
to operate as
commercialized entity with
no recourse to
government funding...



..... Status

NNPC Limited to be incorporated under the CAMA, within 6 months of the commencement of the PIA, with its shares held by the Ministry of Finance Incorporated and Ministry of Petroleum Incorporated on behalf of the FGN.

Shares in NNPC Limited would only be transferable with the approval of the FGN and endorsement by the National Economic Council on behalf of the Federation. Any such sale or transfer is to be at a fair market value and subject to an open, transparent and competitive bidding process.

..... Transfer of Assets & Liabilities

The Minister and MoF are to cause certain assets and liabilities of NNPC to be transferred to NNPC Limited within 18 months of the effective date of the Act. NNPC Limited would act as the agent of NNPC for the purposes of winding down the assets, interest and liabilities of NNPC.

Despite the repeal of the NNPC Act, NNPC (as we know it) would continue to exist alongside its successor, the NNPC Limited, until its assets and liabilities (other than those transferred) are transferred to the government. The Minister, MoF and AGF are responsible for developing a framework for the payment of liabilities not transferred to NNPC Limited.

The Act also contemplates an automatic transfer of employees of NNPC to NNPC Limited, on terms and condition which are not less favourable than that enjoyed by such employees prior to the assumption of their employment by NNPC Limited.

Existing Arrangements

Contractual and related arrangements entered into by NNPC prior to the effective date of the PIA and relating to transferred assets and liabilities, would continue to be effective and enforceable against or, in favour of NNPC Limited. While the PIA is not clear on how this would be effectuated, it nevertheless raises certain key considerations (for example as it applies to third party rights and obligations including guarantees, or whether it may trigger change of law provisions in certain commercial arrangements etc).

Transfer of assets and liabilities would be without prejudice to any limitation of action that may apply, neither would it give rise to any fresh cause of action, thus providing a measure of protection to NNPC Limited where the right of action is extinguished on account of effluxion of time, prior to the transfer.

Relatedly, it also appears that the FGN may provide guarantees in certain cases and presumably to affected third parties, as it relates to assets and liabilities to be transferred as well as related contracts etc.



IJV Model

NNPC Limited and its joint venture partners may transit to incorporated joint venture model on a voluntary basis (IJV). These IJVs will be exempt from the Fiscal Responsibility Act and the Public Procurement Act, thus enabling the government owned NNPC Limited to contract with investors without the rigors of open competitive bidding as required under the PPA.

The initial capitalization of an IJV and transactions required to create the IJV, are exempt from any additional tax liabilities provided that all assets, interests and liabilities previously held under the JOA are transferred to the IJV at net book value.

The PIA provides for certain rights for NNPC Limited as it relates to the IJVs, for example, a right of first refusal in the event of a sale by any shareholder of its shares in an IJV; prior consent of NNPC Limited for any change in control in respect of any holder of shares, as well as for transfer or creation of security over the shares in an IJV.

In a bid to encourage localization, IJVs are required to have their head offices and main operational offices in Nigeria and where desirous of having several streams of operations, the IJV parties have to incorporate separate companies.

ADMINISTRATION



Licensing



Companies intending to engage in more than one stream shall use a separate company for each stream.

Separation of Entities

The PIA now requires companies intending to engage in upstream, midstream and downstream operations to register and use a separate company for each stream.

Midstream and Downstream Licences

The Authority is now responsible for the grant, renewal and modification of licences for operations in the midstream and downstream sectors. However, for the establishment of refineries, the licence shall be issued by the Minister.

The Authority is required to publish a notification of any application for the grant or renewal of a licence in a manner prescribed by a regulation under the Act. Upon such publication, interested parties may comment or make representations to the Authority in respect of the application. The Authority is required to consider such third-party information and representations in the granting or renewing of any of these licences and is required to make its decision within 90 days of the application for the licence. Third parties may now also have greater access to facilities and pipelines for midstream and downstream petroleum operations.

Holders of a subsisting lease, licence or permit in the midstream and downstream sectors prior to the PIA are required to get new licences from the Authority within 18 months from the effective date of the Act. The duration of a licence or permit is to be specified by regulations made pursuant to the Act

The PIA provides clear parameters for the general duties and rights of a wholesale gas supplier and conditions applicable to wholesale gas suppliers. Provisions have also been made with respect to the general duties of a gas retailer as well as the duties, rights and conditions applicable to a gas distribution licence.



Non-Discrimination

A holder of a licence or permit shall not discriminate against customers, classes of customers or their related undertakers in respect of access, tariffs, prices, conditions or standards of service, except for justifiable and identifiable differences regarding matters such as quantity, transmission distance, length of contract, load profile, interruptible supply or other distinguishing features approved by the Authority.

PEL

The Commission is now responsible for the grant of Petroleum Exploration Licence (PEL). Term of PEL increased to 3 years, renewable for further 3 years. Further, a PEL may now be issued over an area covered by a PPL or PML.

Title over all acquired raw and interpreted data obtained by a licensee now vests in the Commission, although the licensee may licence such data for the use of a third party subject to the Commission's written authorisation.

PPL

The rights of a PPL holder has now been delineated into: (i) exclusive right to drill exploration and appraisal wells and (ii) non-exclusive right to carry out petroleum exploration operations. The Act also sets out provisions for bidding/award of PPL

Term of the PPL has been increased to:



6 years (3 years and 3 years extension) for onshore and shallow water acreages, and

10 years (5 years and 5 years extension) for deep offshore and frontier acreages.

Requirements for the extension of the term of a PPL includes entitlement of licensee to retain the area of any significant gas discovery for a retention period of not more than 10 years. In addition, the term of the PPL may be tolled for not more than 3 years, to take into consideration delays in the fulfilment of any term or condition on account of a force majeure.

PPL holder now required to commit to a work programme as well as other terms and conditions as determined by the Commission, supported by a bank guarantee, letter of credit or performance bond issued by a bank and in or performance bond issued by a bank and in an amount acceptable to the Commission.

PML

The conditions for grant of the PML expanded to include where commercial discovery of natural gas is made; and the approval of the FDP from the Commission.

Concept of “discovery of oil in commercial quantities” is now replaced by “**commercial discovery**” and expanded to include natural gas or condensates which can be economically developed in the opinion of the licensee after consideration of all relevant economic factors. The threshold of 10,000 barrels is also deleted.



PML may be granted separately for oil and for natural gas

Another major change is that grant of PML is now to be specific to each commercial discoveries within a PPL, such that the entire PPL is not extinguished but remains valid as it relates to the remainder of the area (where there are no commercial discoveries), until expiration.

Useful to note that henceforth, contracts, licences or leases or side letters with NNPC Limited shall not be confidential, but be published on the website of the Commission within one year after the effective date; and be provided to the Commission by a contractor of NNPC, licensee or lessee within 1 year after the Effective Date.

Notably, failure of the licensee to commence commercial production within the period stipulated in its FDP, (or where none is stipulated, 5 years for onshore and 7 years for shallow waters, deep offshore or a frontier acreage) could lead to revocation of the PML.

Formerly, renewal of PMLs was conditional on payment of fees and satisfaction of terms and conditions of the PML. Now, and perhaps in reaction to some cases on the interpretation of that provision, it has been amended to include that the renewal shall be on terms and conditions determined by the Commission, thus, retaining a measure of discretion to the Commission.

The provisions on automatic relinquishment of half of the lease area after 10 years, has been amended to provide for relinquishing of areas which are not producing as it relates to crude oil or natural gas.

Holders of OMLs or OPLs may convert to an PML or PPL by executing a conversion contract with the Commission. Interestingly, the conversion contract is required to embody a clause terminating all outstanding litigation related to the OPL or OML. It would also nullify any stability provisions or guarantees provided by NNPC in respect of the OPLs or OMLs to be converted. Note however as it relates to OPLs, that, despite the conversion, the PPL would not benefit from the enhanced term applicable to PPLs by virtue of the Act.

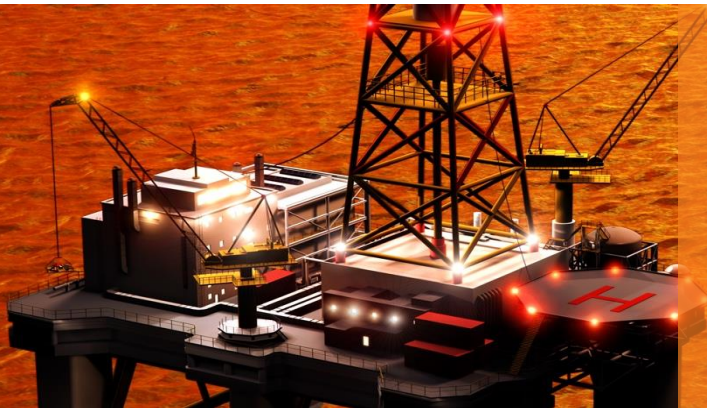
Assignment of PML, PPL & PEL

Ministerial consent for assignment of an OPL or PPL is now subject to the recommendation of the Commission. However, for PEL, only the consent of the Commission is required for any such assignment, and not ministerial consent.

Ministerial consent for assignment via share acquisitions would now be triggered if it would result in a “change of control” (acquisition of direct or indirect beneficial ownership of 50% or more of the voting).

To address the issue of uncertainty and delays in securing Ministerial consent for assignment, the Act has introduced timelines such that (i) the Commission is required to make a recommendation within 60 days of the application, and (ii) deemed consent after 60 working days, following the recommendation of the Commission.

Terms and conditions for grant of consent now includes compliance with the FCCPA.



**Producing
Marginal Field
Holders to be
issued Petroleum
Mining Lease**

Holders of existing and producing marginal fields have been given a sunset date of 18 months, after which their marginal fields will be converted to PMLs, and shall enjoy benefits due to new acreages under Chapter Four of the Act. While existing but not producing marginal fields (as at 1st January 2021) will be converted to PPL, and shall nonetheless, enjoy benefits due to new acreages under Chapter Four of the Act.

It is also expected that within three years of the declaration of a field as a marginal field, the field would be transferred to the government, failing which it shall be subject to a farm out or relinquishment.

Finally, the definition of Marginal Field has been amended from one declared as such by the president from time to time, to one declared as a marginal field prior to 1st January 2021 or which has been lying fallow without activity for 7 years after its discovery prior to the effective date. Consequently, no new marginal fields will be declared under this Act.

Abolition Of Gas Flaring



The PIA demands strict adherence to a gas flaring plan, along with gas utilization plans, to be submitted within 12 months of the coming into effect of the law. Penalty for gas flaring to be in line with the Flare Gas (Prevention of Waste and Pollution) Regulations.

Failure of upstream companies to comply with the DGSO, would result in inability to make supplies to gas export operations, or suspension of operations where the lessee only supplies gas to export operations. The Department of Gas, by these provisions is thereby ousted of its functions and responsibilities.

General Administration Of Midstream And Downstream Petroleum Operations



..... Conditions for License Application

The Act now recognises various conditions for license for midstream or downstream petroleum operations. Interestingly, for midstream operations, a license shall only be granted where the operations: (x) do not involve excessive capital or operating expenditures; (y) includes an acceptable environmental management plan; (z) includes a decommissioning and abandonment plan and a decommissioning and abandonment fund; and (xx) provides for the elimination of routine natural gas flaring, which can be seen as in tandem with one of the overarching objective of the Act to illegalize and abolish gas flaring.

..... Guiding Tariff Principles

The PIA has now consolidated tariff principles to guide the pricing framework for transportation, distribution and processing petroleum as well as gas. Some of these guiding principles include: (x) cost reflective basis- which takes into consideration market forces; (y) concession for reasonable return on investments for licensees; (z) tariffs to be non-discriminatory; and (xx) shall be in USD or other foreign currency to attract favourable investment provided that payments may be made in foreign currency or the Naira equivalent.

Guiding principles specific to gas include: (x) return on equity after tax shall be at such rate as to attract investment; and (y) recovery of operating costs with room for inflation shall be considered.

Common Provisions For Midstream And Downstream Petroleum Operations

..... Consultation with Stakeholders

The Act repositions the input of stakeholders - lessees, licensees, permit holders in finalizing or making amendments to Regulations touching on the business of these stakeholders and in fact, makes it mandatory for the Commission and Authority to invite the thoughts and positions of the stakeholders by publishing in tow national dailies and on their website, a Notice/ Invitation which is to span a period of 21 days within which the stakeholders shall send in their submissions for consideration.

However, where considered exigent, the Commission and Authority may actually issue regulations without consultation, however such regulation will be valid for only one year unless stakeholders confirm the Regulation as suitable.



..... Abandonment, Decommission and Disposal of Infrastructure

The PIA now has express provisions for abandonment, decommissioning and disposal of oil and gas structures. This amendment recognizes the importance of decommissioning in Nigeria especially with the increasing adverse impact of pollution onshore and offshore of the Nigerian environment. The Petroleum Act only makes provision for abandonment and the past five decades have shown that abandonment is not enough and these facilities need to be recycled, relocated or safely put away to an environmentally acceptable place through an acceptable means in line with best industry practices.

Under the PIA, the approval of the Commission or Authority is required before decommissioning can be embarked upon and adequate notice must be given along with the cost estimates, comprehensive decommissioning plan and assessment of the environmental and social impact of the decommissioning.

The Act also mandates the Commission or Authority to provide for public access, a comprehensive list of all installations, structures and pipelines onshore and offshore Nigeria used for petroleum operations along with their current status. The access to such a list once compiled would form part of public records and should be easily accessible to the public on an annual basis.

..... Mandatory Registration

A stakeholder under the Act- lessee, permit holder or licensee of petroleum operation is mandatorily obligated to register the nature of the undertaking with the Commission and Authority.

It shall also be the duty of the Commission and Authority to maintain a register of all permits, licenses, authorisations or leases issued, revoked, suspended, surrendered or withdrawn and any modification or exemption granted in respect of any of the above.



..... Effect of Registration

Registration of a license, permit, lease or authorisation granted under the PIA shall be conclusive evidence of the rights and interests accruing to the holder against any other and the conditions and provisions to which the holder is subject.

HOST COMMUNITIES



Host Communities

The Act aims to promote the prosperity and development of host communities, and peaceful co-existence between licencees or lessees and the host communities. The Commission and Authority may also make regulations with respect to host communities.



Community Needs Assessment:

Following the issuance of a licence or lease, the Settlor is to conduct a community needs assessment (social, environmental and economic). Upon completion, the Settlor is required to develop and execute a development plan, subject to the Commission/Authority's approval. Content of the plan are specifically provided by the Act.

Trust Fund Contribution And Allocation:

3% of the Settlor's operating expenses annually in the upstream petroleum operations affecting the host community, subject to hydrocarbon tax and Companies Income tax. The matrix for the distribution of the trust fund to the host communities shall be provided by the Settlers to the Board of Trustees.

In allocating the funds, 75% of the Trust Fund is utilised as the capital fund for the host community fund, 20% is kept in a reserve fund to be invested for the community projects if and when there is a cessation in the contributions received from the Settlers. Finally, an amount not exceeding 5% is to be entrusted to the Settlor, for the administrative cost of running the Trust and for the Settlor's special projects.

Transfer of Existing Community Development Projects:

Settlers are required to transfer existing host community development projects or schemes to a Host Community Development Trust, of which the Commission or Authority should be notified.

PETROLEUM INDUSTRY FISCAL FRAMEWORK



Administration And Collection Of Revenue

Administration, Assessment and Collection of Government Revenue

Federal Inland Revenue Service ('FIRS')

Assessment & collection of:

- hydrocarbon tax
- companies income tax and tertiary education tax as it relates to taxable petroleum operations

Enforcement of the PIA on hydrocarbon tax assessment and revenue collection.



Commission

Determination & Collection of:

- rents and royalties and its enforcement under this act; and
- related payments or production shares, where the model contract includes provisions on production sharing, profit sharing or risk service.

Hydrocarbon Tax

This is levied on profits of companies engaged in upstream petroleum operations in relation to crude oil.

Excludes: (x) associated and non-associated gas; and (y) condensate and natural gas liquid produced from non-associated gas in fields and gas processing plants, (both of which will be liable to companies income tax.

Ascertainment of Profit

Incidental income would no longer be considered for the purpose of determining the chargeable profits of the company, as this has now been limited to only proceeds of valuable oil sold and value of chargeable oil disposed. Thus, incidental income would now be liable to tax under CITA.

The value of chargeable oil disposed shall be based on the aggregate value of crude oil determined for royalties for all fields. Therefore, extraction, storage and transportation costs will no longer be added back in determining taxable revenue under the HT as was the case under the PPT regime. Further, income incidental to petroleum operations would not be taxable under HT.

Determination Of Adjusted, Assessable And Chargeable Profit

Allowable Deductions

While the courts have in the past, adopted a liberal interpretation of this provision in favour of the tax payers, the recent introduction of the qualifier 'reasonable', is indicative of the intention to give the tax authority a measure of discretion in rejecting expenditure not deemed 'reasonable' for the purpose of petroleum operations. Additional allowable & disallowed expenses have also been introduced as per the table below:

Additional allowable expenses;	Additional Disallowed Expenses:
<ul style="list-style-type: none"> ✓ Interest expenses on related party loans. ✓ Decommissioning cost ✓ Customs and excise duties, taxes, fees, etc. incurred to the federal, state or local government. 	<ul style="list-style-type: none"> ✓ Gas flaring penalty ✓ Bad debt, financial or bank charges, arbitration and litigation cost ✓ Signature or bonus paid on the acquisition of rights ✓ Gross up tax provisions in contract ✓ Education tax

Chargeable Profit

In the determination of chargeable profits, there are longer restrictions on the claim of capital allowance by companies involved in petroleum operation. There is also now the introduction of production allowance.

Application of CIT to Petroleum Operations

Acquisition costs of petroleum rights eligible for annual allowance at the rate of 10% with a retention value of 1% in the last year until the asset is disposed.

Assessable Tax

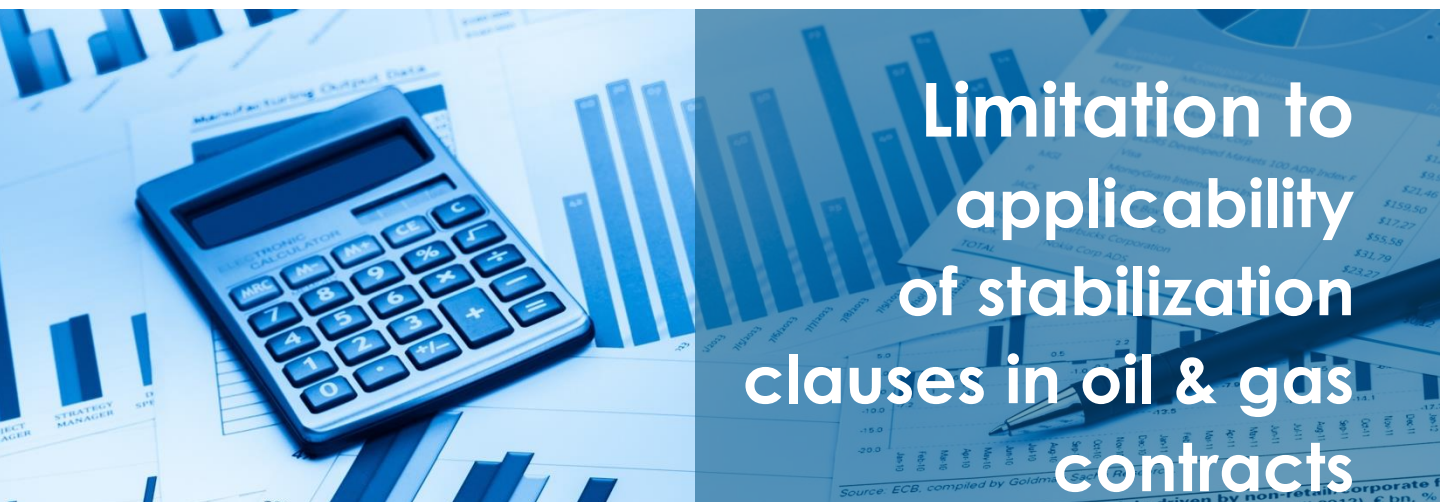
This has been changed from flat 85% percent of the chargeable profit to a graduated rate:

- 42.5% for onshore areas for PMLs
- 37.5% for shallow water areas for PMLs
- 22.5% for onshore areas for new licences and leases granted post PIA commencement and for marginal fields in onshore areas;
- 20.0% for shallow water areas for new licences and leases granted post PIA commencement and for marginal fields in shallow water areas;
- 5% from deep offshore areas for PMLs; and
- 10% for deep offshore areas for new licences and leases granted post PIA commencement.

Applicability Of Companies Income Tax

Companies Income Tax and other forms of Taxes, would still apply to concessionaires, licensees and lessees, depending on whether they are engaged in (x) upstream operations, (y) midstream operations, or (z) downstream operations.

Consolidation of costs is permitted for companies engaged in upstream petroleum operations across terrains. Where the company's operations is related to crude oil across terrains, then may also consolidate costs and taxes for the purposes of hydrocarbon tax for assets in which it holds Licences and leases



Limitation to applicability of stabilization clauses in oil & gas contracts

Fiscal Stabilization

Contractors who enter into PSCs or other contracts after the commencement of the Act, would no longer be able to benefit from any fiscal stabilization clauses in such contracts, where the change which affects the contractor is one involving the following fiscal provisions:

- generally applicable taxes, such as withholding taxes, companies income tax, tertiary education tax and VAT;
- levies, taxes or payments to comply with modern principles in respect of environment, labour laws, health and safety; and
- new taxes, levies or duties to implement Nigeria's commitments with respect to climate change under the United Nations Framework Convention on Climate Change and other related international agreements,

save where such changes are discriminatory to the petroleum industry generally or the affected contractor.

Royalties

The Act stipulates that royalties will be determinable by production and by price. The Commission has the discretion to determine whether royalty should be payable in cash or in kind. In the case of crude oil and condensates, royalties will be based on production and price; while for gas, royalties will be based solely on production.

For price-based royalties, the fiscal oil price for each field will be determined by the Commission, taking into considerations factors such as quality differentials and transportation costs within Nigeria.



Royalty by Production

For crude oil and condensates, the Act provides the terrain-based method of calculation as follows:

15%

Onshore areas

12.5%

Shallow water (up to
200m water depth)

7.5%

Deep offshore (greater than
200m water depth)

*where production (during a month) is
above 50,000 bopd and 5% where less
than 50,000 bopd*

7.5%

Frontier basins

However, for onshore and shallow water terrains including marginal fields, where the production is not more than 10,000 bopd, it shall be calculated as follows:

- first 5,000 bopd – 5%
- next 5,000 bopd – 7.5%

While for natural gas and natural gas liquids, royalty is chargeable at 5% of the chargeable volume and royalty rate for natural gas produced and utilized in county is 2.5%.

Royalty by Price

The Act stipulates that royalty derived from 'royalty by price' will be solely for the benefit of the Nigerian Sovereign Investment Authority. The royalty by price will be reflective of the changes in price of crude oil and condensates.

For crude oil and condensates, royalty by price will apply where the price exceeds \$ 50 per barrel and would be determined as follows:

- 5% where the pricing is at \$100/barrel
- 10% where the price is above \$150/barrel
- Where the price is between \$50/barrel and \$100/barrel or between \$100/barrel and \$150/barrel, it will be determined based on linear interpolation.

The rates provided shall be applicable for the year 2020 and increased by 2% annually, starting in year 2021.



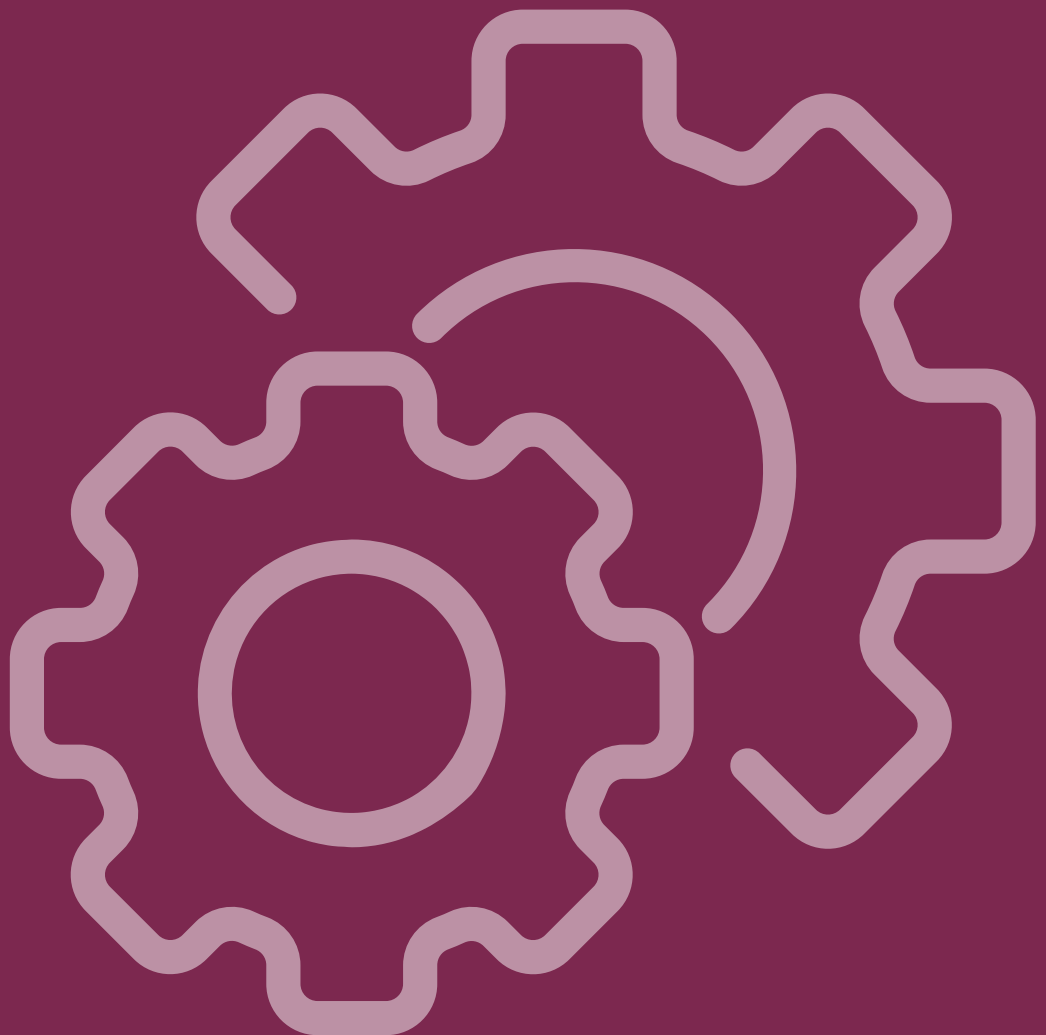
Penalty for Non-payment of Royalty

The Act introduces a penalty regime for non-payment of royalty. Non-payment of royalty within two months after the month in which it was due will attract:

- an additional sum of 10% of the royalty due plus interest. For foreign currency transactions, interest shall be at LIBOR plus 10% point basis. For Naira transactions, interest shall be at NIBOR rate plus 10% point basis).
- N10,000,000 or USD equivalent on the first day of failure to pay and N2,000,000 or USD equivalent for each subsequent day.

Where royalty remains unpaid for three months after the month it became due, the Commission may initiate the revocation of licence or lease and enter the land/property/premises possessed or occupied by the licensee or lessee to seize and sell any petroleum products, tools or machineries, for the payment of any arrears of fees, rent or royalty.

MISCELLANEOUS PROVISIONS



Repeals



The enactment of the PIA will lead to the repeals of the following statutes:

- Associated Gas Reinjection Act, 1979 CAP A25 Laws of the Federation 2004, and its Amendments;
- Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 Laws of the Federation of Nigeria 2004;
- Motor Spirits (Returns) Act, CAP M20 Laws of the Federation of Nigeria 2004;
- Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, CAP N124 Laws of the Federation of Nigeria 2004;
- Nigerian National Petroleum Corporation Act (NNPC) 1977 No, 33 CAP N123 Laws of the Federation of Nigeria as amended, when NNPC ceases to exist pursuant to section 54(3) of this Act;
- Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003;
- Petroleum Profit Tax Act Cap P13 LFN 2004 upon completion of the conversion process under section 92 of the Act, and;
- Deep Offshore and Inland Basin Production Sharing Contract Act 2019, as amended upon completion of the conversion process under section 92 of the Act.

Provisions of the Pre-shipment Inspection of Oil Export Act, 1966 shall be amended accordingly.

The enactment of this Act will have the following effects of Petroleum Equalisation Fund and Oil Marketing Companies:

- (x) the collection of net surplus revenues from oil marketing companies shall cease, except for the collection of unpaid net surplus revenues earned prior to the effective date;
- (y) the payment for reimbursements to oil marketing companies shall cease, except for possible remaining payment obligations incurred prior to the effective date;
- (z) any funds remaining after these transfers shall be moved to the Midstream and Downstream Gas infrastructure Fund.
- Where the funds are insufficient to payments in relation to (y) the Authority may prorate the amounts payable based on the ratio between the funds remaining and the outstanding payables, provided that where the Petroleum Equalisation Fund is in a deficit, the proration shall be zero, and oil marketing companies shall have no claim as to further outstanding amounts.

Saving Provisions

Acts, subsidiary legislation or regulation, guidelines etc. made pursuant to any principal legislation repealed or amended by the Act to remain in force as long as it is not inconsistent with the Act, as if issued by the Commission or Authority.



Any OPL or OML granted under the Petroleum Act, 1969 that is subsisting as at the effective date of the Act shall continue to have effect, subject to the following:

with respect to renegotiated production sharing contracts, the following conditions apply:

- where negotiations are ongoing upon the effective date of the Act, such contracts must be signed within 1 year of the effective date or else at the end of the lease the contract will conform to the Act.
- where the contract was signed by NNPC, the lease shall be assigned to NNPC Limited without prior approval of the contractor and NNPC write a notice to notify the contractor of the assignment;
- the renegotiated production sharing contracts shall not feature any investment tax credits and shall feature a cost oil limit of not more than 60% of the total oil production and a minimum of 55% haircut on disputed amount. Profit oil share based on cumulative production shall be determined on the basis of the production from the total production of all production areas selected under section 93 of the Act; and
- upon expiration, the leases, and renegotiated production sharing contracts can only be renewed on the basis of the provision of this Act.
- For OPL and OML holders that don't wish to convert pursuant to section 92(6) of the Act, and other applicable provisions in the Act, the a) Petroleum Act; b) PPTA; c) OPA; d) Deep Offshore and Inland Basin Production Sharing Contracts Act and such other relevant laws shall continue to apply until the termination or expiration of the OPL and OML.
- Parties to gas sales agreements entered into prior to the effective date of the Act may continue with such agreements unaltered until termination of such agreements.
- For PMLs, any capital allowances existing at the effective date for related OMLs will be carried over but this does not extend to investment tax allowances and credits.

Glossary

Authority	Nigerian Midstream and Downstream Petroleum Regulatory Authority
Bopd	Barrels of oil per day
CITA	Companies Income Tax Act
CAMA	Companies and Allied Matters Act
Commission	Nigerian Upstream Petroleum Regulatory Commission
DCOSO	Domestic Crude Oil Supply Obligation
DGSO	Domestic Gas Supply Obligations
DPR	Department of Petroleum Resources
DSO	Domestic Supply Obligation
EL	Exploration Licence
FCCPA	Federal Competition and Consumer Protection Act
FCCPC	Federal Competition and Consumer Protection Commission
FDPs	Field Development Plans
FEF	Frontier Exploration Fund
FGN	Federal Government of Nigeria
FIRS	Federal Inland Revenue Service
FRA	Fiscal Responsibility Act
GSPA	Gas Sales and Purchase Agreement
IJV	Incorporated Joint Venture
JOA	Joint Operating Agreement
LIBOR	London Interbank Offered Rate
Licence	Licence issued by the Commission or Authority in respect of applicable upstream, midstream or downstream petroleum operations
Licensee	Holder of a Licence
Lessee	Holder of a Lease
LNG	Liquefied Natural Gas
LTO	Licence to Operate
Minister	Minister of Petroleum Resources

Glossary

MMBtu	One Million British Thermal Unit
MoF	Ministry of Finance
MScf	One Thousand Standard Cubic Feet
NGC	Nigerian Gas Company
NIBOR	Nigerian Interbank Offered Rate
NNPC	Nigerian National Petroleum Corporation
NNPC Ltd.	Nigerian National Petroleum Company Limited
OML	Oil Mining Lease
OPA	Oil Pipelines Act
OPEC	Organisation of Petroleum Exporting Countries
OPL	Oil Prospecting Licence
PEF	Petroleum Exploration Fund
PEL	Petroleum Exploration License
PIA	Petroleum Industry Act
PML	Petroleum Mining Lease
PPA	Public Procurement Act
PPL	Petroleum Prospecting Licence
PPRL	Petroleum Product Retail Licence
PPPRA	Petroleum Pricing and Product Regulatory Agency
PPTA	Petroleum Profit Tax Act
PSC	Production Sharing Contract
Settlor	Holder of an interest in a petroleum prospecting licence or petroleum mining lease or a holder of an interest in a licence for midstream petroleum operations, whose area of operations is located in or appurtenant to any community or communities
Trust Fund	Host Communities Development Trust Fund
USD	United States Dollars
VAT	Value Added Tax

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