

The PIA and Host Communities' Development: Spotlight on the Midstream Host Communities Regulations

OALP Oil & Gas Newsletter

INTRODUCTION

One of the novelties of the Petroleum Industry Act 2021 (PIA or the **Act**) remains the formalisation of host communities' development obligations for players within the Nigerian oil and gas industry. The provisions of Chapter 3 of the PIA are aimed at fostering sustainable prosperity within host communities, providing direct and social economic benefits from petroleum operations to these communities, as well as promoting a sense of ownership for the host communities.¹ This is all in a bid to incentivise host communities to maintain peace and stability, thereby ensuring uninterrupted petroleum operations within those communities.

Three (3) years after the passage of the PIA, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the **Authority**) issued the Midstream Petroleum (Host Communities Development Trust) Regulations in 2024 (**Midstream Regulations**) to regulate the administration of host communities' obligations of companies engaged in midstream and downstream petroleum operations.²

In this newsletter, we examine key provisions in the

Midstream Regulations as well as areas of comparison with the Nigeria Upstream Petroleum Host Communities Development Regulations issued by the Nigerian Upstream Petroleum Regulatory Commission (the **Commission**) in 2022 (**Upstream Regulations**).

APPLICABILITY OF THE MIDSTREAM REGULATIONS

Despite the long title of the Midstream Regulations, a composite read of the Midstream Regulations and the Act indicates that the Midstream Regulations apply to both midstream and downstream operations caught by the PIA, and not only to midstream petroleum operations. This intention is particularly evident in instances where the Midstream Regulations refer to *designated facility* owners (as defined in the Act) - which includes owners and operators of bulk storage tank farms that fall within the scope of *downstream petroleum products operations*³.

SCOPE OF HOST COMMUNITIES

Similar to the approach taken in the Upstream Regulations which prescribe the criteria for determining the scope of host communities in the upstream sector⁴, the Midstream Regulations stipulate certain factors⁵ to guide licensees⁶ in determining host communities within

1. Petroleum Industry Act 2021, s 234(1).

2. While the PIA broadly outlines the obligations of licensees to their host communities, section 234(2) of the PIA empowers the Commission and the Authority to issue regulations for upstream operations and for midstream and downstream petroleum operations, respectively.

3. Petroleum Industry Act 2021, s 318.

4. Upstream (Host Communities Development Trust) Regulations 2021, reg 6.

5. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 5(1)(a)-(f). These factors are: (i) a distance of 500 metres on both sides of any pipelines appurtenant to the communities; (ii) a distance of 2 kilometres from the battery limit of any operational facilities that are appurtenant to the communities; (iii) the licensee's operational activities and impact on communities in the area of operation; (iv) pipeline communities through which petroleum liquids and natural gas are transported; (v) facility hosting communities; and (vi) service rendering communities including communities where the licensees have constructed staff housing and personnel accommodation.

6. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, Reg 44 define a licensee as a holder of a licence whose area of operation is located in or appurtenant to a host community and shall include the owner or operator of designated facilities as prescribed in the Act.

within their area of operations.⁷ Additionally, the Midstream Regulations recognise that a licensee may designate any other additional community as its host community.⁸

Importantly, licensees must be empirical in determining the scope of their host communities because once the Host Community Development Trust (the **Trust**) is established, the Midstream Regulations only recognise two (2) basis for exclusion of a beneficiary host community from the Trust, being:

01

where the licensee's area of operations changes, and the community no longer falls within said area; or

02

where a court of competent jurisdiction decides that the community doesn't qualify as a host community according to relevant laws.⁹

HOST COMMUNITY DEVELOPMENT TRUST

The Midstream Regulations require licensees undertaking petroleum operations in designated facilities to incorporate a Trust.¹⁰ However, while for designated facilities, the PIA prescribes a 12-month timeline from the effective date of the PIA for establishment of the Trust (which lapsed since 15 August 2022),¹¹ the Midstream Regulations prescribe a 12-month timeline from its commencement date (i.e., ending on 30 October 2025)¹², essentially extending the statutorily prescribed timeline. This is despite the PIA making no provision for licensees to incorporate the Trust beyond 15 August 2022 and only outlines that non-compliance with the statutory timelines may be grounds for a licence to be revoked.¹³

By extending the deadline, the Authority provide a remediating course for non-compliance with the PIA-prescribed timelines especially given that the Midstream Regulations contain the relevant modalities for incorporation of the Trust and other related obligations. While this intervention may be seen as beneficial, it is possible to be construed as going beyond the ambit of the principal statute -- the PIA -- from which it draws life and its validity. It is trite that any provision in a subsidiary legislation which is inconsistent with the principal legislation is a nullity to the extent of its inconsistency.¹⁴

ESTABLISHMENT OF TRUSTS BY NEW LICENSEES

For owners of designated facilities that were under construction as at the effective date of the PIA and holders of licences granted pursuant to the Act, the Midstream Regulations adopt the timelines for establishment of the Trust in the PIA, which are:



15 August 2022



prior to commencement of commercial operations.¹⁵

Accordingly, where a licensee fails to incorporate the Trust in line with the aforesaid timelines, the Midstream Regulations provide that the defaulting licensee (or the operator if one is appointed) must apply for the Authority's approval prior to incorporating the Trust post-deadline. The Authority shall only approve the application upon payment of an administrative penalty of one million naira (NGN1,000,000) unless waived by the Authority due to circumstances beyond the licensee's control.¹⁶ Given the existence of this waiver regime, it is possible that owners of designated facilities under construction as of August 2021 may seek the Authority's waiver on the basis that the Midstream Regulations, which prescribe the mechanics for the operationalisation of the Trust and ancillary matters, were only issued in 2024, after the statutorily prescribed timeline had lapsed.

7. Petroleum Industry Act 2021, s 318 defines area of operations to mean the territory which hosts a lessee's or licensee's operational or designated facilities, and any other ancillary facilities related to upstream and midstream petroleum operations.

8. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 5(1)(g)

9. Ibid.

10. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 6.

11. Petroleum Industry Act 2021, s 236

12. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 6.

13. Petroleum Industry Act 2021, s 238.

14. Mobil Producing (Nig.) Unltd. v. Johnson (2018) 14 NWLR (Pt. 1639) 337. N.N.P.C. v. Famfa Oil Ltd (2002) 17 NWLR (Pt. 1328) 161 the Supreme Court held that without the principal law, there can be no subsidiary legislations, and so subsidiary legislations must conform with the principal law.

15. Petroleum Industry Act 2021, s 236(c) and (f).



TREATMENT OF HOST COMMUNITIES OBLIGATIONS FOR INTEGRATED OPERATIONS

Holders of petroleum prospecting licences (**PPLs**) or petroleum mining leases (**PMLs**) that have established Trusts for midstream designated facilities that would ordinarily have been subject to the Midstream Regulations may be exempted from incorporating Trusts pursuant to the Midstream Regulations.¹⁷ However, to benefit from this exemption, such companies must apply to the Authority by February 2025 and submit an annual report of host communities' activities in respect of the midstream designated facilities.¹⁸

This exemption regime appears to cover upstream companies which carry on integrated operations.¹⁹ In line with the Policy Directives on the Delineation of Regulatory Oversight between the Commission and Authority Notice 2023, the Commission is saddled with the oversight function in relation to integrated operations²⁰ and accordingly, relevant upstream companies would have established Trusts for the host communities surrounding the midstream designated facilities comprising their integrated operations. However, in the event there is a divestment of the PPL/PML and the PPL/PML holder

proposes to retain its midstream facilities post-divestment, the PML/PPL holder would be obliged to notify the Authority of the divestment and no later than three (3) months from the conclusion of the divestment, incorporate a Trust for the retained midstream designated facilities.²¹ It therefore follows that in instances where such a PPL/PML holder divests its midstream facilities, the acquiring entity would be required to incorporate a Trust in accordance with the Midstream Regulations.

ADMINISTRATION OF THE TRUST

Generally, the Midstream Regulations outline various responsibilities in administering the Trust with specific roles to be borne by the Authority, the licensee, the board of trustees (the **Board**), and the respective committees set up pursuant to the Midstream Regulations. The licensee is responsible for the establishment of the Trust²², engagement with host communities²³, as well as compliance with regulatory framework, amongst others. The Board²⁴ is integral to ensuring that funds are managed effectively for the benefit of the host communities as well as other obligations such as budget approval, compliance and reporting, and management and oversight.²⁵ Similar to the Upstream Regulations, the Midstream Regulations provides for a management committee and an advisory committee, with similar roles as prescribed by the Act.

HOST COMMUNITY DEVELOPMENT TRUST FUND

Licensees are required to establish a Host Communities Development Trust Fund (the **Fund**)²⁶ in a bank licensed by the Central Bank of Nigeria with a minimum credit rating of 'BBB'. However, the Midstream Regulations do not prescribe a timeframe within which the Fund should be established by licensees, unlike the Upstream Regulations which mandates the establishment of the Fund within a specified period.²⁷ The Board is to maintain the following four (4) accounts²⁸:

-
17. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 42
 18. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 42(1). The annual report is required to be submitted no later than 31 May every year
 19. Petroleum Industry Act 2021, s 8(d) provides that petroleum operations may be considered Integrated to be where there is a joint use of utilities used exclusively for the upstream and midstream operations.
 20. Petroleum Industry Act 2021, s 8(d) provides that petroleum operations may be considered Integrated to be where there is a joint use of utilities used exclusively for the upstream and midstream operations.
 21. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 42(2).
 22. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 6.
 23. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 12(1).
 24. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 15.
 25. Petroleum Industry Act 2021, s 243.
 26. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 23(1).
 27. Nigeria Upstream Petroleum Host Communities Development Regulations 2022, reg 23. By the Upstream Regulations, a settlor is required to incorporate the Fund within one month of (a) incorporation of a trust for existing OMLs; (b) grant of approval of the field development plan for existing OPLs; and (c) grant of approval of field development plan for new PPLs or PMLs granted under the PIA.
 28. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 33(3).

Collection Account:

01

into which licensees would remit the annual contribution to the Fund.²⁹ Thereafter, moneys standing to the credit of the Collection Account would be swept to the Capital Fund, Reserve Fund and Administrative Cost accounts in paragraphs (2) to (4) below;

Capital Fund Account:

02

75% of the sums in the Collection Account as well as monies not utilised from the Administrative Cost Account at the end of each year;

Reserve Fund Account:

03

20% of the amount in the Collection Account to be invested for the Trust to utilise in the event of a cessation in the contribution payable by the licensee³⁰; and

Administrative Cost Account:

04

5% of the amount in the Collection Account to be applied by the licensee towards defraying costs for the administration of the Fund.³¹

While the Board is to manage the Capital Fund Account and Administrative Cost Account³², the Reserve Fund is to be managed by a fund manager appointed pursuant to the provisions of the Midstream Regulations.³³ Licensees are to finance the Fund by contributing an amount equal to 3% of their operating expenditure for the preceding financial year³⁴. Other contributions to the Fund include donations, gifts, grants and honoraria, and profits and interest accruing to the reserve fund of the Trust.³⁵

This Fund is to be utilised for the implementation of the applicable host communities' developmental activities.³⁶ To this end, licensees are required to submit a Host Community Development Plan (the **Plan**). Disbursement of monies in the Capital Fund Account for projects in each host community shall be in line with the Plan,³⁷ as well as a distribution matrix which shall form the basis of the proposed allocation of funds to host communities.³⁸

COMMUNITY CONSULTATION AND INVOLVEMENT

The Midstream Regulations reinforce the provisions of the PIA on consulting and engaging host communities. Licensees are required to consult with the host community in carrying out a host community needs assessment to determine the current needs of the host communities,⁴⁰ and this must be carried out within six (6) months following the grant of a licence for new licensees and prior to establishment of the Trust for existing licensees.⁴¹ Other matters that require consultation with the host communities include the appointment and replacement of trustees,⁴² and rotation of host community representatives to the Board, where the number of host communities surpasses the Board seats.⁴³

29. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 25(a).
 30. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 25(b) & 26(3).
 31. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 26(4).
 32. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 29(1).
 33. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 30.
 34. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 24(1) & (4). The first contribution shall be made within one month after the establishment of the Fund, and subsequent payments payable within three months of the end of each year.
 35. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 24.
 36. Petroleum Industry Act 2021, s 241.
 37. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 26(1). This plan outlines the specific actions and projects that will be implemented to address the identified needs of the host community. By the Plan, initiatives to address key community needs such as infrastructure, education, healthcare, environmental restoration are outlined including timelines for their implementation. Administration of the capital fund and administrative cost fund must also be done in accordance with the approved Plan.
 38. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 22.
 39. Petroleum Industry Act 2021, s235.
 40. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 20(1) & (2).
 41. The needs assessment is also subject to review every five (5) years.
 42. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 12.
 43. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 28(2).

COMPLIANCE AND REPORTING TIMELINES

Licensees are required to submit reports periodically to the Authority, including an annual report of activities on the Trust in the preceding year⁴⁴ and a copy of their annual report in relation to the Fund⁴⁵. In addition, licensees are to submit such additional documents or information as may be requested by the Authority.⁴⁶

PENALTY REGIME AND ENFORCEMENT MECHANISMS

The Midstream Regulations stipulate several administrative penalties for non-adherence to prescribed timelines or obligations⁴⁷ under the Act or the Midstream Regulations. These include financial penalties ranging from one million naira (NGN1,000,000) to five million naira (NGN5,000,000), as well as more severe measures like suspension and revocation of licences⁴⁸.

GRIEVANCE RESOLUTION MECHANISM

In the event of a dispute arising:

- between one or more host communities;
- between a host community and a licensee; or
- in relation to a Trust (parties irrespective), the affected parties must first attempt an amicable resolution in good faith.⁴⁹

If the dispute remains unresolved after thirty (30) days of service of the dispute notice by an aggrieved party, either party to the dispute may refer the matter to the Authority

or a mediator for mediation.⁵⁰ Disputes referred to the Authority are to be adjudicated by the Midstream and Downstream Petroleum Alternative Dispute Resolution Centre⁵¹ in accordance with the Midstream Regulations.⁵² In the event mediation fails, the dispute shall be finally resolved by a arbitrator under the Arbitration and Mediation Act⁵³.

DISSOLUTION OF THE TRUST

The licensee or the Board may dissolve the Trust subject to the approval of the Authority. The Authority may approve the dissolution under varying grounds including where the object of the Trust has been fully realised, the relevant licence has been revoked, or the Fund has been exhausted and not replenished.⁵⁴ The Midstream Regulations also provide that the cost of dissolving the Trust shall be defrayed from the Fund⁵⁵, which the Upstream Regulations do not expressly cater for.

CONCLUSION

The Midstream Regulations hold significant potential to usher in substantial socio-economic and environmental development within the relevant host communities. This legislation could also play a pivotal role in mitigating conflicts amongst host communities, licensees and other stakeholders which may otherwise in operational disruptions. This, in turn, would foster greater stability of midstream and downstream operations.

44. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 36(1). This should be accompanied by the audited accounts of the Trust and submitted not later than 31st May of each year

45. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 31. This should be submitted not later than 31st May every year

46. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 36(3). This could be such as receipts of purchase, contracts with third parties, bank statements, or title documents.

47. Some of these contraventions include: (a) Submission or making of inaccurate, misleading or incomplete records and reports; (b) Failure to discharge surviving obligations upon surrender, revocation, termination or expiration of a licence (c) Failure to provide any information, document or report as required (d) Failure to undertake a remedial action (e) Non-complaint withdrawal from the Fund (f) Non-compliance with any provision of the Midstream Regulations (g) Non-compliance with any notice, guideline, or directive issued by the Authority.

48. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 37(3).

49. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 40(2).

50. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 40(3).

51. The Midstream and Downstream Petroleum Alternative Dispute Resolution Centre is established under the Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations, 2023 for resolution of disputes in the Nigerian midstream and downstream petroleum industry.

52. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 40(7).

53. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 40(10).

54. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 11(3)(a)-(c).

55. Midstream Petroleum (Host Communities Development Trust) Regulations 2024, reg 11(6).

FOR MORE INFORMATION, PLEASE CONTACT :



Damilola Salawu
Partner
dsalawu@olaniwunajayi.net



Folashade Oluyadi
Partner
foluyadi@olaniwunajayi.net



Chukwuemeka Osuji
Partner
cosuji@olaniwunajayi.net



Hopewell Nwachukwu
Senior Associate & Team Lead
hnwachukwu@olaniwunajayi.net



Halimat Busari
Associate
hbusari@olaniwunajayi.net



Jane Adekunle
Associate
jadekunle@olaniwunajayi.net