

REGULATORY UPDATE ON THE PETROLEUM INDUSTRY ACT 2021 NEW CHANGES AND KEY PROVISIONS

The Petroleum Industry Act 2021 (the Act) is an Act that provides a legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry. The Act which was recently signed into law is divided into five chapters comprising of 319 sections and eight schedules. The Chapters make provisions for governance and institutions, administration of the industry, host communities, fiscal and miscellaneous matters. The Schedules deal with rights of pre-emption; incorporated joint ventures, domestic base price, and pricing framework; pricing formula for gas-based industries; capital allowances; production allowances and cost price ration limit; petroleum fees, rents, and royalty; and creation of the ministry of petroleum incorporated. This piece highlights some of the key provisions of the law that participants in the industry and the general public need to know.



Governance & Institutions

The Minister

Section 3 of the Act provides for the general supervisory and oversight powers of the Minister of Petroleum. Under the Act, some modifications to the power of the Minister under section 3 (1) (g), (h), and (j) relate to the requirement for the recommendation of the Commission¹ or Authority² before the Ministers can exercise the powers to grant or revoke oil licenses and leases and approval of fees for services rendered by the Commission or Authority.

The National Upstream Petroleum Regulation Commission



The National Upstream Petroleum Regulation Commission (the Commission) is established under section 4 of the Act and responsible for the technical and commercial regulation of upstream operations in the petroleum industry. By section 10 of the Act, the Commission is expected to replace the DPR regarding the regulation of upstream petroleum operations.



The Nigerian Midstream and Downstream Petroleum Regulatory Authority

Section 29 of the Act establishes the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) with the responsibility to regulate the technical and commercial operations of the Midstream and Downstream operations in the petroleum industry amongst other things as set out in section 32 of the Act.

Incorporation of Nigerian National Petroleum Company Limited



The Act by section 53 provides for the incorporation of a limited liability company under the Companies and Allied Matters Act to be known as the Nigerian National Petroleum Company Limited (NNPC Limited). This is required to be done within six months from the commencement of the Act. The established NNPC Limited is required to conduct its affairs on a commercial basis profitably and efficiently without recourse to government funds.

Section 53 (5) of the Act requires that the transfer of the shares held by the government can only be done with the approval of the Government with the endorsement of the National Economic Council.

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Funds Created



Frontier Exploration Fund

Section 394(3) CAMA 2020 also provides that a small company shall be A Frontier Exploration Fund (FEF) under section 9 of the Act is to be maintained and administered by NNPC Limited for exploration and development of frontier acreages, subject to appropriation by the National Assembly. The FEF shall be 30% of NNPC Limited's profit oil and gas from profit sharing and risk service contracts.



Midstream and Downstream Gas Infrastructure Fund

The Midstream and Downstream Gas Infrastructure Fund (MGIF) is established under section 52 of the Act. The MGIF is a body corporate resided within the Authority. The purpose of the MGIF shall be to undertake equity investments of Government-owned participating or shareholders interest in infrastructure related to the Midstream and Downstream gas operations. The is aim is to increase domestic consumption of natural gas through public-private partnerships, encourage private investments and reduce gas flare.

A key source of the MGIF shall be 0.5% of the wholesale price of petroleum products and natural gas sold in Nigeria which shall be collected from wholesale customers. This is in addition to other sources provided for in Section 52 (7) of the Act.

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Host Community Development Trust Fund

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Environmental Remediation Fund

Section 103 (1) requires a licensee or lessee to contribute towards an environmental remediation fund established by the Commission or Authority, for the rehabilitation or management of negative environmental impacts concerning the licence or lease granted.



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Decommissioning and Abandonment Fund

Section 233 of the Act requires that each lessee and licensee shall establish, maintain, and manage a decommissioning and abandonment fund. The Act provides that the decommissioning and abandonment fund shall be exclusively used to pay for decommissioning and abandonment costs. The contributions to the decommissioning and abandonment fund are eligible for cost recovery and shall be tax-deductible. However, funds disbursed from the fund shall not be eligible for cost recovery or deductible for tax purposes.



Administration of Upstream Petroleum Operations

Licenses/Leases

The Act provides for Petroleum Exploration Licence (PEL), Petroleum Prospecting Licence (PPL) and Petroleum Mining Lease (PML) which may be granted to qualified applicants to carry out petroleum exploration operations on an exclusive basis and to search for; win, work, carry away; and dispose of crude oil, condensates, and natural gas respectively. By section 70 (2) of the Act, only companies duly registered under CAMA may be granted PEL, PPL and PML.

Deemed Grants



The Minister may grant a PPL or PML to a winning bidder where the winning bidder has complied with the requirements of the bid invitation. The Minister is required to inform the Commission of his decision within 90 days of the application for licence or lease and where he fails to do so within the stipulated time, the license or lease will be deemed granted.

A holder of an existing Oil Prospecting Licence (OPL) or Oil Mining Lease (OML) may enter into a voluntary conversion contract under section 92 (1) of the Act. A licensee or lessee under a conversion contract shall benefit from applicable fiscal provisions under chapter four of the Act where the licensee or lessee complies with the provisions of the Act.



Non-Confidentiality of Contract/License/Lease

The Act by section 83 (3) provides that the text of any existing contract, license or lease and any amendment or side letter with the NNPC shall not be confidential. Such texts shall be provided by a contractor of NNPC, licensee, lessee, to the Commission and published on the website of the Commission within one year after the effective date. A contractor of NNPC, licensee, lessee who does not or partially provides the Commission with the required information, within the stipulated time contravenes the provision of the Act and is liable to an administrative penalty in the sum of \$10,000 for every day of default. Also, the text of any new license, lease or contract or amendment shall not be confidential. Such text is required to be published by the Commission immediately following the grant or signing of such texts.



Marginal Fields

The Act provides that a producing marginal field shall be allowed to continue to operate under the original rates and farm-out agreements. However, such field shall convert to a PML under the Act within 18 months from the effective date of the Act and the chargeable tax of 15% under section 267 (b) and the Company income tax shall apply to it. Also, a discovery declared as a marginal field before 1st January 2020 and is not producing shall be converted to PPL and shall benefit from the terms for new acreage. No new marginal fields shall be declared under the Act.



Domestic Crude Oil Supply Obligation

The Commission is empowered under section 109 to issue regulations or guidelines regarding the imposition of domestic crude oil supply obligation on lessees of upstream petroleum operations. For gas, the Commission under section 110 shall by regulation prescribe and allocate the domestic gas delivery obligation among all lessees before the 1st of March each year based on the domestic demand requirements.

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Gas Flaring



By section 104 (1) of the Act, it is an offence to flare or vent gas, except in accordance with the provisions of the Act. Section 104 (3) provides that a fine paid in this regard shall not be eligible for cost recovery or be tax-deductible. The Act in section 108 requires that a licensee or lessee producing natural gas shall, within 12 months of the effective date, submit a natural gas flare elimination and monetization plan to the Commission, which shall be prepared under regulations made by the Commission under the Act.



Administration of Midstream and Downstream Gas and Petroleum Liquid Operation

Issuance of licenses/regulations

The Authority is empowered under the Act to issue regulations for midstream and downstream gas operations and petroleum liquids. The Act also requires the Authority to issues licenses in respect of Midstream and downstream gas operations and Midstream and Downstream petroleum liquid operations.

Prevention of anti-competitive behaviour

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Environmental Management and Decommissioning of Upstream, Midstream, and Downstream Operations

Environmental Management Plan

A licensee or lessee is required under section 102 of the Act to submit for approval an environmental management plan in respect of projects which require environmental impact assessment to the Commission or Authority, within 1 year of the effective date of the Act or 6 months after the grant of the applicable licence or lease.

A licensee or lessee is required to contribute towards an environmental remediation fund established by the Commission or Authority, for the rehabilitation or management of negative environmental impacts concerning the licence or lease granted.

Each licensee shall establish, maintain, and manage a decommissioning and abandonment fund. The Act provides that the decommissioning and abandonment fund shall be exclusively used to pay for decommissioning and abandonment costs.



Assignment, mergers, and transfer of interest in a license or lease

The Act now requires the consent of the Minister for assignment and transfer of interest in a license or lease to be made upon recommendation of the Commission. The application for assignment/transfer of interest shall now be made to the Commission.

Notwithstanding the requirement to first seek consent of Minister before assignment/transfer of interest in a license or lease, the Act now allows a holder of a license of lease to, by way of security, wholly or partly, to assign, mortgage, pledge, hypothecate its interest or grant a security interest provided the consent of the Commission is obtained. See section 95(5) of the Act.

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Fiscal Framework

Introduction of Hydrocarbon Tax

Chapter 4 of the Act sets out new fiscal provisions to govern the Nigerian petroleum industry. Under the Act, the Petroleum Profit Tax (PPT) has been replaced with the new Hydrocarbon Tax (HT) on profits from crude oil production.

The Act provides that Companies involved in upstream, midstream, and downstream petroleum operations under the Act are subject to the provisions of the Companies Income Tax (CIT) Act. The CIT will be applied as an entity-based tax and not on a field basis. Also, to determine the CIT, the HT is not tax-deductible. By the provisions of Section 259 of the Act, the FIRS is responsible for assessing and collecting the HT, CIT, and Education Tax (ET), while the Commission is empowered to determine and collect rents, royalties, and production shares under the Act. Also, the Authority is responsible for the determination and collection of the gas flare penalty arising from midstream operations and its enforcement under the Act.

Segregation of Operations Using Separate Companies

Section 302(3) of the Act requires that companies engaged in different streams of operations i. e. upstream, midstream, and downstream shall segregate the different operations by using separate companies for each stream of petroleum operation under the Act. Capital gains tax and stamp duties will not apply on segregation.



Local Content Provisions

The Act also seeks to promote compliance with the Nigeria Oil and Gas Content Development Act (Local Content Act) by ensuring that the field development plan submitted by a licensee with regards to a commercial discovery complies with the Local Content Act before approval for the plan is granted by the Commission. By the provisions of Section 79 (2) (g) technical and commercial terms of the field development plan shall only be approved by the Commission where it includes an approved Nigerian content plan under the Nigeria Oil and Gas Content Development Act.

Any other law that is inconsistent with the provision of the Act shall be null and void to the extent of its inconsistency except the Nigeria Oil and Gas Content Development Act. See section 309 of the Act.

Conclusion

This piece has highlighted some of the changes and new requirements introduced by the Act. We hope that it serves as a quick guide to industry players and the general public as they seek to align and conform with the new legal and regulatory requirements under the Act.

For more information, you can contact us at info@punuka.com

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