

An overview of the Petroleum Industry Bill 2012



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Background



- ❧ The Nigerian Petroleum sector reform started as far back as 2000, it culminated into a Bill, which was transmitted to the Sixth National Assembly for passage into law but unfortunately it was not passed before that National Assembly was dissolved.
- ❧ Several factors contributed to the non-passage of the Bill but they are history now. What is important is that on 18 July 2012, a new Petroleum Industry Bill 2012 (PIB) was transmitted to National Assembly for passage into law. The Bill is under consideration by National Assembly.
- ❧ The PIB will, upon passage into law, repeal the Petroleum Act, Petroleum Profits Tax (PPT) Act, Deep Offshore and Inland Basin Production Sharing Contracts Act, as well as a host of other laws which presently govern the petroleum industry.

Outline of the Bill



The Petroleum Industry Bill is divided into nine (9) parts, namely:

- ❧ Part I - Fundamental Objectives
- ❧ Part II - Institutions
- ❧ Part III - Upstream Petroleum
- ❧ Part IV - Downstream Licensing
- ❧ Part V - Downstream Products
- ❧ Part VI - Indigenous Petroleum Companies
- ❧ Part VI - Health, Safety & Environment
- ❧ Part VIII - Fiscal Provisions
- ❧ Part IX - Repeals, Transition and Savings Provisions.

Objectives of the Bill



The main objectives of the Bill are to -

- ❧ (a) create a conducive business environment for petroleum operations;
- ❧ (b) enhance exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people;
- ❧ (c) optimize domestic gas supplies, particularly for power generation and industrial development;
- ❧ (d) establish a progressive fiscal framework that encourages further investment in the petroleum industry while optimising revenues accruing to the Government;
- ❧ (e) establish commercially oriented and profit driven oil and gas entities;
- ❧ (f) deregulate and liberalise the downstream petroleum sector;
- ❧ (g) create efficient and effective regulatory agencies;
- ❧ (h) promote transparency and openness in the administration of the petroleum resources of Nigeria;
- ❧ (i) promote the development of Nigerian content in the petroleum industry;
- ❧ (j) protect health, safety and the environment in the course of petroleum operations;

Institutions



The Bill proposes the creation of the following Institutions:

- ❧ The Minister
- ❧ Petroleum Technical Bureau
- ❧ Upstream Petroleum Inspectorate
- ❧ Downstream Petroleum Regulatory Agency
- ❧ Petroleum Technology Development Fund
- ❧ Petroleum Equalisation Fund
- ❧ Petroleum Host Communities Fund
- ❧ National Petroleum Assets Management Corporation
- ❧ Nigerian Petroleum Assets Management Company Limited
- ❧ National Oil Company Plc
- ❧ National Gas Company Plc

Classification of the Institutions



These institutions can be classified into the following categories

☞ **Policy making**

- ☞ - The Minister
- ☞ - Petroleum Technical Bureau

☞ **Regulatory**

- ☞ -Upstream Petroleum Inspectorate
- ☞ -Downstream Petroleum Regulatory Agency
- ☞ - Petroleum Equalisation Fund?

☞ **Commercial**

- ☞ -National Petroleum Assets Management Corporation
- ☞ -Nigerian Petroleum Assets Management Company Limited
- ☞ -National Oil Company Plc
- ☞ -National Gas Company Plc

☞ **Capacity building**

- ☞ -Petroleum Technology Development Fund

☞ **Community development**

- ☞ -Petroleum Host Communities Fund

The Minister



The Minister is to coordinate and supervise all activities in the petroleum industry. He also has other main functions such as:

- ❧ To determine, formulate, and monitor government policy for the petroleum industry.
- ❧ To grant, amend, renew, extend or revoke upstream petroleum licences and leases, on the advice of the Inspectorate;
- ❧ To grant, amend, renew, extend or revoke downstream petroleum licences for gas transportation pipeline, gas distribution networks, refineries, LNG and GTL plants, petrochemical plants and gas exports, on the advice of the Agency; and
- ❧ To make regulations for the industry.

Petroleum Technical Bureau



It is a special unit that will be in the office of the Minister, with some of the following functions:

- ❧ provide technical and professional support on matters relating to the petroleum industry.
- ❧ assist the Minister in the formulation and implementation Government policy on the petroleum industry;
- ❧ carry out the functions of the former Frontier Exploration Services of NNPC;
- ❧ undertake studies, analyse and evaluate all unassigned frontier acreages in Nigeria

Upstream Petroleum Inspectorate



This would be the Regulator of all aspect upstream petroleum operations. Some of its core functions are to:

- ❧ enforce compliance with the terms and conditions of all leases, licences, permits and authorisations issued in respect of upstream petroleum operations;
- ❧ issue licences or permits and any other authorizations necessary for all activities connected with seismic, drilling and design as well as the construction of all facilities for upstream petroleum operations;
- ❧ manage and administer all upstream petroleum data for all unallocated acreage;
- ❧ conduct bid rounds for the award of petroleum prospecting licences and petroleum mining leases, upon a prior approval of the Minister;
- ❧ compute, assess and ensure payment of royalties, rentals, fees, and other charges for upstream petroleum operations.

The Inspectorate is to have a Governing board, which will be subject to the directives of the Minister.

Downstream Petroleum Regulatory Agency



☞ This is the Downstream Regulator and it is empowered to regulate all aspect downstream petroleum operations.

Petroleum Equalisation Fund



- ✧ It proposes the re-enactment of this Fund.
- ✧ Ensure equal pump prices in the county before full derugulation
- ✧ Have 12 Part- time Board members with ministers as the Chairman.

Petroleum Technology Development Fund



The Bill proposes the re-enactment of this Fund. As it is in the current Act, it would be used to train Nigerians and build capacity in the petroleum industry.

The Bill establishes a Governing Board for the Fund, which does not exist in the present PTDF law.

Petroleum Host Communities Fund



- ❧ The Bill establishes a Petroleum Host Communities Fund (PHCF), which shall be utilized for the development of the economic and social infrastructure of the communities within the petroleum producing area.
- ❧ The fund is 10% of the net profit (after-tax) of upstream petroleum producing companies and it will constitute an immediate credit to the company's total fiscal obligations.
- ❧ The fund will be managed in accordance with Regulations to be made by the Minister of Petroleum Resources.

National Petroleum Assets Management Corporation



- ❧ Establish to be a holding Company of the Nigerian Asset Management Company limited.
- ❧ Not subject to Public procurement Law and Fiscal Responsibility Act
- ❧ Have five board members with minister as the chairman.

Nigerian Petroleum Assets Management Company Limited

- ❧ It is to be incorporated as a Private Limited Liability Company and as a subsidiary of the National Petroleum Assets Management Corporation.
- ❧ It would serve as the administrative unit of the Corporation.
- ❧ Its assets and liabilities would be all upstream unincorporated joint venture arrangements presently held NNPC.
- ❧ It would solely government owned.

National Oil Company Plc



- ❧ It is to be incorporated as a Public Limited Liability Company.
- ❧ All assets and liabilities of the NNPC, including production sharing contracts and service contract with the exception of Nigerian Gas Company are to be transferred to it.
- ❧ The share will be initially held by a nominee of Ministry of Petroleum Resources and Ministry of Finance incorporated but at any time within six years, at least 30% of its shares is to be sold on the Nigerian Stock Exchange to the public.

National Gas Company Plc



- ✧ It is to be incorporated as a Public Limited Liability Company.
- ✧ All assets and liabilities of the Nigerian Gas Company is to be transferred to it.
- ✧ The share will be initially held by a nominee of Ministry of Petroleum Resources and Ministry of Finance incorporated but at any time within six years, at least 40% of its shares is to be sold on the Nigerian Stock Exchange to the public.

Upstream Petroleum Licensing Regime

The Bill provides for the grant of the following upstream licences and lease:

- ❧ Petroleum Exploration Licence (“PEL”) to replace the existing Oil Exploration Licence (“OEL”)
- ❧ Petroleum Prospecting Licence (“PPL”) to replace the Oil Prospecting Licence (“OPL”)
- ❧ Petroleum Mining Lease (“PML”) to replace the Oil Mining Lease (“OML”).

It has extensive provisions on upstream licensing and acreage management which includes renewal, assignment, divestment, mergers and acquisition, Revocation of licences and lease and abandonment, decommissioning and disposal oil installations.

Upstream Petroleum Licensing Regime

∞ Award Process

- ∞ The Bill provides that the grant of PPL or PML (where it is not derived from a PPL) shall be to a bid winner in an open, transparent and competitive bid process. The winning bidder is to be determined by a single bid parameter or a combination of bid parameters.
- ∞ It, however, grants the President an unregulated discretionary power to grant a licence or a lease.

Downstream Petroleum Licensing Regime

The Bill specifies a number of Licences that can be issued by the Downstream Regulatory Agency which includes:

- ❧ Constructing and operating a process plant including those for gas liquefaction;
- ❧ Constructing and operating a petroleum transportation pipeline for crude oil or gas or condensate or petroleum products;
- ❧ Constructing and operating a petroleum transportation network;
- ❧ Constructing and operating a petroleum distribution network;
- ❧ Undertaking the supply of downstream products or natural gas;
- ❧ Owning and running a downstream products or natural gas processing or retail facility

Deregulation of the Downstream Sector



The Bill provides for a deregulation of the downstream sector in which:

- ❧ Pricing of products will be determined by market forces
- ❧ Supply of products will be adequate
- ❧ Elimination of economic distortions
- ❧ The emergence of a fair market value for products

Fiscal Provisions



- ❧ The Bill proposes a change in the tax regime for upstream operations and provides that upstream oil companies would pay both Companies Income Tax (CIT) and Nigerian Hydrocarbon tax (NHT). The NHT would replace the Petroleum Profit Tax (PPT).
- ❧ Companies Income Tax will be applicable generally to all upstream and downstream operators, contractors and sub-contractors or companies. In determining CIT, the Nigerian Hydrocarbon tax shall not be deductible. Any company involved in both upstream and downstream petroleum operations shall determine CIT separately for each petroleum operations.

Fiscal Provisions



- ❧ Nigerian Hydrocarbon Tax would be applicable to all companies that engage in upstream petroleum operation. Section 313 of the Bill provides that NHT will be computed on the chargeable profits for the relevant accounting period at 50% for onshore and shallow water areas, and 25% for bitumen, frontier acreages and deep water areas.
- ❧ The NHT provisions are similar to those of the PPT, but with some modifications in the allowable deductions and deductions not allowed.
- ❧ The Bill removed on the total capital allowance and provides for the claim of Production Allowance (PA) to be computed as provided under the Fifth Schedule to the PIB (section 312). The Schedule specifies the PA applicable to crude oil, natural gas and condensate production. The PA is to be determined based on production volume, water depth and specified price thresholds.

Key issues in the Bill



- ❧ The Industry Regulators are not Independent hence they may not likely be effective, transparent, and accountable.
- ❧ Appointment & removal of the Board of the Regulators should be subject to concurrence of the National Assembly.
- ❧ Regulations should be made by the Regulators because of the exigencies of time. Examples of NCC & NERC
- ❧ There is lack of clarity on the role of the National Petroleum Asset Management Corporation in the Nigeria Petroleum Asset Management Company.
- ❧ The discretionary powers granted to the President in the award of PPL and PML may be abused, if not regulated.

Thank you

