

## AN OVERVIEW OF THE PETROLEUM INDUSTRY BILL, 2012

### INTRODUCTION

The Petroleum Industry Bill 2012 ("PIB") seeks to ensure that the management and allocation of petroleum resources in Nigeria and their derivatives are conducted in accordance with the principles of good governance, transparency and sustainable development in Nigeria. The PIB was submitted to the National Assembly on 18 July 2012, and is expected to be deliberated upon and enacted into law in the near future.

Upon commencement, the PIB will repeal the following laws which currently govern the Nigerian Oil and Gas Industry:

- Associated Gas Re-injection Act CAP A25 Laws of the Federation of Nigeria, 2004
- Motor Spirits (Returns) Act, CAP M20 Laws of the Federation of Nigeria, 2004
- Petroleum Act CAP 10, Laws of the Federation of Nigeria, 2004; ('Petroleum Act')
- Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003;
- Petroleum Equalization Fund (Management Board, etc.) Act CAP 11 Laws of the Federation of Nigeria, 2004
- Petroleum (Special) Trust Fund Act, CAP 14 Laws of the Federation of Nigeria, 2004; and
- Petroleum Technology Development Fund Act CAP P15 Laws of the Federation of Nigeria, 2004;
- Deep Offshore and Inland Basin Production Sharing Act, CAP D3 Laws of the Federation of Nigeria, 2004; except for sections 16 subsection (1) and (2)
- Petroleum Profits Tax Act, CAP P13 Laws of the Federation of Nigeria, 2004.

This overview is intended to provide general insight into the PIB by outlining the following salient legal, institutional, environmental, fiscal, and regulatory reforms contained therein.

### **THE INCLUSION OF BITUMEN IN THE DEFINITION OF PETROLEUM**

Bitumen has been incorporated within the purview of the PIB through its inclusion in the definition of petroleum. If enacted with this inclusion, the PIB will be going contrary to the Petroleum Act, which expressly excludes bituminous shales in its definition of petroleum.

### **THE MONITORING FUNCTION OF THE NIGERIAN EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE ('NEITI')**

The PIB under Section 4 specifically provides that all agencies and companies established pursuant to it shall be bound by the NEITI Act 2004. Section 190(6) goes further to spell out the function of NEITI under the PIB, which is to monitor bids for contracts, licenses and leases received and also ensure that bids are processed in accordance with the published guidelines to achieve transparency and accountability.

## **THE ENLARGED ROLE OF THE MINISTER OF PETROLEUM RESOURCES**

Under the PIB, the Minister of Petroleum Resources ('Minister') has several new responsibilities, some of which include the formulation and monitoring of petroleum policy; the negotiating and implementing of international petroleum treaties and agreements with other countries or agencies on behalf of the government; and advising the President on appointments of chief executives of all companies and agencies established pursuant to the Act.

The Minister is also empowered to grant all upstream sector licenses, which include the Petroleum exploration license, Petroleum prospecting license and the Petroleum Mining lease. Notwithstanding the foregoing, the President is equally empowered by the PIB to grant other licenses and leases.

Additionally, the PIB extends the current requirement of the consent of the Minister by a licensee, lessee or contractor before the assignment of their right or a part of their right, to include mergers, acquisitions, concessions and exchange of shares in their companies.

## **THE INTRODUCTION OF THE 'INQUIRY' PROCESS**

Notwithstanding the PIB empowering the Minister to make regulations necessary to give effect to the provisions of the PIB, the Minister is expected to conduct an inquiry on the subject matter of any proposed regulations.

The Minister shall take into consideration the findings of the inquiry in making the relevant regulation, however based on any prevailing circumstances, the Minister may make a regulation without an inquiry. Although such regulations made without an inquiry can only have a life span of 12 months from its commencement date, unless confirmed by an inquiry.

## **THE CREATION AND ESTABLISHMENT OF THE FOLLOWING ORGANIZATIONS:**

- PETROLEUM TECHNICAL BUREAU ('the Bureau')

The Bureau shall be a special unit in the office of the Minister, established under the PIB and consisting of professionals with expertise in both the upstream and downstream sector of the petroleum industry.

The Bureau will be saddled with the responsibility of providing technical professional support to the Minister on matters relating to the petroleum ministry. The bureau shall

also carry out the functions of the former Frontier Exploration services of NNPC in addition to its other duties.

- THE UPSTREAM PETROLEUM INSPECTORATE ('the Inspectorate')

The Inspectorate shall be a body corporate established under the PIB, which shall become vested with all the assets and liabilities previously vested in the Department of Petroleum Resources, particularly those relating to the upstream petroleum sector.

The general function of the Inspectorate includes the administration and regulation of the upstream petroleum operations through either the establishment or enforcement of policies, laws and regulations.

- THE DOWNSTREAM PETROLEUM REGULATORY AGENCY ('the Agency')

The Agency shall be established under the PIB as a body corporate, which shall become vested with the assets and liabilities relating to the downstream petroleum sector function which was previously held by the Department of Petroleum Resources and the Petroleum Product Pricing and Regulator Agency.

The Agency's general function is to administer and regulate all aspects of the downstream petroleum operations through either the establishment or the enforcement of policies, laws and regulations.

- PETROLEUM HOST COMMUNITIES FUND ('the Fund')

The Fund is to be utilized for the development of the economic and social infrastructure of communities within the petroleum producing areas.

10% of the estimated net profit of Companies engaged in upstream petroleum operations shall be remitted to the Fund on a monthly basis.

- ASSETS MANAGEMENT CORPORATION ("the Corporation")

The Corporation shall be a body corporate established under the PIB. It shall be a holding Company operating fully on commercial principles. The main function of the Corporation is to acquire and manage investments of the Government in the upstream petroleum sector.

- NIGERIAN PETROLEUM ASSETS MANAGEMENT COMPANY LIMITED (“Management Company”)

The Management Company is established as a subsidiary of the Corporation and shall be subject to neither the provisions of the Fiscal Responsibility Act 2007 nor the Public Procurement Act 2007.

The Management Company is a body corporate registered under the Companies and Allied Matters Act 1990, by the Minister not later than three months after the commencement date of the PIB. At incorporation the initial shares of the management company shall be held in the ratio of 99% by the Corporation and 1% by the Permanent Secretary of the Ministry in trust for the Corporation.

The Management Company shall also warehouse the assets and liabilities comprising exclusively of the interests in all the incorporated joint ventures by NNPC, on behalf of the Federal Government, however excluding any assets vested in the National Oil Company.

- NATIONAL OIL COMPANY PLC

The National Oil Company shall be incorporated by the Minister as a public company limited by shares three months after the commencement date of the PIB. It shall be vested with certain assets and liabilities of the Nigerian National Petroleum Corporation save the assets and liabilities of incorporated joint ventures and the Nigerian Gas Company Limited.

The initial shares of the National Oil Company shall be held by a nominee of the Ministry of Petroleum Resources and the Ministry of Finance on behalf of the Government. The Government is required to divest up to thirty [30] percent of its authorized shares in the National Oil Company to the Public in a transparent manner on the Nigerian Stock Exchange any time within six years from the date of incorporation of the National Oil Company.

- NATIONAL GAS COMPANY PLC

The National Gas Company is to be incorporated by the Minister three months after the commencement date of the PIB. Its initial shares shall be held by a nominee of the Ministry of Petroleum Resources and the Ministry of Finance on behalf of the Government and it shall be vested with certain assets and liabilities of the Nigerian National Petroleum Corporation.

The PIB requires the Government to divest up to Forty Nine [49] percent of its authorized shares in the National Gas Company plc to the Public in a transparent manner on the Nigerian Stock Exchange at any time within six years from the date of incorporation.

## **THE RETENTION OF THE FOLLOWING ORGANIZATIONS:**

- **PETROLEUM EQUALISATION FUND**

The PIB proposes the continuity of the Petroleum Equalization Fund in which any net surplus revenue recovered from petroleum products marketing companies shall be paid into.

Notwithstanding the continuity of the Petroleum Equalization Fund, the PIB equally provides that the Petroleum Equalization Fund shall cease to exist where the Government decides that petroleum product market has been effectively deregulated. The assets and liabilities of the Petroleum Equalization Fund shall therefore be transferred to the Government to be controlled and managed by the Minister and then the provisions of the sections of the PIB relating to Petroleum Equalization Fund shall stand repealed.

- **PETROLEUM TECHNOLOGY DEVELOPMENT FUND**

The Petroleum Technology Development Fund shall be utilized for the training of Nigerians to qualify as graduates, professionals, technicians and craftsmen in the field of engineering, geology science and management and other related fields in the Petroleum Industry.

The Petroleum Technology Development fund shall provide scholarship and bursaries wholly or partly to Nigerians in universities and institutions undertaking petroleum training in either Nigeria or abroad.

## **LICENSES AND LEASES**

The PIB altered the names and durations of the petroleum industry licenses and leases as provided under the Petroleum Act.

With the passage of the PIB, the Oil Exploration Licence ('OEL'), the Oil Prospecting Licence ('OPL') and the Oil Mining Lease ('OML') shall be known as Petroleum Exploration Licence ('PEL') Petroleum Prospecting Licence ('PPL') and Petroleum Mining Lease ('PML') respectively.

Under the Petroleum Act, the OEL is granted for a period of one year with an option to renew for one further year and an application for renewal to be made 3 months before

expiration. However under the PIB, the PEL is to be granted and valid for not more than 3 years.

Additionally, under the PIB the PPL is to be granted for a period of not more than 5 years with respect to onshore and shallow waters, comprising an initial exploration period of 3 years and a renewal period of 2 years. For deep waters areas and frontier acreage, the PIB is to grant a period not more than 8 years, comprising an initial exploration period of 5 years and a renewal period of 3 years. This will be a departure from the provisions of the Petroleum Act wherein an OPL is granted only for a period not exceeding five years, inclusive of the renewal period.

Furthermore, under the PIB the PML is granted for a maximum period of 20years as against the grant for 25 years under the Petroleum Act. It is usually granted in areas where crude oil, natural gas and bitumen have been found in commercial quantity.

The PIB provides that where a PML is derived from a PPL, the licensee shall be allowed to use up its initial renewal and appraisal period such that the PPL for onshore and shallow waters shall run for an overall period of 27 years. While that of deep water areas and frontier acreages shall run for an overall period of 30years. Likewise where the PML is granted for a Petroleum Prospecting licence PPL that is yet to expire, the term of the PML shall be the mandatory 20years period in addition to the remaining term of the PPL.

## **THE NEW TAX REGIME**

- IMPOSITION OF A NIGERIAN HYDROCARBON TAX ('NHT') FOR COMPANIES ENGAGED IN UPSTREAM PETROLEUM OPERATIONS

Section 299 of the PIB introduces the NHT which shall be levied upon the profits of each accounting period of any company engaged in upstream petroleum operations for that period. This new tax seems to replace the Petroleum Profits Tax.

Additionally, Section 327(1) of the PIB proposes that companies eligible for the NHT self-assess for the NHT due and pay the required tax amount within 21 days of filing the assessment.

- COMPANIES INCOME TAX ('CIT') MADE APPLICABLE TO COMPANIES ENGAGED IN UPSTREAM PETROLEUM OPERATIONS

The PIB proposes the payment of CIT by Companies engaged in upstream petroleum operations. Companies involved in both upstream and downstream petroleum operations shall determine their CIT for each sector separately. The PIB also goes further to amend some provisions of the CIT Act in order to make this provision effective.

- EXEMPTION OF DIVIDENDS FROM FURTHER TAX

According to the PIB any dividend paid out by a company from profits on which Petroleum Profit Tax has been paid, is exempted from further tax.

- PAYMENT OF ROYALTIES

The PIB provides for the payment of royalties but does not specify the basis and percentage of royalties to be paid. However the Minister of Petroleum Resources is empowered to make regulations in this regards.

- TAX RETURNS AND ASSESSMENTS

The PIB under sections 317 provides that every company including contractors under the production sharing contract arrangement shall be responsible for reporting their own upstream operations such as profits, outgoings, expenses and more importantly to pay tax chargeable on their upstream petroleum operations. Thus with the commencement of the PIB, parties under a production sharing contract arrangement shall file separate tax returns in respect of their respective interests in the concession.

Likewise the PIB provides as a requirement under sections 322(3) that companies yet to commence bulk sale or disposal of chargeable oil and gas shall submit their audited accounts and returns to the tax authority. In the case of a newly incorporated company, it has to be within 18months from the date of incorporation and for companies already in existence, within 6 months after any period ending the 31<sup>st</sup> of December of the following year.

Under section 327 the PIB also introduced the concept of self- assessment. It provides that every company liable to file tax returns shall file self- assessment returns within the specified period, showing the tax payable by the company for the accounting period.

## **THE NEW ENVIRONMENTAL REGIME**

- INTRODUCTION OF ENVIRONMENTAL QUALITY MANAGEMENT PLAN

The PIB introduces the submission of environment management plan by all licensees and lessees engaged in petroleum upstream operations within a period of one year after commencement of the PIB or three months after the grant of the licence or lease.

The environment management plan shall contain the licensee's or lessee's environmental policy, objectives and targets as well as their commitment to comply

with the relevant laws, regulations, guidelines and standard as approved by the Inspectorate.

The environment management plan shall establish the following:

- I. Initial baseline information or program affecting the environment to determine protection, remedial measures and environmental management objective.
- II. Investigate assess and evaluate the impact of the licensee or lessee exploration and production activities on the environment and the socio economic conditions of any person who might be directly affected by the upstream petroleum operations.
- III. Develop environment awareness plan to inform employees of any environment risks in order avoid pollution of the degradation of the environment.
- IV. Described the manner by which the licensee or lessee intends to comply with any prescribed waste management standards or practices
- V. Contain or remedy the cause of pollution or degradation and migration of pollutants
- VI. Modify, remedy. Control or stop any action, activity or process which causes pollution or environmental degradation.

- ESTABLISHMENT OF GAS FLARING PENALTIES

The PIB provides that natural gas shall not be flared or vented after a 'flare-out-date' which will be provided via regulation by the Minister. However the Minister is empowered to grant permits for not more than a hundred days to any licensee or lessee to flare or vent gas where it is a start-up operation, cases of equipment failure, shut down and flaring due to inability of gas customers to off-take gas.

Any licensee or lessee who flares or vent gas without the permission of the Minister shall be liable to pay a fine which shall not be less than the value of the gas flared.

Additionally, the PIB provides that a licence or lease for the production of oil and gas whether onshore, offshore or deep water shall not be granted to any applicant unless applications for such a licence or lease is accompanied by a comprehensive programme acceptable to the Minister for the utilization or reinjection of natural gas

## **INTRODUCTION OF RENEWAL BONUS PAYMENT**

The PIB under Section 185(1) provides that a PML lessee shall make application in writing to the Minister for renewal not less than twelve months before the expiration of his lease and the Minister shall grant the renewal if all fees, royalties and rents have been paid.

The PIB further states that the terms and conditions by which an application for renewal shall be considered shall be based on the prevailing conditions for granting new Petroleum Mining Lease at the time of the renewal and the lessee shall pay a renewal bonus of an amount specified in the lease on the date of renewal.

## **CONCLUSION**

Overall the PIB seeks to introduce several positive developments in the Nigerian petroleum Industry ranging from the incorporation of the fundamental principles of the NEITI Act, to addressing the concerns of the host communities and the new environmental regime. The new tax regime does have its pros and cons but the PIB could be said to be progressive towards creating a more tax efficient industry, although there has to be a balance so as to prevent the IOCs or other investors being repelled. Also noteworthy is the fact that the powers of the Minister of Petroleum Resources under the PIB have been greatly enlarged with little checks.

However, with the current deliberations and queries raised on the PIB, it is expected that the PIB presently before the National Assembly may not remain the same when passed into Law. Some fundamental and key provisions of the present Bill may be amended or more provisions included where deemed necessary.

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