June 2017

A Critical Review of the Petroleum Industry Governance Bill

The Petroleum Industry Governance Bill (PIGB) was passed by the Senate on 25 May 2017. If the House of Representatives concurs, it could be signed into law.

This is the passage of the first fragment of the comprehensive Petroleum Industry Bill (PIB), which was broken into parts to facilitate quick passage. It is one of the first steps, towards the actualization of the '7 Big Wins' unveiled by the Minister of State for Petroleum Resources in the last quarter of 2016, with a view to reform and reposition the oil and gas industry.

The Nigerian Senate passed the Petroleum Industry Governance Bill (PIGB) on Thursday, 25 May 2017. This seems to be the passage of the first fragment of the comprehensive Petroleum Industry Bill (PIB), which was broken into parts to facilitate quick passage, almost 17 years after the original bill was proposed. This move by the Senate, is in actualization of 1 of the '7 Big Wins' unveiled by the Minister of State for Petroleum Resources in the last quarter of 2016, with a view to reform and reposition Nigeria oil & gas industry.

Overview of the Bill

1. Introduction of a new regulator - named the Nigerian Petroleum Regulatory Commission ("NPRC" or "the commission"), to serve as the supervisory body for Nigeria oil & gas industry. The NPRC will replace the Petroleum Inspectorate, the Department of Petroleum Resources (DPR) and the Petroleum Products Price Regulatory Agency (PPPRA), and carry out their functions. This is slightly different from the provision in the previous version of the "complete" PIB, in which two regulatory bodies called the Upstream Petroleum Inspectorate ("the Inspectorate") and the Downstream Petroleum Regulatory Agency ("the Agency") were proposed.

2. The Petroleum Equalization Fund (PEF) will continue to exist. However, the PEF Act will be repealed, and the PIGB will serve as the relevant legislation for the existence of the PEF.

3. Establishment of 3 Commercial Entities – The Nigeria Petroleum Liability Management Company ("Liability Management Company"), the Nigerian Petroleum Assets Management Company Limited ("the management company") and the National Petroleum Company (NPC). These entities will replace the Nigerian National Petroleum Corporation (NNPC).

   The management company will hold and manage assets under Production Sharing Contracts (PSCs) and Back-in Rights assets on behalf of the government of the Federation, while the NPC will be responsible for all other assets currently held by NNPC. Both companies will be 20% owned by the Bureau of Public Enterprises (BPE), 40% by the Ministry of Finance Incorporated (MOFI), and 40% by the Ministry of Petroleum Incorporated (MOPI). 10% of the shares of the NPC will be divested within 5 years of incorporating the company, while an additional 30% will be divested within 10 years. There are no plans in the bill for the asset and liability management companies to be divested.

The Liability Management Company will assume "certain" liabilities of the NNPC and the pension liabilities of the DPR, so as not to encumber the newly formed companies. The shares of the Liability Management Company shall be held by the management company, the NPC and the NPRC, in ratio of their respective liabilities. The Minister of Petroleum Resources ("The Minister") shall initiate the winding down of this entity once the liabilities have been settled.

Key Highlights to Note

1. The Minister still possesses significant powers. For instance, in the event of a national emergency, he/she will have the right of pre-emption, over all petroleum and petroleum related products, under any license or lease granted under the Bill. What does this mean? The Minister can order any crude oil producer or petroleum marketer to supply products either to the government or specified license holder. The fine for contravention is technically limitless, as the Minister may increase the fine imposed by the Bill (N10 million), through regulation. The Minister also has the powers to determine the assets, liabilities and employees, which will be transferred to the new entities subject to an audit. The Bill is silent on the details of this audit.

2. The PIGB makes reference to the "Petroleum Inspectorate", when stating the institutions which the NPRC replaces (in addition to the DPR and the PPRA). The issue is that the Petroleum Inspectorate was excised from the Nigerian National Petroleum Corporation (NNPC) in 1988, during its structural re-organisation. It was then transferred to the Ministry of Petroleum Resources (MPR) as its technical arm, and renamed the DPR. It would seem that this reference was an oversight.

3. The Commission will have a special investigation unit which among other things, will keep surveillance on oil and gas installations for illegal activities and will have the power to work with the police to make arrests. This should give some comfort to stakeholders.

4. The PIGB states that the NPC will not be subject to the Fiscal Responsibility Act (FRA) and the Public Procurement Act (PPA), even though it will remain a government owned institution before its shares are divested. Given that both laws were enacted to aid transparency in public institutions, this exemption appears counterintuitive, as one of the objectives of the PIGB is to promote transparency and accountability of petroleum resources.

5. The NPC and the management company, will have the right to defray from their revenue, all expenses including cash call obligations (for NPC) and finance costs, before distributing the surplus as dividends in accordance with the respective companies' dividend policy . This is a deviation from the current situation, where the government of the Federation's share of crude oil sales virtually goes directly to the federation account (without considering expenses incurred). While the profit retention proposal is noble, and is the norm for commercial entities, government may need to consider a transition arrangement to minimise the impact of any profit retention by the NPC on funds available for distribution to various levels of government in the short to medium term given the current fiscal challenges.

6. On the planned divestment of the NPC, it is important to point out that there is no specific plan in the Bill to list the NPC shares on any stock exchange, as is being proclaimed by some analysts. The Bill simply states that the shares will be disposed to the public in a transparent manner. This "public" includes institutional and strategic investors, as contemplated in the last version of the Bill, hence, the divestment may be via a private placement. Since the Bill does not go into detail about the modalities for the divestment, it is very important that there is transparency to prevent any abuse of diversion for vested interest.

7. The PIGB seems to place much emphasis on the upstream sector of the petroleum industry value chain, and not enough on the downstream. Since the management company's oversight is limited to the PSCs and Back-in rights, it is safe to assume that NPC will continue with the downstream functions of the NNPC. Leading to questions around the continuous need for the PEF (see point 8 below). From the Bill, there seems to be no clear plan to put an end to the current subsidy regime.

8. As earlier stated, the PEF was set up (as a temporary agency) to ensure uniform pricing of petrol in Nigeria, by reimbursing petroleum marketers for "any losses suffered by them solely and exclusively" as a result of the sale of petroleum products at the same price throughout the Federation. Although the intention behind its origin was good, this reimbursement mechanism has aided corruption within the system, begging the question as to why uniform pricing is required at the expense of full deregulation. Also, the PIGB provides that the PEF would be funded by way of a 5% fuel levy in respect of all fuel sold and distributed within the Federation which shall be charged subject to the approval of the Minister. It is not clear if this levy would be passed to the consumers, both for price regulated and unregulated products.

Conclusion

They say progress is better than perfection. This fits perfectly when one thinks of the several attempts that have been made in the past to pass the almighty PIB. In line with recommendations made by various stakeholders, the government has decided to break it up and pass it in parts. While the version approved by the Senate is not perfect by any means, it is progress nonetheless – which is what we need in Nigeria right now.

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