



# Tax Bites



## Is the Petroleum Industry Act on Track?

### Introduction

The signing of the Petroleum Industry Act (PIA, or “the Act”) by President Muhammadu Buhari on 16 August 2021 heralded a major milestone in the history of the oil and gas industry in Nigeria. With over 37 billion barrels of crude oil and over 200 trillion cubic feet of gas in its proven reserves, the Nigerian government expects the PIA to unlock value and transform the petroleum sector.

### Key Developments

#### Implementation Committee

A few days after signing the Act, the PIA Steering Committee, led by the Minister of State for Petroleum, was set up. The Committee was tasked with providing guidance on the implementation of the Act in the first 12 months and supporting the transition of the relevant institutions created or restructured by the Act.

This deliberate effort started with an implementation structure that is made up of the Steering Committee and the Implementation Working Group/Coordinating Secretariat. The Steering Committee is to ensure effective and timely implementation of the law in the course of transition to the new petroleum industry envisaged in the reform programme, while the Implementation Working Group/Coordinating Secretariat has the task of developing the briefs that would be presented to the Steering Committee for consideration and approval. The Coordinating Secretariat was organised into four workstreams, namely legal, coordination and planning, communications and stakeholder management, and administration and finance.

#### The Regulators

The new regulators of the Industry, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC, or “the Commission”) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA, or “the Authority”), have begun issuing draft regulations and guidelines and have been consulting with stakeholders to receive inputs.

The NMDRA has issued 12 draft regulations which are under review and these include:

- Midstream and Downstream Petroleum (Operations) Regulations
- Petroleum Pipeline Regulations
- Gas Pricing Domestic Demand and Delivery Regulations
- Natural Gas Pipeline Tariff Regulations
- Midstream and Downstream Decommissioning and Abandonment Regulations
- Environmental Regulations for Midstream and Downstream Operations
- Midstream and Downstream Gas Infrastructure Fund Regulations
- Environmental Remediation Funds Regulations
- Assignment and Transfer of Licence and Permit Regulations 2022
- Midstream and Downstream Petroleum (Safety) Regulations
- Petroleum Measurement Regulations
- Petroleum (Transportation and Shipment) Regulations 2022.

The NUPRC issued 6 draft regulations and these include:

- Nigerian Upstream Fee and Rent Regulations
- Petroleum Licensing Round Regulations
- Domestic Gas Delivery Obligations Regulations
- Nigeria Conversion Regulations
- Nigeria Royalty Regulations
- Nigeria Host Community (Commission) Regulations.

The last one has been finalized as Nigeria Upstream Petroleum Host Communities Development Regulations 2022 and published in a federal government official gazette dated 24 June 2022.



#### The New NNPC

On 19 July 2022, the President formally unveiled the Nigerian National Petroleum Company Limited (“NNPC Limited”), created by the PIA to operate as a commercial and profit-oriented company without recourse to government funds. The PIA permits NNPC Limited to retain 20% of its profits to grow its business and distribute the balance to the owners by way of dividends.

#### Tax Administration

The PIA empowers the Federal Inland Revenue Service (FIRS) to administer and collect hydrocarbon tax, in addition to the companies income tax, and education tax. For companies that are yet to convert to PIA, the FIRS collects petroleum profits tax. The FIRS have issued information circulars on different provisions of the PIA after engagement with industry stakeholders.

The FIRS circulars cover the following issues:

- Apportionment and consolidation of costs and revenue
- Conversions and transitions
- Taxation of production sharing contracts and incorporated joint ventures
- Sundry fiscal provisions of the Act.

#### Ticking timelines

#### Host Community Development Trust (HCDDT)

Holders of existing OMLs and licenses to designated facilities were obligated to have set up the HCDDT by 16 August 2022. Existing Oil Prospecting Licenses (OPL) and Petroleum Prospecting Licenses (PPL) or Petroleum Mining Leases (PML) granted under the PIA are required to set up the HCDDT prior to the application for a field development plan. The Act also requires holders of licenses for designated facilities granted under the Act to set up the Trust before commencement of commercial operations.

The Regulations issued by the Commission confirmed the deadline. The Regulations further require the Commission to issue a notice to the defaulting companies within 14 days after the deadline, giving them 45 days to incorporate the Trust, failing which they will be subject to a fine of USD2,500 or its equivalent in Naira per day from the date of expiration of the notice period. If the default continues for more than 30 days after the expiration of the notice period, the Regulations also give the Commission the authority to recommend to the Minister the revocation of the license or lease of the defaulting company.

The Commission has done well to give further 45 days’ grace period to the operators and it is believed that the operators will use this lifeline to set up the Trust.

#### Environmental Management Plan (“EMP”) and Environmental Remediation Fund (“ERF”)

The PIA requires upstream and midstream operators to submit an approved EMP for their projects requiring environmental impact assessment to the Commission or the Authority as applicable within a year after the effective date of the Act or, in the case of new license or lease approvals, six months after the grant of the license or lease. The approval of the Plan is subject to the payment of a financial contribution into the ERF established by the Commission or the Authority. The two regulators are required to issue guidelines to guide the operators on the financial contributions to the Fund.

Given that no Regulation has been issued for the ERF, compliance with the timeline is impracticable. It is therefore expected that the Regulators would finalize and publish the guidelines and also give sufficient time for operators to comply.

#### Decommissioning and Abandonment Plan

Holders of PPLs are required to submit the Field Development Plan (FDP) to the Commission within two years of declaration of commercial discovery. One of the components of the FDP is the Decommissioning and Abandonment Plan (DAP) for the field. Each licensee or lessee is also required to set up the Decommissioning and Abandonment Fund (DAF) with an independent financial institution. The annual financial contribution to be made into DAF will be based on the approved DAP.

The PIA however gives 16 August 2022 as the deadline for submission of the DAP where no such exists and where a field is already producing or in development. In the case of midstream companies, the PIA also gives the same deadline. As this date has already passed, it is expected that the affected companies would

have submitted their DAP for the Commission or the Authority or remediate immediately.

#### Natural Gas Flare Elimination and Monetization Plan (“NGFEMP”)

The PIA mandates licensees and lessees producing natural gas to submit a NGFEMP to the Commission before 16 August 2022. The NGFEMP is to be prepared in accordance with the regulations made by the Commission under the PIA. Although there are existing regulations on gas flare before the PIA, the Act specifically requires that the Plan be developed based on regulations issued under the PIA regime. As no regulations have been issued before the due date, compliance is currently impracticable.

#### Conversion of Licenses and Leases

The deadline for mandatory conversion by pre-PIA marginal fields or voluntary conversion of other OPLs and OMLs to PPLs or PMLs as applicable is 16 February 2023. If the license expires before this date, the renewal will happen under a PIA regime. For OPL and OML holders whose licenses or leases expire after 16 February 2023 but choose not to convert to PIA before the date, the renewal will automatically happen under PIA whenever the license or the lease expires.

February 2023 is less than 6 months away. It is important that the regulators finalise the regulations and guidelines in good time to give enough room for industry players to comply. It is also important for companies to start evaluating their conversion scenarios to make informed decisions and avoid last minute rush.

#### Outlook for the Second Year of PIA

It is expected that implementation of the provisions of the PIA in the next one year will be approached with a sense of urgency to deliver the laudable objectives of the Act. Some of the milestones expected to be met include;

- Finalised regulations and guidelines to be issued by the regulators
- Oil and gas companies should have set up the various funds and plans required by the PIA
- More companies would have converted from the old fiscal regime to the new fiscal regime thereby having new compliance obligations.

#### Conclusion

The implementation of the PIA has been slow in the first year of the Act. This was expected given the overhaul of the regulatory agencies which are required to guide the operationalization of the provisions of the Act. The implementation of several provisions of the Act also depends on regulations to be issued by the regulators. We recommend that the regulators and other responsible agencies be faster in providing guidance on how operators can comply with the provisions of the Act.

To fully deliver the transformation expected with the passage of the PIA, other issues affecting the industry must be resolved in a timely manner. The much needed investment required to unlock value and drive the industry forward may be constrained if the issues of security and crude theft are left unattended to.

For a deeper discussion, please contact



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