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KEY HIGHLIGHTS OF THE PETROLEUM INDUSTRY ACT 2021

The Petroleum Industry Act (Act) was finally signed into law on the 16th of August 2021 by President Muhammadu Buhari, the President of the Federal Republic of Nigeria. The passage of the Act after almost 20 years in the making is a significant milestone for the petroleum industry in Nigeria. The Act which contains 5 Chapters, 319 Sections, and 8 Schedules provides a legal, governance, administrative, regulatory, and fiscal framework for the Nigerian petroleum industry and the development of host communities. In this article, we shall be looking at some of the key highlights of the Act.

KEY HIGHLIGHTS

1. The establishment of the Nigerian Upstream Petroleum Regulatory Commission (Commission)-

The new Petroleum Industry Act created a new commission to be known as the Nigerian Upstream Regulatory Commission. This commission shall be responsible for the technical and commercial regulation of the upstream petroleum operations, Section 4, Petroleum Industry Act, 2021. Upstream operations are limited to exploration and production (E&P) and includes exploring, drilling and extracting petroleum products.

2. **Creation of a new host community development trust structure –**

Every settlor must incorporate a host communities development trust for the benefit of the host communities which the settlor is responsible for. According to Section 240 (2) of the Act, settlors are required to make an annual contribution, of 3% of its annual operating expenditure of the preceding financial year, to its applicable host communities. This contribution is to be used to attain the trust's objectives which includes initiating local projects, as well as funding existing community projects. Upstream operators have 12 months within which to create these trusts.



3. **Establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority (Authority) –**

Part IV of the Act established the Nigerian Midstream and Downstream Regulatory Authority. The objects and functions of the authority are limited to the midstream and downstream petroleum operations sectors. The objectives of the authority are listed out in Section 31 of the Act and include regulatory compliance, health and safety, environmental policies, tariff and pricing, promotion of competitive market, supply and distribution, amongst others. Section 29, Petroleum Industry Act, 2021.

4. **Voluntary conversion** of existing oil prospecting or mining contracts in exchange for significant relinquishment of acreages. A holder of an existing oil prospecting licence or oil mining lease may enter into a voluntary conversion contract under the new Petroleum Industry Act, 2021. The licensee or lessee under a conversion contract shall also benefit from the fiscal provisions under Chapter 4 of the Act where the licensee or lessee complies with the provisions of the Act. Section 92 and 93 of the Petroleum Industry Act, 2021.

5. **Petroleum Industry Act Funds: These include the**

- i. Frontier Exploration Fund (30% of Profit oil and gas of NNPC Ltd),
- ii. Midstream and Downstream Gas Infrastructure Fund (0.5% of wholesale price of petroleum products sold in Nigeria and natural gas produced and sold in Nigeria), – Section 52 of the Petroleum Industry Fund.
- iii. Environmental Remediation Fund (will be based on size of operations),
- iv. Decommissioning and Abandonment Fund (as determined in the field development plan and periodic appraisal of the costs required) – Section 233 of the Petroleum Industry Act, 2021, and
- v. Host Community Development Trust Fund (3% of annual operating expenditure in prior financial year). Section 240 of the Petroleum Industry Act, 2021.





6. **Incorporation of Nigerian National Petroleum Company Limited (NNPC Limited):**

According to Section 53 in Part V of the Act, NNPC Limited is to be incorporated as a limited liability company within 6 months of the commencement of the Act with Ministry of Finance Incorporated and Ministry of Petroleum Incorporated as shareholders in equal portions on behalf of the Federation. The assets, interests and liabilities of NNPC, as determined by the Petroleum Minister and Minister of Finance, are to be transferred to NNPC Limited or its subsidiaries and thereafter NNPC shall cease to exist.

7. **Voluntary conversion to incorporated joint ventures for existing joint operating agreement,** subject to the guiding principles defined in the Second Schedule to the Act. Each incorporated joint venture (IJVC) shall be formed under the Companies and Allied Matter Act and the NNPC Limited shall negotiate with parties to existing joint operating agreements and agree on the shareholders agreement, memorandum and articles of association and the incorporation process of the IJVC. Section 92(3) states that the conversion contract shall contain a termination clause of all outstanding arbitration and court cases related to the respective oil prospecting licence or oil mining lease.

8. Development of Model Licence and Model Lease:

The model license for the Petroleum Prospecting License or the model lease for the Petroleum Mining Lease shall accompany the license round guidelines and reflect the conditions of the guidelines for the bid round. This shall be incorporated before the approval of any license or lease by the Minister. Section 76 of the Petroleum Industry Act, 2021.

9. Repeal of the Petroleum Profit Tax Act :

Chapter 4 of the Petroleum Industry Act established the petroleum industry fiscal framework. The following taxes were imposed instead:

- i. Companies Income Tax,
- ii. Hydrocarbon Tax,
- iii. Tertiary Education Tax,
- iv. Withholding tax on dividends.

10. FIRS to collect government revenue and tax :

According to section 259 of the Petroleum Industry Act, from the commencement of the act, the administration and collection of Government revenue in the petroleum industry shall be the function of the Federal Inland Revenue Service (FIRS or Service). The Service shall be responsible for the assessment and collection of hydrocarbon tax, companies income tax, tertiary education tax, while the Commission shall be responsible for the



11. **Gas flare penalties** from upstream operations are to be utilized for environmental remediation and relief of the impacted host communities while that arising from mid-stream operations will be credited to the Midstream and Downstream Infrastructure Fund to be utilized for midstream and downstream infrastructure investment in the affected host communities. Section 104 of the Petroleum Industry Act.

12. **Creation of licenses and leases related to the Upstream Petroleum Operations.**

The following were created (Section 70 of the Act):

- i. Petroleum Exploration Licence, (equivalent to the Oil Exploration Licence), which may be granted to qualified applicants to carry out petroleum exploration operations on a non-exclusive basis;
- ii. Petroleum Prospecting Licence, (equivalent to the Oil Prospecting Licence) which may be granted to qualified applicants to -
 - i. Drill exploration and appraisal wells and do corresponding test production on an exclusive basis, and
 - ii. Carry out petroleum exploration operations on a non-exclusive basis; and



- iii. Petroleum Mining Lease (equivalent to the current Oil Mining Lease), which may be granted to qualified applicants to –
 - i. Win, work, carry away and dispose of crude oil, condensate and natural gas on an exclusive basis,
 - ii. Drill exploration and appraisal wells and carry out the related test production on an exclusive basis and
 - iii. Carry out petroleum exploration operations on a non-exclusive basis.

The new Petroleum Industry Act indeed introduced several innovative concepts, all geared at supporting and promoting the oil and gas industry in Nigeria. It is hoped that this translates to positive outcomes.

You can ***CONTACT US*** for more details if you require further analysis on how this Act affects your company or business.

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