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Petroleum Industry Act, 2021: Administrative framework

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Nigeria remains endowed with huge deposits of petroleum resources which accounts for at least 90% of its export earnings. However, the sector contributes only about 10% of the Gross Domestic Product (GDP). Nigeria's petroleum industry's contribution to the national economic development will depend on how much of its petroleum reserves are unlocked and developed, and its ability to ramp up production levels. In this newsletter, we examine the administrative framework introduced by Petroleum Industry Act, 2021 ('PIA' or 'the Act'), as it impacts upstream, midstream, and downstream petroleum operations.

The PIA's administrative framework has been crafted to enable the efficient exploitation of Nigeria's petroleum resources, promote investments, develop a competitive and liberalised market, preserve the environment and foster transparency and accountability in the administration of petroleum resources.

Title to data on upstream petroleum operations

In line with international best practices, the Act clearly vests the title to any data relating to upstream petroleum operations, and its interpretation, in the Federal Government of Nigeria (FGN), as the resource owner.

Upstream petroleum data management responsibility rests with the Nigerian Upstream Petroleum Regulatory Commission ('NUPRC' or 'the Commission'); under the pre-PIA regime, that role rested with the defunct Department of Petroleum Resources (DPR), based on the National Data Repository Regulations, 2020.

The PIA's administrative framework has been crafted to enable the efficient exploitation of Nigeria's petroleum resources among other functions.

Upstream Petroleum licences/leases

PEL 6 years max

PPL 10 years max

PML 20 years Renewable

The Act provides for the replacement of:

i.) Oil Exploration Licence (OEL) with Petroleum Exploration Licence (PEL).

ii.) Oil Prospecting Licence (OPL) with Petroleum Prospecting Licence (PPL).

iii.) Oil Mining Lease (OML) with Petroleum Mining Lease (PML).

Development period for a PML is as established in the field development plan (FDP). **However, in the absence of an FDP:**

i.) 5 years for an onshore lease; and

ii.) 7 years for a lease in shallow water or deep offshore or a lease in a frontier acreage.

Where a lessee of a PML intends to renew its lease, it is required to apply to the Commission for a renewal of same or any part of it within a period not less than 12 months before the expiration of the lease.

Licence	Tenure(years)	Rights granted
PEL	3 years subject to renewal for 3 years.	Explore on non-exclusive basis.
PPL	Initial 3-year exploration period. Optional 3-years extension for onshore and shallow water acreages. 5 years initial exploration and optional 5 years for deep offshore and frontier acreages. The size of a PPL shall not exceed: a). 350km2 for onshore or shallow water acreages; b). 1,000km2 for deep offshore acreages; and c). 1,500km2 for frontier acreages.	Drill exploration and appraisal wells, test production on exclusive basis. Exploration operations on non-exclusive basis.
PML	Maximum period of 20 years	**Exclusively win, work, carry away and dispose of crude, condensates and natural gas** **Exclusively drill exploration and appraisal wells and related test production** **Non-exclusive petroleum exploration operations**

Licensing rounds, award of PPL & PML, work commitment, commercial discovery and significant crude/ gas discovery

The grant of a PPL or PML on a previously appraised PPL area or a surrendered, relinquished or revoked PML is required to be subject to an open, transparent, competitive and non-discriminatory bidding process. The basis for determining the winner is required to be in line with the single bid parameter identified under the Act, such as full signature bonus to be paid prior to the grant of the licence or lease, royalty interest, profit or profit oil split (in the case of a PSC), a work programme commitment during the initial exploration period or any other parameter specific to a bidding round.

Licensing round guidelines are required to be accompanied with the model licence for the PPL or model lease for the PML. This allows investors to know the base terms especially for making investment and financial decisions – such terms include the acreage, term, details of

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guarantees to be provided, minimum work obligations, relinquishment, abandonment, dispute resolution, regulatory obligations and fiscal terms of the licence/lease ahead of any grant of such licence. We also note that the licence would typically be accompanied by the applicable model contract in line with section 85(1) of the Act. There is also room for the Commission to include additional clauses as it may deem necessary.

The PPL is required to contain a requirement for the licensee to commit to a work progrmme and commit to drill at least one exploration well to a minimum depth specified in the licence for each period is to be supported by a bank guarantee, letter of credit or performance bond issued by a bank and based on an amount acceptable to the Commission. There is an exception to frontier acreages where the work programme during the initial exploration period may only consist of geophysical work.

Where a licensee makes a discovery during the initial exploration period or extension period, it is required to notify the Commission within 180 days of such discovery if the licensee considers that the discovery merits appraisal or is of no interest to it. Based on the interpretation section of the Act, a commercial discovery is different from a significant gas/crude discovery.[1]

While a commercial discovery entails a discovery of both crude oil, natural gas or condensates, a significant crude/gas discovery is of a lesser magnitude than a commercial discovery and is determined by other metrices such as availability of pipelines or existing facilities, the potential for commerciality based on developing the significant crude discovery with existing discoveries or potential future discoveries in the case of crude and availability of markets for natural gas within Nigeria and pipeline, processing or liquefaction capacity, need to identify and develop export markets, or where the gas would only be commercial when jointly developed with other existing or potential future natural gas discoveries.[2]

There is also a time limit for the retention of an area which is the subject of a significant gas/crude discovery – not more than 10 years from the day the declaration was made based on section 78(9) or declaration of a commercial discovery by the licensee. However, the licensee is required to relinquish the area upon the expiration of the retention period where no commercial discovery is made or in the event of a commercial discovery, submit an FDP within 2 years of such discovery. Such FDP may be based on a single integrated project regardless of the fact that the development of the commercial discovery entails the construction of facilities for midstream petroleum operations.

The submission of an FDP allows the licensee to continue operations until the completion of the grant or refusal to grant the lease. The issuance of a lease follows the approval of an FDP – with the FDP required to be approved within 180 days after its submission. There is also a requirement upon the grant of one or more PMLs, to submit in each year, the annual work programme and status report in respect of each of the PMLs for approval by the Commission.[3] Phased FDP may be submitted with detailed provisions relating to each phase.

The Act requires the grant of a PML for each commercial discovery of crude oil or natural gas or both to a PPL holder that has satisfied the conditions imposed in the licence and received approval for its FDP.

Commentary

The Act does not limit the ability of a holder to retain part of its acreage only on commercial discovery which is a higher threshold but allows retention where there is proof of a significant crude/gas discovery. There is also the opportunity for a PPL holder to apply that separate leases be issued in respect of each discoveries. The Act also allows a single integrated project for the development of a commercial discovery despite the fact that the discovery may warrant the construction of midstream petroleum facilities.

However, the powers of the Commission to review and implement the project will be based on its regulatory responsibilities, implying that separate approvals in respect of the midstream component may be obtained from the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) by the holder.[4]

Unitisation of straddling fields

- Unitisation is the merging of straddling petroleum fields under a unitisation and unit Operating Agreement (UUOA).
- PIA provides for the unitisation of straddling fields and requires the licensee or lessee to promptly notify the Commission where a petroleum reservoir extends beyond the boundaries of its licensed or leased area.

Although this was contained in the Petroleum (Drilling and Production) Regulations, 1969 (as amended), the Petroleum Act did not have any provisions covering unitisation.

The unitisation of different licence/lease areas throws up various challenges and questions amongst the affected licensees or lessees some of which have been addressed in PIA. However, given that the idea is to achieve maximum economic recovery and to avoid competitive drilling, comprehensive Guidelines/Regulations should be issued by the Authority to provide clarity on the potential issues that may arise from such unitization and to avoid perennial disputes over the unitised area.

[1] A commercial discovery is a discovery of crude oil, natural gas or condensates within a PPL or PML which can be economically developed in the opinion of the licensee or lessee after consideration of all relevant economic factors normally applied for the evaluation and development of crude oil, natural gas or condensates.

[2] Interpretation section to the PIA
[3] Sections 78(17) and 79(13) of the Act
[4] Section 79(3) & (4) of the PIA

Voluntary Conversion of Licence/Lease

Perhaps one of the most critical requirements of the PIA, is for the existing holders of licences/leases to elect to remain under the existing regime or convert to the fiscal regime under the PIA. It provides the option for holders of OPL or OML to enter a voluntary conversion contract under the Act. The conversion from an OPL or OML to the new regime respectively entitles the holder to benefit from the PIA's favourable fiscal terms.

Implications of conversion includes:

- All outstanding arbitration or court cases relating to the OPL/ OML will stand discontinued;
- Any stabilisation or guarantees provided by the NNPC in respect of such OPL or OML will become null and void;
- Incentives under sections 11 and 12 of the Petroleum Profits Tax Act (PPTA) will cease to apply.[5]

The construction of the Act does not give a clear indication if the removal of the incentives under sections 11 and 12 of the PPTA will affect rights earned prior to the enactment of the PIA. The Interpretation Act provides that the repeal of enactment shall not affect any right, privilege, obligation or liability accrued or incurred under the enactment.[6] Equally, provisions of statutes are not expected to operate retrospectively with respect to rights, obligations and liabilities earned or incurred. The expectation is that regulations will provide further clarity to this ambiguity especially for companies who may have earned these rights but yet to utilize same for one reason or the other.

The voluntary conversion contract is required to be concluded at the earlier of 18 months from the effective date of the Act (i.e. 15 February 2023, which is 18 months from 16 August 2021) and the expiration date of OML or date of conversion of the OPL to an OML under the relevant contract. Conversion becomes automatic upon renewal at the expiry of such lease or licence.

However, prior to such conversion or where the conversion option is not triggered, the fiscal terms applicable to the OML or OPL applies. While the Act seems to suggest that the provisions will not apply to a holder of an OPL or OML who do not enter into the voluntary conversion contract, several provisions are scattered across the PIA which specifically impose obligations on both the holder of an OPL and OML even though voluntary conversion may not have been triggered. Importantly, while the conversion of an OPL to a PPL will result to a continuation of the existing OPL term based on the express provisions of the PIA which limits it to the existing residue of the OPL term, the conversion of an OML potentially increases the term as there is no express limitation of the term of a lease except the 20-year period provided under the Act.[7]

It is important to emphasise that it is the lease holder or licence holder that is empowered to take decision on whether to convert or not. For example, in a Production Sharing Contract (PSC) or Risk Service Contract (RSC), the decision to convert lies with NNPC, being the holder, even though we expect NNPC to consider the views of the contractor in making the conversion decisions as the contractor bears the costs and operatorship responsibilities. For joint venture arrangements, the joint venture partners are collectively the licence/ lease holder, which means that the JV partners must make a collective or majority decision to convert. Where it is difficult to agree, relevant provisions of the underlying joint operating agreement will provide the necessary guidance to agree on a binding position.

As the conversion is voluntary, players in the upstream oil and gas value chain require comprehensive and comparative assessment of the fiscal, legal, commercial, and other implications of voluntary conversion or continuing with the existing regime. In some cases, the impact of conversion may be far-reaching depending on the existence of third-party commitments, financing obligations and other factors. A change in the field licence is likely to trigger a material change for instance in a financing document relating to the relevant OML or OPL for which certain prior written consents may be required of the lenders.

The nature of the arbitration and court cases which are to stand discontinued are not specified and seem very vague, though it is the logical and acceptable view that the dispute must relate to the OML or OPL. It is however important for the NUPRC to issue guidelines and the model conversion contracts as soon as possible to provide the required clarity on these issues.

However, we reckon that as a protective measure, from a government perspective, in light of recent high-profile investor-host country arbitration disputes, it may be inferred that all arbitration or court cases relating to the OPL or OML against NNPC or the government, as a JV partner or PSC, are expected to stand discontinued upon conversion. The primary reason behind this provision from the text of the law is to eliminate certain investor guarantees and protections that currently exists, and protect the host country (in this case, Nigeria) from potential liabilities.

Designation of areas and zones and relinquishment upon voluntary conversion

The Act requires the holder of an OML (including one subject to a PSC) at the conversion or renewal date, to designate each area and zone of the OML which:

a.) in its opinion merit appraisal;

b.) the holder is prepared to make a commercial discovery and submit a field development plan;

[5] Sections 11 and 12 of the PPTA refers to incentives for Utilisation of associated and non-associated gas.

[6] Section 6(1)(c)

[7] Section 92(7)

c.) the holder is prepared to make a declaration of significant gas or significant crude oil discovery and submit an FDP;

d.) the development of a field is underway based on prior approvals or having declared a commercial discovery or if no such declaration, a final investment decision to develop the field has been made; or

e.) in which regular commercial production is occurring.

Areas not falling under the above paragraphs are to be relinquished by the holder up to 60% of the entire acreage, except where the sum of the areas marked in paragraphs (a) to (e) exceed 40% of the entire acreage. However, the designation by the OML holder is important as it determines the applicable fiscal term with respect to the various designated zones or areas.

Areas falling under paragraphs (a), (b) and (c) are to be converted to a PPL and will be subject to the fiscal terms under the Act which roughly translates to – 30% companies income tax (CIT), 2.5% tertiary education tax (TET) and 15% hydrocarbon tax (HT) – effectively at 47.5%. While those falling under paragraphs (d) and (e) are to be converted to PMLs and subject to 30% CIT, 2.5% TET and 30% HT – effectively at 62.5%.

As the world races towards clean energy sources, the need to ensure maximum economic recovery of the available petroleum reserves to meet current energy demands and boost economic conditions becomes imperative for the government.

This translates to a significant (26%) reduction from current rates which are on a graduated scale from 65.75% to 85% depending on terrain and stage.
For converted OPLs, including those that are subject to a PSC, the designation of the various areas follows that of the PML discussed above. Areas marked as paragraphs (a), (b) and (c) are to be treated as PPL with the fiscal terms at 15% HT, 2.5% TET and 30% CIT while those marked as (d) and (e) are to be converted to PMLs with 30% CIT, 2.5% TET and 30% hydrocarbon tax.

The idea behind relinquishment seems to take away inactive fields from companies that are not actively exploring them, for subsequent reallocation. This concept speeds up the rate of exploitation of petroleum resources which is expected to boost production volumes. As the world races towards clean energy sources, the need to ensure maximum economic recovery of the available petroleum reserves to meet current energy demands and boost economic conditions becomes imperative for the government.

There is also a risk of relinquishment of parcels not falling within the boundary of a producing field and formations deeper than the deepest producing formations to the government after 10 years of the commencement of a PML.

There is a further risk of relinquishment of marginal fields under section 94(4) which requires the holder of an OML within 3 years of the effective date to: (i) present an FDP; (ii) farmout the discovery; or (iii) relinquish any marginal field that has not been transferred to the government.

Compulsory conversion of marginal Fields

A marginal field is one declared as such prior to 1 January, 2021 or which has been lying fallow without activity for 7 years after its discovery to the effective date. By the text of the PIA:

- Producing marginal fields are allowed to continue to operate under the original royalty rates and farmout agreements but are required to convert to a PML within 18 months from the effective date and become subject to the fiscal regime of the PIA effectively translating to 15% hydrocarbon tax and 30% CIT and royalty provisions. Producing marginal fields effectively enjoy the benefit of a 'special marginal fields HT rates' – at 15% despite its conversion to a PML.

- Non-producing marginal fields declared prior to 1st January 2021 will be converted to a PPL and be subject to the fiscal provisions under Chapter 4 of the Act.

- The Act prohibits the declaration of any new MF but does not prohibit carve outs through farmout arrangements.

The Act establishes a direct relationship between operators of marginal fields and the government especially as it relates to their obligations but still protects the commercial understanding of the parties under any existing farmout agreements.

While the expectation is for the relationship between the farmee and the farmor to continue simultaneously with that of the farmee and the government until such time as the underlying lease expires, where the lease is not renewed by the Commission, , any such relationship will dissolve by operation of law. There is the risk of a converse construction to section 94 to the extent that the mandatory conversion of marginal fields to a PML or PPL has by the creation of a direct relationship with the government effectively excised the marginal field from the OML. It is thus unclear at what point the farmee-farmor relationship falls off.

The prohibition of declaration of marginal fields does not seem to consider the need for smaller and indigenous players that have made inroads into the capital-intensive petroleum industry. It may also take away the competitive process for the award of marginal fields. Nonetheless, the Act does not prohibit the creation of carve out of fields through farmout arrangements and the hope remains that small scale players can make inroads into the industry through farmout arrangements with the leaseholders. Again, the current waive of divestments by the international oil companies presents an opportunity for indigenous players to further establish themselves in the industry and promote Nigerian content.

Administration of a revoked producing lease – Interim Operatorship

The Act introduces an interim operator in respect of a revoked PML. Under the Act, the Minister may within 30 days of the revocation of a PML, participating or shareholder interest, on the recommendation of the Commission, appoint an interim operator to ensure petroleum operations continue from the areas or zones subject to the PML based on good international petroleum industry practices. During the tenure of the interim operator, the Commission may conduct transparent and competitive bidding process for the grant of a new PML.

The interim operatorship is a welcome innovation as it allows petroleum operations in respect of a revoked field to continue pending a time when the lease is re-awarded to another party. The idea is to ensure that production and invariably government revenue from fields including revoked field is unaffected by a change in operatorship by reason of the revocation of the lease.

Environmental Management

Licensees or Lessees engaged in upstream and midstream petroleum operations are required within one year of the effective date or 6 months after the grant of the applicable licence or lease, to submit for approval an environmental management plan (EMP) in respect of projects which require environmental impact assessment to the Commission or Authority as the case may be.

The text of the PIA suggests that the approval of the plan by the Commission or the Authority will be based on the relevant environmental Acts. We suppose that the principal legislation being referenced is the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 and related Acts and subsidiary legislations affecting environment in force.

Gas Flaring

- The Act seeks to promote the protection of the environment by prohibiting the flaring of gas except in cases of emergency, in pursuant of an exemption granted by the Commission or as an acceptable safety practice under established regulations.
- A Licensee is required prior to commencing petroleum production, to install metering equipment conforming to certain specifications on every facility from which natural gas may be flared or vented.
- Also, the Act requires upstream players involved in the production of natural gas to submit within 12 months of the effective date, a natural gas flare elimination and monetisation plan in accordance with Regulations to be issued by the Commission.
- The Act disallows fines paid from being tax deductible. It is safe to say that, fines paid for contravening the law would not be deemed to be wholly, reasonably, exclusively and necessarily for the operations of the Company.
- Equally, penalties for flaring gas are not cost recoverable as not all costs should qualify for recovery under the PSC arrangement.
- The fines paid to the Commission in respect of penalties for gas flaring are to be utilized for the purpose of environmental remediation and relief of the host communities of the settlors on which the penalties are levied.

Domestic Crude Supply Obligations (CSO) and Gas Delivery Obligations (GDO)

Despite Nigeria's petroleum deposits, meeting domestic petroleum products demand has been challenging for successive governments. The state of existing refineries means that Nigeria exports a significant volume of its petroleum products which are refined offshore and imported back to meet local demand.

There have been efforts in the past to address some of these issues and persistent shortages in the domestic market. While most of the existing refineries have gone moribund, the Dangote refinery is expected to become operational in the first quarter of 2022 and is estimated to have a 650,000 barrels per day capacity. In addition to Dangote and NNPC's 445,000 bbls refineries (four of them), there at least other 21 licensed refineries at various stages of development, which all require crude oil as feedstock.

The Act makes provision to guarantee the supply of crude oil and condensates for the domestic market on a willing supplier and willing buyer basis. The Commission is mandated to issue guidelines on the mechanism for the imposition of domestic CSO as well as on the allocation of domestic GDO among all lessees before 1st March each year based on domestic gas demand requirements.

The Act allows a lessee on a voluntary basis, to conclude contracts with wholesale customers of the strategic sectors or with wholesale gas suppliers supplying strategic sectors, for delivery of marketable natural gas on a free market basis to such customers or suppliers and notify the Commission of the contracts.

Where the volume of such contracts is equal to or higher than the domestic GDO for the lessee, the lessee is deemed to have fulfilled its domestic GDO, not be a producer client of the gas aggregator and inform the gas aggregator.[8]

Existing crude and gas agreements which were executed prior to the effective date of the Act are preserved under the PIA to the extent that the Commission or Authority may order variation of such contracts.[9] The Commission is empowered to discontinue the imposition of domestic GDO where the Authority determines that the natural gas market has attained full market status.

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[8]The gas aggregator is the Gas Aggregation Company of Nigeria Limited

[9]Sections 174(9) and 311(10)

Midstream/ Downstream licences

Gas Operations Licenses

The PIA establishes 7 new gas operations licensees. The Nigerian Gas Company, a subsidiary of the Nigerian National Petroleum Corporation currently engages in the transmission, distribution and marketing of natural gas and operates most of the gas transportation network alongside other pipeline system owner granted an operator licence/authorization by the Department of Petroleum Resources under the Nigerian Gas Transportation Network Code, 2020.

The newly created midstream and downstream licensees created under the PIA relating to gas are:

- **Bulk Gas Storage Licence (BGSL)** - bulk storage of natural gas
- **Gas Transportation Pipeline Licence (GTPL)** - exclusive right to own, construct, operate and maintain a gas transportation pipeline
- **Gas Transportation Network Operator Licence (GNOL)** - convey natural gas through the transportation network on an open access basis
- **Wholesale Gas Supply Licence (WGSL)** - sell and deliver wholesale gas to wholesale customers and gas distributors
- **Retail Gas Supply Licence (RGSL)** - sell or retail compressed or liquified marketable natural gas to customers and establish, construct and operate facilities to deliver compressed natural gas and small-scale facilities for LNG not requiring a gas processing licence, for transportation by truck, railcar or marine vessel to customers in compressed or liquified form.
- **Gas Distribution Licence (GDL)** - establish, construct, and operate a gas distribution system and to distribute and sell its natural gas to consumers in a local distribution zone including non-wholesale customers.
- **Domestic Gas Aggregation Licence (DGAL)** support the implementation of the domestic GDO, operate a nomination and balancing mechanism for equitable curtailment of natural gas deliveries in cooperation with the Authority whenever demand and supply expediencies require.

The DGAL role appears to mirror that of the System Operator[10] in the Nigerian electricity value chain. The DGAL will be a not-for-profit company limited by guarantee and shall not be a company controlled by licensees or lessees of upstream petroleum operations or by wholesale customers or their affiliates.

However, the ownership of the company may be a combination of such licensees or lessees. It is not clear what happens to the Gas Aggregation Company of Nigeria Limited (GACN) which was established in 2010 following the National Domestic Gas Supply and Pricing Regulations, 2008 (NDGSPR) for the implementation of the Nigerian Gas Master Plan and the management of the domestic supply of gas to the market.

However, given that most of the provisions of the PIA relating to the DGAL was lifted from the NDGSPR, the expectation is that it will either be the same company or a new entity will replace the existing GACN.

Power of the Authority to regulate and review prices

The Act empowers the Authority to regulate prices where a licensed activity is a monopoly, a licensee is a dominant player or competition has not yet developed in the market to such extent as to protect the interests of customers. However, the Authority is expected to consult with licensees, industry participants and stakeholders before undertaking pricing review or establishing a methodology for regulating prices and revenues earned by licensees providing monopoly or dominant services. Equally, both the Commission and the Authority are required to engage in consultation with stakeholders prior to finalizing or amending any regulation as well as consider submissions made by such stakeholders.

This is a welcome provision and allays fears of indiscriminate price control or change in regulation. The expectation is that the control of price is temporal for the promotion of competition and until such a time as the market has attained enough liquidity and the interplay of the forces of demand and supply become the price determinants.

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Petroleum Liquids Operations

The PIA provides for third party access to facilities and infrastructure used for midstream petroleum on a non-discriminatory basis. The Act creates 8 new crude/petroleum liquid licences

- **Crude Oil Refining Licence (CORL)** - allows the holder to procure, construct, install and operate facilities to process crude oil on its own account, sell such chemicals and petroleum products. Currently there are 5 refineries in Nigeria with 4 of such owned by the Nigerian government through the NNPC and the fifth, owned by the Niger Delta Petroleum Resources Ltd.[11]

  The Dangote Refinery is still under construction but is expected to be operational in the coming months in 2022.

[10] Is an arm of the electricity Transmission Company of Nigeria

[11] https://www.dpr.gov.ng/downstream/refinery/

There are ongoing refurbishment of NNPC refineries to increase profitability and meet local demand for refined products.

The Act also prohibits the establishment, construction or operation of a terminal or other facility for the purpose of export or import of crude or petroleum products without an appropriate licence issued by the Authority.

- **Bulk Petroleum Liquids Storage Licence (BPLSL)** – allows the holder to undertake the bulk storage of petroleum liquids for its account or on behalf of customers.

- **Petroleum Liquids Transportation Pipeline Licence (PLTPL)** - grants the licensee the exclusive right to own, construct, operate and maintain a transportation pipeline for the bulk transportation of petroleum liquids within a route for its own account with third party access provisions or as common carrier.

- **Petroleum Liquids Transportation Network Operator Licence (PLTNOL)** - allows the holder to convey petroleum liquids through the transportation network, balance inputs and offtakes from the transportation network, provide open access to the transportation network and charge for the use of the transportation network.

- **Wholesale Petroleum Liquids Supply Licence (WPLSL)** - grants the holder the rights to provide a reliable supply of petroleum liquids to purchasers on request who is willing and able to pay for the connection to the transportation network or pipeline.

- **Petroleum Product Distribution Licence (PPDL)** - develops and maintains a safe, efficient, reliable and economical service for the distribution of petroleum products to individual customers and petroleum product retailers.

While the petroleum liquids and gas licences will improve efficiency as they clearly delineate the roles of the various licensees, there is some chance of overlap in functions as well as scope in the system to merge some of these licenses/functions to avoid duplicity of roles.

- **Petrochemicals Production Licence** - authorizes the holder to establish, construct and operate a facility for the production of petrochemicals and sell the petrochemicals produced.

Pricing of Petroleum Products

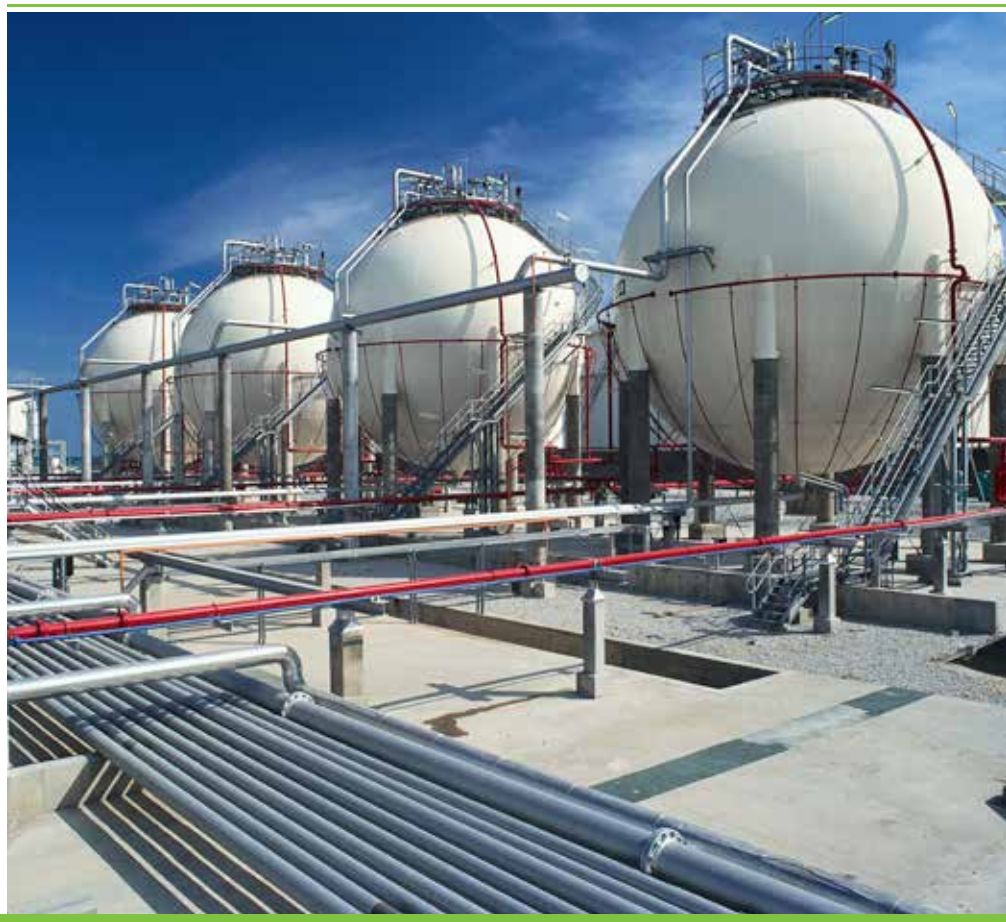
The Act seems to liberalise the market by providing for the wholesale and retail prices of petroleum products to be based on unrestricted free market pricing conditions.

The Authority however, retains the power to regulate the tariffs and prices charged by licensees in activities or service that constitute a monopoly or excessive dominant supplier.

Competition and Market Regulation

The PIA empowers the Authority subject to the provisions of the Federal Competition and Consumer Protection Council Act (FCCPCA), to monitor the state of the market, administer and ensure compliance with the provisions of the Act and any law or regulation issued in respect of competition and market regulation, and prevent anti-competitive activity in the midstream and downstream sector.

It prohibits a licensee from the direct or indirect acquisition of an interest in, purchase or merger with another holder of a licence or an affiliate of a holder of a licence without the prior written consent of the Authority. The texts of the PIA seems to align with the FCCPCA which contains overriding provisions over every other legislation in respect of competition and consumer protection matters. While the Act seeks to ensure a stable market, there are chances that it may lead to some form of over-regulation which may stifle businesses and discourage players.



Abandonment, Decommissioning and Disposal

Abandonment or decommissioning in oil and gas is the process of safely removing or dismantling of installations and equipment used in petroleum activities to bring the environment as nearly as it was prior to the commencement of such activities usually at the end of production.

The PIA requires such decommissioning to be in line with good international petroleum industry practice and standards set by the International Maritime Organisation for offshore petroleum installations and structures.

The consent of the Commission or Authority as the case may be is required before a licensee or lessee may undertake decommissioning. Furthermore, the licensee must submit a decommissioning programme after the notice setting out certain information on the decommissioning plans for approval.

Decommissioning and Abandonment Fund

Each lessee and licensee is required to set up, maintain and manage a decommissioning and abandonment fund held by a financial institution that is not an affiliate of the lessee or licensee through an escrow account which will be accessible by the Commission or Authority. The funds will be used exclusively to pay for decommissioning costs. The decommissioning fund is in accordance with international best practices.

The fact that the PIA grants the Commission or Authority access to the funds raises some issues and fear that such funds may be subject to abuse by the authorities. While such access may be permissible, mechanisms should be put in place to ensure that the funds are applied solely for the purpose of restoring the licensed or leased area back to its previous state based on the tenets of the Act.

Decommissioning Plan

Decommissioning Plan is required to be submitted within 12 months of the effective date for upstream operations and within 12 months of the effective date for midstream operations. The plan forms the basis for the computation of the decommissioning contribution. The plan should contain the yearly amount which is required to be a reasonable estimate by the lessee or licensee of its decommissioning costs projected forward on a nominal basis divided by the estimated life of the facilities.

- Contribution is subject to review every 10 years.
- The holder is required to notify the Commission of the establishment of the fund.
- The holder is required to furnish the Commission and the Federal Inland Revenue Service with statements of accounts showing the contribution to the fund.

Conclusion

Overall, the administration chapter of the PIA represents a significant step towards attaining a commercialized and liquid petroleum market.

The creation of the petroleum licences/ lease also demonstrates the fact that Nigeria is moving quickly towards a diversified economy driven by crude oil and gas. The impact may not be felt in the immediate but will definitely emerge in the coming years.

However, as one of the objectives of the Act is to create a competitive market, government interference should be minimal and limited to protecting the retail consumers and less of private arrangements with wholesale supply and distribution of petroleum products.

Nonetheless, the foundation for the industrialization of the Nigerian economy seems to have been set with the passage of the Act and the benefits will be visible as time goes on. One key factor would be efficient and competent regulators to provide guidance in form of regulations and guidelines for the implementation of the provisions of the Act.

Although some areas of the Act remain unclear and require clarity, the expectation is that with the passage of time and engagement with industry players, the right meanings will be given to the provisions of the Act.

The creation of the petroleum licences/lease also demonstrates the fact that Nigeria is moving quickly towards a diversified economy driven by crude oil and gas. The impact may not be felt in the immediate but will definitely emerge in the coming years.

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