

FROM BILL TO ACT: WHAT HAS CHANGED IN THE GOVERNANCE AND INSTITUTIONS PROVISIONS OF THE PETROLEUM INDUSTRY ACT 2021?



The President of the Federal Republic of Nigeria, President Muhammadu Buhari, finally signed the Petroleum Industry Bill (“PIB”) 2021 (now Petroleum Industry Act, “PIA”, the “Act”) into law on August 16, 2021, well over a decade after the first draft of the Bill was presented to the National Assembly. Although the PIA did not specify a commencement date, the President inaugurated a Steering Committee for the Implementation of the Act with a 12 months deadline in which to come up with the implementation framework, which suggests that the Act may likely become effective around August 2022 or soon thereafter. Earlier in July, when the PIB was passed by both houses of the National Assembly, we began a review of Chapter One of the Bill on Governance and Institutions, specifically looking into the Powers of the Minister as well as the Establishment of the Nigerian Upstream Petroleum Regulatory Commission (the “Commission”) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the “Authority”)¹. Now that the Bill has been assented to, this article seeks to review Chapter One (Parts I-IV) of the PIA in order to identify any significant changes that may have been made to the Bill before it was passed into law, particularly as it relates to aspects of this Chapter that raised concerns amongst stakeholders.

A review of these provisions indicates that they basically remain the same as contained in the Bill, save for a couple of amendments/insertions discussed below.

The Technical and Regulatory Functions of the Commission

i. The Act, by its Section 8(d), permits the Commission to be in charge of fully integrated upstream and midstream petroleum operations as an exception to the general rule of separation of powers between the Commission and the Authority in relation to upstream and midstream operations. For the Commission to treat upstream and midstream petroleum operations as integrated, there must be a joint use of utilities used exclusively for the upstream

and midstream operations. In our review of Part III of the Bill, we had pointed out that there seemed to be some confusion in the description of what may be considered as integrated petroleum operations under the Bill. The Bill provided that petroleum operation may be considered integrated, where there is a joint use of utilities used exclusively for the upstream and midstream operations **and possible assistance to host communities** (emphasis ours). We had raised concerns about what this reference to host communities could possibly mean in the context of the provision. Thankfully, this phrase has been deleted from the Act.

ii. Concerning the functions of the Commission with regard to frontier basins, Section 9(2) of the Act provides that where data acquired and interpreted under a petroleum exploration licence, in the judgment of the Commission, require testing and drilling of identifiable prospects and leads, and no commercial entity has publicly expressed an intention of testing or drilling such prospects, the Commission shall request the services of the Nigerian National Petroleum Company Limited (“NNPC Limited”) to drill or test such prospect and leads on a service fee basis to be charged to the Frontier Exploration Fund. Section 9(3) of the Act is a new addition which provides that where commercial discovery is made pursuant to Section 9(2), NNPC Limited shall have the first right of refusal in the award of the acreage for subsequent developments and other petroleum operations. It remains to be seen whether NNPC Limited possess the relevant expertise to deliver on such tasks.

iii. Under the Bill, the Frontier Exploration Fund (the “Fund”) was to be maintained with 10% of the rents on petroleum prospecting licences and 10% rent on petroleum mining leases, and 30% of NNPC Limited’s profit oil and profit gas as in the production sharing and risk service

¹ See the following links to our website articles: https://www.topeadebayollp.com/resources/insightfile/45_REVIEW%20OF%20THE-PETRO-LEUM-INDUSTRY-BILL.pdf; [https://www.topeadebayollp.com/resources/insightfile/47_PART-2-REVIEW%20OF%20THE-PETROLEUM-INDUSTRY-BILL%20\(%20Edited\).pdf](https://www.topeadebayollp.com/resources/insightfile/47_PART-2-REVIEW%20OF%20THE-PETROLEUM-INDUSTRY-BILL%20(%20Edited).pdf); https://www.topeadebayollp.com/resources/insightfile/48_REVIEW%20OF%20THE-PETROLEUM-INDUSTRY-BILL-PART-3.pdf



contracts. The Act however limits the payment into the Fund to 30% of NNPC Limited's profit oil and profit gas as in the production sharing, profit sharing and risk service contracts², although this does not seem to have allayed the fears of some stakeholders, amongst them, host communities who believe that the 30% is still too much to invest in frontier acreages.³ Currently, NNPC operates thirty-two Production Sharing Contracts ("PSC")⁴ four Service Contracts ("SC")⁵. It is not clear which arrangement is referred to as the profit sharing contract, outside of the PSC and SC arrangements. One of the issues raised in the Federal Government's 2017 National Petroleum Policy ("NPP", the "Policy") is the possibility that government may consider conversion of some of its Joint Venture ("JV") arrangements to PSCs in order to put an end to the dilemma of cash calls under the JV arrangements. There is therefore, a high probability that NNPC's PSCs may significantly increase, and consequently, the profit accruing to the Fund. It should be noted that the Act now provides that the 30% profit shall not be utilised by the fund until appropriated by the National Assembly.⁶ However, doubts still exist as to the legality of NNPC making payments directly into the Fund's escrow account rather than into the Federation Account as is constitutionally required.

² See Section 9(4) of the PIA

³ nil

⁴ <https://napims.nnpcgroup.com/our-services/Pages/Production-Sharing-Contractors.aspx>

⁵ <https://napims.nnpcgroup.com/our-services/Pages/Service-Contractors.aspx>

⁶ Section 9(5) of the PIA

⁷ See Section 52(1) of the PIA

The Midstream and Downstream Gas Infrastructure Fund

The Bill provides for the establishment of the Midstream Gas Infrastructure Fund which shall be subject to appropriation by the National Assembly. The Act renames the Fund the Midstream and Downstream Gas Infrastructure Fund, does expanding the scope of the Fund to cover downstream gas operations.⁷

In our next publication, we will be taking a critical look at the establishment of NNPC Limited under the PIA.

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