Nigeria’s Petroleum Industry Act Handbook
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01 Background
Nothing reflects the status of Nigeria’s Petroleum Industry more than its lack of a regulatory law, especially in a country that generates over 90% of its foreign exchange earnings. Until August 2021, when the Petroleum Industry Act was passed into law, the industry had seen a lingering setback as there was no regulatory framework guiding its operations.

For decades, the virtually ungovernable industry has been plagued by poor leadership, corruption, and environmental degradation. Despite being the principal revenue source for the better part of the last 4 decades, the sector has also recorded losses through opaque licensing deals, unaccountable middlemen, lack of refining capacity and graft in the government and state-owned Nigerian National Petroleum Corporation (NNPC). Likewise, sabotage and pipeline theft in the oil-rich Niger Delta have ensured that the taxpayer loses out on billions of dollars in annual revenues.

Since the 1960s, different administrations have failed to initiate any significant reform in the oil and gas industry; thus, Nigeria has not been able to translate its oil wealth into national development. There have been many reasons for this, including bad governance, weak sector regulation, and inefficiencies in operations. For over 20 years, multiple governments have attempted to pass an all-encompassing Petroleum Industry Bill (PIB), the scope and complexity of which ensured repeated failure.

The first Executive Bill on the PIB was sent to the sixth National Assembly in 2008 by the administration of the late President, Umar Yar’Adua. However, the bill’s passage suffered a hitch due to disagreement over 10% as a dedicated fund for the development of Host Communities and sharing of oil profit among the International Oil Companies. During the Goodluck Jonathan administration in July 2012, a revised draft was again presented to the seventh National Assembly. Still, the House of Representatives only passed it just a few days before the end of the administration.

The PIB was split into four parts – the Petroleum Industry Governance Bill (PIGB), Petroleum Industry Administration Bill (PIAB), Petroleum Industry Fiscal Bill (PIFB), and Petroleum Host and Impacted Community Development Bill. The eighth National Assembly passed the PIGB; however, President Muhammadu Buhari declined presidential assent to the Bill.

The Petroleum Industry Act (PIA) was finally signed into law by President Muhammadu Buhari on August 16 2021. The PIA established a new reality for Nigeria’s oil and gas industry.

1 - https://punchng.com/buhari-signs-petroleum-industry-bill-into-law/
Objectives

The key objective of the PIA is to restructure and transform Nigeria’s petroleum industry. The PIA provides a legal, governance, regulatory and fiscal framework for the Nigerian oil and gas industry and the development of host communities. The PIA seeks to encourage investment in the Nigerian petroleum industry, and there is a high expectation for an increment in revenue to the Federal Government.

The PIA will:

- Create an efficient and effective governing institution.
- Creation of a commercially oriented and profit-driven national petroleum company.
- Promote transparency, good governance and accountability.
- Foster a business environment conducive to petroleum operations.
Governance and Institutions

The key objective of this aspect of the Act is to ensure transparency, good governance and accountability in the administration of petroleum resources in Nigeria. It further highlights creating a commercially oriented national petroleum company and encourages friendly business environments for petroleum operations.

The Act commences with governance and establishing the Nigerian petroleum sector’s institutional framework. The Minister, two new regulatory bodies – the Nigerian Upstream Regulatory Commission (the “Commission”) and the Midstream and Downstream Regulatory Authority (the “Authority”), and the Nigeria National Petroleum Company Limited (“NNPC Limited”) (successor company to the
2.1 Minister of Petroleum (‘The Minister’)

The Minister of Petroleum continues to exercise general supervision over the affairs and operations of the Nigerian petroleum industry. The PIA empowers the Minister to negotiate treaties or other international agreements on behalf of the government on petroleum-related issues. Interestingly, the powers of the Minister to make regulations concerning the upstream, midstream or downstream sectors have now been ceded to the Commission and the Authority, respectively.

The power to grant, assign and revoke interests in Petroleum Prospecting Licenses and Petroleum Mining Leases, which the Minister previously held, is now subject to the recommendation of the Commission. Likewise, the power to issue, suspend or revoke, impose conditions for the transfer, cancel, extend, and renew licences, permits and authorisations for midstream and downstream petroleum operations are now vested in the Authority.

However, the PIA still allows the Minister to give general policy directives to the Commission on matters relating to upstream petroleum operations and the Authority on midstream and downstream petroleum operations, as the case may be.

2.2 The Nigerian Upstream Regulatory Commission (“the Commission”)

The Commission will be responsible for the commercial regulation of upstream petroleum operations and will take over the responsibilities of the Department of Petroleum Resources (DPR). The Commission will regulate all technical activities in the upstream sector by enforcing, administering, and implementing all laws, regulations, national and international policies, standards, and practices relating to the sector.

The Commission is also to enforce compliance with the conditions of all leases, licences, permits and authorisations issued to companies in the sector. The Commission will determine and collects royalties, signature bonuses, and related payments or production shares where the model contract includes production sharing or risk service provisions and gas flare penalty arising from midstream operations.

3 - https://www.bomesresourcesconsulting.com/review-petroleum-industry-act-2021-nigeria.html
It is also required that any government body whose action would impact the upstream industry should consult with the Commission before taking such action and comply with any recommendation that the Commission may propose. This will particularly help minimise disruption by government agencies seeming to work at cross purposes when the overall objection should be the viability of the petroleum industry.

There will be a Governing Board to oversee the Commission. Members of the governing board will be appointed by the President subject to the Senate’s confirmation, with a non-executive Commissioner as its head. However, the President solely has the power to remove the members without deferring to the Senate. The Commissioners are to hold office for 5 years, renewable for another 5 years.

### 2.3 The Nigerian Midstream and Downstream Petroleum Regulatory Authority (“the Authority”)

The Authority will be responsible for the technical and commercial regulation of Nigeria’s midstream and downstream petroleum operations. The Authority will also be responsible for determining the appropriate tariff methodology for processing natural gas, transportation and transmission of natural gas, transportation of crude oil, bulk storage of crude oil and quality monitoring for service provided. Likewise, the Authority is expected to determine the domestic gas demand requirement and the crude oil required for domestic supply obligation to satisfy economic and strategic demands.

There is a difference between the Midstream and Downstream petroleum industry operations. The midstream sector captures the establishment of refineries and facilities to produce lubricants and petrochemicals. The sector also includes constructing facilities for the transportation and storage of petroleum liquids. The PIA provides details of permissible activities in the sector subject to obtaining licenses and permits.

The Authority will impose a gas flare penalty for midstream operations, and this penalty will be credited to the Midstream and Downstream Gas Infrastructure Fund. The penalty will be utilised for midstream gas infrastructure investment within the host community where the flare occurs.

The PIA makes provision for the establishment of the Midstream and Downstream Gas Infrastructure Fund, in which 0.5% of the wholesale prices of petroleum products sold in Nigeria and natural gas produced and sold in Nigeria will be paid into the Fund.4

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4 - [https://drive.google.com/file/d/1ZOa3G0F_-rm4EonuOhcFNF__J_aC96vS6/view](https://drive.google.com/file/d/1ZOa3G0F_-rm4EonuOhcFNF__J_aC96vS6/view)
Similar to the Commission, the Authority will also be run by a Governing Board and the members of the Governing Board, which is to be headed by a non-executive Commissioner, are to be appointed by the President subject to the Senate’s confirmation. The Commissioners are also to hold office for 5 years, which is renewable for another 5 years.

2.4 The Midstream and Downstream Gas Infrastructure Fund

According to Section 52 of the PIA, a Midstream and Downstream Gas Infrastructure Fund will be established. Its purpose is to make equity investments of government-owned participating or shareholder interests in infrastructure related to midstream gas operations. This aims to increase domestic gas utilisation and eliminate gas flaring in Nigeria.

There is a 0.5% levy on the wholesale price of petroleum products and natural gas sold in Nigeria; this will serve as the primary funding source for the Midstream and Downstream Gas Infrastructure Fund. This is different from the 0.5% levy charge to be collected by the Authority. The fund will have its governing council, which the Minister of Petroleum will chair.
The gas flaring penalty that is payable to the Commission will be added to the environmental remediation fund and relief of the host communities of the settlor on which the penalty is levied. There may be some disputes between the Authority and the Commission as regards the gas flare penalty, and this is because it was not stated clearly in the Act the frequency of transfer of gas flaring penalty monies from the Commission to the Fund.⁵

2.5 Nigerian National Petroleum Company Limited (NNPC Limited)

Within six months of the commencement of the PIA, the Nigerian National Petroleum Company (NNPC) will be replaced by a limited liability company under the Companies and Allied Matter Act (CAMA) which will be known as the Nigerian National Petroleum Company Limited. NNPC Limited will be responsible for carrying out petroleum operations on a commercial basis and also engage in the development of renewable resources in competition with private investors. All shares in the NNPC Limited belong to the government through the Ministry of Finance and Ministry of Petroleum as the shareholders.

All assets and liabilities of NNPC will be transferred to NNPC limited. The assets and liabilities not transferred will remain with NNPC until extinguished or transferred to the government. It should be noted that NNPC Limited will act as an agent of NNPC during the winding-down process. According to Section 59 of the PIA, the composition of the NNPC Limited board shall be determined following the provisions of the Companies and Allied Matters Act and its Articles of Association.⁶ All NNPC employees will be transferred to NNPC Limited with similar conditions of employment.

The PIA stated that 10% of proceeds of the sale of profit oil and profit gas would be earned as a management fee by NNPC Limited. In comparison, 30% will be remitted to Frontier Exploration Fund for the development of frontier acreages and 10% of rents on petroleum prospecting licenses and mining leases.


This section of the PIA focuses on providing a transparent and efficient administration of the petroleum industry, promoting the exploration and exploitation of petroleum products for the benefit of Nigerians, ensuring the sustainable development of the petroleum industry and creating a conducive business environment within the petroleum industry. It caters for the administration of the Upstream Petroleum operations, Midstream & Downstream Gas operations, and Midstream & Downstream Petroleum operations.

Overall, the administration chapter of the PIA represents a significant step towards attaining a commercialised and liquid petroleum market.
3.1 Administration of Upstream Petroleum Operations

According to the PIA, the Commission will be responsible for regulating upstream petroleum operations. The Commission will be in charge of licenses and leases and perform technical and commercial regulatory functions that were the responsibility of the Department of Petroleum Resources. Recommendations will be made to the Minister by the Commission regarding granting of licences or lease to operating companies incorporated and validly existing in Nigeria under the Companies and Allied Matters Act.

The Commission is responsible for receiving applications for licences and leases and making necessary technical and commercial appraisals that would form the basis of its recommendation to the Minister on granting licences or leases to respective applicants.

The form of the principal licences/lease to be given for upstream operations are listed below:

3.1.1 Petroleum Exploration Licence (PEL)

The Petroleum Exploration Licence is equivalent to the current Oil Exploration Licence and may be granted to qualified applicants to explore petroleum on a speculative and non-exclusive basis. The PEL shall be for 3 years and may be renewable for an additional period of 3 years.

3.1.2 Petroleum Prospecting Licence (PPL)

The Petroleum Prospecting Licence is equivalent to the current Oil Prospecting Licence and may be granted for the exploration of petroleum on an exclusive basis. A PPL for onshore and shallow water acreages shall be for not more than 6 years, with an initial exploration period of 3 years and an extension period of 3 years which is optional. In the case of deep offshore and frontier acreages, it shall not be more than 10 years, with an initial exploration period of 5 years and an extension period of 5 years which is optional.
3.1.3 Petroleum Mining Lease (PML)

The Petroleum Mining Lease is equivalent to the current Oil Mining Lease and may be granted to qualified applicants to search for, win, work, carry away and dispose of crude oil, condensates and natural gas. The lease shall be for a maximum period of 20 years and may be renewable for one or more additional periods of not more than 20 years each. The PIA amended the renewal of the petroleum mining lease to be on terms and conditions determined by the Commission.

3.1.4 Management of Gas Flaring

Gas flaring, the burning of natural gas that accompanies crude oil pumped from ground level, is a hotly-debated issue amongst oil and gas experts in Nigeria today. It is generally believed that processing gas for sale is costlier than flaring it away; as such, associated gas is preferred to be flared by operators. Gas flaring is a menace which has caused and continues to contribute to irreversible environmental degradation, posing hazards to human health.

Considering the environmental impact of gas flaring, the PIA demands that upstream operators that produce natural gas should submit a natural gas flare elimination and monetisation plan to the Commission within 12 months of the effective date of the PIA.

There are a few instances where gas flaring may be allowed, such as in the case of an emergency, an exemption granted by the Commission, or as an acceptable safety practice under established regulations. Before the commencement of petroleum operations, operators must install metering equipment conforming to certain specifications on every facility from which natural gas may be flared or vented.

The PIA made it clear that gas flare penalties paid for midstream operations are to be transferred to the Midstream and Downstream Gas Infrastructure Fund. This will then be utilised for investment in gas infrastructure in the affected host communities. Gas flare penalties paid to the Commission will be used for environmental remediation and relief of the impacted host communities.
3.2 General Administration of Midstream and Downstream Petroleum Operations

The management and administration of the midstream and the downstream sector will be the responsibility of the Nigerian Midstream and Downstream Petroleum Regulatory Authority. The Authority will be in charge of license application and tariff principles.

3.2.1 Licence Application

Various conditions for the license for the midstream and downstream petroleum operations are recognised by the PIA. A permit shall only be granted for midstream operations where the operations do not involve excessive capital or operating expenditures, includes an acceptable environmental management plan, a decommissioning and abandonment plan, and a decommissioning and abandonment fund, and provides for the elimination of routine natural gas flaring.

The Authority is responsible for granting, renewing, modifying and extending licences and permits to operators in the midstream and downstream sectors. These licenses will be granted subject to the approval of the application and payment of fees. It is notable to mention that the license for crude oil refinery needs to be approved by the Minister on recommendation by the Authority. The Authority is empowered to make and enforce regulations and guidelines that will help it discharge its duties concerning licensing matters. The tenure of each license and the conditions for granting a renewal are expected to be published through a regulation.

3.2.2 Tariff and Pricing Principles

The PIA eliminates the government’s regulation on the pump price of petroleum products and allows the market forces to determine the price; however, the authority will regulate prices and tariffs on products where a monopoly exists, or the market is at an infant stage to protect the interest of customers.

Before establishing a methodology for price regulation, the Authority will have to consult some stakeholders such as the operators, consumers, prospective customers, consumers associations, associations of prospective customers and any other persons interested in the proposed tariff methodology. Nevertheless, the Authority may establish a tariff methodology without the stakeholders’ consultation. It considers it necessary to do so; such tariff methodology so determined shall be valid for only six months subject to confirmation via due process of stakeholders’ consultation.

Administration of Midstream and Downstream Petroleum Liquids Operations

For the administration of the midstream and downstream gas operations, it is required that a holder of an existing lease, license or permit who is involved in midstream or downstream gas operations before the effective date of the PIA must apply to the Authority within 24 months from the effective date of the PIA for the appropriate licence or permit, as applicable.

According to Section 125 of the PIA, it is an offence to be involved in midstream and downstream gas operations without authorisation. Anyone found guilty of this will face a penalty of either one year in prison or a fine imposed by regulation in the case of a license-required Activity or 6 months in prison or a fine imposed by regulation in the case of a permit-required Activity.

Seven new gas operation licenses are created under this section in the PIA. These licenses are listed below:

- Bulk Gas Storage Licence (BGSL)
- Gas Transportation Pipeline Licence (GTPL)
- Gas Transportation Network Operator Licence (GNOL)
- Wholesale Gas Supply Licence (WGSL)
- Retail Gas Supply Licence (RGSL)
- Gas Distribution Licence (GDL)
- Domestic Gas Aggregation Licence (DGAL)

Administration of Midstream and Downstream Petroleum Liquids Operations

There is a provision for third party access to facilities and infrastructure used for midstream petroleum on a non-discriminatory basis in the PIA.

Eight new crude/petroleum liquid licences are created under this section of the PIA. These licenses are listed below:

- Crude Oil Refining Licence (CORL)
- Bulk Petroleum Liquids Storage Licence (BPLSL)
- Petroleum Liquids Transportation Pipeline Licence (PLTPL)
- Petroleum Liquids Transportation Network Operator Licence (PLTNOL)
- Wholesale Petroleum Liquids Supply Licence (WPLSL)
- Petroleum Product Distribution Licence (PPDL)
- Petrochemicals Production Licence (PPL)
Decommissioning is ending offshore oil and gas operations at an offshore platform and returning the ocean and seafloor to their pre-lease condition. The decommissioning of oil facilities makes the operating site in the state as much as possible with its original environment and in optimal safety conditions. When a field production cycle comes to an end in oil and gas, and all the usable fuel has been processed, the facilities should be dismantled, and the surrounding area returned to its natural condition.

The PIA requires that decommissioning be in line with good international petroleum industry practices and standards set by the International Maritime Organisation for offshore petroleum installations and structures. Approval must be obtained from the Commission or the Authority, as the case may be. Each lessee and licensee must set up, maintain and manage a decommissioning and abandonment fund. This fund is to be held by a financial institution that is not an affiliate of the lessee or licensee in an escrow account accessible to the Authority or Commission. The fund will be used for abandonment and decommissioning purposes, and operators must make periodic payments to the fund. Either the Authority or Commission can access this fund for abandonment and decommission if the licensee or the lessee fails to comply with the abandonment plan. However, mechanisms should be put in place to ensure that the funds are applied solely to restore the licensed or leased area to its previous state based on the tenets of the Act.

It is mandated that a decommissioning plan be submitted within 12 months of the effective date for upstream operations and within 12 months for midstream operations. This decommissioning plan will form the basis for the computation of the decommissioning contribution. It should contain the yearly amount 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.
The operations of companies involved in the exploration and exploitation of oil and gas resources come with social and environmental downsides for the communities that play host to such operations. The underlying tensions between oil companies and host communities have been blamed on the perception that while the districts bear the brunt of such environmental and social consequences, they have not had a fair share of the benefits of extraction. The foregoing has necessitated an essential debate on how host communities may be compensated for the impact the industry may have on their lives and how they may contribute to shaping the relations between their communities and the companies; as such, participation, ownership and beneficiation will be critical to peace and sustainable development in oil-producing areas.
The objectives of the Host Communities Development are to:

- Foster sustainable prosperity within host communities
- Provide direct social and economic benefits from petroleum operations to host communities
- Enhance peaceful and harmonious co-existence between licensees or lessees and host communities
- Create a framework to support the development of host communities

The PIA provides another salient introduction: the Petroleum Host Community Development, and it is expected to provide direct social and economic benefits to the communities. With the enactment of PIA, companies are required to set up a Host Community Development Trust (‘HCDT’ or ‘Trust’) for the benefit of the host communities. Funding for the Host Community Development Trust will come from annual contributions equivalent to 3% of its actual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities. Likewise, the trust may also be funded by donations, gifts, and grants.

To achieve its key objective, the PIA puts a framework for the allocation of the Fund. It states that 75% of available cash will be used for capital projects, 20% for reserves, and 5% for administrative expenses. In the event of vandalism, sabotage, or other civil unrest resulting in damage to petroleum facilities or disruption of production activities, a community will forfeit the cost of repairs. The settlor must give a matrix to the Board of Trustees, which shall be used to distribute the Fund to the host communities.

There will be some crucial duty bearers in charge of the host communities' development trust fund.

### 4.1 The Commission and Authority

The Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority will make regulations on the administration and safeguard the utilisation of the host communities' development trust fund and, at the same time, maintain oversight responsibility for ensuring that projects and programmes proposed by the host communities development trusts are implemented. They will promote healthy, safe, efficient, and effective conduct of petroleum upstream, midstream, and downstream operations in an environmentally acceptable and sustainable manner and determine the guarantee of compensation to persons or communities adversely affected by petroleum operations.
4.2 Companies

The companies are required to incorporate, manage, and supervise the administration of host communities' development trust to achieve the following:

- Finance and execute projects for the benefit and sustainable development of the host communities.
- Facilitate economic empowerment opportunities in the host communities.
- Support healthcare development for the host communities.
- Support local initiatives within the host communities which seek to enhance security.
- Assist in any other developmental purpose deemed beneficial to the host communities.
- Undertake infrastructural development of the host communities within the scope of funds available for such purposes.
- Advance and propagate educational development for the benefit of members of the host communities.
- Support local initiatives within the host communities, which seek to enhance the protection of the environment.
- Invest part of the available fund for and on behalf of the host communities.

4.3 Host Communities

The host communities that will directly benefit from the trust are expected to create and sustain a convenient environment for petroleum upstream, midstream, and downstream operations. These communities must participate in the development of needs assessment by companies and support and cooperate with structures created to deliver development objectives. Communities will take responsibility for acts of vandalism, sabotage, and civil unrest that adversely affect company operations.
4.4 Structure & Operandi of The Trusts

4.4.1 Formation and Operationalization

Companies are mandated to incorporate the host communities development trusts and determine the beneficiary littoral communities in the case of shallow and deep offshore operations. They are also to appoint and authorise the Board of Trustees to be registered under the Companies and Allied Matters Act (CAMA).

Companies will carry out needs assessments for the development of Community Development Plans. The essence of the needs assessment is to determine the specific needs of each affected host community, ascertain the effect that the proposed petroleum operations might have on the host community, and provide a strategy for addressing the needs and identified impacts. The needs assessment will form the basis for developing a host community development plan submitted to the Commission or Authority to enable the performance of oversight functions.

Companies are expected to engage with each of the affected host communities to understand the issues and needs of the communities to develop a strategy to address the needs identified in the applicable host community needs assessment.

4.4.2 The Host Community Development Plan

The Host Community Development Plan shall:

- Specify the community development initiatives required to respond to the findings and strategy identified in the host community needs assessment.
- Determine and specify the projects to implement the defined initiatives.
- Provide a detailed timeline for projects.
- Determine and prepare the budget for the host community development plan.
- Set out the reasons and objectives of each project as supported by the needs assessment.
- Conform with the Nigerian content requirements provided in the Nigerian Oil and Gas Industry Content Development Act.
- Provide for ongoing review and reporting to the commission or authority.
The PIA requires companies to set up a Board of Trustees for the Host Community Development Trust and determine membership and criteria for appointment, subject to the approval of the Commission or the Authority. Members of the Board must be persons of high integrity and professional standing, and appointees to the Board may not necessarily come from any of the host communities.

The Board of Trustees will be responsible for the general management of the Trust, which includes approving the projects for which the trust fund will be utilised. The Board will also provide general oversight of these projects and set up a committee of the host communities development trust and appoint its members.

The Board of Trustees must set up a management committee that will comprise one representative of each of the host communities as a non-executive member, alongside other executive members that must be of high integrity and professional qualifications. The management committee is tasked with preparing the budget of the trust fund and will also manage and supervise project execution.

The management committee will also be responsible for setting up an advisory committee responsible for nominating members to represent the host communities on the management committee. The advisory committee will also be responsible for monitoring the progress of projects and advising the management committee on ways to improve security within the communities.
### 4.5 Funding And Financial Governance

#### 4.5.1 Source of Funding

According to section 240 of the PIA, each settler must contribute an amount equal to 2.5% of its actual operating expenditure in the immediately preceding calendar year in respect of all petroleum operations affecting the host communities to the Trust.

Beyond the compulsory contribution payable to Trust, other funding sources include gifts, donations, honoraria, and grants. Profits and interest accruing to the reserve fund of the Trust are also additional sources of funding.

#### 4.5.2 Usage and Allocation of the Fund

The trust funds will be exclusively used for the implementation of the host community development plan. The settlor will provide the Board of Trustees with a matrix for distributing the trust fund to the host communities under its jurisdiction. The Board of Trustees shall rely on such a matrix to affect the distribution of funds.

Funds are to be allocated using the following formula:

- 75% will be allocated to the capital fund, out of which the Board shall make disbursements for projects in each of the host communities as may be determined by the management committee.
- 20% will be allocated to the reserve fund, which will be invested to utilise the trust whenever there is a cessation of contribution by the settlor.
- An amount not exceeding 5% is to be utilised solely for the administrative cost of running the trust and special projects. It is entrusted to the company, which shall render an account of its usage at the end of each financial year.

According to Sections 256 and 257 of the PIA, the funds of the Trust shall be exempted from taxation. At the same time, statutory payments by the company to the trust shall be deductible for hydrocarbon tax and company income tax.

In the case of vandalism, the host community shall forfeit its entitlement to the extent of the cost of repairs due to vandalism, sabotage, or other civil unrest that damages petroleum and designated facilities or disrupts production activities within the host community. The basis for computation of the trust fund shall exclude the cost of repairs of damaged facilities attributable to any act of vandalism, sabotage, or other civil unrest in any applicable year.

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11 - https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/petroleum-industry-bill-(pib)-2021-a-game-changer.pdf
The PIA made some significant changes to the fiscal framework in the oil and gas sector, which will lead to an overhaul of the current fiscal regime.
The objective of this section is to create a fiscal framework that will encourage investment in the petroleum industry, promote transparency, increase revenue for the government and at the same time, ensure a fair return for investors.

The PIA introduced a dual income tax regime for upstream petroleum companies, namely the Hydrocarbon Tax and the Companies Income Tax.

### Dual Taxation Regime

The PIA introduced a dual income tax regime for upstream petroleum companies, namely the Hydrocarbon Tax and the Companies Income Tax.

#### 5.1.1 Hydrocarbon Tax (HT)

A new tax regime will replace the existing petroleum profit tax called the Hydrocarbon Tax. The Federal Inland Revenue Service, FIRS, will be responsible for collecting hydrocarbon tax on behalf of the government. The hydrocarbon tax will be chargeable from the profits of upstream petroleum companies in the onshore and shallow water. Hydrocarbons which include crude oil, condensates and natural gas liquids produced from associated gas, will be taxed, while crude oil from deep offshore is excluded from the tax; this is done to encourage exploratory activities in the area.

The chargeable tax for any accounting period of a company shall be a percentage of the chargeable profit for that period aggregated, and it shall be as follows:

- 30% of the profit from crude oil for petroleum mining Leases selected pursuant to sections 93(6)(b) and 93(7)(b) of the PIA
- 15% of the profit from crude oil for onshore and shallow water areas and petroleum prospecting licenses selected according to sections 93(6)(a) and 93(7)(a) of the PIA

Some of these changes include:

- Segregation of upstream-midstream-downstream assets into separate companies for tax purposes
- Reduction of income tax and production-based royalty rates
- Introduction of price-based royalties for upstream production of oil
- Limitation of tax-deductibility of costs to 35% of gross revenues
- Zero tax deductibility for interest, litigation and arbitration costs, and bad debt

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12 - https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/energy-resources/PIA_Tax_Newsletter_Fiscal.pdf
13 - https://www.bomesresourcesconsulting.com/review-petroleum-industry-act-2021-nigeria.html
Also, given that Hydrocarbon Tax is a resource tax, costs that cannot be directly attributable to production will not be allowable for a deduction. However, such costs will qualify for deduction against Company Income Tax. The Hydrocarbon Tax rates in the PIA appear competitive when compared to comparable jurisdictions. Hopefully, this will go a long way in attracting the desired investment.

The Hydrocarbon Tax will not apply to the following:

- Associated natural gas, including gaseous natural gas liquids produced in the field and contained in rich and non-associated natural gas.
- Condensates and natural gas liquids are produced from non-associated gas and associated gas.
- Frontier acreage until it is reclassified under section 68 of the PIA and deep offshore.

### 5.1.2 Company Income Tax (CIT)

The Company Income Tax and other forms of taxes will be applicable to companies, licensees, concessionaires, lessees, contractors, or subcontractors depending on whether they are engaged in the upstream, midstream, or downstream petroleum operations in addition to the hydrocarbon tax as provided in Section 302 of the PIA, subject to the Companies and Allied Matters Act.

### 5.1.2.1 Requirements for Companies to pay CIT

Companies, concessionaires, licensees, lessees, contractors or subcontractors involved in upstream, midstream and downstream petroleum operations will be liable to CIT.
Allowable deductions include the following:

- Rents incurred with respect to a Petroleum Mining Lease (PML) or Petroleum Prospecting Licence (PPL).
- Royalties incurred concerning the commercial sale of crude oil and associated gas and payments to the Federation Account related to production sharing, profit sharing, risk service contracts or other contractual features.
- Tangible and intangible drilling costs are directly incurred in connection with the drilling of the first exploration well and the first two appraisal wells in the same field.
- Any amount contributed to abandonment and decommissioned petroleum host communities’ development trust, provided that the fund is approved by the Commission or Authority and any surplus or residue of such funds is subject to tax under the PIA at the end of the life of the field, where such surplus is returned to the lessee.
- Cost of gas reinjection wells (used for re-injecting natural gas that would have been flared).
- Contribution to funds, schemes or arrangements approved by the Commission, including the host communities’ development trust fund, environmental remediation fund, Niger Delta Development Commission (NDDC) and other similar contributions.

Non-Allowable deductions include the following:

- Expenditure for the purchase of information on the existence and extent of petroleum deposits except in respect of geophysical, geological and geochemical data and information.
- Production and signature bonuses paid for acquisition of rights on petroleum deposits, signature bonuses or fees paid for renewing PML or PPL or fees paid for the assignment of rights to other parties, including for marginal field.
- Any penalty incurred, including gas flare penalty.
- Retirement benefits, custom duties and depreciation.
5.1.3 Royalties

According to the PIA, royalties will be determined by production and price. The Commission can decide if royalty should be payable in cash or kind. Royalties will be based on production and price for crude oil and condensates, while for gas, royalties will be based solely on production.

5.1.3.1 Royalty by Production

For crude oil and condensates, the royalty shall be at a rate per centum of the chargeable volume produced from the field area in the relevant month on a terrain basis as follows:

- **a** Onshore areas: 15%
- **b** Shallow water (up to 200m water depth): 12.5%
- **c** Deep offshore (greater than 200m water depth): 7.5% (where production during a month is above 50,000 bopd and 5% if it is less than 50,000 bopd)
- **d** Frontier basins: 7.5%

However, for onshore and shallow water terrains, including marginal fields, where the production is not more than 10,000 bopd, it shall be calculated as follows:

- First 5,000 bopd: 5%
- Next 5,000 bopd: 7.5%

While for natural gas and natural gas liquids, royalty is chargeable at 5% of the chargeable volume, and the royalty rate for natural gas produced and utilised in county is 2.5%.

**Note:** bopd means barrels of oil per day

5.1.3.2 Royalty by Price

The PIA stated that the royalty derived from ‘royalty by price’ will be solely for the Nigerian Sovereign Investment Authority (NSIA) benefit. The royalty by price will reflect the changes in the price of crude oil and condensates.

Royalty by price will be applied for crude oil and condensates where the price exceeds $50 per barrel, and it will be determined as follows:

- Where the pricing is at $100/barrel: 5%
- Where the price is above $150/barrel: 10%
- Where the price is between $50/barrel and $100/barrel or between $100/barrel and $150/barrel: it will be determined based on linear interpolation.

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The PIA also introduce stiffer penalties to encourage voluntary compliance, curb default and entrench integrity. At the same time, there will be a penalty regime for those that default in the payment of royalty. Therefore, taxpayers should ensure that they strictly comply with the provisions of the PIA.

Non-payment of royalty within two months after the month in which it was due will attract:

- an additional sum of 10% of the royalty due plus interest. Interest shall be at LIBOR plus a 10% point basis for foreign currency transactions. Interest shall be at NIBOR rate plus a 10% point basis for Naira transactions.

- N10,000,000 or USD equivalent on the first day of failure to pay and N2,000,000 or USD equivalent for each subsequent day.

Non-payment of royalty within three months after the month in which it was due:

- The Commission may initiate the revocation of licence or lease and enter the land/property/premises possessed or occupied by the licensee or lessee to seize and sell any petroleum products, tools or machinery for the payment of any arrears of fees, rent or royalty.

*Nb: bopd means barrels of oil per day
NIBOR means Nigeria Inter-Bank Offer Rate*
06
PIA Implementation Update
The Petroleum Industry Act (PIA) was signed by President Muhammadu Buhari.

Aug 16, 2021

Aug 19, 2021
The Federal Government inaugurated the steering committee that will oversee the implementation of the PIA.

Sept 16 2021
The president submitted a request to the Senate to amend some sections of the PIA.

Sept 22 2021
NNPC Limited completed its registration with the Corporate Affairs Commission.

Oct 6 & 7, 2021
The Boards of the Upstream Petroleum Regulatory Authority and the Midstream & Downstream Regulatory Authority were confirmed by the Senate.

Oct 14 2021
The President appointed a steering committee headed by the Minister of State for Petroleum Resources, Timipre Sylva, to oversee it over a period of 12 months.

Jan 2, 2022
The President inaugurated the board of NNPC Limited.

January 25, 2022
The Federal Government proposed an 18-month extension to implement the PIA.
Conclusion
The Petroleum Industry Act has completely changed the administration and governance of Nigeria’s oil and gas sector. The PIA is an attempt to overhaul the petroleum industry in Nigeria if the implementation goes in the right direction. If properly implemented, the PIA will provide regulations that promote transparency and be a catalyst for investments in the Nigerian Petroleum Industry.

It is worthy to note that the PIA will play a vital role in addressing the inefficiencies plaguing the NNPC and also create an enabling environment for both International Oil Companies, IOCs and indigenous petroleum companies. Hence, it is expected that the PIA will boost investor confidence, and at the same time, there should be an increment in job prospects for indigenes of oil-producing communities. While the introduction of the host community trust fund is a welcome development, there may still be some form of restiveness from the host communities if there is no transparency in the operation of the trust fund.

While the belief is that the Act will bring about growth in the petroleum sector, the PIA does not address energy transition. The government must begin to shift focus on clean and renewable energy for sustainable development. The renewable energy race has started in which Nigeria cannot afford to be left behind.

The objectives of the fiscal part of the PIA seem well-intentioned, but they seem not to be optimal. Taking a critical look, one can deduce that the production sharing system is straightforward while the petroleum royalty system could be simpler. The envisaged fiscal framework somewhat achieves its goal of progressivity, but not through the additional chargeable tax and not in periods of sustained low oil prices. The PIA also does not adequately address perennial NNPC issues of high operating costs, bloated workforce and dysfunctional subsidiaries. With the government still maintaining ownership of NNPC for an indefinite time, it remains a concern on how the current PIA moves NNPC from being a state oil company to a fully-efficient commercial enterprise that can stand tall among its peers.

Finally, we look forward to the optimal implementation of the PIA. It will help the government achieve the intended revenue management goals from the oil and gas sector, environmental remediation and the development of host communities.
Get to know more about the extractive industry, BudgIT's advocacy in the Extractive Sector spotlights issues and recommendations on extractive transparency and fiscal governance in Nigeria, including Beneficial Ownership, NNPC Reforms, Industry Legislation and Revenue Accountability.

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