

Nigerian Midstream and Downstream Subsector Watch

Volume 1

This publication provides a summary of some of the Regulations and Guidelines issued by the Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA or “the Authority”), in line with the provisions of sections 32(a) and 33(b) and (v) of the Petroleum Industry Act (PIA). We hope you find the information and insights in the publication useful.

1. Midstream and Downstream Petroleum Fees Regulations, 2024

The Midstream and Downstream Petroleum Fees Regulations (MIDPFR) were published in the Federal Gazette on 4th November 2024, with a commencement date of 30 October 2024. The MIDPFR consists of nine schedules, each specifying the activities, applicable fees (i.e., application and processing fees), the currency of the fees, frequency of payment (where applicable) and annual administrative charges for different business activities and operations within the sector. Its objectives are to clearly outline the midstream and downstream operations and activities that require a licence, permit, authorisation, or approval from the NMDPRA, specify the fees payable for an initial application, reissuance or renewal of such licences, permits, authorisations, or approvals and provide the procedures for payment of the levies.

Paragraph 4 of the MIDPFR reiterates the provision of section 47(c) of the PIA requiring wholesale customers to pay 0.5% of the wholesale price of petroleum products sold in Nigeria as a levy to the Authority Fund, and section 52(7) of the PIA requiring the same wholesale customers to pay 0.5% of the wholesale price of petroleum products and natural gas sold in Nigeria, as a levy to the Midstream and Downstream Gas Infrastructure Fund (MIDGIF). According to the MIDPFR, petroleum products include – imported petroleum products sold in Nigeria and petroleum products produced, processed, refined, and sold in Nigeria. The phrase, “Sold in Nigeria” was defined to mean, sold free on board in Nigeria, loaded or offloaded for sale within a wholesale point in Nigeria or transaction which emanates, occurs or is concluded in Nigeria. The levies are only applicable to domestic sale of petroleum products or natural gas.

The levies, which shall form part of the wholesale price of petroleum products and natural gas sold in Nigeria, are to be collected by the wholesale suppliers at the wholesale point and should be remitted to the Authority and the MIDGIF, respectively, not later than the 21st day, following the month of sale in line with section 52(9) of the PIA. Furthermore, suppliers are required to account for the levies in sale agreements and submit a report evidencing the sale to the Authority by the 30th day of each month. The report should include the names of the wholesale customers, wholesale prices, volume of petroleum products and natural gas sold, and the relevant documents supporting the sale. The Authority is required to issue a receipt for the levies to the wholesale supplier, a copy of which would be provided to the wholesale customer. The MIDPFR also provides that where a wholesale supplier defaults in remitting the levies as prescribed, such supplier shall be liable to an administrative penalty equal to 10% of the unpaid amount for each month or any portion outstanding after the due date. Additionally, the licence of the supplier or its facility operations may be suspended.

Paragraph 5 of the MIDPFR lists the midstream and downstream licences, permits and operations on which the fees would apply, including the fees for assignment or transfer of licences or permits, and permit to flare or access gas flared. These fees are non-refundable and non-transferable, and shall be paid in the currencies specified in the Regulations. However, the payment of the prescribed fee cannot be deemed as the issuance of the corresponding licence, permit or approval. The MIDPFR also amended and deleted the prescribed fees in other relevant Regulations that were issued in 2023 and the Petroleum (Drilling and Production Amendment) Regulations No 155, 2019.

2. Guidelines for Wholesale Gas and Petroleum Liquid Supply Operations

The Guidelines for Wholesale Gas and Petroleum Liquid Supply Operations (Guide-2-2024 or the "Guidelines") were revised and signed by the Chief Executive of the NMDPRA on 17 September 2024. The Guidelines are applicable to Midstream and Downstream operations and lease holders.

Guide-2-2024 reiterates the distinction between hydrocarbon producers and suppliers, and midstream operations as established by the PIA. According to the Guidelines, the Wholesale Gas Supply Licence (WGSL) and the Wholesale Petroleum Liquids Supply Licence (WPLSL) are the appropriate licences for qualified persons or entities willing to engage in the sale and delivery of natural gas and petroleum liquids to wholesale customers, for domestic consumption or export. The objectives of the Guidelines, which were issued pursuant to the PIA and other midstream and downstream regulations, include describing the terms, basis and procedures for obtaining the licences, permits and other approvals or authorisations required for WGSL and WPLSL, and the minimum requirements for carrying out operations under these Licences. The Guidelines define the category of persons qualified to apply for a Wholesale Supply License (WSL) (i.e., a WGSL and WPLSL) to include companies authorised to operate in the midstream and downstream sector. Furthermore, Wholesale Hydrocarbon Supply Facilities (WHSF) have been defined as facilities or installations that are designed, constructed, installed or operated by a WSL holder.

The Guidelines also highlight the rights and duties of a WSL holder and the means of hydrocarbon transportation by the Holder. According to the Guidelines, a wholesale customer for natural gas has the right to contract for and purchase a supply of raw or marketable natural gas with capacity to connect individually and economically to a transportation pipeline or transport network, while wholesale customers of petroleum liquids include petroleum product distributors and customers that buy directly from crude oil refiners, wholesale suppliers and importers. In addition to reiterating the relevant provisions of the PIA as well as the Third and Fourth Schedules of the PIA, on gas and petroleum liquid prices, the Guidelines outline the requirements for applying for a WSL. These include making an application as prescribed by the NMDPRA and paying the applicable fees.

Similar to the MIDPFR, the Guidelines provide for the remittance of the wholesale levies as and when due and state the sanctions for non-compliance.



3. Midstream Petroleum (Host Communities Development Trust Fund) Regulations, 2024

The Midstream Petroleum (Host Communities Development Trust Fund) Regulations (MPHCTR) were published in the Federal Gazette on 5th October 2024, with a commencement date of 30 October 2024. Its objectives are to provide substantive and procedural requirements, along with the general rules for establishing and administering the Trust and the Fund for the midstream petroleum host communities. Furthermore, the MPHCTR outlines the parameters for administering and safeguarding the Fund, as well as mechanisms for resolving disputes between host communities and licensees.

The MPHCTR applies to midstream petroleum host communities and licence holders in the midstream sector. Part II of the Regulations itemises the role of the Authority and Licensees and how host communities would be determined. To identify a host community, a Licensee shall consider the following:

- a. for pipelines appurtenant to the host communities, a distance of 500 metres measured on both sides of the pipeline;
- b. for operational facilities that are appurtenant to the host communities, a distance of 2 kilometres measured from the battery limit of the facility;
- c. its operational activities and impact on communities in the area of operation;
- d. pipeline communities through which petroleum liquids and natural gas are transported;
- e. facility hosting communities;
- f. service rendering communities, including communities where Licensees have constructed staff housing or personnel accommodation; and
- g. any other community as may be determined by the Licensee.



A Licensee is required to incorporate a Host Community Development Trust within 12 months from the effective date of the MPHCTR, after obtaining the necessary approvals from the Authority. Upon the submission of an application by the Licensee, the Authority shall notify the Licensee within 60 days of its decision to approve or refuse the application. Where the application is rejected, the Authority shall provide the reason for the refusal and may direct that the application be amended and resubmitted within 30 days. Where the Authority fails to communicate its decision to the Licensee within 60 days, the application shall be deemed approved. However, the Licensee is required to apply within the time limit prescribed by the MPHCTR, unless for circumstances beyond the Licensee's control.

The Licensee is also required to comply with the provisions of the PIA in administering the Trust, appointing Trustees, and the Trust cannot be dissolved without the prior approval of the Authority. Where the Licensee or its approved appointed Board of Trustees¹ intends to dissolve the Trust, an official request in the prescribed format must be submitted to the Authority. In line with the provisions of the MPHCTR, a Licensee shall do the following:

- a. In consultation with the host community, carry out a Host Community needs assessment, within six months following the grant of a licence;
- b. Review the Host Communities' needs assessment every 5 years, to determine the current needs;
- c. Prepare and submit to the Authority for approval, a Host Communities Development Plan pursuant to section 252 of the PIA, not later than 30 days from the completion of the Host Communities needs assessment;
- d. Provide the Board of Trustees with a matrix for the distribution of the Trust Fund to Host Communities;
- e. Establish a Host Communities Development Trust² Fund (the Fund) in the name of the Trust. The Fund shall be deposited in a designated account, in a commercial bank duly licensed by the Central Bank of Nigeria with a minimum credit rating of 'BBB' issued by at least, two rating agencies, one of which shall be a rating agency incorporated in Nigeria and registered with the Securities and Exchange Commission;
- f. Make an annual contribution to the applicable Fund of an amount equal to 3% of its actual operating expenditure³ for the preceding financial year in the midstream operations affecting the host communities for which the applicable Fund⁴ was established. Prior year's contribution to the Fund will not be considered in determining the amount payable by the Licensee.

¹The Board of Trustees is required to establish a management committee within 30 days of appointment and notify the Authority accordingly. The management committee shall also set up and appoint the host communities advisory committee, not later than 30 days. The membership of both committees shall be in line with the provisions of Part IV of the MPHCTR.



and Downstream Petroleum Alternative Dispute Resolution Centre or to an Arbitrator, as required under the Arbitration and Mediation Act, no 74 of 2023, after appropriate notification. The settlements reached from the mediation are final and binding on the Parties.

According to Paragraph 42 of the MPHCTR, a holder of a petroleum prospecting licence or petroleum mining lease that has established a Host Communities Development Trust that applies to midstream designated facilities that ordinarily may have been subjected to the MPHCTR, can apply to be exempted from the provisions of the Regulations, once the conditions spelt out by the MPHCTR are met.



Licensees must submit an annual report of the Fund to the Authority by May 31 of each year. Furthermore, the Fund must be operated in line with the provisions of the PIA and the MPHCTR. Where a Licensee does not comply with the requirements of the MPHCTR, there are prescribed sanctions, depending on the instance of non-compliance.

Paragraph 38 of the MPHCTR provides that where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to designated facilities or disrupts petroleum operations within the host communities, such community shall forfeit its entitlement to the extent of the costs of repairs of the damage, that resulted from the activity within that financial year. Thus, in arriving at the contribution to the Trust Fund in any year, the cost of repairs of any damaged facilities shall be excluded. A Licensee is expected to notify the Authority of any destructive act within 24 hours and submit a detailed report of the incident within fifteen (15) days.

Where a licence is transferred, surrendered, revoked, terminated or expires, the Licensee is still required to fulfil its existing Trust obligations. The MPHCTR also provides a dispute resolution mechanism, where there is a dispute between a Licensee and its Host Community or between Host Communities. Such disputes are to be referred for mediation and resolution by the Midstream

²The Board of Trustees is required to allocate 75% of the Fund to the Capital Fund, which is dedicated to development projects in host communities. 20% is designated as the Reserve Fund, to be used in the event of any cessation in contributions from the licensee. The remaining 5% is allocated for administrative costs and special projects related to the management of the Trust.

³In determining operating expenditure, the licensee shall take into consideration non-capital production costs, cost of sales, administrative expenses and any other expenses incurred for the operations of the business on a day-to-day basis as included in the audited financial report provided that such expenditures shall not include capital expenditures, impairment, depreciation or amortization.

⁴The funds in each of the accounts comprising the Fund shall remain distinct and shall not be co-mingled.

► Commentary

The NMDPRA has issued these Regulations and Guidelines to provide additional administrative direction for the implementation of the relevant provisions of the PIA on licensing and fees for applicable operations, wholesale gas and petroleum liquids supply and incorporation of host communities trust fund, in the Midstream and Downstream subsector. This is in line with the objects and functions of the NMDPRA as highlighted in sections 30-33 of the Act. In our view, the content of the Regulations and Guidelines is in line with the provisions of the PIA, each providing a comprehensive guide on the modalities for compliance by players in the subsector.

The NMDPRA continues to make transformative progress in regulating the commercial and technical operations in the midstream and downstream subsectors of the petroleum industry through the issuance and implementation of relevant Regulations and Guidelines. The NMDPRA is thus establishing a robust framework that would ultimately promote certainty, transparency, efficiency, and sustainability in the subsector. It is, therefore, crucial that companies operating in the subsectors are conversant with the relevant compliance obligations, for smooth operations and to minimise potential sanctions for non-compliance.

However, the only concern is the risk of 'dollarising' the economy as some of the application and processing fees are payable in US dollars even though the revenue earned by many of the wholesale customers will be in Naira. Paragraph 5 (3) of the MIDPFR specifically states that the fees must be paid in the currency specified. This, therefore, poses the risk of exacerbating the volatilities being experienced by the local currency due to excessive demand and this may counteract the policies being implemented by the Central Bank of Nigeria to stabilize the value of the Naira. If the fees must be denoted in US dollar because of the impact of inflation, the NMDPRA can specify that the payment must be paid in Naira based on the prevailing exchange rate. Alternatively, the Authority can specify the fees payable in local currency but with an annual escalation rate. We, therefore urge the NMDPRA to reconsider its position on this matter.



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