

The Petroleum Industry Governance Bill

Newsletter

Introduction

The Senate of the Federal Republic of Nigeria (FRN), on Thursday 25 May 2017, passed the Petroleum Industry Governance Bill (PIGB or the Bill). The Bill, which still needs to be passed by the House of Representatives and assented to by the President of the FRN before it becomes law, seeks to **establish a framework for the creation of commercially-oriented and profit-driven petroleum entities, to ensure value addition and internationalisation of the petroleum industry, through the creation of efficient and effective governing institutions with clear and separate roles for the petroleum industry.**

The Bill is the first in a series of long awaited petroleum industry laws designed to reform the Nigerian oil and gas industry. The Petroleum Industry Bill (PIB), an omnibus law meant to regulate the entire sphere of the industry and repeal all current existing oil and gas legislation, had struggled to see the light of day despite its introduction to the National Assembly over 16 years ago. Subsequently, the National Assembly decided to break the PIB into a number of different pieces of legislation guiding specific aspects of the industry. The PIGB is the first of several Bills (the Petroleum Industry Fiscal Bill and the Host Community Bill are currently before the Senate) which the National Assembly will debate and pass in due course.

Highlights of the Bill

The Bill establishes/confirms a number of new/existing institutions, which can be broadly classified into the following categories:

- i. Policy and general strategy formulator– Tasked with setting overall policy and direction for the industry

- ii. Regulator – Charged with regulating the entire industry
- iii. Commercial Institutions – Tasked with holding and managing the assets and interests of the Government
- iv. Ancillary Institutions – Tasked with the provision of specific support services assigned to them

An analysis of the Institutions and their functions is as follows:

i. Policy and general strategy formulator

- [Minister of Petroleum Resources](#)

The Minister shall be responsible for setting the overall policy and strategy in the Sector. The Bill also grants the Minister pre-emptive rights to all petroleum products in the country in the event of a National emergency. However, the Minister will no longer have the power to grant, renew, amend, extend or revoke any lease or licence issued pursuant to the provisions of the Act. Under the Bill, the Minister cannot create any new entities.

ii. Regulator

- [The National Petroleum Regulatory Commission \(NPRC or the Commission\)](#)

The NPRC (which replaces the current Department of Petroleum Resources (DPR), the Petroleum Inspectorate and the Petroleum Products Pricing Regulatory Agency (PPPRA)) shall be responsible for regulating the entire industry. Its regulatory functions, which cut across the downstream, midstream and upstream sectors include:

- Administer and enforce policies, laws and regulations

relating to all aspects of the petroleum operations assigned to it under the provisions of this Act or any regulations made in pursuance of this Act or any other enactment.

- Monitor and enforce compliance with the terms and conditions of all leases, licences, permits and authorisations issued in respect of any petroleum operation.
- Advise the Minister on fiscal and other issues pertaining to the petroleum industry.
- Conduct bid rounds or other processes for the award of any licence or lease required for petroleum exploration or production.
- Establish the methodology for determining appropriate tariffs for gas processing, gas transportation, transmission and transportation of crude oil and bulk storage of oil and gas.
- Establish the framework for calculating the fair market value of petroleum products.
- Regulate the supply, distribution, marketing and retail of petroleum products.

The NPRC shall be vested with all assets, funds, resources and other movable and immovable properties currently held by the Petroleum Inspectorate, Department of Petroleum Resources and the Petroleum Products and Pricing Regulatory Agency. The Commission, which shall be **wholly independent** from the Minister of Petroleum, shall be run by a Governing Board whose members, other than those representing the Ministries of Petroleum, Finance and Environment, shall be appointed



by the President subject to the approval of the Senate. The Governing Board shall comprise eleven (11) Directors, five (5) of whom shall be Executive Directors.

iii. Commercial Institutions

- [The Nigeria Petroleum Assets Management Company \(NAPAMC\)¹](#)

The NAPAMC shall be incorporated as a company limited by shares within 6 months from the effective date of the Bill. The shares of NAPAMC shall be held by the Ministry of Petroleum Incorporated (40%), the Ministry of Finance Incorporated (40%) and the Bureau of Public Enterprises (20%).

NAPAMC shall be responsible for managing all assets currently being held by the Nigerian National Petroleum Corporation (NNPC) under the Production Sharing Contracts (PSCs) and Back-in-right provisions of the Petroleum Act of 1969, as amended. The Company will be governed and managed based on the provisions of the Companies and Allied Matters Act (CAMA) and the Code of Corporate Governance issued by the Securities and Exchange Commission. The Shareholders will constitute a Nomination Committee, which shall be responsible for the appointment of the Board of Directors. However, the power of the shareholders to appoint or remove the initial Directors shall be subject to the approval of the President. The Board of

Directors shall comprise eleven (11) Directors, five (5) of whom shall be Executive Directors.

Initial capitalisation of NAPAMC shall be provided by Government. Any surplus of revenue over "reasonable operating expenses" at the end of the year shall be paid into the Federation Account as dividend after payment of necessary taxes including income tax.

The Company will be exempt from stamp duties and capitals gains tax with respect to the transfer of assets from the existing PSCs and Back-in-right provisions; though it is not clear if these exemptions will apply to other transactions subsequent to the completion of the transfer process.

- [The Nigerian Petroleum Company \(NPC\)](#)

The NPC shall be incorporated as a company limited by shares within 6 months from the date of passage of the Bill into an Act. The NPC shall be responsible for all assets currently being managed by the NNPC other than those under PSCs and the Back-in-right provisions (already ceded to the NAPAMC). The initial shareholders of NPC shall be the same with NAPAMC and in the same proportion. However, 10% and an additional 30% of the shares of the company shall be floated on the Nigerian Stock Exchange (NSE) within 5 years² and 10 years from incorporation, respectively.

NPC shall be run by a Board of Directors nominated by an

"independent committee"

(The Nomination Committee) constituted by the shareholders. The Board of Directors shall comprise eleven (11) Directors, five (5) of whom shall be Executive Directors. However, the appointment and removal of the initial Directors shall be subject to the approval of the President up until the divestment. The Company shall be managed on the basis of the provisions of the CAMA and the Codes of Corporate Governance issued by the Securities and Exchange Commission and the Nigerian Stock Exchange.

Government shall provide initial capitalisation of the NPC; though it is expected to be financially independent, with the Board authorised, subject to shareholders approval, to undertake any activity including the sale of assets to meet its future obligations or strategic objectives. The earnings of Government from the NPC shall be limited to dividends declared.

The Company shall be exempt from the provisions of both the Fiscal Responsibility Act and Public Procurement Act. In addition, the Company will be exempt from stamp duties and capitals gains tax with respect to the transfer of assets from the existing PSCs and Back-in-right provisions though it is unclear if these exemptions will carry through after that process is completed.

iv. Ancillary Institutions

- [Ministry of Petroleum Incorporated \(MOPI\)](#)

The MOPI shall be incorporated as a corporation sole which shall hold on behalf of the Government, shares in the successor commercial institutions incorporated pursuant to the provisions of the Bill.

The Permanent Secretary of the Ministry of Petroleum shall be responsible for signing any document which requires the signature of the MOPI.

¹ Some Sections of the Bill referred to the entity as the **National Petroleum Assets Management Company**

² The minimum float at the NSE is currently set at 20%. Therefore the NPC may need to float at least 20% of its shares within the first 5 years to be listed on the NSE.

- [The Nigerian Petroleum Liability Management Company \(NAPLMC\)](#)

NAPLMC shall be incorporated as a company limited by shares within 6 months from the effective date of the Act, to take over the liabilities of the NNPC and the pension liabilities of the DPR. The shares of the company shall be held by the NPC, NAPAMC and the NRPC in the ratio of their respective liabilities transferred.

The management of the NAPLMC shall, within 12 months from its date of incorporation, ascertain the liabilities of the NNPC and lay out a clear plan and timeline for its settlement after which it shall be liquidated.

- [The Petroleum Equalisation Fund \(PEF or the Equalisation Fund\)](#)

PEF is set up to enhance development of all regions of the federation by ensuring economic balance in the price of petroleum products. The Equalisation Fund shall be administered by a Governing Board headed by the Minister with an Executive Secretary, appointed by the Minister, responsible for its day-to-day activities.

Issues Arising

The passage of the Bill by the Senate is highly commendable as it is a much needed step in our national objective of reforming the oil and gas sector and encouraging investments. However, there are a number of issues which need to be addressed before the enactment of the Bill into law. These issues include:

- [Board Governance](#)

The Bill proposes the establishment of Boards for the commercial institutions. However, the composition of these boards may not reflect the appropriate balance of powers to ensure effective Board oversight; reduce the risk of executive-led decision-making; and promote adequate independence on the board to minimise undue government interference. It may therefore be necessary to increase the ratio of non-executive to executive

directors and provide specific criteria to guarantee the independence of the non-executive directors.

- [Tenure](#)

Currently, the National Oil Company has historically experienced frequent Board and management leadership changes, which have severely impacted on the performance of the Corporation. Although the PIGB has defined tenures for the Non-executive Directors, there are currently no provisions that help to ensure stable tenures for the Executive Directors and insulate them from changing dynamics of the political context, as far as possible. The issuance of well-defined contracts to the Executive Directors may address this issue

- [Compliance with the SEC Code of Corporate Governance](#)

The newly established commercial entities are expected to be governed in line with the provisions of the Code of Corporate Governance issued by the Securities & Exchange Commission. However, the Bill does not include recommendations to address possible conflicts that may arise between its provisions and those of the SEC Code. To prevent possible ambiguity, there will be a need to emphasise the superiority of the provisions of the Bill over those of the SEC Code, where such conflicts arise.

- [Broad powers granted to NRPC](#)

The powers and functions assigned to the NRPC appear to be very broad. Therefore, the NRPC must ensure that it has the proper structure to aid efficient execution of its mandate.

- [Fixing of price of petroleum products/ deregulation](#)

One of the functions of the NRPC is to establish the framework for computing the fair market value of petroleum products and tariffs for gas processing and transportation. This seems to suggest that Government may be unwilling to deregulate the downstream sector of the petroleum industry. Furthermore, the implication of this for Automotive Gas Oil (Diesel), which has been deregulated, is unclear.

- [Regulator as fee charging service provider](#)

The NRPC is authorised to charge fees for "**services rendered**" to players in the industry. This may create a conflict of interest with its role as regulator.

- [Special levy for developmental projects](#)

The Bill allows the Commission to levy special fees on licencees and lessees for the implementation of any project that is of common benefit and value to the oil and gas industry. The amount of this special levy or its frequency is not stated in the Bill. This may create uncertainty for potential investors.

- [Divestment](#)

The Bill provides for the divestment of at least 40% of the shares in the NPC within 10 years of incorporation. However it is debatable if private investors will be willing to commit to a company which will be majorly owned and run by Government in the long term.

- [Uncertainty around the functions of NAPLMC](#)

The introduction of the NAPLMC also needs to be clarified as the Bill does not state the specific type of liabilities that will be transferred or how the new company will be funded. It is unclear whether Government will appropriate funds to settle the liabilities transferred or whether shareholders will be required to fund the NAPLMC and settle the liabilities and this may negatively impact the viability of any investment in the NPC.

Conclusion

The Bill is still work in progress as both Legislative Houses will need to harmonise their versions of the Bill before it is sent to the President for Assent. The President also has the right to request for clarity on sections of the Bill before assenting or refusing to assent if he is not satisfied with the clarification provided or the Bill as a whole. It is therefore essential that all stakeholders take advantage of this opportunity to seek clarity and where possible, propose changes to the Bill in order to ensure that what is signed into law accomplishes the main objective of reforming the industry for the collective good.

For further enquiries on the above and information on how KPMG can assist you, please contact:

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