

# The President Clarifies Oversight Responsibility for Crude Oil Export Terminals and Integrated Petroleum Facilities

Issue No. 10.3 | October 2023

On 7 August, 2023, the President issued policy directives to clarify responsibility for the management and control of crude oil export terminals. The Notice of Presidential Directives (“the Notice”) on the delineation of regulatory oversight between the Nigerian Upstream Petroleum Regulatory Commission (NUPRC or “the Commission”) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) grants the oversight power on export terminals to the NUPRC. The Notice also reiterates that the NUPRC shall have responsibility for regulating integrated upstream and midstream petroleum operations.

## Commentaries

The Notice has resolved the lingering dispute between the NUPRC and the NMDPRA since the enactment of the Petroleum Industry Act (PIA) on 16 August, 2021. The dispute had created unnecessary operational challenges to the seamless implementation of the PIA. The clarification will certainly help to accelerate the achievement of the two key objectives of the PIA, which are to foster a business environment conducive for petroleum operations and promote transparency, good governance, and accountability in the administration of petroleum resources.

The grant of oversight responsibility over crude oil export terminals to the Commission is the right thing to do as such terminals form part of upstream operations. However, the Notice has raised a fundamental legal issue – can presidential directives, even though gazetted, override the provisions of the Act of the National Assembly (NA)? The Court has always ruled that regulations or any other administrative instrument derive their powers from the extant law and are, therefore, subject to the law. To the extent that such regulations or instrument are inconsistent with the enabling Act, they will be invalid.

It would, therefore, seem that the only way to legally resolve the dispute is to amend the PIA to reflect the contents of the Notice. Section 174 of the PIA gives the NMDPRA the power to license and regulate crude oil export terminals. This position is also supported by section 318 that defines midstream petroleum liquids operations to include export terminals for crude oil. However, there is no ambiguity with respect to which regulator has the power to regulate and manage facilities or fixed or floating platforms or vessels used for integrated upstream and midstream petroleum operations. The Commission is vested with such powers based on sections 8d and 318 of the PIA.

It is, therefore, imperative that the Executive send the necessary amendment, together with any other amendments that are needed to harness and accelerate the desired growth in the oil and gas industry, to the NA. One key area of the PIA that needs clarity is what rules will apply to those operators that are not converting under the terms of the PIA. Though the PIA seems to suggest that only the fiscal provisions would not apply. There are sections that say otherwise e.g., definition of a settlor in the PIA, which does not seem to apply to oil mining lease and oil prospecting licence holders.

Please click [here](#) to download a copy of the Notice.

## For further enquiries, please contact:

**Adewale Ajayi**

ng-fmtaxenquiries@ng.kpmg.com

### KPMG Nigeria – Tax Dispute Resolution Services

KPMG's Tax Dispute Resolution Services (TDRS) team protects our clients against risks arising from uncertainties in the tax dispute resolution landscape in Nigeria.

Our approach is designed to help you address all your tax disputes through effective strategies that ensure proper mitigation, management and prompt resolution.

#### How we can support you

In today's interconnected business environment, tax disputes with the revenue authorities are not merely legal controversies: they have commercial considerations which require representation and support by business savvy advisors. By leveraging KPMG's global network of professionals, outstanding relationships with tax authorities and the KPMG network's collective knowledge, our team works to help you achieve the best possible outcomes in technical discourse with the revenue authorities, inclusive of support during prosecution of appeals at the Tax Appeal Tribunal.

Our TDRS team comprises experienced and duly certified practitioners from various professions, including law, accounting, finance and economics. Embedded with subject matter experts on tax compliance and advisory services, KPMG's TDRS team adopts an integrated approach to helping our clients resolve their tax disputes in a cost-effective manner.

Our services include pre-trial advisory services, representation at the Tax Appeal Tribunal, tax litigation support and general tax dispute management.

Connect with us today to understand how our TDRS team can support your business:

Ajibola Olomola: [Ajibola.Olomola@ng.kpmg.com](mailto:Ajibola.Olomola@ng.kpmg.com)

Ijeoma Uche: [Ijeoma.Uche@ng.kpmg.com](mailto:Ijeoma.Uche@ng.kpmg.com)

Olatoye Akinboro: [Olatoye.Akinboro@ng.kpmg.com](mailto:Olatoye.Akinboro@ng.kpmg.com)



[home.kpmg/ng](https://home.kpmg/ng)  
[Home.kpmg/socialmedia](https://home.kpmg/socialmedia)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.