

Nigeria



FORTUNA CHAMBERS

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“What a year!” This expression aptly describes the general reaction of people globally towards the realities of the year 2020. It was a year that was projected as a harbinger of hope for several countries and individuals. Yet it turned out to be a year that not only robbed many of their expectations but brought economies and activities to a standstill due to the Corona Virus Pandemic also known as the COVID-19.

Nigeria has not been immune to such expectations and dashed hopes. Yet, as characteristic of the nation and its people, resilience and fortitude has remained an intrinsic lace in the fabric of its existence. This is illustrated in the strides made with the Petroleum Industry Governance Bill (PIGB) despite COVID-19 and its attendant ills.

History has it that Oil was discovered in Nigeria in 1956 at Oloibiri in the Niger Delta after half a century of exploration. To regulate the Oil and Gas Sector, multiple regulatory frameworks were put into place. The Petroleum Act is the principal statute that governs petroleum operations, including exploration, production and use. It vests ownership and control of all petroleum exclusively in the government and the exercise of the powers consequent on this title in the minister of petroleum resources. Qualified persons wishing to carry out any form of petroleum operations must be authorized by the Minister.

Others include the Oil Pipelines Act, the Oil and Gas Pipelines Regulations, the Deep Offshore and Inland Basin Production Sharing Contracts Act, the Nigerian National Petroleum Corporation Act and the Nigerian Oil and Gas Industry Content Development Act.

However, despite the above regulatory framework, Nigeria is currently facing significant challenges in its petroleum industry. It is clear that the country must reduce its reliance on crude oil income by developing its midstream and downstream sectors and leveraging on its natural gas reserves. The existing petroleum regulatory framework however discourages investment in the sector and has proved to lack the requisite comprehensiveness to enable Nigeria achieve these outcomes. These factors necessitated an overhaul of the petroleum regulatory framework and the advancement of incentives to promote investment and operations in the industry. This seeded the idea behind the Petroleum Industry Governance Bill (PIGB).

The Petroleum Industry Bill (PIB) is currently under legislative consideration having passed its second reading on 20th October 2020 and represents the most comprehensive review of the legal framework for the oil and gas sector in Nigeria since the industry began commercial operations in the 1960s. The Petroleum Industry Bill (PIB), an omnibus law is meant to regulate the entire sphere of the industry and repeal most existing oil and gas legislations.

The Petroleum Industry Bill (PIB) seeks to increase government revenue from oil, and as well lay down a strengthened legal and regulatory framework for the Nigerian oil industry, set up structures for the establishment of commercially driven petroleum entities; and promote transparency in the administration of Nigerian petroleum resources. Succinctly put, the bill seeks to address the problem of administering petroleum resources in line with global best practices, and to provide for efficient and independent sector regulation.

The extant regulatory framework of the oil and gas sector which includes the Ministry of Petroleum Resources, NNPC Act 1997, the Petroleum Act 1969, the Oil and Pipelines Act 1990, the Petroleum Profit Tax Act 1959, the Petroleum Products Pricing Regulatory Act 2003 amongst others have had more ruinous effect on the oil and gas sector, as they have not promoted a culture of transparency in the oil and gas sector. They have also not created the right opportunities to tackle gas flaring, oil spillage and Illegal bunkering in Nigeria.

The key provisions of the bill are as follows:

1. The Minister of Petroleum

The Minister of Petroleum is empowered to formulate, monitor and administer government policy in the petroleum industry, inter alia.

2. The Nigerian Upstream Petroleum Regulatory Commission

This commission is to administer and enforce policies and regulations relating to all aspects of upstream petroleum operations and also to issue, administer and enforce compliance on the issuance of licenses, leases, health and safety measures in the upstream sector.

3. The Nigerian Midstream and Downstream Petroleum Regulatory Authority

This authority is to administer and enforce policies, laws and regulations relating to all aspects of midstream and downstream petroleum operations, and to issue and administer licenses in the midstream and downstream sectors. The agency is also to, amongst other things, ensure and enforce compliance with the terms and conditions of all licenses, permits, and authorizations issued in respect of the midstream and downstream petroleum operations; set and enforce approved standards for designs, procurement, construction, and maintenance for all plant; installation and facilities pertaining to midstream and downstream operations.

4. Incorporation of the Nigerian National Petroleum Company Limited

The Minister of Petroleum shall within 6 months from the commencement of this Act, cause to be incorporated under the Companies and Allied Matters Act, a limited liability company, which shall be called Nigerian National Petroleum Company Limited (NNPC Limited).

NNPC shall cease to exist, after its remaining assets, interests, and liabilities other than its assets, interests, and liabilities transferred to NNPC Limited or its subsidiaries under subsection (1) of this section, shall have been extinguished or transferred to the Government.

5. Granting of Licenses and Leases

Petroleum exploration license may be granted to qualified applicants, to explore petroleum on a speculative and non-exclusive basis.

Petroleum Prospecting License may be granted to qualified applicants, to carry out petroleum exploration operations on an exclusive basis. A Petroleum Prospecting License for onshore and shallow water acreages shall be for duration of not more than 6 years, comprising of an initial exploration period of 3 years, and an optional extension period of 3 years. A petroleum prospecting license for deep offshore and frontier acreages, shall be for duration of not more than 10 years, comprising of an initial exploration period of 5 years, and an optional extension period of 5 years.

6. Abolition of Gas Flaring

Gas flaring has been said to be a major destroyer of the ozone layer, and this has a very detrimental effect on climate all over the world, as is presently occurring. The United Nations Framework Convention on Climate Change (UNFCCC), has called on countries to put an end to greenhouse effect. Despite not having any binding emission target under the UNFCCC, Nigeria in its own way, has responded under the proposed bill to illegalize and abolish gas flaring.

Accordingly, the new bill demands strict adherence to a gas flaring plan, along with gas utilization plans, to be submitted by all oil and gas operators within six months of the coming into effect of the law, indicating data on their daily flare quantity, reserve, location, composition. Statistics posit that Nigeria losses a lump sum of money every year to gas flaring, such that its abolition is a wise way of saving this money, and making it available for the usage of the economy and its development.

7. Domestic Gas Obligations

The PIB provides that the Nigerian Upstream Regulatory Commission shall, having regard to the needs of the domestic gas market and in accordance with the National Gas Master Plan, impose Domestic Gas Supply Obligations (DGSO) on lessees. As proposed, a lessee who fails to comply with its DGSO, shall not be permitted to make supplies to gas export operations, and where the lessee only supplies gas to export operations, the lessee shall be directed to suspend operations. This section will oust the existing Department of Gas in its functions and responsibilities.

8. Deregulation of the Downstream Sector

The PIB provides that the pricing of petroleum products in the downstream product sector, shall be deregulated to ensure market related pricing, adequate supply and removal of economic distortions, and creation of a fair market value for petroleum products in Nigeria's economy. However, although pricing is to be left to market forces, the Bill proposes to safe-guard the interests of consumers, by providing that the Nigerian Midstream and Downstream Petroleum Regulatory Authority shall oversee tariffs for transportation by pipelines, bulk storage for petroleum products, and regulated open access facilities. This will oust the present Petroleum Pricing Products Regulatory Agency (PPPRA).

9. Petroleum Host Communities Fund

The objective of the Bill is to provide direct social and economic benefits from petroleum operations to host and impacted communities. Also, the Bill seeks to enhance peaceful and harmonious coexistence between E & P companies on one hand, and host and impacted communities on the other - with an objective to foster sustainable and shared prosperity amongst the oil and gas companies and host communities.

Consequent upon our belief in the complete reformation of the Petroleum Sector, M. A. Abubabar & Co. (Fortuna Chambers) as Legal Advisers to some companies seeking to be registered as corporate actors in the sector has commenced the processing of Five (4) Oil and Gas Industry Service Permits (OGISP) for these companies. It is our strong belief that though the year 2020 has created roadblocks, it has also created opportunities which shall be fully harnessed in the coming year.