On 1 July 2021, both chambers of the Nigerian National Assembly (NASS) passed the Petroleum Industry Bill (PIB) after about 2 decades since it was first presented to the NASS. The PIB outlines a new framework that is aimed at comprehensively addressing the myriads of challenges currently faced by the Nigerian oil and gas industry in order to enhance the sector’s attractiveness for more investments. What are the major changes introduced by the PIB and how will they affect businesses in Nigeria?
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Overview
The Petroleum Industry Bill (PIB) is an attempt by the Nigerian lawmakers to comprehensively review the legal framework for the petroleum industry in Nigeria since its inception. The PIB repeals most of the existing legislations currently governing different aspects of the petroleum industry.

On 1 July 2021, both chambers of the Nigerian National Assembly (NASS) passed the PIB after about 2 decades since it was first presented to the NASS. The current PIB that has been passed by NASS is omnibus (as against the earlier attempt by NASS to fragment the bill into multiple laws) because it seeks to consolidate the provisions of several existing laws that would govern the entire industry. The PIB outlines a new framework that is aimed at boosting the oil and gas industry output while enhancing the sector’s attractiveness for more investments.

The Bill is divided into five chapters which deal with ‘Governance and institutions’, ‘Administration’, Host communities development’, Petroleum Industry fiscal framework, and ‘Other miscellaneous provisions’. We expect that in a short while, the NASS would come up with a properly harmonized version of the passed Bill for presentation to the President (for assent).

While we wait for the passed bill to translate into becoming a gazetted law soon, we have highlighted below some important provisions of the bill (using the version passed by the House of Assembly, which contains the changes recommended in its Ad-hoc Committee report).

Summary of the Major Changes Introduced by the PIB

- Establishment of new regulatory authorities to govern upstream, midstream and downstream petroleum activities.
- Establishment of NNPC Limited to succeed NNPC.
- Renaming of the existing licences/lease.
- Existing holders of licences and lease to apply for permit under the new law within 18 months after its commencement.
- Marginal fields shall cease to exist under the new act, 18 months after its commencement.
- Separate business entities must be registered to operate in each of the sectors, except for Integrated Strategic Projects.
- Establishment of ‘Frontier Exploration Fund’, Midstream Gas Infrastructure Fund and ‘Authority Fund’.
- Upstream operators now required to set up ‘Host Communities Development Trust’ and ‘Abandonment and Decommissioning Fund’.
- Upstream companies now to pay Hydrocarbon Tax (replacing Petroleum Profits Tax) and Companies Income Tax (CIT).
- Gas flare penalties, accrued royalties, Tertiary Education Tax, bank charges, interest on borrowing, Head officeaffiliate or shared costs not allowable for upstream tax purpose.
- Downstream gas utilisation Incentives under s. 39 of CITA now to be also enjoyed by “all companies engaged in domestic midstream petroleum operations, downstream gas operations and large-scale gas utilization industries”.
- Penalty for late filing of Hydorcarbon Tax returns (estimated and actual) and CIT Returns in relation to petroleum operations is now ₦10 million in the first instance and additional ₦2 million for every day of continued failure. A fine of ₦20 million shall apply to offenses with no stipulated penalty.

We have discussed, in further details below, some of the provisions in the bill.

Powers of the Minister of Petroleum under the PIB

The bill gives the Minister of Petroleum the powers, to exercise general supervision over the affairs and operations of the petroleum industry; formulate, monitor and administer government policy in the industry; grant, revoke and assign interests in licences and leases (as recommended by the Nigerian Upstream Regulatory Commission), amongst other powers. The Bill also revokes the powers of the Minister to fix prices of petroleum products.
Establishment of New Regulatory Authorities

The bill establishes new regulatory authorities to separately regulate the operations/activities of upstream, midstream and downstream players in the petroleum industry.

All upstream petroleum operations will now be governed by the **Nigerian Upstream Regulatory Commission (“the Commission”),** while all mid-stream and downstream petroleum operations shall be governed by the **Nigerian Mid-stream and Downstream Petroleum Regulatory Authority (the Authority).**

Establishment of NNPC Limited

The PIB provides that the Minister shall incorporate the Nigerian National Petroleum Corporation Limited (NNPC Limited) as a limited liability company to carry out petroleum operations on a commercial basis without recourse to government funds. All shares in NNPC Limited will be held, on behalf of the Federal Government, by the Ministry of Finance Incorporated (MoFi) and Ministry of Petroleum Incorporated (MoPI) in equal proportions.

Frontier Exploration Fund (FEF)

Part of the functions of the Commission shall be the management of the FEF which is dedicated for the development of frontier acreages requiring testing and drilling. The FEF shall be derived from 10% of rents on petroleum prospecting licences, 10% rent on petroleum mining leases; and 30% of NNPC Limited’s profit oil and profit gas from production sharing, profit sharing and Risk service contracts (the Senate’s version of the bill excludes ‘10% of rents on petroleum prospecting licences’ and ‘10% rent on petroleum mining leases’ from being sources of the fund).

Licences and Lease for Upstream Petroleum Operations

The PIB proposes licenses and lease that are largely similar to the licenses/lease granted under the Petroleum Act.

Oil Exploration Licence (OEL) is renamed as Petroleum Exploration Licence (PEL), Oil Prospecting Licence (OPL) is renamed as Petroleum Prospecting Licence (PPL), while Oil Mining Lease (OML) is renamed as Petroleum Mining Lease (PML).

Voluntary Conversion of an Oil Prospecting Licence to a PPL or Oil Mining Lease to PML

To benefit from the fiscal framework under the bill, a holder of an existing OPL or OML may enter into a voluntary conversion contract which shall terminate all outstanding arbitration and court cases related to the respective OML and OPL. The conversion date shall be the earlier of “18 months after commencement of the Petroleum Industry Act (PIA)” and “the expiration date of the OML or date of conversion of the OPL to an OML”.

Where the conversion option is not taken, the OPL and OML shall continue under the old terms and conditions, subject to a review or modification of all applicable tariffs by the Authority within **24 months** after commencement of the Act.

*However, it is mandatory for lessees and licensees involved in midstream or downstream gas and petroleum liquids*
operations to apply for permit under the new law, within 18 months after its commencement.

**Conversion of Marginal Field to PML**

A producing marginal field shall be allowed to continue to operate under the original royalty rates and farm out agreements, but shall convert to a PML under the new Act within 18 months from its effective date. **After the commencement of the law, no new marginal field shall be declared under the Act.**

**Gas Flaring**

The Act (once effective) prohibits the flaring of natural gas by holders of licences and leases and marginal field operators except in the case of an emergency, as an acceptable safety practice or an exemption granted by the Commission. The gas flaring fine paid shall not be eligible for cost recovery or be tax deductible.

**Installation of Metering Equipment Prior to Production**

As a result of the huge loss of government revenue caused by crude oil theft (aided by poor metering of oil wells in Nigeria), the Weight and Measures Act was approved in 2015 (though it has not been strictly administered to effectively deal with the menace).

To effectively address that loophole, the PIB stipulates that prior to commencement of petroleum production, upstream companies are now required to install metering equipment (meeting prescribed specifications).

**Midstream Gas Infrastructure Fund (MGIF)/Authority Fund**

The MGIF (a corporate body under the Authority) is established for the purpose of investment in Midstream Gas Infrastructure within the host communities in which the upstream oil companies operate. The major sources of the MGIF shall be:

- 0.5% (Senate’s version of the Bill has 2.5%) of the wholesale price of petroleum products and natural gas sold in Nigeria, which shall be collected from wholesale customers (this exact levy will be charged separately as one of the sources of the Authority Fund);
- Remittances from gas flaring penalties received by the Commission.

The PIB forbids a company from engaging in operations in more than one of the upstream, midstream or downstream sectors. Except for upstream operations that are established as Integrated Strategic Projects in (ISPs), any company seeking to do business in more than one of the sectors must register a separate business entity and obtain a different licence for its operation in each sector.

**Abandonment and Decommissioning Fund**

Each licensee or lessee is required to set up and manage a decommissioning and abandonment fund (an escrow account), which shall be held by a financial institution that is not an affiliate of the lessee or licensee. The contributions made to the fund shall be eligible for cost recovery and shall be tax deductible during the year it was contributed and not when it is eventually disbursed.

**Host Communities Development Trust (HCDT)**

The PIB also introduces provisions to cater for and support the development of host communities (from the economic benefits derived from petroleum operations).

- Each settlor shall make an annual contribution to the
appliable HCDT fund of an amount equal to 5% of its actual annual operating expenditure of the preceding financial year in the upstream and 2% in the midstream and downstream in respect of all petroleum operations affecting the host communities (the Senate’s version of the bill totally exempts midstream and downstream operations from HCDT contributions).

This payment shall be deductible for Hydrocarbon Tax and CIT purposes.

**Hydrocarbon Tax (HcT)**

The PIB introduces HcT which shall replace the Petroleum Profits Tax (PPT) for upstream petroleum operations subject to the conversion specified in the bill. **HcT shall be specifically applicable to companies engaged in upstream petroleum operations in the onshore and shallow waters.**

**HcT applies to:** crude oil as well as field condensates and natural gas liquids derived from associated gas and produced in the field upstream of the measurement point.

**HcT shall not be applicable to:**

- associated natural gas, including gaseous natural gas liquids produced in the field and contained in the rich gas, and non-associated natural gas;
- condensates and natural gas liquids produced from non-associated gas in fields or gas processing plants regardless of whether the condensates or natural gas liquids are subsequently reinjected into crude oil stream; and
- any condensates and natural gas liquids produced from associated gas at gas processing or other facilities downstream of the measurement points.

Also note the following:

- HcT shall not apply to a frontier acreage until it is reclassified as “onshore”, and shall not apply to deep offshore.
- For the purpose of determining royalties, condensates shall be treated as crude oil and natural gas liquids as natural gas.
- **Upstream petroleum operations shall also be subject to CIT in addition to the HcT.**
- For the purpose of HcT, the crude oil revenue shall be just the sum of “chargeable oil sold” and “chargeable oil disposed” by an entity. **Thus, all other income ‘incidental to upstream petroleum operations’ are excluded from the scope of HcT.**

**Royalties**

According to the PIB, the royalty payable shall be determined as follows:

- **For crude oil and condensates,** royalty shall be computed as a combination of **Royalty based on production volume** and **Royalty based on price.**

- **For Natural gas and Natural gas liquids,** royalty payable shall be the **Royalty based on production only** which shall be 5% of the chargeable volume (2.5% shall apply for natural gas produced and utilized in-country).

**Expenses Allowed for HcT**

Some notable items that were allowable under the PPTA, but now listed as disallowable for HcT purpose in the PIB include:

- **Royalties that are merely accrued and not actually paid during the period**
- Contributions to a pension, provident or other society, scheme or fund for production staff which may be approved, with or without retrospective effect, by the National Pension Commission
- Arm’s length interest expense on any money borrowed and employed as capital for upstream petroleum operations.
Tertiary Education tax

Other Notable deductions specifically listed in the PIB as not allowed for HcT Purpose

- Expenditure incurred as a penalty, natural gas flare fees or imposition relating to natural gas flare
- Financial or bank charges, arbitration and litigation costs, bad debts and interest on borrowing
- Head office or affiliate costs, shared costs, research and development costs or any other like shared indirect production costs
- Production bonuses, signature bonuses paid for the acquisition of, or of rights in or over, petroleum deposits, bonuses or fees paid for renewing PML or PPL or marginal field or fees paid for assigning rights to another party
- Tax inputted into a contract or an agreement on a net tax basis and paid by a company on behalf of the vendor or contractor
- All custom duties
- All costs not claimed as a result of the Cost price ratio restriction prior to termination of upstream petroleum operations

The major difference between HcT and PPT is that the latter is imposed on “crude oil income together with other income incidental to petroleum operations”, while HcT is charged solely on “crude oil income”.

Capital allowances for Qualifying Expenditure relating to Upstream Petroleum Operations

Upstream petroleum operations assets shall be treated in accordance with the Fifth Schedule to the Act, while mid-stream and downstream operations assets shall be treated in accordance with the Second Schedule to the CITA.

Production Allowance
The sixth schedule to the PIB grants production allowance for crude oil production to the holders of converted OML, or PML granted after the commencement of the Act, which shall be additional tax-deductible claims for HcT purposes.

Minimum Tax Provisions - Cost Price Ratio Limit (CPR)
In determining the HcT payable, all allowable costs and capital allowances claimable for an accounting period shall be subject to a CPR ceiling of 65% of gross revenues, and the excess unclaimed costs shall be carried forward to subsequent years.

Adjusted Profits, Assessable Profits, Chargeable Profits & Tax Losses
Under the PIB, the adjusted profits, assessable profits and chargeable profits are all computed in same manner as provided under the PPTA; tax losses are also carried forward indefinitely as is applicable under the PPTA.

Pre-Production Expenditure
Similar to the provisions in the PPTA, the PIB provides that 20% capital allowance claims shall be made on all relevant pre-production expenditure subject to a 1% retention.

Chargeable Tax - HcT

The HcT payable shall be as follows:

- 30% of the profit from crude oil for petroleum mining leases with respect to onshore and shallow water areas.
- 15% of profit from crude oil for onshore and shallow water and for petroleum prospecting licenses. This HcT rate shall also apply to a marginal field converted to PML.

Companies yet to commence Upstream Business
Companies that are yet to commence bulk disposal of chargeable oil are expected to file audited accounts and returns:
For a new company: Within 18 months from the date of incorporation.

For an existing company: Not later than 5 months after the accounting year end.

**Penalty for late filing of HcT Returns (Estimated and Actual)**

The PIB prescribes a stringent penalty of **₦10 million** in the first instance and additional **₦2 million** for every day of continued failure, in relation to late or non-filing of both the Estimated HcT returns and Actual HcT returns.

**Applicability of Companies Income Tax (CIT) to Petroleum Operations**

Upstream, midstream and downstream petroleum operations shall be liable to payment of CIT (in addition to the HcT payable by upstream entities). In computing the CIT payable, the following should be noted:

- The total chargeable revenue shall be the sum of the proceeds of “chargeable oil or gas sold” and “chargeable oil or gas disposed” by the company during the period.

- The HcT payable shall not be deductible.

- Natural gas transferred or disposed from upstream to midstream or downstream shall be subject to CIT.

- Natural gas liquids and liquid petroleum gases derived from natural gas shall be subject to CIT.

- Acquisition costs of petroleum rights shall be eligible for annual allowance at the rate of 20% with a retention value of 1% in the last year until the asset is disposed.

**Gas Utilisation Incentives**

- The list of companies to enjoy the incentives provided under s. 39 of CITA for downstream utilization of gas has been expanded to now include “all companies engaged in domestic midstream petroleum operations, downstream gas operations and large-scale gas utilization industries (as defined in the PIB)”.

- Investors in gas pipeline will be granted an additional tax-free period of 5 years at the expiration of the maximum 5 years tax-free period previously granted under section 39 of CITA.

**Capital Allowances (CA) in relation to CIT Computation for Petroleum Operations**

For **Upstream Petroleum Operations Assets**, CA shall be granted in accordance with the fifth schedule to the Act.

For **Assets used in Midstream and Downstream Operations**, CA shall be granted in accordance with the second schedule to CITA.

**Allowable Expenses in relation to CIT Computation for Petroleum Operations**

In addition to the existing list of allowable expenses under section 24 of CITA, the PIB lists some other specific expenses as allowable under the CIT computations for petroleum operations.

**Disallowable Expenses in relation to CIT Computation for Petroleum Operations**

In addition to the existing list of non-allowable expenses under section 27 of CITA, the PIB also lists other specific expenses as not allowable under the CIT computation for petroleum operations.
Basis Period in relation to CIT Computation for Petroleum Operations/Estimated Returns/Mode of Tax Remittance
Companies involved in upstream petroleum operations shall apply the same basis period applicable to HcT computation (i.e. actual year basis). Estimated CIT returns are also required to be filed within the same statutory timeline specified for HcT returns. The payment of CIT for petroleum operations will also follow the same 13-installment approach for HcT.

Penalty for late filing of CIT Returns in relation to Petroleum Operations
The PIB also stipulates a separate penalty of ₦10 million in the first instance and additional ₦2 million for every day of continued default, for failure to file CIT returns in relation to petroleum operations.

Conclusion
The passage of the PIB indicates government’s seeming resolve to proffer a practicable solution to the myriads of problems facing the Nigerian petroleum industry. Indeed, a lot of the long-standing concerns have been reasonably addressed by the bill. However, it is important that in implementing the new law, government’s focus should not be skewed towards just increasing revenue, but also ensuring that the legislation realises the desired positive outcomes for all affected stakeholders in the sector, particularly the investors (indigenous and foreign).

There are a few other concerns to note. One of the sources of the ‘Midstream Gas Infrastructure Fund’ and ‘Authority Fund’ is an additional levy, both totaling 1% (the Senate’s version has a total of 3% for both funds) on the wholesale price of petroleum products. This additional burden would potentially worsen the plight of the general populace, considering that the PIB was contemplated to usher in a full deregulation regime. Furthermore, the limitation (65% cost price ratio) to allowable cost claims for determining hydrocarbon tax appears to be quite onerous and may be considered a direct disincentive for potential investors (which the PIB aims to attract).

Additional concerns may also be raised regarding the level of transparency and accountability that would be brought to bear in the administration of the ‘Frontier Exploration Fund’ and ‘Midstream Gas Infrastructure Fund’, in view of the renown history of corruption that has pervaded the industry.

Notwithstanding, we believe that the proper and effective implementation of the provisions of the Act (once signed) can potentially make the Nigerian oil and gas sector competitively attractive again and it is our hope that rig counts in the country will soon begin an upward trend.
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