

## Commercial Issues, Institutional and Regulatory Framework

TEMPLARS | 7th August 2012 Newsletter

### INTRODUCTION

This Newsletter is the second in our series on the review of the PIB 2012.<sup>1</sup> Divided into two Parts: *Commercial Issues* and *Institutional/ Regulatory Framework*, the Newsletter analyses relevant PIB provisions for the benefit of industry participants – operators, investors, service providers and other stakeholders.

### Part A: HIGHLIGHTS OF COMMERCIAL ISSUES

We discuss ramifications of the PIB 2012's "stay awake" commercial issues in this Part under the respective subheadings below.

#### *Restrictions on Assignments and M&As*

The current restriction on transfer of interests and rights under Oil Prospecting Licenses ('OPLs'), and Oil Mining Leases ('OMLs'),<sup>2</sup> has been retained in the PIB 2012 and extended to include transfers by a Production Sharing or Service Contractor.<sup>3</sup>

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<sup>1</sup> Our first PIB Newsletter, *Tax Fiscal Highlights & Issues* was circulated on 27<sup>th</sup> July, 2012.

<sup>2</sup> The equivalents under PIB 2012 are 'Petroleum Prospecting License (PPLs) or Petroleum Mining Leases (PMLs).

<sup>3</sup> *Section 194(2) PIB 2012.*

More importantly perhaps, is the clearer language of the PIB which specifies that the Honourable Minister of Petroleum Resources' (HMPR) consent is required where a licensee, lessee or PSC contractor is taken over by, merges with, or is acquired by, another company whether by acquisition or exchange of shares including a change of control of a parent company outside Nigeria.

These provisions are remarkably more expansive than the current provisions of the Petroleum Act<sup>4</sup> and appear to restrict any attempt to avoid the requirement for the HMPR's consent by bringing mergers or takeovers higher up the corporate chain than the asset-holding entity within the ambit of the law.<sup>5</sup> If passed in its current form, almost all structures adopted for business transactions to date will require HMPR's consent for post PIB transactions.

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<sup>4</sup> And the *Petroleum (Drilling & Production) Regulations* (PDPR), made pursuant to the *Petroleum Act*.

<sup>5</sup> The Federal High Court, in *Moni Pulo Limited v Brass Exploration & 7 Ors. (Suit No. FHC/L/CS/835/2011)*, recently held that transfer of shares and ownership of an asset owning company amounts to indirect transfer of interest in such asset and therefore required HMPR's consent.

The current draft, relative to current statutory provisions, does not reflect the requisite clarity that should put the controversy around some issues to rest. For example, whether an intra-group corporate restructuring requires ministerial consent;<sup>6</sup> or whether consent is required for encumbering PPL, PML, PSC and SC interests? There is also the need to specify process and timelines for the grant of HMPR's consent, whenever consent is required.

Notably, and in sharp contrast to previous drafts, the PIB 2012 does not require a consent fee of 2% of the value of the assignments and transfers; this should positively impact transaction costs.

### ***PML Duration, Renewals and Relinquishments***

The PIB 2012 states the maximum term of PML as 20 years, although the combined term of a PML and PPL may extend to a maximum of 27 years for onshore and shallow water areas or 30 years for deep water.

However, this duration may be reduced where a PML does not commence commercial production 5 years into the

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<sup>6</sup> Although *section 194(6)* provides that the HMPR may waive fees in cases of assignment to affiliates, which suggests that HMPR consent applies to affiliate transfers, it will appear that the assignment referred to in this sub-clause will not include intra-group corporate restructuring which falls short of a takeover, acquisition or merger. Clause 31 of the standard terms of Nigeria's OML deeds provide that HMPR consent is not required for affiliate transfers only a notice should be given to the HMPR.

term for onshore and shallow waters and 7-10 years for deep water leases.

Industry participants should be aware of the new investment risk which this provision creates: blocks awarded or acquired may be forfeited if they do not attain production/set criteria within the prescribed timelines.

PML renewals are no longer automatic or obligatory, as the PIB subjects renewals to the discretion of the HMPR and such renewals are for a maximum of 10 years.<sup>7</sup> This is very different from the current regime where for example, against the expectation of automatic renewal (provided lessee is not in breach of its OML obligations), two IOCs were only able to get their OMLs renewed pursuant to a negotiated settlement, only after a public standoff with the Government. ,

Another commercial consideration under the PIB 2012 is the *aggressive relinquishment regime*, whereby 10 years into the term of a PML, all portions of the PML not in commercial production or in respect of which firm commitments have not been made, are to be relinquished. However, for existing OMLs and OPLs this relinquishment regime will only kick in after the expiration of their terms.<sup>8</sup>

### ***Presidential Power to Grant Licenses and Leases***

One of the cardinal objectives of the PIB 2012 is transparency and competitiveness of the acreage award process. However ***section 191*** is seemingly inconsistent with

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<sup>7</sup> *Sections 184 and 185 PIB 2012.*

<sup>8</sup> *Sections 186 and 193 PIB 2012*

such objective by providing that, notwithstanding any other provisions of the Act, the President shall have the power to grant a license or lease under the Act.

It appears all the more worrisome that the section 191 discretionary award power is unqualified and does not appear to be subject to any guidelines or procedure. If the National Assembly passes the provision as is, same is likely to be a sore point and potentially attract judicial review at the instance of aggrieved parties.

### ***Marginal Field Operators***

The PIB 2012 envisages that host PML holders will no longer get overriding royalties from such marginal field operations. Marginal fields are to be relinquished from their host OML holders and the relevant marginal field operators will be entitled to obtain PMLs on those fields.

The effect of this is that there will be no marginal field regime under the PIB 2012 and the same rules and fiscal regime will apply to all PML holders. Some earlier versions of the PIB had created a 'cushioned' fiscal regime for small companies producing less than 25,000 bpd through reduced royalties and high production allowances, but the PIB 2012 whilst giving marginal field operators independent PMLs, does not go further to incentivize development of marginal petroleum deposits.

### ***Local Content 'Incentives'***

The PIB 2012 does not include some of the provisions seen in the earlier versions that reserved half of the blocks in any

licensing rounds for indigenous petroleum companies.<sup>9</sup>

An 'indigenous petroleum company' defined as a company incorporated in Nigeria with 51% of the company's shares beneficially owned by Nigerian citizens; or where listed on the Nigerian stock exchange, has majority of its directors as Nigerians.<sup>10</sup>

The transparent award process prescribed under the PIB 2012 for petroleum licensing does not make express provisions for local content, although the Local Content Act,<sup>11</sup> requires that Nigerian companies be given first consideration in the award of oil blocks in the petroleum sector.

Nonetheless, PIB 2012 provides that indigenous Nigerian companies producing below 25,000 bpd will be allowed to produce up to the technical allowable output under the license or lease and the Federal Government covenants not to exercise its right to participate in such operations.<sup>12</sup> This could make them attractive targets for investment.

### ***Environmental, Abandonment and Petroleum Host Community Funds***

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<sup>9</sup> Section 287 PIB 2012 however empowers the Minister to make regulations to enable the increase of indigenous petroleum reserves.

<sup>10</sup> Section 362 PIB 2012 (Interpretation section).

<sup>11</sup> Or formally known as *Nigerian Oil and Gas Industry Content Development Act 2010*. See section 3.

<sup>12</sup> Sections 192 and 285 PIB 2012

As a condition to the grant of a PPL or PML, PIB 2012 requires financial contributions to be made by a licensee or lessee into an environmental remediation fund established by the Upstream Petroleum Inspectorate (Inspectorate) which will be used for the rehabilitation or management of negative environmental impacts with respect to each individual license or lease area. The size of the contribution is to be fixed by the Regulator taking into the consideration the size of the operations and the possible environmental risks present.<sup>13</sup>

Also, an Abandonment Fund (AF) is required to be set up by a licensee/lessee for the purpose of abandonment, decommissioning and disposal of petroleum installations, which will also be accessible by the Inspectorate.<sup>14</sup>

The Petroleum Host Communities (PHC) Fund<sup>15</sup> should engender an active, stakeholder mindset in community residents regarding security and integrity of facilities in their area.

In practical terms, the PHC Fund will presumably replace (or complement?) community/operators' MOU arrangements currently being used to ensure that host communities derive some benefits directly from operators regarding conduct of petroleum operations in their area. The success and

impact of the PHC Fund will depend largely on the governance and management structure to be set up by proposed Regulations and how integrated the structure is with the host communities.

Unlike the PHC Fund contributions that are deductible for NHT purposes,<sup>16</sup> the ERF and the AF are neither stated to be deductible or disallowable for NHT purposes. Presumably, they should be deductible, being expenses "*wholly, exclusively and necessarily*" incurred for petroleum operations; by the same token, they will be deductible for CIT.

### ***Domestic Market Obligations***

PIB 2012 seeks to impose Interim Domestic Gas Supply Obligations (DGSOs) on PMLs, to meet the gas needs of the domestic gas market.<sup>17</sup> Accordingly a lessee may be required by the Regulator to scale up production to meet the demand in the Nigerian gas market; this may entail the lessee having to increase its investment on a gas block, as the DGSO allocations for each lessee is based not just on current gas production but also proven gas reserves.

Where there's con-compliance with the DGSOs, the lessee will not be allowed to export gas and its gas export license may be revoked. In cases where the lessee is only supplying gas to gas export operations, the Regulator may direct that

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<sup>13</sup> Section 203 PIB 2012.

<sup>14</sup> Section 204 PIB 2012.

<sup>15</sup> The PHCF has been discussed in our first PIB 2012 series, *Tax Fiscal Highlights*.

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<sup>16</sup> Section 305(1)(p) PIB 2012. Presumably, the PHC contribution is also deductible for Companies Income Tax (CIT) purposes.

<sup>17</sup> Sections 183 and 269 PIB 2012 provide for the DGSO regime for not more than 20 years.

the entire gas production be suspended.<sup>18</sup>

The DGSOs will constitute a major commercial consideration for gas asset holders especially in view of the Nigerian government's "gas to power" initiatives under the Power Sector Roadmap. This will require incremental investments from gas asset holders, even though the gas pricing for the domestic market will remain regulated.

Investors may find it comforting that the PIB 2012 clearly indicates that the DGSO regime is a temporary arrangement; the Nigerian gas market will be fully deregulated when it matures enough to compete with the export market, provided the DGSO regime shall not exceed 20 years.

### ***Gas Pricing and Flaring***

In respect of DGSOs, the PIB 2012 imposes an Aggregate Gas Price (AGP), which is fixed by the Domestic Gas Aggregator (DGA) and based on the weighted average of purchase prices and supplied volumes of the purchased gas.<sup>19</sup> The intention is for this aggregate gas price to apply to all DGSOs.

Unlike previous versions of the PIB which sought to benchmark the price of gas for the supervening period before the

maturity of the domestic gas market,<sup>20</sup> the PIB 2012 confers the Regulator with the responsibility in consultation with all other regulators remotely related to the gas industry, to formulate a temporary or transitional pricing plan where the need arises. It is good to note that the price of gas as determined by the Regulator must accord with certain pricing principles stipulated in the PIB 2012 which essentially ensure that the prices reflect the cost of supply and allow a reasonable return to the gas seller.<sup>21</sup>

Wholesale gas prices, on the other hand, are unregulated and are to be negotiated directly between the supplier and purchaser on an arm's length basis, with the Regulator playing a monitoring role.<sup>22</sup>

Contrary to some expectations, the PIB 2012 does not set out a flare out date in its provisions; the Minister will, by regulations, set the flare out date.<sup>23</sup> The MPR may grant gas flare permits for no more than 100 days in cases of start-up, equipment failure, shut down, safety flaring or due to inability of Gas customer to off take gas.<sup>24</sup>

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<sup>20</sup> Most of the earlier PIB versions used international gas price standards especially the Henry Hub price index.

<sup>21</sup> *Sections 252-253 PIB 2012* set out the power of the Regulator to regulate prices based on certain non discriminatory pricing principles.

<sup>22</sup> Section 255 PIB 2012. The class or classes of customers that constitute wholesale customers shall be stipulated by regulations by the MPR – *section 247 PIB 2012*.

<sup>23</sup> *Sections 275-277 PIB 2012*.

<sup>24</sup> *Section 272(2) PIB 2012*.

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<sup>18</sup> Under *section 272*, the Regulator may also impose penalties for non compliance with the DGSOs.

<sup>19</sup> *Section 269(5) PIB 2012*.

Flaring gas after the flare out date without permit is an offence and upon conviction attracts a fine to be determined by the MPR but shall not less than the value of gas flared.<sup>25</sup> Furthermore, such penalty is not tax deductible. Accordingly, whilst it may seem that the PIB 2012 does not provide a stricter regime against gas flaring, the penalty for gas flaring will act as a deterrent to industry participants, and help 'push' them in the direction of helping to monetize Nigerian gas and reducing negative environmental impact of petroleum operations.

### **Conclusion:**

Whether the PIB has introduced more favourable commercial terms for respective players remains to be seen. We envisage close review of the provisions and running of relevant financial models to provide informed basis for corporate strategic responses. We hope that during the public hearing on the PIB at the National Assembly, stakeholders will provide input that will help facilitate enactment of industry-changing legislation that will be a win-win for the industry and the Federal Government of Nigeria.

### **Part B: INSTITUTIONAL AND REGULATORY FRAMEWORK**

The PIB proposes far reaching regulatory changes to the oil and gas industry. It changes the institutional landscape by creating new institutions and overhauling some old ones, towards the avowed objective of creating "efficient and effective regulatory agencies". For

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<sup>25</sup> Sections 201 and 281 PIB 2012.

example, it seeks to privatize the state-owned NNPC and to create new bodies to take over functions it currently performs. Industry stakeholders will require a firm understanding of these provisions to optimally navigate the emerging compliance regime.

### **(Honourable) Minister of Petroleum Resources (HMPR)**

**Section 5 PIB 2012** provides that the HMPR will have overall responsibility to formulate policy, co-ordinate the activities of the industry and supervise its institutions. The PIB subjects the powers and duties of all other institutions to the supervisory authority of the HMPR.

The functions and powers of the HMPR include:

- ❖ to grant, amend, renew, extend or revoke upstream petroleum licenses and leases pursuant to the provisions of the PIB, and upon the advice of the Inspectorate;
- ❖ upon the advice of the Downstream Petroleum Regulatory Agency (DPRA), to grant amend, renew, extend or revoke downstream petroleum licenses<sup>26</sup>;
- ❖ to enforce the provisions, and make regulations to give effect to the provisions of the Act, as well as do all other things as are incidental and necessary to the performance of the functions of the HMPR.

### **Petroleum Technical Bureau (PTB)**

**Section 9 PIB 2012** seeks to create the PTB. It will assist the HMPR formulate and implement policy and provide professional and technical support to the

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<sup>26</sup> For gas transportation pipelines, gas distribution networks, refineries, LNG and GTL plants, petrochemical plants and gas exports.

HMPR, in monitoring policy implementation.

In addition to succeeding to the functions of the former Frontier Exploration Services of the NNPC, the PTB will, amongst others:

- ❖ identify opportunities in petroleum resources in frontier acreages across the country;
- ❖ develop exploration strategies and portfolio management for the exploration of unassigned frontier acreages in Nigeria; and
- ❖ undertake activities to stimulate the interest of local and international players in exploration of the frontier basins of Nigeria to increase Nigeria's petroleum resources.

### *Upstream Petroleum Inspectorate (the Inspectorate)*

**Section 13 PIB 2012** provides for the Inspectorate to take over the upstream regulatory functions now exercised by the Department of Petroleum Resources (DPR). It is directly charged with regulating the upstream industry and enforcing all the laws relating to it, including compliance with grant terms and conditions.

In addition to the above, the Inspectorate will:

- ❖ subject to the approval of the HMPR, conduct bid rounds for all PPLs and PMLs;
- ❖ issue authorizations for seismic activities, drilling, design and construction of upstream facilities;
- ❖ set and enforce health and safety standards for the upstream industry;

- ❖ keep registers of all leases, licenses, permits, authorisations and subsequent changes to them;
- ❖ take necessary steps to monitor the activities of grant holders to secure compliance with grant terms;
- ❖ publish tariffs and process relating to third party access to upstream petroleum facilities;
- ❖ ensure accurate calibration and certification of equipment used for fiscal measures; and
- ❖ assess and make sure that payment is made for charges in upstream petroleum operations. Such charges include fees and rentals.

**Section 33**, which empowers the Inspectorate to accept gifts, may be regarded as controversial. However, our view is that this is not necessarily the case, once the gift is transparent and the circumstances do not suggest an attempt to exercise influence over a regulator; in this regard donors and the Inspectorate would be expected to exercise good judgment. In any event, almost all statutory bodies and agencies in Nigeria have power to receive gifts (from public spirited donors) to supplement budgetary allocations and internally generated revenue.

### *Downstream Petroleum Regulatory Agency (DPRA)*

**Section 43** will create the DPRA to take over the downstream regulatory functions of the DPR and the Petroleum Products Pricing Regulatory Agency (PPRA). The functions and powers of the DPRA are more extensive than those

currently exercised by the PPRA. A significant role is for the DPRA to *facilitate gas supply to strategic sectors of the economy in accordance with the approved national gas pricing framework.*

The DPRA will also be empowered to:

- ❖ issue, modify, extend, renew, suspend or revoke downstream licenses and authorizations;
- ❖ monitor and enforce the application of its tariff and pricing framework for third party access to facilities;
- ❖ request and obtain any information or any document concerning *licensed activities in the downstream petroleum sector* from any licensee or permit holder *whether or not it contains business secrets*;
- ❖ where it considers it to be in the public interest:
  - publish information relating to downstream petroleum operations provided by licensees and permit holders;
  - require licensees and permit holders to publish certain information relating to downstream petroleum operations;
- ❖ enforce the provisions of any enactments or regulations applicable to downstream petroleum operations made prior to the commencement of the Act.

## *Petroleum Technology Development Fund (PTDF)*

**Section 73 PIB 2012** provides for the continued existence of the PTDF; its financial resources will be sourced from the balance of its existing finances, grants and other donations.

The PTDF will be used to educate Nigerians in the fields of engineering, geology, science, management and other related fields in the petroleum industry, through provision of scholarships and bursaries, contribute to Nigerian tertiary institutions, and generally develop Nigerian indigenous capacity in the petroleum industry.

## *Petroleum Equalisation Fund (PEF)*

**Section 100** provides for the PEF to consist of net surplus revenue recovered from petroleum marketing companies and any other sum that the Federal Government pays into it. The PEF will be used to offset losses suffered by marketing companies where they sell products at prices benchmarked by the Fund. The power to set prices appears to be vested in the PEF as opposed to the HMPR, as is currently the case.<sup>27</sup>

The PEF has no obligation to issue notices to any company in respect of net outstanding surplus revenue, so the onus is on each company to maintain effective compliance procedures.

When Government decides that the petroleum product markets have been effectively deregulated, the HMPR will take the required actions to ensure that the PEF ceases to exist and its assets and liabilities transferred to the Government to be controlled and managed by the MPR and at such time the provisions of

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<sup>27</sup> See *section 104(b) PIB 2012, section 6(1) Petroleum Act, Cap. P10, LFN 2004* and *section 2 Petroleum Equalisation Fund Act Cap. P11, LFN. 2004.*



the Act relating to the PEF shall stand repealed.

### ***Petroleum Host Communities Fund (PHCF)***

The PHCF is a new fund to be used for economic and social development in petroleum producing areas. Each petroleum producing company is required to remit, on a monthly basis, 10% of its net profit to the PHCF. 'Net profit' is defined as adjusted profit less royalty, allowable deductions and allowances, less NHT and less CIT.

While this payment appears to have the effect of an additional tax, *section 188(2)* of the Bill provides that payments made will constitute an immediate credit to each company's total fiscal rent obligations.

### ***National Petroleum Assets Management Corporation (NPAMC)***

**Section 120 PIB 2012** provides for the NPAMC, to be vested with certain assets and liabilities of NNPC. The HMPR is to incorporate the company within three months of the Act coming into force.

The main function of the NPAMC is to acquire and manage investments of the Federal Government in the Nigerian upstream industry. The assets and liabilities comprising exclusively the interests in all the unincorporated JVs held by the NNPC on behalf of the Government, and excluding any asset that the Government may have vested in the NOC, shall be vested in NPAMC within 12 to 24 months of coming into force of the PIB. The Government may thereafter vest in NPAMC any upstream assets as the government may from time to time deem fit.

The NPAMC will also take over the role of the National Petroleum Investment Management Services (NAPIMS), division of NNPC.

### ***National Oil Company (NOC)***

**Section 148 PIB 2012** provides for the establishment of the NOC, which is meant to be a 'part successor' of the NNPC.

The PIB mandates the HMPR to incorporate the NOC, not later than 3 months after the PIB comes into force, as a public company limited by shares vested with certain assets and liabilities of the NNPC.

Under the current regime the NNPC is a creation of statute<sup>28</sup> whilst under the PIB, the NOC will be established as a company under the Companies Act with the initial shares of the company being held by a nominee of the HMPR and Ministry of Finance Incorporated (MOFI) for the Federal Government.

The Government shall at any time within 6 years from the date of incorporation of the NOC, divest up to 30% of the authorized shares of NOC to the public in a transparent manner through the Nigerian Stock Exchange (NSE). This will help deepen the capital market, require professional services (legal, financial, etc) to consummate and should interest both local and foreign investors.

Within 24 months of the incorporation of the NOC, assets and liabilities held by the NNPC, except the interests in the unincorporated joint ventures and Nigerian Gas Company Plc shall be vested in the NOC. Such transfer releases the NNPC from the liability or obligation with respect to the transferred assets.

Unlike the NNPC which was bound by the provisions of the Public Procurement Act, 2007 in the award of contracts, the NOC shall not be subject to same or the Fiscal Responsibility Act 2007. Also, the NOC is not burdened by the restriction on

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<sup>28</sup> See *NNPC Act, Cap N123 2004 LFN*.

borrowing powers that the NNPC had.<sup>29</sup> Experience has shown that legislation such as *NNPC (Projects) Act, Cap. N124, LFN 2004* which relaxed NNPC's borrowing restrictions in respect of "approved project", still did not fully enable NNPC's commerciality vis a vis private sector corporates.

The NOC being an incorporated commercial entity under CAMA, will be managed like a commercial entity that is answerable to shareholders and subject to the governance rules of the Investment and Securities Act 2009 and oversight of the Securities and Exchange Commission (SEC).

### ***National Gas Company Plc (NGC Plc)***

**Section 159 PIB 2012** obligates the HMPR, to incorporate the NGC Plc as a company limited by shares under CAMA, to be vested with some of the assets and liabilities of the NNPC.

The initial shares of NGC Plc will be held by a nominee of the MPR and MOFI, on behalf of the Federal Government. The Government shall at any time within 6 years from the date of incorporation of the NGC, divest up to 49% of the shares of NGC to the public in a transparent manner through the NSE. Such action will be a veritable investment opportunity, with potential spillover effects.

Upon incorporation of NGC Plc, the assets and liabilities held by NNPC on behalf of the Federal Government of Nigeria *except* Nigeria Gas Company Limited shall be vested in the NGC Plc within 12 to 24 months from the coming into force of the PIB. The transfer of the liabilities and obligations will release the

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<sup>29</sup> Under **section 8 NNPC Act**, the NNPC shall not without the approval of the President, borrow any sum of money whereby the amount in the aggregate outstanding on any loan(s) at any time exceeds such amount as is for the time being specified by the President.

NNPC from any liability or obligations with respect of the transferred asset.

*It thus appears that the intention is that the NGC will co-exist with the Nigerian Gas Company Plc. It is difficult to justify this duplication of responsibility with its attendant conflicts and wastages. The section is also unclear as to what specific assets and liabilities of the NNPC will be transferred to the NGC.*

### ***Other Institutions***

The *Petroleum Training Institute (PTI)* established by the *PTI Act, Cap. P16, 2004 LFN* shall remain as a parastatal under the HMPR with the objective of delivering quality education and providing efficient technological manpower for the needs of Nigerian and African petroleum industries.

The *Nigerian Content Development and Monitoring Board* established by the *Nigerian Oil and Gas Industry Content Development Act, 2010* shall remain as a parastatal under the HMPR with the objective of developing Nigerian content in the upstream petroleum sector.

### ***UPSTREAM LICENSING***

The Inspectorate shall administer all acreages for exploration, development and production of petroleum in Nigeria, a role which is currently undertaken by the DPR.

The PIB provides for a new National Grid System to be created for the management of petroleum acreages. The system, which will be based on the Universal Transverse Mercator (UTM) coordinate system, will define license and lease areas, relinquishments, bid procedures, identification of well locations, petroleum conservation measures and such other regulatory and acreage management procedures.

## ***Petroleum Exploration License (PEL)***

A PEL grants the holder a non exclusive right to carry out geological, geophysical and geochemical exploration for petroleum within the license area, and to drill core holes not deeper than 150 meters. This hole-depth restriction does not exist under current regime applicable to Oil Exploration Licenses (OELs).

A PEL grant is for a period of not more than three years. Under the current regime, an OEL expires on the 31st December following the date on which it was granted.

## ***Petroleum Prospecting License (PPL)***

A PPL will confer the exclusive right to carry out petroleum exploration operations within the license area including having the right to carry away and dispose of crude oil, natural gas or bitumen won during prospecting operations as a result of production tests.

A PPL area shall not be more than 500 square kilometres and not less than one parcel (four square kilometres).

The duration of a PPL depends on the location of the block. For onshore and shallow water, the term is not more than five years consisting of an initial exploration period of three years and renewal period of two years with a possibility for a further extension subject to an appraisal and significant gas discovery periods.

With respect to deep water areas and frontier acreages, a License shall be granted for a period of not more than eight years, consisting of an initial exploration period of five years and a renewal period of three years. There is also a possibility for further extensions due to appraisal periods and significant gas discovery periods.

## ***Petroleum Mining Leases (PML)***

A PML shall be granted for parcels of each commercial discovery of crude oil or natural gas or both or bitumen, to the licensee of a PPL who has satisfied all the conditions imposed on the License or otherwise imposed on the licensee by the Act; and has received approval for the related development plans from the Upstream Inspectorate.

A PML will only be granted where a prospective lease area contains a:

- ❖ discovery of crude oil or natural gas or both, or condensate which in the opinion of the Inspectorate is commercial; or
- ❖ petroleum field or fields with suspended wells or continuing commercial production, where the corresponding PML has been revoked or has expired; or
- ❖ bitumen deposit.

Prior to the expiration of the PPL, a licensee may *propose that a separate PML be granted for each commercial discovery in the PPL*. Operators may take advantage of this provision if there would be resulting benefits, for example where the PML straddles varying water depths or if there is opportunity to 'ring fence' the PPL.

A PML is to be granted for a maximum period of 20 years, provided that where a PML is derived from a PPL and a commercial discovery has been declared, such License shall be allowed to use up its initial, renewal and appraisal period such that:

- ❖ the overall period shall run for 27 years from the date of the grant of the related PPL for onshore and shallow water areas; or

- ❖ the overall period shall run for 30 years from the date of the grant of the related PPL for deep water areas and frontier acreages; and
- ❖ where a PML is to be granted for a PPL which is yet to expire, the term of the PML shall be the aggregate of the mandatory term of 20 years and the balance of term for the PPL.

## *DOWNSTREAM LICENSING*

A person shall not conduct any downstream petroleum operations without a License issued by the DPRA. Downstream Licenses issued by the DPRA include Licenses to:

- ❖ construct and operate a process plant, including a pipeline for crude oil or gas or condensate or petroleum products;
- ❖ construct and operate a petroleum transportation pipeline for crude oil or gas or condensate or petroleum products;
- ❖ construct and operate a petroleum distribution network;
- ❖ construct and operate a petroleum transportation network;
- ❖ supply downstream products or natural gas; or
- ❖ own and run a downstream products or natural gas processing or retail facility

The DPRA will be empowered to issue Licenses in respect of the utilization of all chemicals used for downstream petroleum operations in Nigeria.

The Network Operator License (NOL) includes the right to:

- ❖ convey gas through the transportation network;
- ❖ balance the inputs and off takes from the transportation network;
- ❖ provide third party access to the transportation network; and
- ❖ charge for the use of the transportation network.

The DPRA is further authorised to issue a Gas Distribution License (GDL) which will confer exclusive right to own and operate a gas distribution system and to distribute gas within a local distribution zone. This also entitles the holder to apply for, hold and operate a License for the exclusive supply of gas within the local distribution zone to customers that are not wholesale customers.

## *Assignment of Licenses*

No licensee shall directly or indirectly, assign or transfer its License or any rights or obligations arising from such License without the prior written consent of the DPRA.

## *Conclusion:*

Familiarization with the key regulatory issues in the PIB and monitoring any changes during the legislative process would be important for stakeholders to evaluate emerging opportunities in the industry and devising regulatory efficient strategies to execute business transactions in the Nigerian oil and gas industry, post PIB. Several regulatory changes such as partial privatisation of NNPC successor companies or their unrestrained participation in the industry

as commercial entities unencumbered by Government bureaucracy and funding challenges promises to inject new life to the industry. The wide spectrum of licensed activities in the downstream sector (as well as anticipated efficient regulation) is also expected to really foreshadow a boom in the entire value chain of the Nigerian oil and gas industry. The PIB seems to be saying to investors: 'Nigeria beckons'!

**Contacts:**

• **Oghogho Akpata**, *Managing Partner & Head, Energy & Projects:*  
+234 1 461 1891 (direct),  
+234 802 291 0062 (mobile);  
e-mail: [ogh.akpata@templars-law.com](mailto:ogh.akpata@templars-law.com);

• **Olayemi Anyanechi**, *Partner & Head, Finance:*  
+234 1 4611 894 (direct)  
+234 802 314 0120 (mobile)  
email: [olayemi.anyanechi@templars-law.com](mailto:olayemi.anyanechi@templars-law.com)

[www.templars-law.com](http://www.templars-law.com)

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