

# OVERHAULING NIGERIA'S ENERGY INDUSTRY: A REVIEW OF THE PETROLEUM INDUSTRY BILL

*A presentation given at the "Legal Issues in Oil and Gas"  
Conference.*

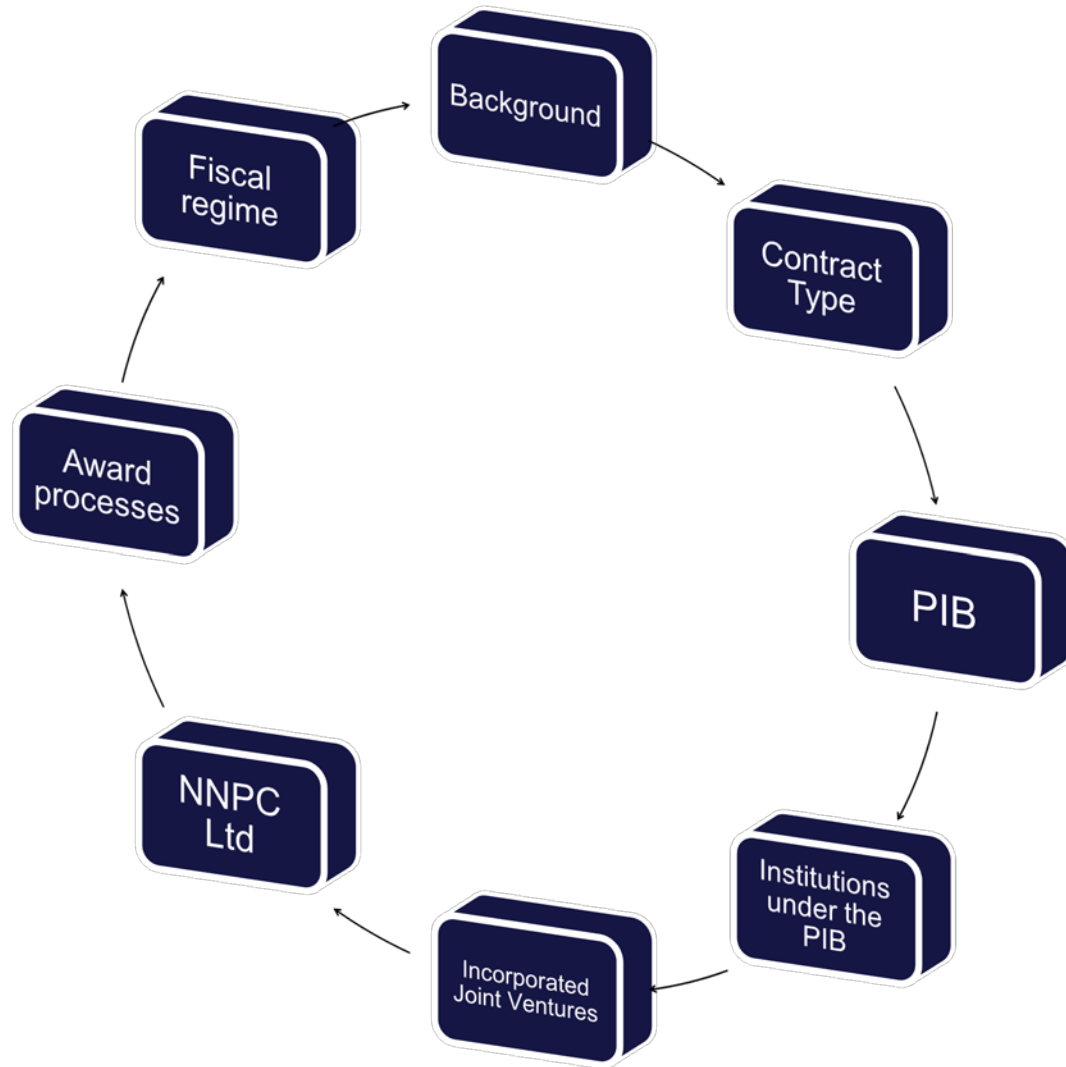
*London: 15<sup>th</sup> April 2010.*

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# OUTLINE



# BACKGROUND

- Pre 1993 – Unincorporated Joint Venture (UJV) predominant;
- Funding challenges and need to open new frontiers led to adoption of production sharing contracts (PSC).
- However, fiscal terms under PSCs:
  - did not capture windfall profits.
  - Cost control and accounting procedures are inadequate
- Acreage management provisions under the Petroleum Act are highly inadequate

# Petroleum Industrial Bill (PIB)

The introduction of the PIB, is based on the realisation that the present regime is:

- Obsolete and outdated
- Not in alignment with international best practice
- Lacks transparency
- Lacks good governance, practices and processes

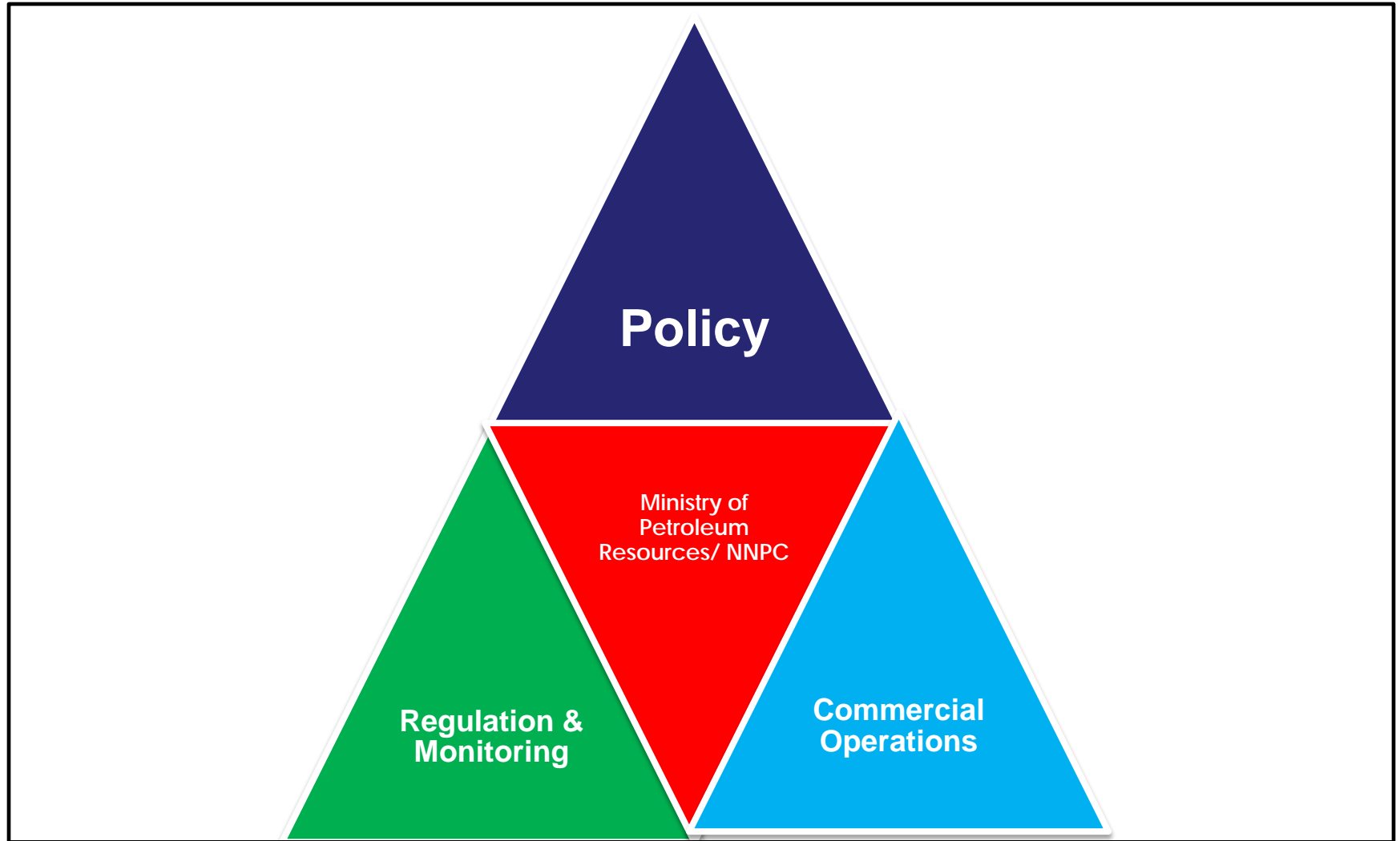
## CONTENT OF THE PIB

- It repeals 16 petroleum industry Acts and creates a single Act for the entire petroleum industry.
- It strengthens the administration & regulation of the industry by creating 4 regulatory institutions.
- It converts NNPC to a self-financing NOC;
- It converts NNPC unincorporated joint operation agreements to incorporated joint ventures;
- It requires open transparent bid system for all upstream licenses and leases;

## CONTENT OF THE PIB (II)

- New Fiscal regime that increases government take.
- It removes confidentiality on royalty and tax payments;
- Host community participation
- CSR obligatory
- Local content initiative integrated

Creating a framework for separating policy, regulation /monitoring and commercial operations with the creation of institutions to support that framework



## INSTITUTIONS CREATED UNDER THE PIB

- The National Petroleum Directorate
- The National Petroleum Inspectorate
- The Petroleum Products Regulatory Authority
- The National Midstream Regulatory Agency
- The Nigerian National Petroleum Company Limited
- The Nigerian Petroleum Research Centre
- The National Frontier Exploration Service
- Retains the Petroleum Equalisation Fund and the Petroleum Technology Development Fund.



# NNPC Limited

- The Nigerian National Petroleum Company Limited (National Oil Company) shall be a limited liability company.
- Ownership shall be vested solely in the FGN at incorporation;
- Subsidiaries of the company may however be partially owned by other parties.
- The assets and liabilities in the incorporated joint ventures shall be held jointly and severally by NNPC Ltd and the respective joint venture partners.

# INCORPORATED JOINT VENTURES

- Existing UJVs shall each be incorporated (IJV).
- NNPC interest in UJVs to be assigned to NNPC Ltd.
- Each party in IJV shall have right to percentage of crude oil, natural gas and condensate equal to its share in IJV.

## LICENSING UNDER THE PIB

- **PETROLEUM EXPLORATION LICENCE (PEL)**

- Used for exploration on a non exclusive basis

- **PETROLEUM PROSPECTING LICENCE (PPL)**

- Issued to prospect for either crude oil or natural gas

- **PETROLEUM MINING LEASES(PML)**

- Issued to search for, win work, carry away and dispose of crude oil or natural gas.
- Term of 20 years, renewable for a further term not more than 20 years.

*Note: PSCs will still operate under PIB*

## AWARD PROCESS UNDER THE PIB

- Bidding process conducted by the National Petroleum Directorate (NPD).
- Facilitates **OPEN , TRANSPARENT AND COMPETITIVE** bidding process.
- Guidelines for bidding based on technical, legal, economic and financial requirements, minimum experience and capacity.

## AWARD PROCESS UNDER THE PIB (II)

- Determination of winning bidder using single bid parameters:
  - Signature Bonus;
  - % royalty in addition to the % royalty based on daily production;
  - Work commitment: Number of wells to a specified minimum depth;
  - Work units;
  - Or a combination of either.
- No discretionary awards (apart from Marginal Fields).

## PROVISIONS UNDER THE PIB FOR MARGINAL FIELDS

- S. 291 makes provision for the relinquishment of current licenses, leases and Marginal Fields.
- Marginal Field operators (MFO) shall be entitled prior to the relinquishment date to apply for PML for fields operated as marginal fields by operators.
- Provides for award of leases to MFO from the relinquished acreages by the Directorate.
- The granting of a PML will be effective from the respective relinquishment dates for a period of 20 years.

# RELINQUISHMENT

- 50% of area granted to be relinquished after initial period expires where PPL covers area larger than 10 parcels
- PMLs to be relinquished where there is no “commercial production” after 10 years
- PMLs to be revoked where there is no “commercial discovery” after 5 years
- Relinquishment provisions of the bill apply to existing OMLs and OPLs
- Relinquished acreages shall be vested with the Directorate and can only be issued on the basis of a bidding round.

# FISCAL PROVISIONS

- Section 431 – 509 of the Petroleum Industry Bill deals with the Fiscal Provisions
- These include provisions relating to:
  - COMPANIES INCOME TAX
  - RENTS
  - ROYALTIES
  - NIGERIAN HYDROCARBON TAX



## Points of Interest:

- No provisions for Petroleum Profit Tax
- Education Tax @ 2% of Assessable Profits
- Withholding Tax on dividend payments @ 10% (new provision)
- NDDC Levy which is 3% of the Total Budget of a petroleum company
- 80% of Benchmarked, Verified and Approved expenditure incurred offshore will be allowable as deductions for tax purposes

- Section 432 amends the Companies Income Tax Act (CITA) by inserting a new Section 39A

*Section 39A provides: all companies, concessionaires , licensees, lessees, contractors, and sub-contractors engaged in upstream, midstream and downstream crude oil, gas and petroleum products operation would all be subject to taxation*

- This differs from current regime under which upstream operators are only liable to CITA in respect of their gas
- In determining the companies income tax, the NHT shall not be deductible (S.432(3)) resulting in a higher take for the FGN.

- All companies engaged in midstream domestic gas obligations and downstream gas distribution and utilization operations shall be entitled to incentives under S 39. (S.432 (4))
- All companies engaged in LNG shall be entitled to incentives under S.39A : *provided they make firm guaranteed commitments for investments in new LNG facilities prior to December 31st 2011. any plants, projects or expansions of LNG facilities shall not benefit from incentives. (S.432(5))*
- Inclusion of Initial and Annual allowance for “Upstream Petroleum Operations” of 25% initial allowance and 25% in subsequent 3 years. (S.432(8))

# RENTS

- Petroleum Exploration (PEL) Licenses - \$10/ Square Kilometer per year as rent.
- Petroleum Prospecting Licenses (PPL)- rent of of \$100/ square kilometer for the initial 2 years of PPL after which it shall be \$300/square kilometer for 3<sup>rd</sup> & 4<sup>th</sup> after which \$500 shall become payable yearly.
- Petroleum Mining License (PML) - \$1,000 yearly.
- Before either the PEL, PPL or PML is granted, the applicable rent must be paid in advance for the first year.
- These rents are paid in line with the adjustment factor as defined under the PIB.

# ROYALTIES

- IJVs shall pay royalty in cash.
- Different royalty rates for crude oil and gas
- The PIB provides that royalty rates shall be based on combination of production and on value as opposed to just royalty based on water depth.

**Total Royalty** = *Royalty based on production* + *Royalty based on value*

# NIGERIAN HYDROCARBON TAX

- PIB provides that companies engaged in upstream operations shall be subject to the Nigerian Hydrocarbon Tax (NHT).
- This would replace Petroleum Profits Tax.
- All upstream companies affected by the NHT.

## NIGERIAN HYDROCARBON TAX (II)

- NHT shall be the higher of 2% of the gross income from upstream operations or 50% for onshore and shallow water areas and 30% for frontier acreages and deep water areas of their chargeable profit respectively.
- NHT shall be charged for each contract area separately and payment of the NHT can be either in cash or in Kind depending on the preference of the Nigerian Government.
- Where companies carry on operations in both geological zones they shall submit separate tax returns for each zone.

## ASSIGNMENT, MERGERS AND ACQUISITIONS

- Licensee, lessee or contractor shall not assign his license, lease or contract, or any right, power or interest therein without the written request of the Minister.
- Where a licensee, lessee, or contractor is taken over by another company, or merges, or is acquired by another company either by acquisition or exchange of shares, it shall be treated as an assignment.
- Fee equal to 2% of the fair market value of the transaction.



## IN SUMMARY, THE PIB :

- i. Subjects petroleum industry companies to the payment of Companies Income tax (which they are currently exempt).
- ii. Introduces the Nigerian Hydrocarbon tax which replaces the PPTA.
- iii. Increases royalty rates on the basis of acreage size, separates oil from gas as well as onshore from offshore operations for the purposes of taxation.
- iv. Develops a system responsive to inflation.
- v. These changes indicate a more stringent fiscal regime under which tax exemptions and incentives are to be lost and invariably profit margins will decrease.

Thank you for listening!

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