

TEMPLARS LEGISLATIVE WATCH

Petroleum Industry Bill Overview

Series: **Part 1: A summary of the new Governance Provisions.**

The Petroleum Industry Bill (the “**PIB**” or the “**Bill**”) has been a predominant part of any conversation around petroleum sector reforms in Nigeria since the first version was introduced in the National Assembly in 2008.

The PIB will be passed, that’s almost certain now and it will likely be passed before the end of the year, latest Q1 2021, so we need to start preparing for a change in the regulatory landscape of Nigerian oil and gas.

Below, we examine the governance provisions contained in the Bill transmitted by President Buhari to the National Assembly in September 2020.

Governance

The Bill starts out with governance and laying out the institutional framework for the Nigerian petroleum sector. There are four distinct players in the sector; the Minister; two new regulatory bodies – the Nigerian Upstream Regulatory Commission (the “**Commission**”) and the Midstream and Downstream Regulatory Authority (the “**Authority**”); and the Nigeria National Petroleum Company Limited (“**NNPC Limited**”) (successor company for the Nigeria National Petroleum Corporation).

The Minister

As expected, the Minister of Petroleum Resources (“**Minister**”) retains some similar powers under the PIB as currently contained under the Petroleum Act (the “**Act**”) including exercising general supervision over the affairs and operations of the petroleum industry and report developments in the industry to the government¹. The Minister also retains the right of pre-emption of petroleum or petroleum products in the event of a national emergency².

The PIB proposes to grant the Minister the power to negotiate treaties or other international agreements on matters pertaining to petroleum on behalf of the Government³ (of which we expect pushback from the Minister of Justice who is currently tasked with these duties for all treaties) and

¹ See Section 3 (1) of the PIB and Section 8(1) of the Petroleum Act

² Section 3(3) of the PIB
³ Section 3(1) of the PIB

to order cutbacks in crude oil or condensate production in the context of international oil pricing agreements supported by Nigeria.⁴

Interestingly, the PIB also seeks to curtail the Minister's powers by proposing that (amongst others):

- The price fixing powers of the Minister for petroleum products⁵ no longer exist under the PIB.
- The powers to grant and revoke Prospecting Licences and Mining Leases exercisable solely by the Minister are now only exercisable upon the recommendation of the Commission.

The Commission

The Bill establishes the Commission for the purpose of regulating the upstream petroleum sector, and it is empowered with technical and commercial regulatory functions and optimised for transparency and accountability.

The Commission takes over most of the upstream regulatory functions of the Department of Petroleum Resources ("DPR") including the establishment, monitoring and regulation of health, safety and environmental standards relating to upstream petroleum operations, as well as to inquire, inspect, examine or investigate business or activity in the upstream petroleum sector where it believes such activities are illegal⁶.

The Commission is also to implement cutbacks of crude oil or condensate production ordered by the Minister.

In relation to frontier basins, the Commission is to promote its exploration, develop exploration strategies for unassigned frontier basins, identify opportunities and increase information about the resource base in frontier basins and undertake studies to

analyse unassigned basins⁷. Noteworthy is that the Commission is required to maintain a Frontier Exploration Fund which would be funded by 10% of rents on petroleum prospecting licences and petroleum mining leases.

The Authority

Like the Commission, the Authority has both technical and commercial regulatory functions⁸ and is to regulate midstream and downstream petroleum operations, including technical, operational and commercial activities, and ensure efficient, safe and sustainable infrastructural development of midstream and downstream petroleum operations.

The Authority will also govern the implementation of the Nigerian Gas Transportation Network Code as it is charged with developing open access rules for transportation of petroleum liquids and natural gas.

The Authority is to maintain a Midstream Gas Infrastructure Fund ("MGIF") which is to be a body corporate with a Governing Council having the Minister as Chairman. The purpose of the MGIF is to make equity investments of Government owned participating or shareholder interest in infrastructure relating to midstream gas operations aimed at increasing the domestic consumption of natural gas in projects part financed by private investment and for the purpose of encouraging private investment.⁹

NNPC Limited

NNPC Limited is created as a successor company to Nigerian National Petroleum Corporation ("NNPC") and is expected to come into existence within 6 months of the passage of the Bill. Ownership of NNPC Limited is to be fully held by the Ministry of Finance Incorporated on behalf of the

⁴ Section 3 (2) of the PIB

⁵ Section 6(1) and (2) of the Act

⁶ Section 26 (1)a of the PIB

⁷ Section 9 of the PIB

⁸ Section 29 of the PIB

⁹ Section 52 of the PIB

Nigerian Government at incorporation, with the Board to be appointed entirely by the President.

Notably, the shares held by the Government in NNPC Limited are not transferable unless approved by the Government and in such cases shall be subject to an open, transparent and competitive bidding process¹⁰ The Bill however hints at the fact that ownership of the shares of NNPC Limited would eventually become open to other non-government shareholders as it suggests that at some point, the Government will divest its interest in NNPC Limited. It is expected that such divestment may also feature listing of the shares of NNPC Limited to generate local and foreign investment in a similar manner as recently done with the listing of Saudi Aramco.

Furthermore, NNPC Limited is to engage in the development of renewable resources in competition with private investors¹¹ and promote the domestic use of natural gas through developing large-scale gas utilization industries.¹²

NNPC Limited is to be vested with the rights to natural gas under production sharing contracts (PSCs) entered prior to the effective date. NNPC Limited is also to assume NNPC's working interest in any joint operation and act as an agent of the

Commission for management of PSCs upon the request of the Commission and for a fee.¹³

Additionally, NNPC Limited may on a voluntary basis restructure its joint operating agreements to become incorporated joint ventures based on principles provided in the Bill.¹⁴

Conclusion

The governance of the Nigerian petroleum sector is the fulcrum on which every other aspect of the sector rests. In a bold move, the PIB wrests much of the power that has resided in the Minister for the past five decades and institutionalizes them. The Bill also adopts a commercial approach to the governance framework of the petroleum sector through a clean separation of the regulatory bodies and the commercial body in order to promote effectiveness in the sector.

In addition, the separation of the regulatory bodies into the upstream on one hand and the midstream and downstream on the other is a welcome development that will aid the ease of governance of the Nigerian petroleum sector as well as enable policies to be well structured to suit the needs of players per sector.

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¹⁰ Section 53 (2) (3) and (6)

¹¹ Section 64 (g) of the PIB

¹² Section 64(h) of the PIB

¹³ Section 64 of the PIB

¹⁴ Section 65 of the PIB