

AN EXPOSITION OF THE NIGERIAN PETROLEUM INDUSTRY BILL

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After a 20-year journey, the National Assembly has finally passed the Petroleum Industry Bill (PIB) on the 1st of July 2021. The Bill is now awaiting the assent by the President.

The Petroleum Industry Bill (PIB) 2020 is a Bill seeking to introduce extensive reforms in the Nigerian oil and gas industry. The Bill which was first presented to the National Assembly by former President Umar Yar'Adua's administration in 2008, recently reached a turning point as the senate and house of representatives, the two chambers of the National Assembly considered the reports of their respective committees on the bill. The inception of the bill could however be traced to the Oil and Gas Reforms Committee (OGRC) established by former President Olusegun Obasanjo's administration.

The Bill seeks to provide legal, governance, regulatory governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities and for related matters. It has become imperative to review extant laws and enact relevant ones in today's fast-changing and technologically advanced world, bringing them in alignment with current realities. A lot of Nigerian laws are currently outdated and petroleum-related laws are not exempted for this. The Petroleum Act of 1969 is a practical example.

The PIB contains 5 Chapters, 319 Sections and, 8 Schedules. Some of the Chapters are further divided into parts: Chapter 1 is divided into 5 parts; Chapter 2 is divided into 7 parts and Chapter 4 contains 11 parts.

CHAPTER 01

GOVERNANCE AND INSTITUTIONS

This Chapter is divided into 5 parts. The objectives of this Chapter are to create efficient and effective governing institutions, with clear and separate roles for the petroleum industry; establish a framework for the creation of a commercially oriented and profit-driven national petroleum company; promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria; and foster a business environment conducive for petroleum operations.²

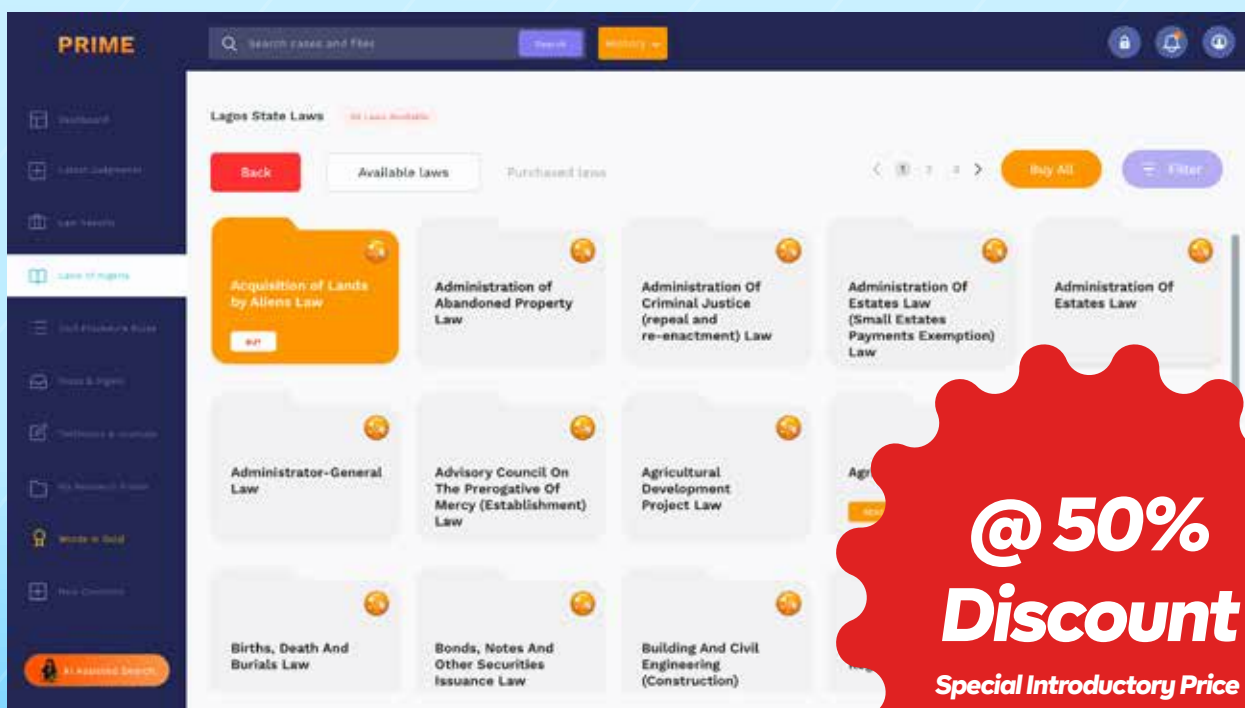
The novel features of this chapter include:

- a. The vesting of the property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and Exclusive Economic Zone in the Government of the Federation of Nigeria.³
- b. The establishment of the Nigerian Upstream Regulatory Commission to be responsible for the technical and commercial regulation of upstream petroleum operations⁴ and the establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority to be responsible for the technical and commercial regulation of midstream and downstream petroleum operations in the petroleum industry.⁵ The Commission and Authority are exempted from the provisions of any enactment relating to the taxation of companies or Trust Funds.
- c. Incorporation of a commercial and profit focused NNPC Limited under the Companies and Allied Matters Act within 6 months from commencement of the new law with ownership vested in the Ministry of Finance Incorporated (and Ministry of Petroleum Incorporated) on behalf of the Federation to take over assets, interests and liabilities of NNPC.⁶
- d. Appointment of NNPC Limited as agent of NNPC for the purpose of managing the process of winding down the assets, interests and liabilities of NNPC, upon incorporation of NNPC Limited and consultation of the Ministers of Petroleum and Finance.⁷

- e. Assets, interests and liabilities of NNPC not transferred to NNPC Limited or its subsidiary shall remain the assets, interests and liabilities of NNPC until they become extinguished or transferred to the Government. NNPC shall however cease to exist after its remaining assets, interests and liabilities other than its assets, interests and liabilities transferred to NNPC Limited or its subsidiaries shall have been extinguished or transferred to the Government.⁸

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CHAPTER 02 ADMINISTRATION

This Chapter is divided into 7 parts. The objectives of this Chapter are to promote the exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people; promote the efficient, effective and sustainable development of the petroleum industry; promote the safe and efficient operation of the transportation and distribution infrastructure for the petroleum industry; provide the framework for developing third party access arrangements to petroleum infrastructure; encourage and facilitate both local and foreign investment in the petroleum industry; promote transparency and accountability in the administration of petroleum resources in Nigeria; develop, where appropriate, competitive markets for the sale and distribution of petroleum and petroleum products; promote safe and affordable access to petroleum and petroleum products in Nigeria; promote the processing of petroleum within Nigeria and the development of fuel and chemical industry and other related value added products and activities; create a conducive business environment for operations in the petroleum industry; promote the liberalisation of the downstream petroleum industry; establish an orderly, fair and competitive commercial environment within the petroleum industry; and ensure that petroleum operations are conducted in a manner that protects the health and safety of persons, property and the environment.⁹

The provisions of Chapter 2 apply to activities within or associated with petroleum operations and the petroleum industry and persons conducting such activities.¹⁰

The novel features of this chapter include:

- a. Avoidance of economic distortions and ensuring a competitive market for the sale and distribution of petroleum products and natural gas in Nigeria;
- b. Avoidance of cross-subsidies among different categories of consumers of petroleum products and natural gas in Nigeria.

CHAPTER 03 HOST COMMUNITIES DEVELOPMENT

The Objective of this Chapter is to the objectives of this Chapter are to foster sustainable prosperity within host communities; provide direct social and economic benefits from petroleum operations to host communities; enhance peaceful and harmonious co-existence between licensees or lessees and host communities; and create a framework to support the development of host communities.¹¹

The novel features of this chapter include:

- a. Board of trustees and executive members of the management committee may include persons of high integrity and professional standing who may not necessarily be from any of the host communities.¹²
- b. Available funds are to be allocated 75% for capital projects, 20% as reserve and 5% for administrative expenses of running the host communities development trust and special projects.¹³ However, a community will forfeit the cost of repairs in the event of vandalism, sabotage and other civil unrest causing damage to petroleum facilities or disruption of production activities within the host community.¹⁴
- c. The host community's development trust is tax exempt.¹⁵

CHAPTER 04

FISCAL FRAMEWORK

This Chapter contains 11 parts. The Objectives of the Chapter are to - (a) establish a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria; (b) provide a forward-looking fiscal framework that is based on core principles of clarity, dynamism and fiscal rules of general application; (c) establish a fiscal framework that expands the revenue base of the Federal Government, while ensuring a fair return for investors; (d) simplify the administration of petroleum tax; and (e) promote equity and transparency in the petroleum industry fiscal regime.¹⁶

The novel features of this Chapter include:

- a. The fiscal and tax amendments shall not apply to holders of an Oil Prospecting License (OPL) or Oil Mining Lease (OML) who do not enter into a conversion contract until the termination or expiration of the respective OPL or OML, but they shall apply to any renewal of an OML. The eventual implication is that, any holder of an OPL or OML would have their petroleum operations governed by the PIB, either by conversion or expiry of time.¹⁷
- b. The Administration and collection of the revenue of the Federal Government of Nigeria (FGN) in the petroleum industry will be through the Commission and the Federal Inland Revenue Service (FIRS).¹⁸
- c. Alteration of the rates for royalty by price, as well as the pricing for deep offshore Production Sharing Contracts (PSCs) and onshore and shallow offshore arrangements.¹⁹
- d. Splitting of the current Petroleum Profits Tax (PPT) regime. The following taxes will be imposed instead: Hydrocarbon tax, Companies income tax, Tertiary education tax, and Withholding tax on dividend.

- e. The newly formed Hydrocarbon tax is applicable only to upstream petroleum operations in relation to crude oil, condensate and natural gas liquids produced from associated gas, and is charged and assessed on its profits related to such operations and payable during each accounting period.²⁰

The New Royalty by Price has been altered as follows:

Below \$50 (US dollars) per barrel – 0%;

At \$100 per barrel – 5%;

Above \$150 per barrel – 10% ²¹

The royalty by price is to be determined based on linear interpolation, where the price per barrel of oil is between (a) \$50 and US\$100 per barrel; or (b) \$100 and US\$150 per barrel.²²

Royalty Rate for deep offshore production has been altered as follows:

For deep offshore fields (greater than 200m water depth)- 10% royalty rate, in addition to royalty by price²³

For deep offshore fields (greater than 200m water depth) producing not more than 15,000 bopd during a month- 7.5%. For Production above 15,000 bopd- 10%.²⁴

Royalty Rate for Frontier Basins- 7.5%, in addition to royalty by price.²⁵

Royalty Rate for Onshore/Shallow Offshore:

For onshore and shallow offshore fields producing not more than 10,000 bpd:
For the first 5000 barrels – 5%; For the next 5000 barrels– 7.5%. ²⁶

For all other onshore and shallow offshore fields producing in excess of 10,000 barrels bopd, the rates are 18% flat rate for onshore and 16% flat rate for shallow offshore (up to 200m water depth) plus royalty by price.²⁷

Royalty Rate for natural gas and natural gas liquids:

This shall be at a rate per centum of the chargeable volume in the relevant area based on the terrain as follows:

onshore areas: 7.5%; shallow waters: 5%; deep offshore areas: 5%; and frontier basins: 5%. Additionally, the royalty rate for natural gas produced and utilized in Nigeria shall be a flat 5% of the chargeable volume.²⁸

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CHAPTER 05 MISCELLANEOUS PROVISIONS

A notable feature of this Chapter is its provision on repeals. The Bill repeals 10 laws: The Associated Gas Reinjection Act, 1979 and its Amendments; the Hydrocarbon Oil Refineries Act 1965; the Motor Spirits (Returns) Act; the Nigerian National Petroleum Corporation (Projects) Act 1993; the Nigerian National Petroleum Corporation Act (NNPC) 1977 as amended, when NNPC ceases to exist pursuant to PIB; the Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003; the Petroleum Equalisation Fund (Management Board etc.) 1975; the Petroleum Equalisation Fund (Management Board, etc.) Act, 1975; the Petroleum Profit Tax Act LFN 2004, and the Deep Offshore and Inland Basin Production Sharing Contract Act 2019, as amended.

SCHEDULE

The breakdown of the Schedules are as follows:

First Schedule- Rights of Pre-Emption

Second Schedule- Principles of Negotiating Incorporated Joint Ventures

Third Schedule- Domestic Base Price and Pricing Framework

Fourth Schedule- Pricing formula for gas price for the gas-based Industries

Fifth Schedule- Capital Allowances

Sixth Schedule- Production Allowances and Cost Price Ratio Limit

Seventh Schedule- Petroleum Fees, Rents and Royalty

CONCLUSION

This Bill is highly commendable as it aims to establish good governance, best practices, and ease of doing business in the petroleum industry by enabling frontier exploration and mandating improved environmental compliance amongst others. It seeks to promote transparency and accountability in the administration of the petroleum resources of Nigeria and foster a business environment conducive for petroleum operation. It can be recalled that the previous administrations failed to

pass it into law, however, the current administration's effort is creditable and has yielded positive results. As such, the public should expect the Bill's passage into law this year, thereby bringing about the much-needed restructuring of the petroleum industry, its institutions and the country at large.

REFERENCES

¹Preamble, Petroleum Industry Bill, 2020

²Section 2, Chapter 1, Part I, Petroleum Industry Bill, 2020

³Section 1, Chapter 1, Part I, Petroleum Industry Bill, 2020

⁴Section 4, Chapter 1, Part I, Petroleum Industry Bill, 2020

⁵Section 29, Chapter 1, Part IV, Petroleum Industry Bill, 2020

⁶Section 55, Chapter 1, Part V, Petroleum Industry Bill, 2020

⁷Section 53, Chapter 1, Part V, Petroleum Industry Bill, 2020

⁸Section 54, Chapter 1, Part V, Petroleum Industry Bill, 2020

⁹Section 66, Chapter 2, Part I, Petroleum Industry Bill, 2020

¹⁰Section 66, Chapter 2, Part I, Petroleum Industry Bill, 2020

¹¹Section 234, Chapter 3, Petroleum Industry Bill, 2020

¹²Section 247, Chapter 3, Petroleum Industry Bill, 2020

¹³Section 244, Chapter 3, Petroleum Industry Bill, 2020

¹⁴Section 257, Chapter 3, Petroleum Industry Bill, 2020

¹⁵Section 256, Chapter 3, Petroleum Industry Bill, 2020

¹⁶Section 256, Chapter 3, Petroleum Industry Bill, 2020

¹⁷Section 303 PIB

¹⁸Section 259 PIB

¹⁹Section 306 PIB

²⁰Section 261 PIB

²¹Paragraph 11(a)-(c) of the 7th Schedule to the PIB.

²²Paragraph 11(d) of the 7th Schedule to the PIB

²³Paragraphs 10(2)(c) and 11 of the 7th Schedule to the PIB

²⁴Paragraphs 10(3) and 11 of the 7th Schedule to the PIB

²⁵Paragraphs 10(2)(c) and 11 of the 7th Schedule to the PIB

²⁶Paragraph 10(4) and Paragraph 11 of the 7th Schedule to the PIB

²⁷Paragraph 10(2)(a)(b) and Paragraph 11 of the 7th Schedule to the PIB

²⁸Paragraph 10(2)(a)(b) and Paragraph 11 of the 7th Schedule to the PIB



AUTHOR

Ayobami Harriet Odole-Akinyemi is a lawyer. She obtained an LL.B degree from Bowen University in 2017 and a B.L from the Nigerian Law School, Bwari, Abuja in 2018. She currently works in the Digital Transformation Department at LawPavilion as a Legal Officer.

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Contact Us

 20 Felicia Koleosho Street, Off Agbaoku Street, Awosika Bus Stop, Opebi Ikeja, Lagos State

 08050298724, 08050298727, 08050298729, 08050298540

 sales@lawpavilion.com  www.lawpavilion.com