



Petroleum Industry Governance Bill:

Implications on Nigeria's Regulatory Architecture

VICTORIA OHAERI ESQ.
&
UCHE ONU ESQ.

FEBRUARY 1, 2017

Overview of the Petroleum Industry Bill and its
Impact on the DPR



**PUBLIC RELATIONS
WORKSHOP FOR
OFFICIALS OF
DEPARTMENT OF
PETROLEUM
RESOURCES**

The full title of the Bill



- *A Bill for an Act to Provide for the Governance and Institutional Framework for the Petroleum Industry and for Other Related Matters*
- **PETROLEUM INDUSTRY
GOVERNANCE &
INSTITUTIONAL FRAMEWORK
BILL 2015 (PIGB)**

Objectives



- (a) create efficient and effective governing institutions with clear and separate roles for the
- Petroleum industry;
- (b) establish a framework for the creation of commercially-oriented and profit-driven petroleum entities that ensures value addition and internationalization of the petroleum industry;
- (c) promote transparency and accountability in the administration of the petroleum resources
- Of Nigeria;
- And (d) create a conducive business environment for petroleum industry operations.

Overview of developments to Note in the PIGB



- Focus of PIGB is only on governance and institutions
- Unbundling the NNPC: Creation of two new commercial entities called Nigeria Petroleum Assets Management Company, and the National Petroleum Company (NPC).
- One regulatory body to regulate upstream and downstream operations as with the current DPR
- President to appoint Board members and heads of regulatory agencies, subject to Senate confirmation
- New regulatory body empowered to enter into contracts and incur obligations, acquire property etc
- Widened scope and functions of regulatory body
- The Commission also maintains a *Fund* from which all expenditures incurred by the Commission shall be defrayed. Fund comprises of a percentage of the revenue generated by the Commission, plus gifts loans, donations etc.
- The Special Investigative Unit will be attached to the regulatory body, the NPRC
- Community engagement and public grievance mechanism absent

Implications for DPR to note



- **New body to replace DPR:** PIGB scraps the DPR, PPPRA, and the Petroleum Inspectorate. The functions of the three agencies will be vested in a new body called the Nigeria Petroleum Regulatory Commission, NPRC.
- The NPRC shall be vested with all assets, funds, resources and other movable and immovable properties of the DPR, PPPRA & PI
- Subsisting contractual obligations (plus liabilities) of the three bodies still effective, and will be implemented by the NPRC
- NPRC may be structured into departments, but Board will decide.

Objectives of the NPRC



- (a) promote the healthy, safe and efficient conduct of all petroleum operations;
- (b) promote the efficient, safe, effective and sustainable infrastructural development of the petroleum industry;
- (c) ensure compliance with all applicable laws and regulations governing the petroleum industry;
- (d) determine and ensure the implementation and maintenance of technical standards, codes and specifications applicable to the petroleum industry;
- (e) subject to the provisions of this Act, execute Government policies for the petroleum industry assigned to it by the Minister;
- (f) promote an enabling environment for investments in the petroleum industry;
- (g) ensure that regulations are fair and balanced for all classes of lessees, licensees, permit holders, consumers and other stakeholders; and
- (h) implement such other objectives as are consistent with the provisions of the Act.

Functions of the NPRC (S.6)



- Administer and enforce policies and regulations governing the industry
- Monitor and enforce compliance with the terms and conditions of all leases, licences, permits and authorisations issued in respect of any petroleum operations;
- Ensure adherence to applicable national and international environmental and other technical standards by all persons involved in petroleum operations;
- establish, monitor, regulate and enforce health and safety measures relating to all aspects of petroleum operations;
- Keep public registers of all leases, licences, permits and other authorizations issued by the Commission or the Minister and any renewals, amendments, extensions, suspensions and revocations thereof;
- Publish reports and statistics on the petroleum industry;
- Develop and publish tariffs and pricing methodology relating to third party access to petroleum facilities from time to time as specified in any regulation;
- establish the framework for the validation and certification of national hydrocarbon reserves;
- Advise the Minister on fiscal and other issues pertaining to the petroleum industry.

Upstream Regulation (S.6(2))



- Issue licences or permits or any other authorizations for seismic, drilling, design and construction activities necessary for upstream petroleum operations
- Evaluate national reserves and regular audit of activities of industry operators, including oil service companies to ensure compliance with regulations
- Maintain a petroleum industry databank
- Supervise and ensure accurate calibration and certification of equipment used for fiscal measures
- Conduct bid rounds, allocate petroleum quotas, develop cost benchmarks, manage and administer unallocated acreage of crude oil and natural gas
- compute, determine, assess and ensure payment of royalties, rentals, fees, and other charges for upstream petroleum operations etc
- Liaise with FIRS on cost deductions

Downstream Regulation (S.6(3))



- Issue licences or permits or any other authorizations necessary for downstream operations
- Regulate and coordinate downstream operations in a non-discriminatory manner, including setting cost benchmarks, security of products supply, customer protection measures etc
- Establish the methodology for determining appropriate tariffs for gas processing, gas transportation/transmission and transportation of crude oil and bulk storage of oil and gas;
- Determine fair market value of petroleum products
- Regulate bulk storage, transportation and transmission
- Monitor market behavior, enforce application of tariffs and pricing + infrastructural development
- Promote competition and private sector participation and arrest abuse, restrictive business practices; etc

Other regulatory functions



- Undertake and promote the exploration of the frontier basins of Nigeria;
- Develop exploration strategies and portfolio management for the exploration of unassigned frontier acreages in Nigeria;
- Identify opportunities and increase information about the petroleum resources base within all frontier acreages in Nigeria;
- (d) undertake studies, analyse and evaluate all unassigned frontier acreages

Appointment of Commissioners



- The governing board is comprised of a non-executive chairman, one non-Executive Commissioner, the Executive Vice-Chairman of the Commission, three other executive commissioners and representatives of Ministries of Petroleum Resources, Finance and Environment who shall not be below the rank of a director. (Executive and Non-Executive Commissioners)
- Board members of the Commission shall hold office for a term of four years in the first instance which term may be renewed for another term of four years only. Only the non-executive chairman and the non-Executive Commissioner shall serve on a part-time-basis
- President, subject to Senate confirmation, to appoint Board and executive members
- Appointment not subject to career progression in the civil service
- A member of the Board may be suspended or removed from office by the President.
- Conflict of interest to be avoided: Members of the Board shall be disqualified if found to have a financial interest in any business connected, either directly or indirectly with the Nigerian petroleum industry, or engaged in a paid or unpaid industry activity, or is a relative of a person who has such an interest, unless the President is satisfied that the interest or activity shall not interfere with the impartial discharge of his duties. (S.22)

Collaborations with other agencies (S.6(6))



- In performing its functions as provided in section 6 of this Act, the Commission shall, where applicable, collaborate with other relevant government agencies.
- Esp: FMOE, FIRS
- Consult experts on technical questions
- Questions of law may be referred to the Federal High Court (S. 12)
- Salaries and wages of the NPRC personnel to be based on recommendation of the National Salaries, Incomes and Wages Commission.

Implications for DPR to note



- Deregulated petroleum market V. Price determination and control obligations
- Relationship with Ministry of Environment (+ NOSDRA, NESREA, etc).
- **In environmental matters, the FMOE shall have overriding authority. (S. 6(7))**
- No distinct policy-making body for the industry.
- New regulatory body has policy-making, investigative, discretionary and punitive powers. See next slide:

Special Powers of Regulatory Body



- Make and enforce regulation and prescribe fees (policy-making)
- Revoke, amend, modify permits and licences (enforcement, punitive)
- Request and obtain any information or any document concerning licensed activities in the industry from any licensee, lessee or permit holder; (investigative)
- Publish such information if it considers it to be in the public interest (discretionary)
- Issue penalties and fines (Punitive)
- Institute legal proceedings against any lessee, licensee or permit holder for non-compliance (enforcement, punitive)

Public engagement activities to note



- conduct public hearing prior to making regulations
- Publish notice (time, venue, nature of the matter) of public hearing, at least two national newspapers and its website
- Request submissions (prescribe format and provide mailing address) from the general public prior to public hearing
- Period of public notice no less than 21 days
- Only waive public hearing due to the exigency of the circumstances, but such regulations shall be valid for not longer than six months
- Commission shall hold public hearing on matters which it determines to be of significant interest to the general public

Relationship with the Petroleum Minister



- The Minister may issue general directions to the Commission on matters concerning the petroleum industry and the Commission shall implement such directions provided that the directions are not in conflict with the provisions of the Act.
- The Minister has oversight over the NPRC

Public obligations



- Every 30th September of each financial year, , NPRC shall present a budget for appropriation to the National Assembly through the Federal Ministry of Finance (an estimate of income and expenditure for the following financial year)
- Monies accruing from upstream leases, bonuses, lease renewal, fees, assignment, fees and concession rentals are paid into the Federation Account.
- The Commission shall also ensure that all other monies accruing from its activities, including fines, penalties are paid into the Consolidated Revenue Fund.
- Audit accounts (6 months after close of financial year)
- Submit mid-term report of its operations to the Minister and annual report to be published on its website not later than 31st July of every year

Q & A



Thank you for your time!