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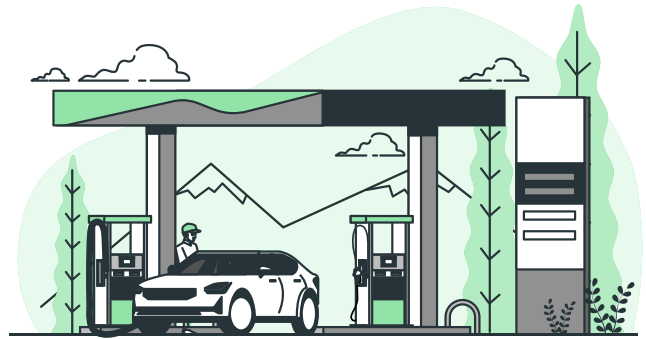
Nigeria's President signs
the Petroleum Industry
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Petroleum Industry Act

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17 August 2021



President Muhammadu Buhari has assented to the Petroleum Industry Bill (PIB). The PIB is now referred to as the Petroleum Industry Act ('PIA' or 'the Act'). The Act, which was recently passed by the two houses of the National Assembly, has been in the works since the early 2000s.

The enactment of PIA is Nigeria's boldest attempt at revamping the fortune of the Nigerian Petroleum sector. The PIA either repeals or amends at least ten different legislations applicable to the Petroleum Industry. This legislation is expected to bolster the government's revenue and create significant investment opportunities for local and international investors.

We have provided the key highlights of the PIA below, under relevant headings:

Governance and Administration

- Introduction of separate regulatory authorities for the upstream subsector on the one hand and midstream & downstream subsectors on the other hand. The current petroleum regulatory authorities including the Department of Petroleum Resources (DPR) will cease to exist when the new Regulatory Authorities come on board.
- The Nigerian National Petroleum Corporation (NNPC) will transform into NNPC Limited, a profit-oriented incorporated company, to be jointly owned by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated.
- Existing Unincorporated Joint Ventures (UJVs) with NNPC participation, which are currently managed under the Joint Operating Agreements (JOAs), may voluntarily convert into Incorporated Joint Ventures (IJVs).
- New licenses and leases that will be issued under the PIA, which includes the renewal of existing licenses and leases, can only be issued to incorporated companies. This suggests that existing UJVs would have to convert to IJVs upon the expiration of their licenses and/or leases.
- Introduction of a new licensing regime, which is largely similar to the current one.
- Current holders of Oil Mining Leases (OMLs) and Oil Prospecting Licenses (OPLs) have an 18-month window, from the effective date of the PIA, to voluntarily convert to the new licensing/leasing regime, otherwise they will be automatically converted on expiration of their license or lease.
- OMLs and OPLs will, upon conversion to the new regime, whether voluntarily or upon expiration of existing contracts/leases, relinquish up to 60% of their acreage.

Host communities

- PIA introduces the Host Communities Trust Fund (HCTF) concept and requires all license/leaseholders to incorporate an HCTF for the benefit of their host communities.
- The HCTF seeks to enhance peaceful and harmonious co-existence between companies and host communities where they operate, while creating a framework to support the development of these host communities.
- Companies are required to contribute 3% of the preceding year's annual operating expenses to their respective HCTFs.
- The host community shall forfeit its entitlement to HCTF benefits to the extent of the cost of repairs of the damage that results from an act of sabotage, vandalism, and civil unrest.
- HCTFs are exempted from income taxes and are required to issue annual audited accounts.
- Oil and gas companies operating in the Niger-Delta area will continue to contribute 3% of their annual operating and capital expenditure budget to the Niger-Delta Development Commission (NDDC), as the PIA did not repeal the NDDC Act, the legal basis for the imposition of the 3% NDDC levy.

Fiscals

- **Tax rate** - The maximum applicable income tax rate for upstream crude oil and condensates is 60%. However, the income tax rate can be as low as 30%, if the companies are involved in deep offshore, upstream gas, midstream or downstream activities. Companies Income Tax (CIT) applies to all categories at 30%, the excess rate relates to Hydrocarbon Tax (HT). The maximum 60% tax rate is a significant reduction from the 85% rate applicable under Petroleum Profits Tax Act (PPTA).
- **Incentives and tax holiday** - All companies engaged in domestic midstream petroleum operations, downstream gas operations and large-scale gas utilization industries are entitled to gas utilization incentives under Section 39 of CIT Act (CITA). Up to 10 years tax holiday is available to gas pipeline companies.
- **Royalty rates** - PIA retains production-based royalty but also introduced price-based royalty. Production-based royalty ranges from 5% to 15% for crude oil and condensates; for gas, the royalty rate is 5%, but 2.5% for local gas supplies. The gas royalty rate under PIA is lower than the rates under the current regime, which is between 5% and 7%.
Additional (price-based) royalty only applies to crude oil and condensates; it crystallizes when the price exceeds \$50 per barrel. Price based royalty is credited to the Nigerian Sovereign Wealth Fund. Depending on the price of crude/condensate, the effective royalty rate may be lower under PIA relative to the existing regime, which is as high as 20%.
- **Unbundling** - Companies intending to operate in more than one sector (upstream, midstream, or downstream) of the petroleum industry must incorporate separate companies for each sector. Where a company is required to unbundle itself into more than one company, capital gains tax and stamp duties will not apply under certain conditions.
- **Cost price ratio (CPR)** - Deductibility of expenses and capital allowances, for HT purposes, is restricted to 65% of gross revenue. Rent paid on license and lease, royalty and all deductible taxes and levies paid to the government are not subject to the 65% CPR restriction.
- **Non-deductible expenses** - Interest, retirement benefits, custom duties, and head office, affiliate & shared costs are not deductible for HT purposes, but deductible for CIT, subject to other deductibility rules. These expenses are fully deductible under PPTA, subject to other deductibility rules.
- **Production allowances** - Price and production-based allowances introduced to replace petroleum investment allowance and investment tax allowance/credit that currently exist under PPTA and Deep Offshore and Inland Basin Petroleum Sharing Contract Act (DOI/BPSCA)
- **Grandfathering provisions** - Current players may elect to remain under the existing Petroleum Act, PPTA and DOI/BPSCA until the expiration of their leases/licenses. The decision to remain or transition is going to be largely driven by economics.

We are analysing the PIA in detail, which was recently issued to the public, and will be issuing a newsletter series accordingly. We will also continue to monitor developments and provide necessary updates and insights.



If you need further clarification on the Act as may be relevant to your business, please reach out to us on NGTaxPartners@deloitte.com.



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