

# **GOVERNMENT MEMORANDUM On the Petroleum Industry Bill, 2009**

## **Explanatory Memorandum**

### **Executive Summary**

This is the Explanatory Memorandum of the Government Memorandum on the Petroleum Industry Bill (“PIB”), 2009. The Government Memorandum is a comprehensive proposal to amend the PIB submitted in 2009 and is based in part on the original work of the OGIC.

This Government Memorandum has been prepared by the Inter Agency Team (“IAT”) created by the former HMPR in April 2009. The IAT consists of:

- Ministry of Petroleum Resources (MPR)
- Ministry of Finance (MOF)
- Budget Office of the Federation (BOF)
- Ministry of Justice (MOJ)
- Department of Petroleum Resources (DPR)
- Nigerian National Petroleum Corporation (NNPC)
- Federal Inland Revenues Services (FIRS)
- Revenue Mobilization and Fiscal Commission (RMAFC)
- Nigeria Extractive Industries Transparency Initiative (NEITI)

The IAT is supported by Dr. Pedro van Meurs at the request of the HMPR, in order provide independent views to the Inter Agency Team and the Federal Government and to ensure the adoption of international best practice. The consultant has worked for governments on petroleum legislations and fiscal systems in more than 70 countries in the world.

### **General nature of the Government Memorandum**

On adoption of the Government Memorandum by the National Assembly to amend the PIB, Nigeria would have one of the most modern and forward looking petroleum laws in the world, incorporating the best international practice from a large number of countries.

The IAT defined a number of objectives, which the IAT believes reflect the national interest. The incorporation of these objectives in the Government Memorandum is discussed in the following sections.

## **Increase oil and gas production**

*The objective is to increase oil production within the overall framework of OPEC and to increase gas production for domestic markets and for exports. Higher levels of production will mean more employment and business opportunities in Nigeria and more revenues for Government.*

Over the last five years Nigeria has experienced a gradual decline of its oil production. Yet, it is generally recognized that the oil potential of Nigeria is very large and can be easily expanded with new exploration and development of conventional resources.

In the Government Memorandum, the IAT proposes the following comprehensive set of solutions:

- More attractive fiscal terms for investors in onshore and shallow water areas. The government take for small new onshore fields is reduced from about 90% to 65%,
- Higher profitability for fields in deep water areas with specific new fiscal incentives to encourage re-investment in Nigeria as will be discussed in more detail below,
- More acreage availability through mandatory relinquishment of unused acreage. This will enable the Government to attract large scale new investment through new bidding rounds, and
- Strong work commitments and effective acreage management on new PPLs through the application of the “drill or drop” system.

## **Significant increase in gas supplies for power generation and domestic industries**

*The objective is to rapidly increase domestic gas supplies for power generation and provide total support for the plans of Mr. President to create a reliable and effective power supply and ensure sustainable development of gas for national economic growth.*

Nigeria has very large resources of relatively low cost gas. At the same time the country has an enormous need for electric power. Without rapid expansion of power generation and gas based industries such as fertilizer, methanol and petrochemicals, on the basis of cheap natural gas the nation will not achieve its full economic potential. Nigeria has been notoriously unsuccessful in creating large scale electric power based on natural gas so far.

The IAT proposes a new comprehensive strategy in the Government Memorandum to deal with these issues which consists of the following:

- Attractive fiscal terms for the production of gas and condensates through royalties which are capped at 12.5% and substantial production allowances on the Nigerian Hydrocarbon Tax creating an overall government take of about 65%,
- Application of these new fiscal terms to new projects that eliminate gas flaring or develop deeper gas reservoirs,

- A comprehensive gas pricing framework, with substantially higher gas prices, linked to international market indicators, that will encourage producers to rapidly increase gas production and that links domestic prices to market based indicators, and
- Gas pipeline and processing tariffs, to be regulated by a midstream regulatory agency, which are the most attractive in the world, in order to provide strong incentives for investments in gas infrastructure, under strong fiscal incentives.

### **Increase government revenues from deep water**

*The objective is to establish a fiscal framework for deep water that provides a fair share of the economic rent for Nigeria, is competitive from an international perspective and provides a framework for further expansion of deep water oil and gas production.*

Currently, there are basically three “series” of deep water PSCs:

- The 1993 Model, which provides on the first fields to be developed from a contract area a share to Nigeria that is well below international levels,
- The 2000 Model, which provides a fair share for Nigeria, but requires fiscal incentives to increase the level of investments, and
- The 2005 Model, which has tough fiscal provisions that are no longer competitive internationally.

The IAT proposes through the Government Memorandum:

- To establish a single fiscal system for all existing deep water contracts, with a level of government take that is similar to the 2000 Model, but with increased royalties and taxes and with a reduced NNPC profit oil share,
- To consolidate for tax purposes all deep water areas in order to encourage current operators to invest in the new blocks of 2000 and 2005 PSCs in which there is currently no production, so investments in such blocks can be deducted for tax purposes from production in 1993 PSCs, and
- To establish a new and lower profit oil scale which will apply on a field by field basis, so each field benefits from a low profit oil share during the initial phase of production.

The proposed system will result in a significant increase in government revenues from existing producing fields in 1993 PSCs. However, investments in blocks that are 2000 or 2005 PSCs and new fields in 1993 PSCs will have a higher profitability, which in turn will result in a significant increase in deep water activity and production.

### **Establish a stable fiscal framework**

*The objective is to establish a stable fiscal framework that adjusts automatically to different economic circumstances and may only have to be adjusted in small steps from time to time through legislative change to deal with new circumstances.*

The fiscal changes proposed in the Government Memorandum represent a dramatic change from the current situation. The reason is that Nigeria has not fundamentally changed its petroleum legislative framework during the last 40 years. As a result the current Nigerian petroleum legislation is outdated and needs to be replaced. Many other countries have done so much earlier and more frequent than Nigeria.

The IAT proposes to establish in the Government Memorandum a stable fiscal framework in the following manner:

- Split the previous PPTA into the Companies Income Tax (“CIT”) and the Nigerian Hydrocarbon Tax (NHT). The CIT will be the generally applicable income tax, which will be adjusted as part of the normal budget process. The NHT can be adjusted occasionally when circumstances so justify through legislative change. This concept is based on the system applicable in Norway,
- Create royalties that are sensitive to daily production, so small fields will automatically pay less and large fields will pay more. This will adjust the royalty automatically to the size of the field. This concept is applied in many countries in the world, and
- Create in addition, royalties that are price sensitive for oil and gas, so under very high prices additional royalties are payable and windfall profits are avoided. This concept is based on the royalty system currently applicable in Alberta.

### **Deal with the Niger Delta crisis**

*The objective is to establish direct dividends payments to the communities in the Niger Delta that are directly impacted by the petroleum developments in order to create a more positive relationship between the petroleum industry and the local population.*

The Niger Delta crisis has created conditions where the petroleum industry cannot really reach its full potential. This is detrimental to Nigeria and the Niger Delta. The Government has rather significant development programs in the Niger Delta. However, the local population does not feel part of these programs and the benefit of these programs does not always reach the communities that are impacted by oil and gas activities.

Based on the original ideas of the Presidential Adviser on Petroleum Matters, the IAT proposes in the Government Memorandum one of the most substantive and innovative concepts in the world to deal with the above crisis in support of the Amnesty Program of Government, through:

- The creation of a significant direct dividend program, whereby as much as US \$ 600 million of dividends is paid to impacted communities in the Niger Delta,
- The dividends will be based on the impact value of the assets which impact on the communities in the onshore and offshore,
- Precise dividend amounts are established for each asset, such as wells, PPL acreage , gas processing plants, etc.,
- The dividends are payable directly from the operators to community cooperatives without further State or Federal involvement, and
- Communities can use these funds as the community cooperatives decide, including direct distribution to all members.

## **Create a viable National Oil Company with effective joint venture agreements**

*The objective is to create a self-financing and self-governing National Oil Company, which based on its own cash flow and resources can effectively contribute to a faster and more effective development of the petroleum industry of Nigeria and maintain a significant Nigerian owned presence in the industry.*

Currently, the NNPC combines the role of policy maker, regulator, tax collector and commercial entity. NNPC operates very much as a government department and is dependend on Government for its financial resources. The lack of commercial focus leads to inefficient operations and corruption.

The IAT proposes to follow the strong international trend as was also implemented in countries such as Algeria, Indonesia, Brazil and Colombia, to separate clearly the various functions: regulation should be done by the Regulatory Institutions, taxes should be collected by the FIRS and NNPC should focus on becoming an efficient commercial entity similar to private corporations. The IAT proposes in the Government Memorandum that:

- NNPC Ltd should be incorporated under the Companies and Allied Matters Act,
- NNPC Ltd will operate under the same terms and conditions as any other petroleum company in Nigeria and will pay all royalties and taxes, including taxes on its profit oil from PSCs,
- The full or partial privatization through the sale of shares on the Nigerian stock exchange will be pre-approved,
- NNPC Ltd will have a professional Board,
- The current joint operating agreements will be converted into incorporated joint venture companies (IJVs) in order to ensure that the cash flow generated from petroleum production is with priority re-invested in exploration and development of oil and gas production and improved opportunities are created for the financing of the operations in order to ensure strong value creation,
- The IJVs and NNPC Ltd will not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act in order to ensure that these companies can operate like any other private company with Boards that will make decisions on the basis of best international practice, and
- The IJVs will be subject to all taxes and royalties and therefore there will be no loss in government revenues as a result.

## **Deregulate petroleum product prices**

*The objective is to fully deregulate petroleum product prices in order to create strong competition resulting in the lowest possible petroleum product prices for consumers and to create an attractive environment for investment in new refining capacity and distribution systems.*

The current situation where refineries are operated well below their capacity and Nigeria has to rely on the import of expensive petroleum products while creating occasional shortages of petroleum product supplies is not acceptable. Interference in the subsidization and allocation of petroleum products creates opportunities for rent seeking which is a source of corruption.

The IAT proposes in the Government Memorandum that:

- The petroleum products markets should be completely deregulated,
- The Equalization Fund should be scrapped,
- Open access provisions will be established for bulk plants, product pipelines and terminals to permit effective competition in the downstream petroleum market,
- Strong price monitoring powers will be given to the Regulatory Institutions to prevent misuse of the free market environment, and
- The attractive fiscal incentives currently applicable to gas processing will also be extended to the construction and operation of domestic refineries.

### **Create efficient regulatory powers with a strong midstream entity**

*The objective is to establish a clear and transparent regulatory framework, with shorter approval cycles and a clearer focus, with a strong midstream regulator in order to support the rapid development of gas infrastructure and new refining capacity.*

The fact that Nigeria is currently in a disastrous situation with respect to gas deliveries to power plants and refining performance is in part the result of the absence of a clear regulatory framework. Currently, the investment in new projects requires ad-hoc and discretionary decisions with significant political interference, corruption, endless bickering and long approval cycles with poorly defined requirements and lack of coordination among agencies of Government.

Project decisions should be through a “one stop shop” where all technical aspects and commercial aspects of a project can be reviewed by a single Regulatory Institution on the basis of a clear and efficient process and a short period for decision making.

The IAT proposed in the Government Memorandum to create:

- A Nigerian Petroleum Inspectorate in charge of all technical and commercial aspects of upstream operations,
- A National Midstream Regulatory Agency in charge of all technical and commercial aspects of midstream operations, and
- A Petroleum Products Regulatory Authority in charge of all technical and commercial aspects of downstream operations.

In particular the absence of a clear midstream regulator has been the cause for the disastrous conditions in Nigeria with respect to gas to power plants and refining performance. It is for this reason that the IAT proposes a strong midstream regulator based on the favourable experiences of Algeria, the United States and Canada in establishing an extensive nation wide network of gas pipelines and gas processing plants to serve a rapid expansion of the domestic gas demand for power generation and other industrial sectors. Today, Algeria and Canada are among the most successful gas exporters in the world.

## **Create transparency and a non-discriminatory environment**

*The objective is to create a transparent framework where all information is publicly available and whereby discretionary decisions on the part of the Government are reduced to the barest minimum.*

Currently most data and transaction are confidential. This creates a situation where Nigerians and foreigners do not know what is going on in the petroleum sector. Confidentiality creates corruption.

It is based on the foregoing, that the IAT in the Government Memorandum proposes a complete removal of confidentiality on a scale not seen before in the world as follows:

- Texts of licences, leases and contracts and all side letters should not be confidential and should be published on the Government website,
- Geological data should be accessible to all interested parties and production information should be freely available,
- All information on payments of royalties and taxes to government should be non confidential, and
- All production and lifting information should be available to the public

The implementation of these provisions will transform Nigeria from one of the most opaque nations in Africa to one of the most open and transparent in the world.

Another important issue is the removal of an environment in which Government can make discretionary decisions in favour of particular “investors” which have a special relationship with the Government of the day. In Nigeria, such favoritism has reached the point, where under previous Governments, private individuals without any qualifications or financial resources have been given large petroleum concessions, which now have the potential of creating non taxable revenues in excess of a billion dollars through production sharing contracts without any financial contribution on the part of the concessionaires.

The IAT proposes in the Government Memorandum to put an end to these practices through:

- Removal of discretionary powers on the part of the Minister to grant petroleum licences or leases or to grant fiscal incentives to particular individuals or companies,
- The strict requirement to grant all petroleum prospecting licences and petroleum mining leases through competitive bidding processes in which the only companies that can participate must be qualified through a transparent process,
- Establishment of a non discriminatory fiscal system that applies equally to all companies, and
- The requirement to pay Companies Income Tax and Nigerian Hydrocarbon Tax on profit oil shares or similar petroleum income.

## **Enhance Nigerian content**

The IAT proposes an enhanced implementation of the Nigerian content provisions while providing an integration with the provisions and objectives of the Government Memorandum.

## **Protect Health, Safety and Environment**

*The objective is to ensure that Nigeria adopts the best international practices in the pursuit of health, safety and a clean environment.*

Unfortunately, in the Niger Delta pollution is a major problem for a variety of reasons. Environmental processes require clarification.

The IAT proposes in the Government Memorandum:

- To clarify how the Regulatory Institutions should interact with the Ministry of Environment in order to achieve the goals of health, safety and environment,
- Directives of the Ministry of Environment prevail over Regulatory Institutions,
- To provide strong fiscal incentives for the elimination of gas flaring,
- The requirement for environmental management plans for all licences and leases,
- The requirement to establish environmental remediation funds,
- The establishment of modern abandonment and decommissioning practices,
- The requirement to establish an abandonment fund, and
- The powers for the Minister to establish up to date petroleum safety and health practices through detailed petroleum regulations.

## **Comparison with proposed Senate Bill draft**

The Inter Agency Team received a version of the proposed Senate Bill draft. In order to facilitate the comparison between the two drafts, following Annex A provides a summary of the salient differences.

## Annex A

### SUMMARY OF DIFFERENCES BETWEEN PROPOSED SENATE BILL AND GOVERNMENT MEMORANDUM

#### Executive Summary

Contrary to the Government Memorandum, the proposed Senate Bill version:

- Creates a powerful National Petroleum Commission which eliminates most powers of the Minister of Petroleum and all powers of the Minister of Finance with respect to the Nigerian Hydrocarbon Tax.
- Maintains the status quo of the regulatory institutions and does not create the strong midstream agency required to ensure that cheap Nigerian gas is amply available for power generation.
- Leaves NNPC subject to excessive political meddling, depending on tax payers money for survival, no funding mechanisms and without a framework to create an efficient company.
- Creates an unconstitutional 10% royalty for the Niger Delta, largely allocated to the governors of the littoral states, without need to justify the corresponding expenditures, and to the 10% of the Niger Delta communities that are actually located in producing petroleum mining leases, while 90% of the communities receive very little or nothing.
- Scraps the incorporated joint venture companies and therefore leaves NNPC with no viable commercial options to further expand petroleum production
- Creates very weak work obligations for petroleum companies without the need to provide financial guarantees to execute work programs upon the granting of a licence or lease
- Does not require large blocks of unused acreage occupied by current companies to be returned to government for issuance to other investors
- Does not establish a commercial gas pricing framework that will support the development of gas for power generation
- Creates an unworkable discretionary licence and lease award system
- Permits the calculation of royalty and tax on the basis of contract export gas prices instead of netback prices, enabling companies to take most of the Nigerian economic rent “offshore”
- Measures oil at the point downstream of where oil is produced, facilitating large scale illegal taking of oil without the payment of royalties or taxes
- Establishes fiscal terms with a government take below internationally competitive levels and with a structure that will result in a rapid erosion of government petroleum revenues during the next 5 years.

## **Summary**

Following is a comparative analysis of the Senate committee version of the PIB, SB236 and the Redraft of the Government Memorandum (“Redraft”). From an oral communication it is understood that this is the July 18 Senate committee version. However, the document itself is not dated. The IAT has not seen later versions from the Senate Committee. The comparative analysis focuses on areas of difference.

## **Commission and Ministers**

The proposed Senate Bill (“SB”) creates a powerful Commission that would take over essentially all powers of the Minister of Petroleum and would also replace the Minister of Finance with respect to the Nigerian Hydrocarbon Tax. Members are appointed by the President. The Minister of Petroleum would be reduced to a mere conduit between the Commission and the Cabinet.

The Redraft retains the powers of the Minister of Petroleum and the Minister of Finance and creates a Directorate to coordinate the institutions and act as secretariat to the Minister of Petroleum.

## **Regulatory Institutions**

The SB maintains the status quo, i.e. upstream and downstream.

The Redraft creates three streamlined regulatory entities for the upstream, midstream and downstream, with a view to ensure the construction and operation of gas pipelines and gas processing plants to supply gas to the power sector through a strong midstream regulator. As evidenced by the extremely low consumption of electricity, the current regulatory setup is one of the reasons that gas and electricity development have been a total disaster. There is an urgent need to create an efficient regulatory framework that delivers gas to power plants and electricity to Nigerians. Also as a result of the deregulation of petroleum product prices, the price monitoring powers of the downstream regulator are enhanced.

## **NNPC**

The SB largely retains the status quo, with NNPC under strong political influence of the National Assembly and continuing funding through the National Assembly. Ability for efficient management is stymied by continuing the need for compliance with the Fiscal Responsibility Act and the Public Procurement Act.

The Redraft proposes a self-financing and self-governing NNPC Ltd, incorporated under the Companies and Allied Matters Act, which will no longer be dependent on tax payers contributions, and therefore with political influence much reduced.

## **Nigerian Petroleum Research Centre and National Frontier Exploration Service**

Provisions deleted in the SB. Provisions retained in the Redraft.

### **Equalisation Fund**

Provisions deleted in the SB.

Temporarily retained in the Redraft with provision that the Fund stands repealed when deregulation is completed.

### **Niger Delta communities benefits**

SB creates Petroleum Producing Communities Funds. An “ownership right” to 10% of the gross revenues is created. The onshore and shallow water revenues are distributed to the communities. The deep water revenues go directly to the littoral states. Under current price conditions this would be a distribution of about \$ 5 billion per year. The distribution among communities will be highly uneven since only communities which are fully or partly within PMLs receive 90% of the onshore and shallow water revenues (it is unclear how a shallow water PML can contain a community). The Inter Agency Team estimates that this means that only 10% of the Niger Delta communities will divide more than \$ 2 billion a year, the other communities receive nothing or very little. The 10% of revenues is directly offset against royalties and taxes. Since the 10% revenue ownership right is unquestionably a royalty and since under the Nigerian constitution all royalties have to be paid to the Federation Account, it is highly questionable whether the proposal is constitutional.

The Redraft follows largely the proposals of the Presidential Adviser on Petroleum Matters, with the creation of Host community dividends. These dividends constitute impact funding and are largely determined based on environmental and social impact. Impact funding is based on all upstream and midstream assets and product pipelines in the onshore and shallow water. All dividends go directly to the communities, no funding is provided for the littoral states. The total fund is estimated at \$ 0.63 billion per year. There is no direct offset against royalty or tax payments, but level of government take, takes the higher costs into account.

### **Incorporated Joint Venture Companies (IJVs)**

The SB retains the status quo. There are no IJVs.

The Redraft creates IJVs in order to ensure:

- that all cash flow from JV oil and gas fields can be re-invested in the further development of these fields and exploration and development of new fields.
- Political influence meddling is minimized, and
- The IJVs are able to self-finance the developments through borrowing rather than relying on tax payers money for NNPCs share.

### **Confidentiality**

Both the SB and the Redraft take a strong stance with respect to the removal of confidentiality. The only difference is that the provision of technical data to the national data bank under the SB is subject to the discretion of the Inspectorate. This opens the door for bureaucrats selling data that are being kept confidential.

### **Petroleum exploration licences**

The SB does not permit gathering of geophysical data over existing petroleum prospecting licences or petroleum mining leases. This is contrary to international practice and will severely hamper the ability of government to offer new acreage under favorable terms.

The Redraft permits gathering of geophysical data anywhere in Nigeria.

### **Timing in petroleum prospecting licences and work commitments**

The SB largely recreates the status quo, whereby in case of a discovery the appraisal period is at the discretion of the Inspectorate until the end of the licence (The SB does not define when the licence terminates). Work commitments are minimal and do not have to be guaranteed with a bank guarantee.

The Redraft establishes a 2-year appraisal period and establishes strong work commitments to be guaranteed with a bank guarantee for all phases.

### **Commercial discovery and development plan**

The SB does not require the consideration of commercial and economic issues during the approval of a development plan. This could lead to high cost developments as a result of lack of cooperation among companies.

The Redraft requires consideration of all issues when approving a development plan, as is currently best international practice.

### **Bitumen**

The SB does not include bitumen in petroleum.

The Redraft includes bitumen in petroleum, because bitumen is petroleum that does not flow to a well, but can be made to flow to a well based on steam injection. The development of bitumen deposits is now considered worldwide and Nigeria should receive its fair share also from such deposits.

### **Renewal of a lease at the end of the term**

The SB leaves the renewal of a lease open ended and establishes prevailing fiscal terms and conditions for the renewal.

The Redraft provides for a 10 year renewal period on terms as determined by the Minister.

### **Award Process**

The award process for foreign oil companies is similar in both drafts.

However, the SB reserves 50% of the block for indigenous companies, and classifies these companies based on past cumulative expenditures and subsequently offers blocks based on “probable reserves” to different classes of companies. Apparently, the drafters of the SB are unaware of the fact that exploration acreage does not contain probable reserves, as internationally defined. Indigenous companies will certainly not have sufficient funds to explore and develop 50% of the open acreage. Since it is impossible to administratively determine who the beneficial owner of a company is, this scheme will certainly invite rampant sham transactions whereby indigenous companies will receive acreage on uncompetitive terms. Such acreage will then be peddled to foreign companies, with the indigenous companies taking a share of the economic rent that belongs to the nation. This is not the way to develop a healthy and competitive Nigerian owned petroleum industry.

### **Mandatory relinquishment of unused acreage.**

Currently large blocks are being held by companies that contain acreage that is not being used for exploration and development.

The SB proposes to enable current companies to retain such acreage even if they are not planning to do anything with it.

The Redraft requires that unused acreage be returned to the Government, so it can be offered to petroleum companies interested in exploration and developing such acreage.

### **Gas flaring penalties.**

The provision related to gas flaring penalties has been deleted from the SB and is retained in the Redraft.

### **Environmental remediation fund and Abandonment fund**

The SB does not require the establishment by the licensee or lessee of an environmental remediation fund or an abandonment fund. The redraft does. The requirement of such funds is now widely accepted international practice.

### **Project approval certificate**

The SB does not require a midstream or downstream project approval certificate and maintains the status quo with respect to the current disastrous regulatory framework or project promotion and approval.

The Redraft streamlines the process for the approval for construction and operations of a midstream or downstream facilities on the basis of a single approval certificate, as is best international practice.

### **Pipeline owners and users**

The SB does not require an arm's length relationship between pipeline owner and users of the line. This has potential for maintaining the current oligopolistic conditions in the midstream.

The Redraft requires an arm's length relationship between pipeline owners and users, even if the pipeline owner is also a producer and user of the line. This promotes open access.

### **Commercial licences**

The SB does not have provisions that the construction of refineries, gas processing plants and similar facilities require a commercial licence. The Redraft does.

### **Deregulation of petroleum product prices**

The SB draft implies that the SB supports deregulation, since the Equalisation Fund is deleted. However, the SB does not actually contain specific deregulation provisions. The Redraft does.

### **Open access**

The SB only provides for open access on petroleum product pipelines and product depots.

The Redraft requires open access for all pipelines, gas processing plants, terminals and depots. This ensures that small producers will have access to these facilities.

### **Tariffs**

The SB only provides for tariffs for pipelines and depots, not for gas processing plants, terminals and other facilities that are open access in the Redraft. It should be noted that without such tariffs it is not possible to determine the proper fair market value for gas.

The Redraft provides for tariffs for all open access facilities. Also detailed start-out tariff methodologies are provided, so the immediate implementation of the new fiscal terms is facilitated.

### **Price Monitoring**

The SB includes price monitoring provision. However, important powers to fight anti-competitive behavior, as contained in the Redraft, are not included.

### **Gas pricing for power and other strategic sectors.**

The SB does not contain a gas pricing framework that is consistent with the new framework for the development of the power sector as proposed by Mr. President.

The Redraft, contains a comprehensive gas pricing framework for the power sector, other strategic sectors and the export of gas, linked to international gas markets. The comprehensive gas pricing framework provides strong support for the initiatives by Mr. President.

### **Domestic Gas Supply Obligation**

The SB provides the Inspectorate with the task to implement the domestic gas supply obligation. The SB does not clarify what the obligations of producers are to supply the domestic market or how the obligations will be allocated among producers. The SB creates an Aggregator which in effect is an oligopolistic structure, permitting the main petroleum companies to control the Nigerian gas market.

The Redraft provides the powerful midstream regulator with the task of the management of the domestic gas supply obligation, with support of the Inspectorate. The Redraft describes in detail the obligations of producers to supply the domestic market and how the obligations are to be allocated among producers. The Redraft creates an Aggregator which is independent between producers and consumers.

### **Compensation of damage to third parties**

The SB only provides for compensation to landowners and other third parties with respect to upstream petroleum operations. This means pipeline construction could not result in compensation claims. The Redraft provides compensation provisions for all petroleum operations.

### **Fiscal provisions: Companies Income Tax**

The SB introduces the production allowances for companies income tax. This essentially will wipe out companies income tax payments under high cost – low price conditions. The Redraft does not.

### **Fiscal provisions: Royalties, taxes and production sharing – volume determination**

The SB maintains the status quo where the royalties are being measured at the “fiscal sales point”, which is for oil typically is the point of exports and for gas the point where gas is sold.

The Redraft changes the volume determination to the measurement point in the field, as is international practice, so petroleum can be measured directly after it is produced.

This difference is of great significance, since much of the illegal removal of oil takes place between the production in the field and the fiscal sales point, when oil is being transported to this point. So the stealing of oil is actually not measured. The illegal removal of oil is a significant source or revenue loss to government and of ill-gotten wealth in Nigeria. So it is troublesome that the SB maintains the status quo.

### **Fiscal provisions: Royalties, taxes and production sharing – value determination**

The SB abandons the concept of fair market value and leaves the determination of the value of oil to the Inspectorate, with no specific criteria established in the SB. This could open the door to significant corruption.

The SB fixes the value of gas on the basis of the gas sales contract rather than the fair market value based on a net back calculation. This opens the door for transfer pricing, in particular with respect to the export of gas, since it is very easy for companies to undersell their gas and make compensating transactions somewhere else in the world. In this way most of the value of export gas can be taken “offshore”.

The Redraft embraces international principles. A widely used international practice is that the gross revenues for royalties, tax and production sharing purposes should be based on independent fair market prices, which are arms-length. In this way the country is guaranteed a fair determination of value for royalty and tax purposes. Most exporting nations have procedures for determining the so-called net back prices in order to determine fair market values.

### **Fiscal provisions: Royalty rates on volume**

The SB divides the fields in the onshore and shallow water into fields of less and more than 5000 bopd. The fields of less than 5000 bopd pay 5% royalty. Large fields pay a royalty of 22% onshore and different levels of royalties depending on the water depth. These levels are slightly higher than currently applicable. Since many fields in the onshore are small. This royalty scheme will result on average in a lowering of these royalty revenues.

For a water depth of 1000 m or more the royalty is a flat 8% in the SB draft. This is an increase from the current 0% for 1993 PSCs and is identical to later royalty rates.

The Redraft maintains the royalty rates from PML that are currently producing (except for PSCs), so there is no revenue loss.

The Redraft provides that for production from new PMLs the royalty rate will be from 5% to 25% depending on a sliding scale based on daily production. The new royalty rates are applicable to PSCs. The sliding scale based on daily production will encourage the development of new fields.

### **Fiscal provisions: Royalty rates based on value**

Both drafts provide for a new royalty based on value, which starts at US \$ 70 for crude oil and condensates and at US \$ 2 per MMBtu for gas. However, the SB version has much lower royalty increases with price for oil.

### **Fiscal provisions: Nigerian Hydrocarbon Tax (“NHT”)**

The SB removes the power of the Minister of Finance with respect to NHT and places this in the hands of the commission. The SB permits a wide range of costs that are non-deductible under the Redraft as deductible, such as interest, foreign headquarter costs and 20% of foreign costs.

What is very worrisome is that the SB has not stipulated that the following costs are non-deductible:

- Costs that are incurred for the midstream and downstream
- Costs that are in excess of the fair market value of the goods or service
- Joint costs of activities that are both upstream and relate to other activities, to the extent that costs are allocated to such other activities.

Including statements that such costs are non-deductible is international practice.

The most damaging provision from a national revenue point of view, is that the SB permits production allowances on incremental production from existing PMLs. Since oil fields typically decline by 10% or more, this means the petroleum revenues from existing fields will decline very rapidly. In principle, the SB provides a perpetual production allowance on all production, since it is easy for companies to create decline curves that will make most production incremental.

The SB lowers the NHT tax rate for deep water from 30% to 25%. Furthermore the tax rates for indigenous companies are reduced to 40% for onshore and shallow water and 20% for deep water, inviting again wide ranging sham transactions with foreign companies.

### **Fiscal provisions: Non-deductible costs for PSCs**

The entire section in the Redraft on non-deductible costs, which is rather standard for modern PSCs, has been deleted in the SB.

### **Fiscal provisions: Dividend withholding tax**

The SB makes companies exempt from dividend withholding tax, while the Redraft does not. It should be noted that for most large international oil companies, dividend withholding taxes are creditable for tax purposes in their home countries, so not levying them in Nigeria is a subsidy to foreign governments.

### **Fiscal administration: Electronic management system**

The entire section related to the requirement to establish an electronic management information system in order to facilitate revenue collection by government and make fiscal administration more transparent and less corrupt, has been deleted in the SB.

### **Fiscal discretion**

The SB includes a section that permits lowering of fiscal terms for projects of national strategic importance. Needless to state that this could open the door to corruption and revenue erosion.

### **Fiscal provisions: Overall Government Take**

**It is clear that on an overall basis the SB provides for a significantly lower government take than the Redraft. It is the opinion of the Inter Agency Team that under the Redraft Nigeria will receive a fair share, as is amply demonstrated in the Government Memorandum report. The SB therefore constitutes a needless give-away on a large scale. The SB provisions will rapidly erode government revenues during the next 5 years as much production becomes “incremental” production.**

# Explanatory Memorandum Justification Report

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# **1. INTRODUCTION**

This document is a justification of the Government Memorandum on the Petroleum Industry Bill (“PIB”).

The Government Memorandum has been prepared by the Inter Agency Team (“IAT”) created by the former HMPR in April 2009. The IAT consists of:

- Ministry of Petroleum Resources (MPR)
- Ministry of Finance (MOF)
- Budget Office of the Federation (BOF)
- Ministry of Justice (MOJ)
- Department of Petroleum Resources (DPR)
- Nigerian National Petroleum Corporation (NNPC)
- Federal Inland Revenues Services (FIRS)
- Revenue Mobilization and Fiscal Commission (RMAFC)
- Nigeria Extractive Industries Transparency Initiative (NEITI)

The IAT is supported by the consultant Pedro van Meurs of Van Meurs Corporation.

The memorandum went through a large number of changes due to intensive discussions among the members of the IAT and the various stakeholders. This document is a justification of the final version of this Government Memorandum, which is attached to this Explanatory Memorandum.

The Government Memorandum consists for clarity of a redraft of the Bill (“Redraft”) with a view to ensure that the proposals for amendments under the Government Memorandum are provided in proper legal language. The Redraft contains the same ten parts (“Parts”) as are contained in the Bill. These ten parts are:

- Part I - Fundamental Objectives
- Part II - Institutions
- Part III - Upstream Petroleum
- Part IV - Midstream and Downstream Project Approval and Licensing
- Part V - Midstream operations, downstream products and special provisions with respect to natural gas
- Part VI - Indigenous Oil Companies and Nigerian Content
- Part VII- Health, Safety and Environment
- Part VIII - Fiscal Provisions
- Part IX - Repeals, Transitional and Savings provisions
- Part X - Interpretation and Citation

The justification is a detailed report aimed at justifying the proposed Redraft from a professional perspective.

This justification report consists of two separate parts:

- A discussion of the specific objectives to be achieved and how the IAT proposes the realization of these objectives in certain sections of the Redraft
- A detailed discussion of some of the other important sections of the Redraft

## **2. REALIZATION OF SPECIFIC OBJECTIVES**

Through the new legal framework provided in the Redraft, the IAT is proposing to achieve the following specific objectives for Nigeria:

- 1. Increase oil and gas production**
- 2. Significantly increase in domestic gas supplies for power generation and industrial development**
- 3. Increase government revenues from deep water while increasing production**
- 4. Establish a stable fiscal framework and capture windfall profits under high oil and gas prices**
- 5. Solve the Niger Delta Crisis**
- 6. Create a viable National Oil Company with effective joint venture agreements**
- 7. Deregulate petroleum product prices**
- 8. Create efficient regulatory entities with a strong midstream entity**
- 9. Create transparency**
- 10. Promote Nigerian content**
- 11. Protect Health, Safety and Environment**

Following is a discussion as to how each of these objectives will be achieved under the legal framework proposed in the IAT Redraft.

### **2.1. Objective: Increase Oil and Gas Production**

**The objective is to increase oil production within the overall framework of OPEC and to increase gas production for domestic markets and for exports. Higher levels of production will mean more employment and business opportunities in Nigeria and more revenues for Government.**

#### **2.1.1. Problems**

Over the last five years Nigeria has experienced a gradual decline of its oil production. Yet, it is generally recognized that the oil and gas potential of Nigeria is very large and can be easily expanded with new exploration and development of conventional oil and gas resources. At the same time large bitumen deposits remain undeveloped.

The level of drilling in onshore and shallow water areas has been limited compared to other areas in the world. New field development in deep water has been slow. In particular the development of small fields is limited. A faster development of the smaller fields could boost employment and business opportunities in Nigeria.

There are many causes for the oil production decline in Nigeria and limited increases in gas production. The main causes are:

- Fiscal terms for small fields in the onshore and shallow water are too tough compared to other areas in the world, in particular for gas. The overall government take is about 90%. This is very high by international standards. This makes it difficult for investors to make profitable investments.
- Fiscal incentives are oriented towards marginal producers rather than small fields creating a disincentive for medium sized and large companies to invest in smaller fields. There are some incentives for marginal companies. However, the number of marginal companies in Nigeria is limited and at this time these companies are too weak to launch the level of investment that would be required to create major production increases. Stronger medium and large sized companies do not have an interest in developing small fields because the fiscal terms would be too tough for them.
- The current Oil Prospecting Licences (OPLs) and Oil Mining Leases (OMLs) do not contain effective provisions for relinquishment of acreage. This means companies are “sitting on” acreage because there are no work obligations and there are no obligations to return the inactive acreage to the Government. The absence of work obligations induces companies to work elsewhere in the world and simply hold on to Nigerian acreage for possible future investment.
- There is no clear open access system to oil and gas pipelines, gas processing facilities and terminals. This inhibits new companies to make significant onshore investments because they do not have access to existing infrastructure. Also there is no strong midstream regulator that can require expansion of existing facilities. The profitability on pipelines and gas processing plants is too low to encourage large scale investment in new infrastructure. Therefore even if companies invest in oil and gas production there are strong impediments to transportation and processing of the production.
- Current domestic gas prices are too low to encourage investment in gas development.
- The ongoing Niger Delta crisis strongly inhibits new investment
- The current unincorporated joint ventures with NNPC require any revenues from such joint ventures to be provided to the Federation Account under the Nigerian constitution. There is no effective mechanism to approve re-investment of these revenues in further expansion of the fields and exploration and development of new fields. Development of production is therefore stagnating because Government, through NNPC has insufficient funds to contribute to the developments as and when required.
- Approval procedures for new projects are slow and inefficient and lack transparency.

Based on the foregoing, it is clear that a comprehensive new framework is required to tackle all these issues at the same time in order for oil production to increase and for Nigeria to move forward economically. This is the framework proposed by the IAT in the Redraft.

### **2.1.2. Proposed Solutions**

The IAT proposes a comprehensive set of solutions, as follows:

- **More attractive fiscal terms for investors in onshore and shallow water areas**
- **Higher profitability for fields in deep water areas**
- **More acreage availability through relinquishment of unused acreage and work requirements on acreage to be retained**
- **Effective work commitments and acreage management on new petroleum prospecting licences (PPLs)**
- **An open access regime for midstream infrastructure for all producers**
- **Higher market based gas prices for the domestic gas market**
- **Dividends for members of the impacted communities in Niger Delta, and**
- **An effective mobilization of the capital resources of NNPC for new oil and gas field development under incorporated joint ventures (“IJVs”).**

The first four proposals will be discussed in this chapter, the next four proposals will be discussed in chapters, 2.2, 2.7, 2.8 and 2.9.

### **2.1.3. Discussion**

#### **2.1.3.1. Significant improvement of fiscal terms in the onshore and shallow water.**

The IAT proposes to lower the fiscal terms for small oil fields and for gas fields significantly. Currently, the government take in the onshore and shallow water is about 90%. The IAT proposes to lower this for small oil fields and for gas fields to a 65% to 70% range. The improvement in fiscal terms is achieved by lowering both the royalties and the taxes.

The 65 – 70% range is equal to the government take in the onshore of the United States and in many other onshore areas in the world. The details of these changes are discussed below.

Royalty Reduction. Medium and large petroleum companies producing oil would be subject to a royalty of 20% in the onshore and 18% in the offshore. The IAT proposes to lower the royalties for new fields in new petroleum mining leases (“PMLs”).

The IAT proposes in *Section 337(2)(a)* of the Redraft to establish royalties on a sliding scale based on the daily production per petroleum mining leases (“PML”) for crude oil. The royalty is 5% for the first 2000 bopd per PML, 12.5% for the next volume from 2000 bopd to 5000 bopd and 25% over 5,000 bopd.

This means that, for instance, the average royalty rate for a PML producing 6000 bopd would be 12.08%. What is very important is that it does not matter what the cumulative production per company is. As an example, if a single company would produce 60,000 bopd from 10 separate PMLs, based on a production of 6,000 bopd in each PML, the average royalty rate would still be only 12.08%. This means that not only marginal producers, but also medium and large producers will be strongly encouraged to produce oil from smaller fields.

The IAT proposes in *Section 337(3)(a)* that for gas the royalty would be 5% up to 100 million cubic feet per day per PML and 12.5% over this level. This means a petroleum company could produce the entire production required for a power plant from one or more fields and only pay a royalty of 5% on the total production.

The IAT proposes to further assist the development of gas resources for domestic and export purposes. The IAT proposes in *Section 337(4a)* to a separate royalty for condensates. This separate royalty would be 5% for the first 2000 bopd and 12.5% over this level per PML. The great importance of paying royalties on condensates separately is that this allows for the development, under favorable terms, of associated gas in leases that are already producing oil or of separate non-associated gas reservoirs in such leases.

This means that a single PML could produce per day 2000 bopd of crude oil, 2000 bopd of condensates and 100 million cubic feet of gas and the producer pay only a royalty of 5% for the entire production.

The IAT proposes similar lower royalties for shallow water, but applicable to sliding scales with larger volumes.

Tax reduction. As will be discussed more fully in section 2.4 of this report, the current PPT will be split into a normal generally applicable Companies Income Tax ("CIT") and a Nigerian Hydrocarbon Tax ("NHT"). The new total rate will be reduced from 85% to 80% (30% for the CIT and 50% for the NHT).

However, for new PMLs the taxes will be reduced significantly further through special production allowances. The IAT proposes in *Section 353(1)(a)* that for the onshore areas, there will be an allowance of US \$ 30 per barrel for the first 10 million barrels of cumulative production and US \$ 12 per barrel for the remaining cumulative production up to 75 million barrels. These production allowances per barrel are capped at 30% of the price of oil. This means that the NHT will be very much reduced on such small fields. At the current oil prices of US \$ 70 per barrel, \$ 21 per barrel would be free of NHT on the first 10 million barrels or on \$ 210 million. However, even on relatively large fields for the onshore, for instance a 75 million barrel field, a total amount of \$ 990 million would be free of NHT at a price of US \$ 70 per barrel. It should be remembered that this is for every PML. So, a small company with 10 fields of 10 million barrels, would receive a total tax free allowance of \$ 2100 million. These are very attractive conditions for any type of company, large or small.

In shallow water the volumes are doubled. So the total allowances could be up to twice those in the onshore.

**Therefore, in combination with the royalty reductions, the IAT expects strong interest in further field development in the onshore and shallow water areas as a result of this fiscal package.**

Similar, but even more generous production allowances apply to gas and to condensates. Condensates will also for taxation be counted separately.

This means that if oil, gas and condensates are being produced from the same PML, allowances are separately determined for oil, gas and condensates. This will encourage strongly the development of gas and condensates, whether from associated gas or non-associated gas in each PML.

#### **2.1.3.2. Higher profitability for fields in deep water.**

The IAT proposes a higher profitability for fields in deep water. Currently, the PPT calculation for each block in deep water is ring fenced. This results in a highly unfavorable level of profitability.

**The IAT proposed full consolidation for CIT purposes across Nigeria. Also the IAT proposes a consolidation for NHT purposes for all deep water blocks. In addition attractive 100% expensing is proposed for capital expenditures made by oil companies which are contractors in deep water production sharing contracts. The combination of these attractive measures creates a much higher level of profitability.**

The details of these arrangements will be discussed in more detail in chapter 2.3 when the overall new fiscal terms for deep water are being discussed.

#### **2.1.3.3. Relinquishment of unused acreage.**

A very important section in the Redraft is *Section 191*. **The IAT proposes that current licensees and lessees should be required to relinquish parts of their acreage for which there is no specific use or for which the companies do not want to make work commitments.**

Licensees and lessees would be permitted to keep the following parcels from their blocks:

- (a) discoveries which in the opinion of the companies merit appraisal for which they are prepared to present the appraisal program;
- (b) discoveries for which a declaration of a commercial discovery has been made and for which a development program is to be submitted;
- (c) significant gas discoveries;
- (d) discoveries which development is underway based on an approved development plan;
- (e) discoveries in which regular commercial production is occurring; and
- (f) where the total acreage selected pursuant to paragraph (a),(b),(c),(d) and (e) of this subsection is less than 50% of the acreage of the oil prospecting licence or oil mining lease, the company will have the option to select further parcels up to 50% of such license or lease as petroleum prospecting license for the purpose of carrying out further exploration, provided the company commits to a minimum work program.

In summary, companies can keep all parts of their blocks that they intend to continue make work commitments for. They would give back the remaining part of the blocks in order to enable the Government to issue these parts under competitive bidding to other oil companies.

The main goal is to encourage companies to retain the maximum amount of parcels, because this means automatically the maximum amount of additional work, which in turn results in a higher level of future production for Nigeria.

Of course, in some cases, it may be difficult for companies to commit to work for a large number of parcels all at the same time within a short time period of a few years. Companies may not have sufficient cash flow to fund all the work or may not be in a position to fast track such a large amount of new work. NNPC may not have sufficient funds either. Therefore *section 191(9)* is included to permit the companies to develop an orderly program of work over a number of years and bring new production on stream in an orderly way. This means that some of the licences would be suspended for a period of time until the companies and NNPC can make the necessary commitments.

Therefore *Section 191* will create for the existing companies a significant opportunity to commit to new work. These new commitments would take place under a much more attractive fiscal regime. Companies that commit to new work would therefore benefit from such new favorable terms as an additional encouragement to carry out a large new work program.

Government will be able to issue the parcels that will be returned as a result of *Section 191* for new competitive bidding rounds. Under these bidding rounds, new companies will get access to this acreage under separate work commitments.

The IAT predicts that the significant new commitments to be made by existing companies for current acreage under *Section 191* and the commitments from new companies under new bidding rounds will result in a very significant increase in activity and production.

#### **2.1.3.4. Effective work commitments and acreage management.**

It is anticipated that at least 30% of the acreage that is currently contained in existing blocks will be returned under the *Section 191* process. This is a huge amount of acreage and it would form a very solid basis for new bidding rounds. Such bidding rounds would result in the granting of new petroleum prospecting licences (“PPLs”) under the proposed Redraft. **The IAT proposes that new PPLs would be granted only under modern acreage management practices and significant work requirements supported by bank guarantees to ensure execution of the work. Modern acreage management implements the “drill or drop” system. This means that companies either carry out significant work on a new block or return the acreage to Government.**

The IAT proposes that the national objective should be that blocks should not be granted unless the maximum amount of work is being guaranteed and strong increases in production can be expected as a result.

This means that that PPLs should be granted under a phased approach. This permits companies to carry out exploration work, evaluate the results and commit to further work if the results are positive until commercial discoveries can be declared and development programs can be proposed.

*Sections 176, 177 and 178* of the Redraft describe the phases of a PPL. These are the following:

- An initial exploration phase, which for onshore areas and shallow water is 3 years and for deep water and frontier acreages is 5 years, and
- A renewal of the exploration phase, which for onshore areas and shallow water is 2 years and for deep water and frontier acreages is 3 years, and
- An appraisal period of 2 years for each discovery made during the initial exploration phase or the renewal thereof. The 2 year period starts from the approval of the appraisal program and applies to an appraisal area that only covers the discovery. The approval will be given no later than 180 days after the licensee has indicated that a discovery merits appraisal.
- Upon the completion of the appraisal period, the licensee shall:
  - Declare a commercial discovery, or
  - Declare a significant gas discovery, or
  - Inform the Inspectorate that the discovery is of no interest to the licensee.
- Where the licensee has decided to declare a commercial discovery, the licensee will be given two years to prepare and submit a development plan. A development plan will be approved or disapproved within 180 days. A petroleum mining lease will be granted for each commercial discovery with an approved development plan.
- Where the licensee has decided to declare a significant gas discovery, the licensee will be given a 10 year retention period in order to enable the licensee to make the arrangements to market the gas in the domestic or export market. The retention applies to the significant gas discovery area which also only covers the discovery.
- After the licensee has made marketing arrangements for a significant gas discovery, the licensee has the option to declare a commercial discovery, in which case the licensee will be given 2 years to submit a development plan, which also will be approved or disapproved within 180 days. Similarly, a petroleum mining lease will be granted for each commercial discovery with an approved development plan that resulted from a significant gas discovery.

What is very important in the IAT proposals is that in order to enter each new phase the licensee has to make new work commitments, as follows:

- In order to obtain the PPL a bidder cannot win a bid without making a significant commitment to an exploration program for the initial exploration phase,
- In order to obtain a renewal of the exploration phase, the licensee has to make further exploration commitments stipulated in the PPL,

- In order to have the right to appraise a discovery, the licensee has to commit to an appraisal program and such program has to be submitted for each discovery that the licensee is of the view that it merits appraisal,
- In order to obtain a petroleum mining lease, the licensee has to commit to the development program proposed in the development plan.

If the licensee does not make the respective commitments for work:

- The licensee will lose the PPL if it does not commit to work for the renewal (subject to possible appraisal areas), and
- The licensee will lose the area of a discovery, if the licensee does not commit to appraisal work, and
- The licensee will lose the area of a commercial discovery if the licensee does not present an acceptable development plan, and
- The licensee will lose the commercial discovery if the licensee does not commit to the work of an acceptable development plan.

In order to stimulate acreage turnover, a relinquishment system is required for licensees.

This provides for a relinquishment of acreage at the end of the initial exploration period and the renewal, as follows:

- 50% based on parcels after initial exploration period
- all acreage after renewal, except for
- appraisal areas and significant gas discovery areas, which need to be relinquished after certain period if no declaration of a commercial discovery is made.

This means the licensee will be under constant pressure to either commit to further work or the licensee will lose the exploration area, discovery or commercial discovery as the case may be.

**This is the implementation “drill or drop” concept. This concept is now widely implemented in many countries in the world.**

What is important is that at the end of the maximum period of 8 years for onshore and shallow water, companies have to give up all acreage except for areas that cover commercial discoveries and significant gas discoveries. The same is true at the end of 10 years for deep water. This means that companies cannot “sit” on large blocks without work commitments at the end of the OPL as is currently the case.

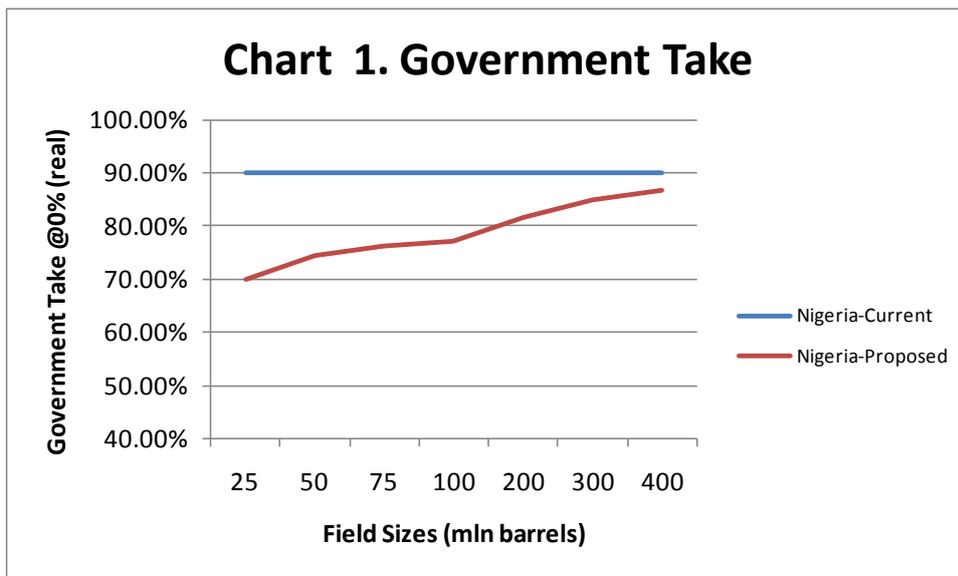
These “drill or drop” provisions will apply to any parcels that are retained by the companies pursuant to *Section 191* as well as any new PPLs granted.

#### 2.1.4. Economic Analysis

Following is an analysis of shallow water economics comparing the Current System (terms and conditions for up to 100 meter water depth were used), and the Proposed System. The analysis is done for companies which are already in Nigeria and would therefore benefit from the consolidation of Companies Income Tax (“CIT”) and Nigerian Hydrocarbon Tax (“NHT”).

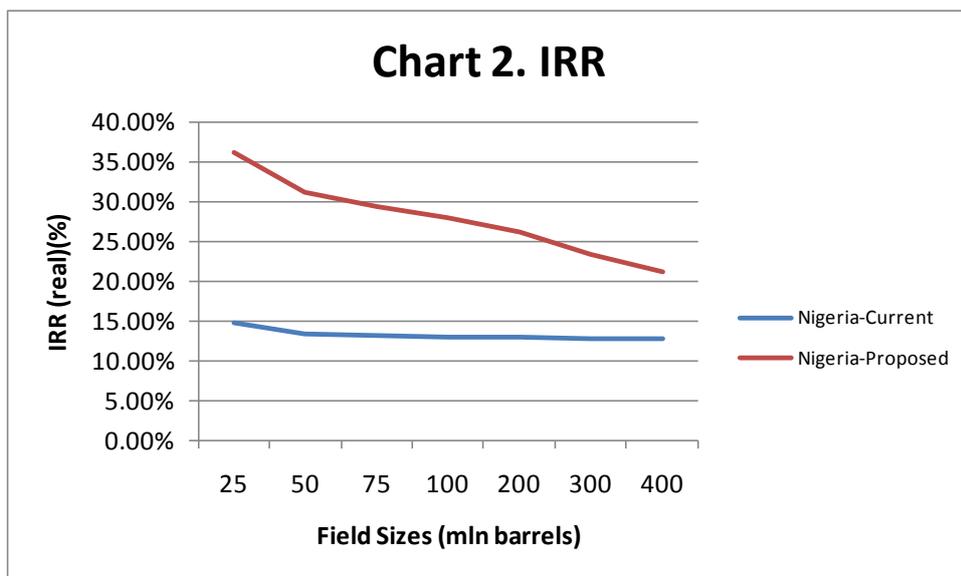
Chart 1 illustrates the difference in undiscounted government take. This chart illustrates the government take for different field sizes, assuming total costs (capital costs and operating costs) of US \$ 20 per barrel and a price of US \$ 80 per barrel.

The Chart 1 shows the very significant drop in government take that is proposed for all field sizes, but in particular for the smaller fields. The much lower government take applies to **new** PMLs. The lower government take is created by the much lower royalties and by the production allowances which reduce the NHT rate very significantly. This creates a level of government take that is directly competitive with states in the United States, of instance. The drop in government take for the small fields is about 20%. In fact, for very small fields, at somewhat lower costs and prices, the government take is as low as 65%.



It should also be noted that the proposed system has a price sensitive royalty scale and therefore for prices in excess of US \$ 70 per barrel, the government take will automatically be higher.

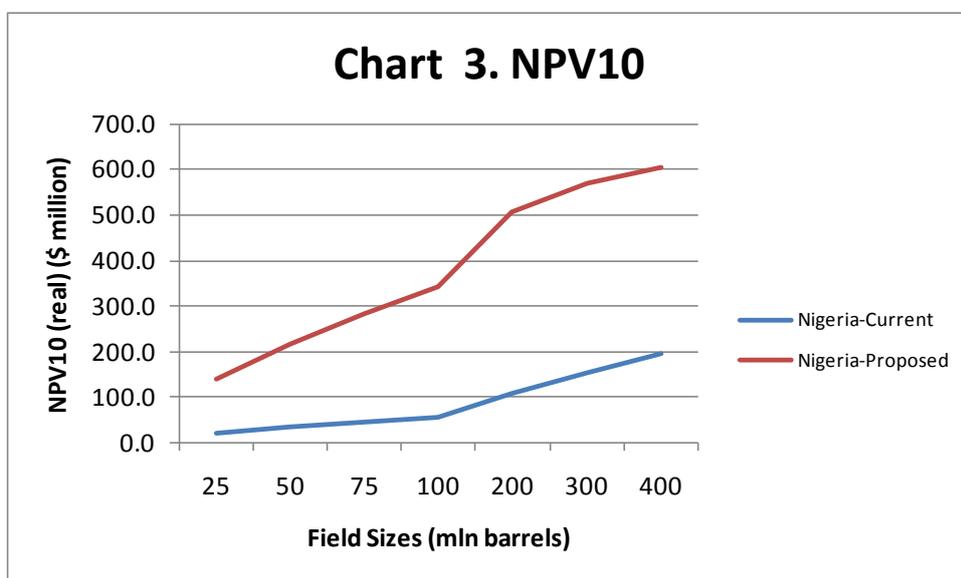
The incremental IRR will be very attractive under these conditions as is illustrated in Chart 2, which is based on the same cases as for the government take.



As a result of the significant drop in government take, the IRR is automatically much higher.

Chart 2 shows how under the current fiscal system, fields costing US \$ 20 per barrel are barely economic under a price level of US \$ 80 per barrel. The Proposed Sstem improves the profitability dramatically.

Chart 3 illustrates the Net Present Value discounted at 10%.

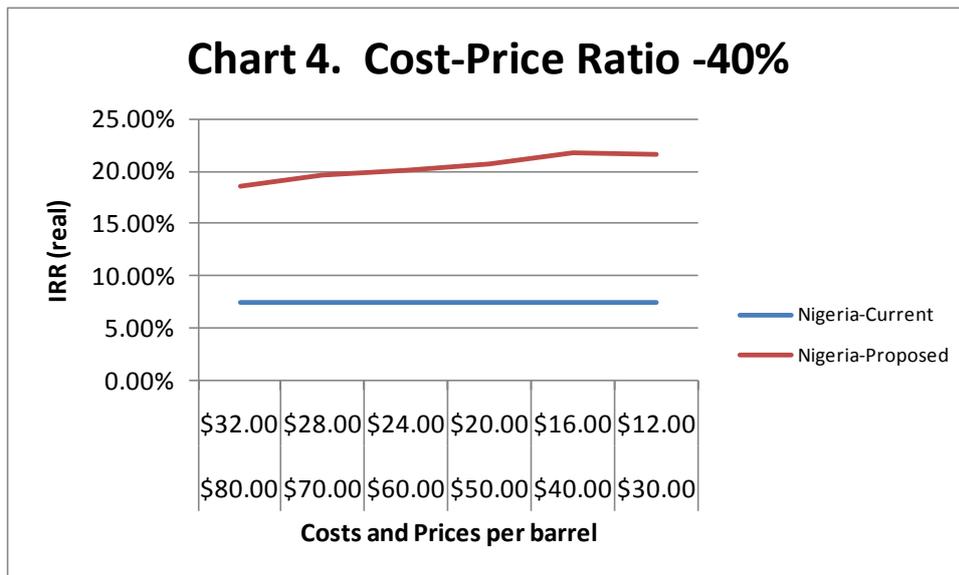


Due to the much lower government take, the NPV10 improves very significantly.

**Based on this analysis, the IAT is of the view that investments in new fields in the onshore and shallow water offshore will be strongly encouraged. This will lead to a significant increase in investment and production.**

What is very important is that this conclusion does not depend on the cost level assumption of US \$ 20 per barrel.

Chart 4 shows the IRR for a new field based on a cost-price ratio of 40%.



This chart illustrates clearly how under the Current Terms field costing 40% of the price are not economic. Under the Proposed System, even if fields cost as much as 40% of the price, the investments will be profitable.

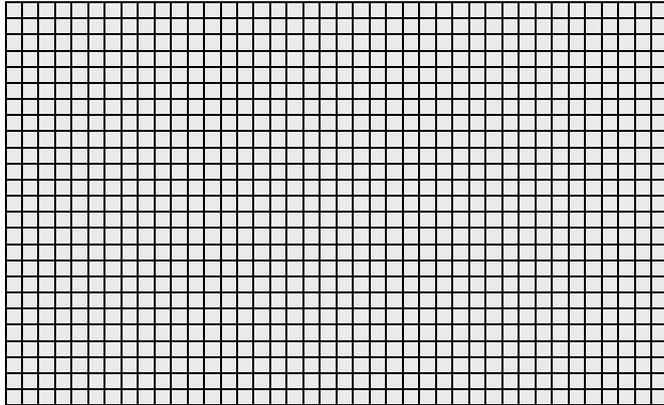
**This means that the Proposed System will encourage investment in a new generation of oil fields. These are fields with deeper reservoirs and lower well productivities. The experience in North America and some other mature areas around the world, is that most of the employment and business opportunities are created by these type of fields.**

### **2.1.5. Modern Acreage Management**

It may be important to illustrate how the “drill or drop” system is implemented in more detail, since this is a key element of the proposals of the IAT. Following is an example for deep water.

The following map illustrates a deep water Petroleum Prospecting Licence (PPL) under the proposed system. The maximum area would be 1000 sq km. The area would consist of 1000 parcels based on the UTM system of 1 square kilometre. The entire area would be available for exploration.

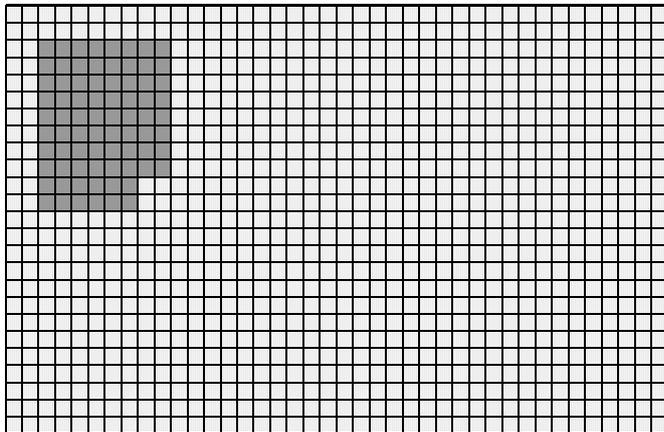
Petroleum Prospecting Licence (PPL) as granted



□ Area for exploration

Assume that during year 3 of the PPL the licensee drills an exploration well which discovers an oil discovery in a structure that merits further appraisal. Assume the structure is 20 square kilometre. This enables the licensee to request an appraisal area. The appraisal area contains a zone of 2 km surrounding the structure, since typically based on a single well it is not possible to define the structure precisely. This creates the following map. The appraisal area can be retained for two years provided the licensee submits an acceptable appraisal drilling program. Such appraisal program is in addition to the ongoing exploration program.

End of Year 3: PPL continuing



□ Area for exploration

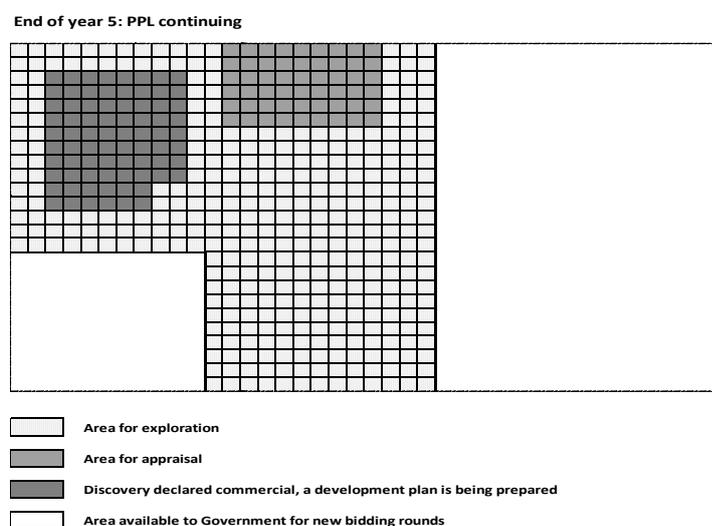
■ Area for appraisal

Assume now that during year 5 the appraisal program of the 20 sq km structure is successful. The licensee will now declare a commercial discovery. This obligates the licensee to prepare a development program for the discovery. A period of 2 years is provided for the submission of this program.

Assume furthermore that the licensee made a second discovery of a 10 sq km oil field. The licensee requests an appraisal area for this field as well.

At the end of year 5, the initial exploration period terminates and the licensee is obligated to relinquish 50% of the acreage. This acreage goes back to the Government and the Government can use this for new bidding rounds.

This creates the situation as displayed on the following map.



The licensee makes new exploration commitments for the renewal phase of 3 years of the exploration.

During year 7, the licensee has presented an acceptable development program. Therefore, the appraisal area of the 20 sq km discovery will be converted to a Petroleum Mining Lease ("PML"). Upon the conversion to a PML the lessee is now obligated to start the development plan that was committed to during the development plan proposal. The area of the PML may contain only one kilometre surrounding the structure and therefore, the PML has a smaller area than the appraisal area.

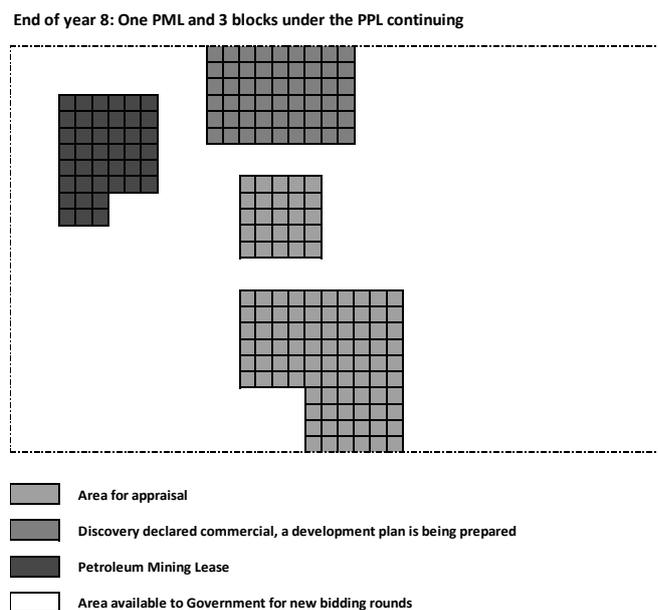
This means that the company now has an area that consists of one PML, but also the PPL is continuing and is still in the renewal stage. The company is therefore lessee of the PML and licensee of the remaining PPL.

During year 7 the licensee also declares the 10 sq km structure commercial and therefore the licensee will start preparing a development plan for this discovery as well.

Assume the licensee makes a small oil discovery, but likes to appraise the discovery anyway to see whether additional reservoirs can be found. This results in a further appraisal area and appraisal program.

Assume that in year 8 a large gas discovery is made and as a result the licensee requests an appraisal area for this discovery and commits to a further appraisal program.

However, at the end of year 8 the renewal phase terminates and therefore acreage that is not a PML, appraisal area or significant gas discovery area needs to be returned. This creates the next map. All exploration commitment have now been complied with and further exploration has ceased. As can be understood the fact that at the end of year 8 all exploration acreage has to be returned is a strong incentive to have an active exploration program.



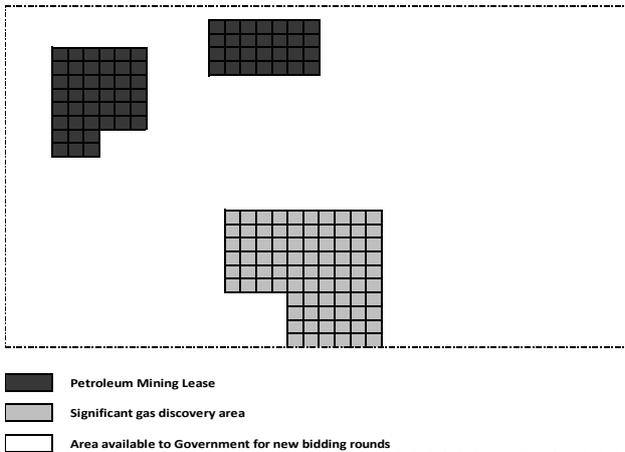
During year 9 the development plan for the second 10 sq km oil discovery has also been approved and therefore a second PML has been granted and the lessee now has to carry out the committed development plan.

Assume that the third oil discovery is not attractive and the licensee declares that this discovery is of no interest to the licensee. This means that the appraisal area will be relinquished.

The 2-year appraisal period for the large gas discovery terminates during year 10 and therefore the licensee has the option to either declare a commercial discovery or a significant gas discovery.

The licensee opts for the declaration of a significant gas discovery. This will give the licensee a 10 year retention period in order to see whether a marketing plan can be developed for the discovery. This creates the following map for the end of year 10.

End of year 10: 2 PMLs and one block under the PPL continuing



The granting of a 10 year retention period does not alter the total available term of the leases. The period of any lease terminates for deep water 30 years after the PPL was granted. Therefore, there is no incentive to “sit” on the large gas field during the retention period.

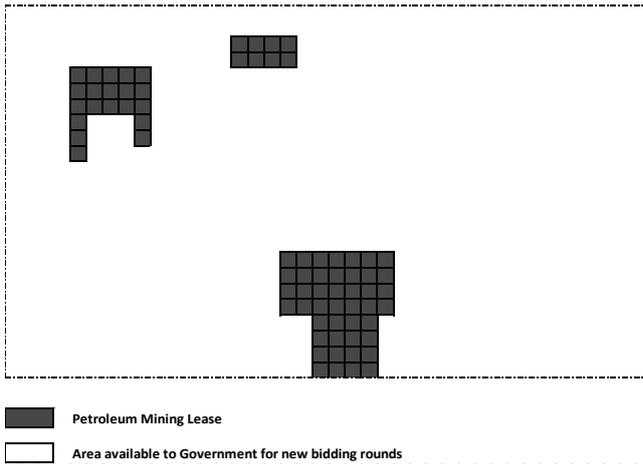
Assume, therefore that in year 15, the licensee makes a commercial discovery based on a gas marketing scheme for exports or the domestic market. This obligates the licensee to submit a development plan for the gas discovery.

During year 17, the first PML is subject to further relinquishment of parcels that are not in production. The purpose of this further relinquishment is to ensure that the lessee fully develops the field, including any deeper zones or extensions. This therefore reduces the size of the PML.

At the same time the development plan has now been accepted for the large gas discovery and a PML is now granted for this gas field, which means that the lessee has to commit to the implementation of the development plan.

During year 19 the acreage of the second PML has to be adjusted to reflect only the producing acreage. This results in the map displayed below.

End of year 19: 3 PMLs continuing

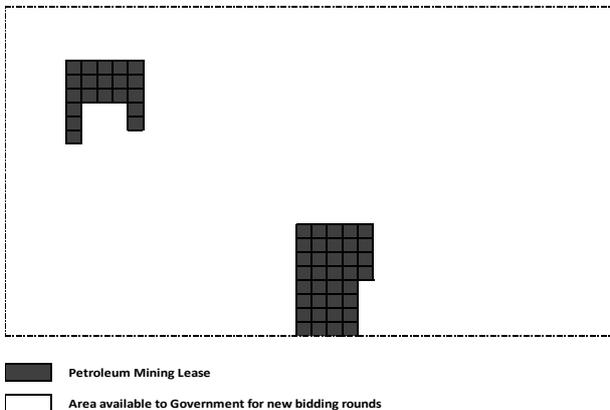


During year 27 the gas PML will have to be adjusted in order to eliminate parcels that are not producing.

Finally, in year 30 the second oil PML stops producing and therefore becomes a dormant PML. Such PMLs have to be relinquished.

This means at the end of year 30 two PMLs remain, as provided for on the map below. The lessee can request a renewal of 10 years production for such leases under new terms and conditions.

End of year 30: End of Lease, 10 year renewal possible under new terms



**It will be obvious from this explanation that the licensee/lessee is under constant pressure to explore, develop, and fully drill any field or otherwise the licensee/lessee will loose the acreage and such acreage can then be offered by the Government in a new bidding round. This is why an efficient “drill or drop” system is key to an increased level of production.**

The question is whether these provisions reflect international practices.

The following table provides an overview for Angola, Egypt, Gabon and Ghana.

	<b>Angola</b>	<b>Egypt</b>	<b>Gabon</b>	<b>Ghana</b>
Exploration phases	Yes	Yes	Yes	Yes
Work commitments for each phase	Yes	Yes	Yes	Yes
Development Plan requirement for Exploitation area	Yes	No	Yes	Yes
Exploitation area only for each discovery area	Yes	Yes	Yes	Yes
Relinquishments during exploration period	No	Yes	No	Yes
Relinquishment of all exploratory acreage upon termination of exploration period	Yes	Yes	Yes	Yes
Relinquishment of exploitation area if not producing within certain time frame or termination if development is not carried out	Yes	Yes	Yes	Yes

As can be seen from the table above, the proposed Nigerian provisions are completely in line with international practices.

It should be noted that apart from the examples of the above four countries, most developing nations will have a similar acreage management system.

#### **2.1.6. Conclusion**

**The IAT predicts that the implementation of these international “drill or drop” provisions in combination with more attractive fiscal terms for new investments will result in a significant increase in activity, petroleum production and better acreage management.**

Of course, these new policies will only be fully successful if at the same time further measures are taken including:

- Providing a more attractive investment framework for domestic gas development, discussed in section 2.2 of this report,

- Success in the resolution of the Niger Delta crisis, as further discussed in section 2.5 of this report,
- The creation of a viable National Oil Company with adequate arrangements to finance new developments under the proposed incorporated joint ventures, to be discussed in section 2.6 of this report, and
- Establishing open access for all producers to existing and future midstream infrastructure to be further explained in section 2.7 of this report.

## **2.2. Objective: Significant increase in gas supplies for power generation and domestic industries**

**The objective is to rapidly increase domestic gas supplies for power generation and provide total support for the plans of Mr. President to create a reliable and effective power supply and ensure sustainable development of gas for national economic growth.**

### **2.2.1. Problems**

Nigeria has very large resources of relatively low cost gas. At the same time the country has an enormous need for electric power. Without rapid expansion of power generation the nation will not fully achieve its economic potential. Power generation on the basis of low cost natural gas is one of the cheapest and environmentally attractive ways of generating power. Despite this situation Nigeria has been notoriously unsuccessful in creating large scale electric power based on natural gas. The per capita electricity and gas consumption in Nigeria is among the lowest in the world. This is a totally unacceptable situation.

A wide range of problems and impediments has led to this situation. The most important factors are:

- Until recently, the price per kWh to power producers was so low that it was not economically attractive to invest in power generation. This is a matter that is now being dealt with and is outside the scope of the work of the IAT and the proposed Redraft.
- Domestic gas prices are controlled and so low that it was usually unattractive to develop and produce natural gas fields. There is no market based gas price system in Nigeria for the domestic market.
- Until recently, attractive gas prices in export markets and low domestic gas prices created an environment in which producers would concentrate on gas export projects through LNG and by pipeline, rather than creating domestic gas supplies.
- There has been no acceptable fiscal and regulatory framework to properly set attractive tariffs for gas pipelines and gas processing plants at levels that would attract significant investment from petroleum companies or independent operators.

- There is no strong midstream regulator that can create the framework for an extensive network of gas pipelines and gas processing plants, that effectively connect producers and consumers with strong open access provisions permitting all producers to sell gas directly to consumers over such networks.
- The existing fiscal framework favors producers strongly over other investors in creating midstream infrastructure, by deducting midstream investments from upstream profits. This is a barrier for independent pipeline and gas processing companies and creates in effect oligopoly conditions and creates a framework in which the midstream sector is not viable on its own.
- Fiscal terms for gas and condensate production in the onshore and shallow water are too tough and create a lack of interest in gas development, and
- The domestic gas supply obligation framework has not been operational due to the absence of a strong midstream regulator to ensure processing and evacuation of upstream gas.

It is obvious that a comprehensive approach is necessary to solve these issues. The proposals of the IAT in the Redraft provide a comprehensive framework to guarantee a rapid increase in domestic gas supplies for power generation and for other domestic gas users.

### **2.2.2. Solutions**

**The IAT proposes a variety of solutions in the Redraft which will result in strong increases in gas supplies for power generation and other consumers in Nigeria. These solutions are:**

- **The creation of attractive fiscal terms for gas and condensates including, for deep water operations,**
- **The removal of cross subsidization of midstream by the upstream in order to create a level playing field,**
- **The application of attractive terms to new projects that eliminate gas flaring or develop deep gas,**
- **The goal of a free functioning gas market is proposed in the Redraft,**
- **In the short term a comprehensive gas pricing framework is proposed that links export prices and domestic prices and is linked to market based indicators,**
- **The creation of high attractive gas pipeline and processing tariffs,**
- **The creation of highly attractive taxation for midstream operations,**
- **The detailed clarification of the domestic gas supply obligation, and**
- **The creation of a strong midstream regulator.**

Following is a discussion of these proposals.

### 2.2.3. Discussion

#### 2.2.3.1. *Creation of attractive fiscal terms for gas, including for deep water operations.*

In Chapter 2.1 it was already discussed how it is proposed to improve the fiscal terms for onshore and shallow water and the profitability of deep water operations.

In general, the proposed fiscal terms now create an environment whereby the government take for natural gas and condensates is less than for crude oil for fields of similar size and costs. This is consistent with an international competitive environment. Nations that export gas over large distances by pipeline or in the form of LNG typically have a lower government take for gas compared to oil. **The IAT proposes that Nigeria follows this overall approach. It is therefore, that fiscal terms for onshore and shallow water were significantly improved for gas and for condensates.**

It should be noted that a major impediment to natural gas development in Nigeria so far has been that the production sharing contracts for deep water do not specify terms for gas. Under these contracts gas is a matter for negotiation for new gas development agreements.

An important concept in the Redraft is that IAT proposes that companies that convert to the new deep water terms will now be able to develop gas under their production sharing contracts, under favorable royalty and tax terms, as well as a favorable low profit share for gas and for condensates to the National Oil Company of 10% as provided for under *Section 404(3)(b) and (c)*.

This unblocks on a very large scale new gas developments, since significant gas discoveries have already been made in deep water.

#### 2.2.3.2. *Removal of cross subsidization of midstream by upstream.*

An important proposed change in the taxation system is the removal of the cross subsidization of the midstream by the upstream. Under the current PPTA, companies can deduct gas pipelines and gas processing plants from their upstream PPT. This in fact means that the Government pays for more than 85% of such infrastructure through the taxation system.

The removal of this cross subsidization is an elimination of a strong fiscal incentive. Nevertheless, this was clearly an unhealthy concept.

Firstly, it essentially made it uneconomic for any independent companies to compete, since without upstream operations, they would not be subject to such tax deductions. This in turn has created a situation of a de-facto oligopoly, where only a few companies have the ability to operate in the midstream.

Secondly, however, these tax incentives were an important argument to keep gas prices low. Since Government paid through the tax system for most of the gas infrastructure there was no need for a competitive and viable gas price.

This cross subsidization system combined with the gas pricing system has obviously not worked for Nigeria in order to bring about a viable domestic gas supply industry.

**It is therefore that the IAT proposes to eliminate this cross subsidization and proposes to create a self-financing and viable midstream sector. Investments in gas pipelines and gas processing plants must be viable investments on their own merits. This is the only way to promote a healthy gas industry and attract the large scale investment that is required.**

#### **2.2.3.3. Attractive terms for elimination of flaring and deep gas.**

It is obvious that the first source of gas for the domestic market should be gas derived from the elimination of gas flaring. Under the current fiscal conditions and gas prices this is not an attractive operation. It is therefore proposed that the new NHT terms for gas, which normally apply only to new PMLs, will also apply for projects related to the elimination of gas flaring. The opportunity for production allowances is now contained in *Section 343(4)(a)*. The combination of attractive fiscal terms to eliminate gas flaring and an attractive gas price, discussed below, is a very strong incentive to eliminate gas flaring and make volumes available for domestic use in the shortest period of time.

The same attractive features are also applicable to new gas that is being produced from an existing PML from a deep gas field which is clearly a separate field and requires significant investment in order to bring it into production as provided for in *Section 343(4)(b)*. There might be some large gas fields under existing PMLs. These fields have not yet been explored. The discovery of such large gas fields could create large volumes of low cost gas supplies for the domestic market.

#### **2.2.3.4. Goal of a free functioning gas market.**

Ideally, the gas prices in Nigeria should be determined by the forces of supply and demand of gas, as is currently the case in North America and North West Europe. **The IAT proposes that the possibility for free gas markets for wholesale gas prices be included in the Bill.** The Redraft enshrines this concept in *Section 293*. It provides for an emerging free market among wholesale gas suppliers and consumers. In the case of the strategic sectors, this free market will apply over and above the volumes related to the domestic gas supply obligation.

At the same time *Sections 304(7) and 310* provide for the fact that such volumes will not be taken into account in determining the domestic gas supply obligation. In other words the overall concept is to gradually let the free market mechanism take over from the price controls established under *Section 304(5)*.

However, faced with a de-facto oligopolistic supply situation in the short term in the Nigerian gas markets, potential wholesale customers should receive some initial protection.

The experience in some other developing countries has been that when contracting among a limited number of gas producers and consumers is based on unrestricted negotiations, gas prices tend to result in prices that are equivalent to the competing petroleum product prices or crude oil prices, reflecting a continental European gas marketing structure. Such developments are not in the interest of Nigeria. Nigeria has more than sufficient low cost gas reserves to supply gas on a wholesale basis at prices that are well below those in North America and Europe. Nigeria should use its low cost gas resources as an engine of economic growth, as a number of other developing countries have done successfully.

It is expected that protection of wholesale customers will be required for only a limited period of time. Free market conditions could rather rapidly emerge, where:

- A large number of producers, in particular small producers, are involved in the supplies,
- A large number of viable customers are established in the power sector, and
- These producers and customers are connected with an open access pipeline and gas processing system that has sufficient capacity and the ability to establish additional capacity to handle incremental volumes.

#### **2.2.3.5. Short term gas pricing framework.**

The Government Memorandum establishes a comprehensive framework for gas pricing in the short terms that will:

- Provide acceptable prices to producers
- Permit the power sectors and other investors in the strategic sectors to benefit from the very large low cost gas resources
- Links the domestic prices to export prices, and
- Links the domestic prices to the international gas market.

The Government Memorandum establishes this framework on the basis of a clearly set of clearly defined concepts. Following are three important definitions introduced in the Government Memorandum:

**"marketable gas"** means a mixture mainly of methane and other hydrocarbons, if necessary through the processing of the raw gas for the removal or partial removal of some of its constituents, and which meets specifications determined by the Agency for distribution to wholesale and small customers:

- (a) for use as a domestic, commercial and industrial fuel; and
- (b) as feedstock or industrial raw material;

**"marketable gas delivery point"** means a point where marketable gas is made available to customers, at the exit of a central gas processing facility, gas processing plant or gas conditioning plant or at a measurement point, or such other location immediately downstream of a facility in which such gas has been produced, processed, conditioned or treated in order to produce marketable gas;

**"strategic sectors"** means in relation to gas purchases by wholesale customers of the following sectors:

- (a) the power sector,

- (b) the gas conversion sector, consisting of industries using gas as a feed stock or industrial raw material but not including GTL and other industries that may be excluded by the Agency, and
- (c) the commercial sector, consisting of industries, as may be determined by the Agency, which use gas as an energy source;

Gas produced at the measurement point in a gas field is often so-called “raw gas”. This is gas that requires further processing or conditioning in order to be suitable for marketing to the power sector or other sectors. During further gas conditioning, impurities such as hydrogen-sulfide or carbon-dioxide will be removed. Gas processing will remove most of the propane-butane, natural gas liquids, pentanes plus, plant condensates and other hydrocarbons. The final “marketable gas” will consist mainly of methane and would also contain some ethane and minor amounts of propane, butane or other products. The gas will be suitable for transportation in gas pipeline systems and for burning in power plants or other industries or for use as feedstock for production of methanol or ammonia. What is important is to establish that the price of the gas that is regulated is the marketable gas, not the raw gas.

The “marketable gas delivery point” is an important definition because this definition establishes where the gas price is being determined. In some cases the gas that is produced in a gas field can be sold directly at the measurement point. In this case the regulated gas price will apply at such measurement point. In most cases the gas will require further conditioning or processing and in this case the gas price applies at the outlet of such facilities.

The short term gas pricing framework for the strategic sectors is being set in *Section 304(5)*.

**It is proposed that the gas pricing framework will be market based and will establish under all conditions a floor price of US \$ 1.50 per MMBtu. This floor price is escalated with the adjustment factor of *Section 331* of the Government Memorandum.**

This floor price is designed to permit small operators to build and operate their own small raw gas pipeline and gas processing plant. Unless small operators are able to build their own plants economically or have access to third party plants, the gas market in Nigeria will remain an oligopoly. Also to stimulate small producers to participate in the Nigerian gas industry it is important to create economic conditions for them that are viable.

A small producers may not wish to wait until the company gets access to a large gas processing plant based on an open access system. “Open access” does not mean prorating. Once the plant has offered all its capacity on an open access basis and a variety of operators have made commitments for this capacity, the plant is full. Therefore, a small operator would have to wait until a new plant is built or the midstream regulatory entity orders the expansion of the plant.

In many countries therefore small companies often built their own smaller plants. On a large gas processing and pipeline system, total tariffs for raw gas pipeline transportation and gas processing may only be US \$ 0.60 per Mcf. Operating a small plant would be more costly. However, in order to speed up cash flow, the producer may wish to accept the lower netback price and built the smaller plant itself. Table 1 provides an example of the economics.

Table 1 below illustrates how the floor price of US \$ 1.50 per MMBtu at the exit of a gas processing plant owned by a small operator will create a raw gas price at the measurement point of only US \$ 0.28 per MMBtu, even if the full value of the liquids extracted from the gas is taken into consideration. The raw gas pipeline tariff and gas processing tariff are based on the tariff structure contained in *Section 275(12) and (13)*. The table illustrates that under these conditions only gas fields with a very significant condensate content will be economic to produce. This is therefore a floor price that creates absolute minimum conditions for small independent producers.

**Table 1**

**Raw gas netback calculation for a small producer with a small processing plant**

		<b>Assumptions</b>	
Gross gas revenues per day	75900	Marketable gas price	\$ 1.50 per MMBtu
Liquid revenues per day	14000	Average liquids price	\$ 400 per ton
		Raw Gas input	50 MMcft/day
Gross Revenues per Mcf Prod	1.80	Sales Gas output	46 MMcft/day
Gas Processing tariff per Mcf	1.17	Liquids	35 tons per day
Raw Gas pipeline tariff per Mcf	0.27	Btu of Sales Gas	1100 Btu/cft
<b>Raw Gas net back per Mcf</b>	<b>0.36</b>	Btu of Raw Gas	1300 Btu/cft
Raw Gas net back per MMBtu	<b>0.28</b>		

**Note: The combined tariffs for raw gas transportation and gas processing in large facilities are estimated in the range of US \$ 0.40 to US \$ 0.80 per Mcf.**

**However, the IAT proposes to link that gas pricing structure to international conditions. A direct link is established with the Henry Hub spot price for gas, which is the main indicator of gas pricing conditions in North America. The floor price applies as long as the Henry Hub price is US \$ 3 per MMBtu or less.**

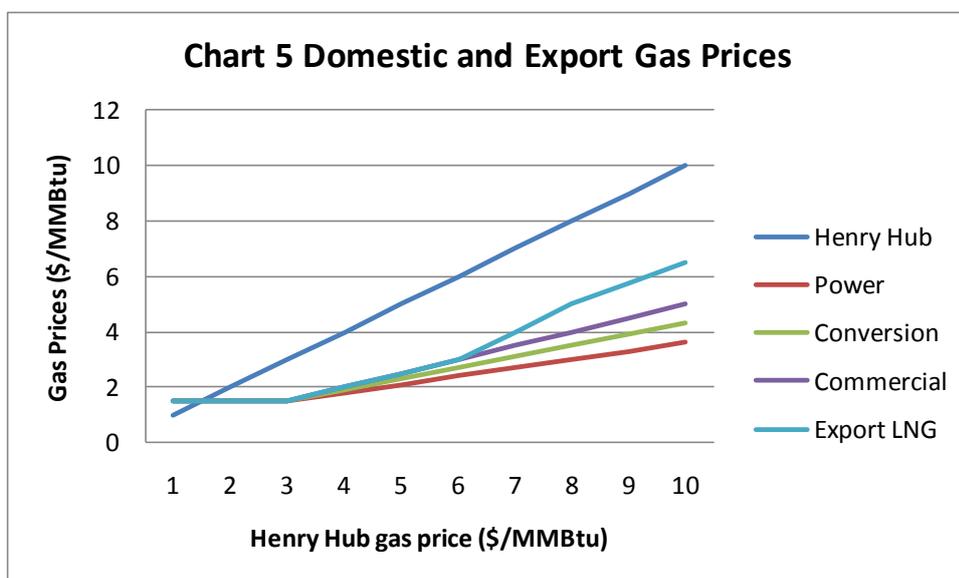
Above this level the maximum Nigerian domestic gas price for power generation increases with 30% of the difference between the Henry Hub price and US \$ 3 per MMBtu, based on a rolling average of the monthly average prices. For instance, if the average for the last year is US \$ 4.50 per MMBtu, the domestic gas price for power generation will be US \$ 1.95 per MMBtu (\$ 1.50 per MMBtu plus 30% of an extra US \$ 1.50). In the immediate short term the gas price for the power sector will be set at US \$ 1.50 per MMBtu for 2011 and 2012. For 2013 the gas price will be set at US \$ 2.00 per MMBtu. Thereafter the link with the Henry Hub price will be implemented.

The percentage difference for gas conversion sector is 40% and for the commercial sector is 50%. It should be noted that the above gas price levels are maximum gas prices. In other words, this is only a price cap in order to protect the Nigerian market initially from oligopolistic practices. Producers and wholesale customers are able to negotiate lower prices.

Therefore, as new gas resources become increasingly available and the number of players in the market increases, it is expected that gas prices will in effect rapidly be established by the forces of supply and demand.

For the purposes of royalties, the Nigerian Hydrocarbon Tax and production sharing, the export price will also have a floor price of US \$ 1.50. Over this level, the Government would accept a so-called S-curve in order to ensure that Nigeria receives fair value for exported gas. These provisions are contained in *Section 334(8)(b)*.

This overall concept ensures that Nigerian wholesale customers in the strategic sectors will always pay less than the export price of gas. Chart 5 below illustrates the overall gas pricing concepts.



#### **2.2.3.6. Attractive gas pipeline and gas processing tariffs.**

The main problem at this time is that there is no comprehensive framework with respect to gas pipeline tariffs and gas processing tariffs. The income of independent pipeline companies and gas processing companies is entirely determined by the tariffs they receive for these services. Therefore, in order to stimulate rapid large scale investment in this type of infrastructure it is essential that the construction and operation of pipelines and gas processing plants is highly profitable.

It is also important that a stable generally applicable framework is being established. In most countries pipeline tariffs and sometimes gas processing tariffs are regulated in order to ensure that small producers have proper access to these facilities at tariffs that are known and non-discriminatory.

The initial tariffs to be used in Nigeria are established in *Sections 275(12) and (13)*. These tariffs provide for pipelines for a guaranteed rate of return of 13% in real terms (about 15% in nominal terms) for pipelines on an after tax basis. This rate or return is determined on the total capital base. This means that the more the investor is able to borrow, the higher the rate or return on equity will be. For instance, if the investor is able to borrow 50% of the capital expenditures for a rate of 7%, the average rate will still be 13% and therefore the rate on equity will be 19%. A rate of 13% rate of return on total capital is among the most attractive rates in Africa. This is higher than the West African Gas Pipeline from Nigeria to Ghana. It is also higher than rates applied for gas lines connecting Africa and Europe. The rate is much higher than rates applied in North America or Europe.

The same principle is applied to gas processing plants. Only in this case the internal rate of return ranges from 13% to 15% on a real basis depending on the size of the plant. In order to stimulate small producers to built gas processing plants very attractive rates are proposed by the IAT. This should therefore be an attractive basis for investing in gas pipelines and gas processing plants in Nigeria.

#### **2.2.3.7. Attractive taxation for midstream operations.**

The creation of a profitable midstream sector is furthermore supported by an attractive taxation regime. The midstream operations are essentially only subject to companies income tax at a current rate of 30%. Companies will benefit from an initial tax free period of 3 years from the start of operations, which can be extended with another 2 years, or alternatively an investment allowance of 35%. Also there is an initial allowance of 90% of capital expenditures and the allowances can be taken upon the completion of the tax free period.

In summary, this means that there will be no or a minimum companies income tax during the first 10 years of operations of the facilities.

As was explained, under the proposed tariff structure, the rate of return is on an after tax basis. This means that any anticipated tax payments will be added to the basis for calculating the tariff. The tariff will therefore be higher to the degree tax is levied on the pipeline or gas processing operations. **The attractive tax regime therefore benefits the consumers, it has no impact on investors.**

#### **2.2.3.8. Detailed clarification of the domestic gas supply obligation.**

**The IAT proposes to include the earlier regulations related to the domestic gas supply obligation in the Government Memorandum. However, the procedures have been clarified and strengthened in order to ensure a proper functioning of these obligations in a variety of sections of the Government Memorandum.**

*Section 182* now provides the powers to the Inspectorate to properly allocate and enforce the domestic supply obligation with respect to the lessees. An allocation methodology is now established that ensures a fair methodology among lessees based on plans submitted by the lessees pursuant to *Section 306*. Also the allocation methodology now prevents that lessees allocate cheap gas to exports and expensive gas to domestic consumption.

*Section 306* now clarifies that PMLs that only contain dry natural gas are excluded from the national domestic gas supply obligation. Dry gas is relatively uneconomic to produce due to the lack of high value condensates. Therefore, this provisions protects producers against obligations that would be inherently uneconomic to execute. At the same time, this provision protects consumers against costly gas being allocated to the domestic market.

*Section 304(8)* clarifies the obligations of the lessees under the domestic gas supply obligation. This obligation is to deliver the gas to the inlet flange of the wholesale customer. This does not involve an obligation to construct pipelines and gas processing plants. However, lessees have the obligation to respond positively to invitations on the part of pipeline and gas processing companies to enter into long term gas transportation and processing agreements to ensure that gas is transported and processed in order to be available for purchase by the customer.

#### **2.2.3.9. Creation of a strong midstream regulator.**

The creation of an extensive network of gas pipelines and gas processing plants, with well established tariffs and open access of any producer requires a strong midstream regulator. This matter will be discussed in more detail in section 2.8 of this report.

### **2.2.4. Economic Analysis**

#### **2.2.4.1. Economics of gas-condensate production**

**As will be illustrated in this section of the report, a very important and fundamental change in the fiscal structure is the overall structure for gas and condensates.**

Currently, the overall concept is largely based on associated gas. The framework is that associated gas could be made available largely for free as part of the crude oil operations, as long as the costs of gas production and midstream infrastructure can be deducted for PPT purposes from the crude oil income. In other words, the concept was based on the average project economics for oil and gas together. This concept has been a failure. The reason is that investors in gas development will judge such investments on an incremental basis, not on an average basis. On an incremental basis, investments in gas development and production were mostly uneconomic. Therefore, regulations with respect to a domestic gas supply obligation were introduced, but these regulations have so far been unsuccessful as well.

**In support of the power sector initiatives of Mr. President, the IAT proposes a fundamental change to the gas fiscal concepts and the gas economics. The proposed concept is that gas-condensate fields should be economic to develop and produce, independent of crude oil developments.**

This IAT proposal will make gas development and production sector a very important sector on its own in Nigeria.

In other words, if a small Nigerian company, carries out an exploration program and happens to find a gas-condensate field, rather than a crude oil field, it should be economic to develop such field for domestic consumption, provided the condensate and natural gas liquids yields are adequate.

The following charts will illustrate this matter. The charts are based on a condensate yield of 50 barrels per million cubic feet of gas in shallow water. The long term Henry Hub gas price is assumed to be the crude oil price divided by 15. The charts are made for a crude oil and condensate price of US \$ 80 per barrel. The charts shows both volume and cost variation. In calculating the netback from the outlet of the gas processing plant, it was assumed that for large facilities, the total raw gas pipeline and gas processing tariff would be US \$ 0.60 per Mcf.

The economic analysis is done from the perspective of an investor which has already operations in the onshore/shallow water areas and can therefore consolidate for tax purposes.

Chart 6 illustrates, how under the current system, as applicable before the new gas price announcement by the HMPCR, the government take for gas developments for the domestic market was essentially a “crude oil” government take well over 90% and considerably in excess of gas government takes in other countries.

The proposed government take is the same regardless of whether gas is exported or not (therefore the two lines in the chart cover each other). However, it should be noted that with respect to domestic gas for power generation, there would be a consumer benefit as illustrated in Chart 5, that is not captured in the government take chart.

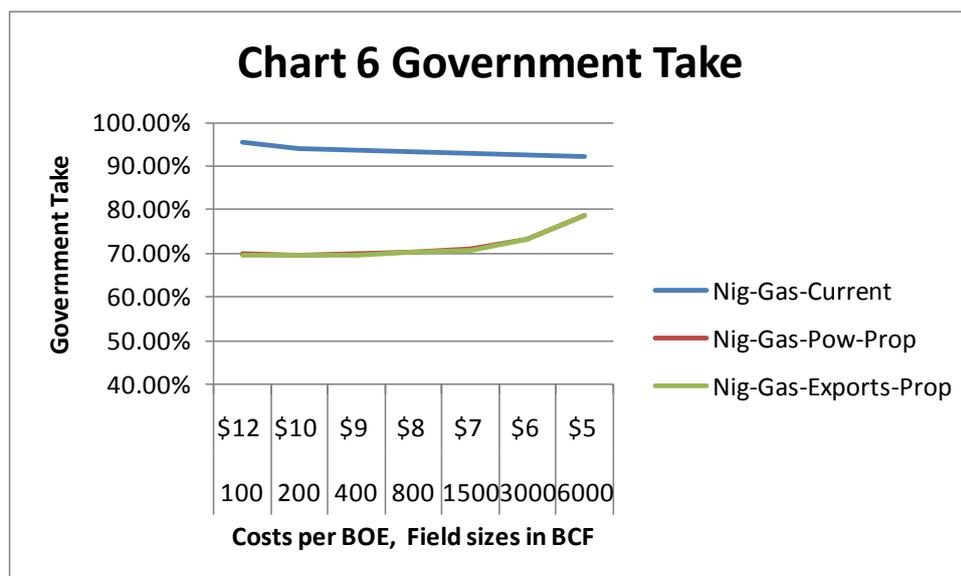
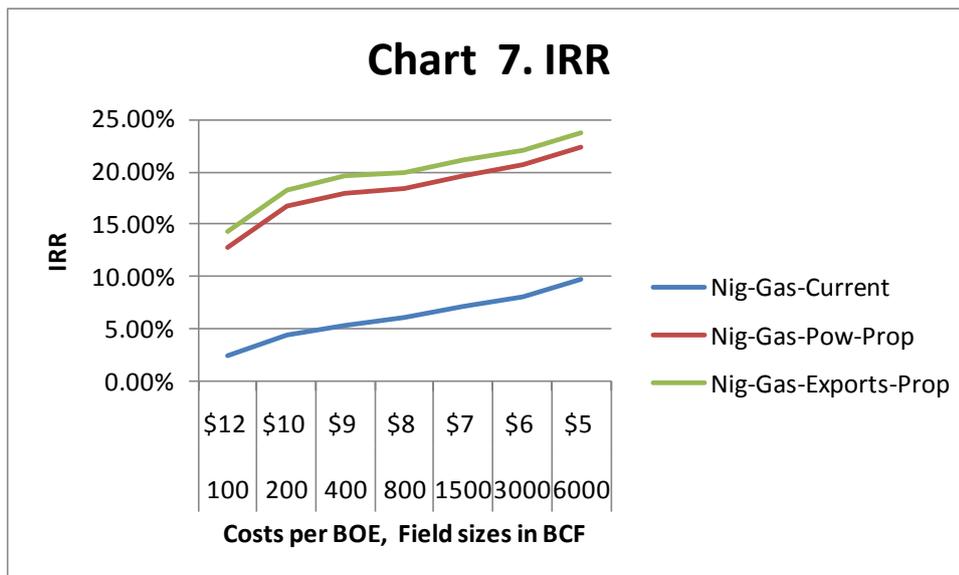


Chart 7 illustrates the IRR. It is obvious that under the current system it is not economic to develop a gas condensate field for the domestic market, unless costs would be very low, condensate yields would be very high.



Under the system proposed by the IAT gas-condensate fields would be attractive investment opportunities. As is also illustrated, the economics would be very similar for gas destined to the power sector and destined to exports, at the US \$ 80 per barrel price level.

This is very important for small Nigerian or foreign owned companies. They do not have to sell their gas to a large LNG consortium in order to have a viable gas production project. They can simply develop a gas-condensate field for the domestic power sector or for other domestic clients. As was illustrated in subsection 2.2.3.5 of this report, they can even built their own small raw gas pipeline line and gas processing processing plant and make an attractive rate of return on the midstream investments as well. At the outlet of the gas processing plant they can deliver gas under open access provisions, enforced by a powerful midstream regulator, to any client connected to the marketable gas pipeline grid. This is very similar to conditions as would exist in the United States, Canada or the North Sea.

**It is this fact, that is the basis for the view of the IAT, that rather rapidly a truly competitive Nigerian gas market will develop, with competition among producers and consumers. This is also the basis for the view that strong investment in domestic gas and oil production will occur by smaller companies.**

It is for this reason that *Section 309(4)* is included in the Redraft. This section provides for the fact that Part V-C of the Act will stand repealed as soon as the gas market has reached a level of maturity. The IAT believes that this section may actually be applied within a decade and that the gas-gas competition that will emerge will result in continuing to supply Nigerian consumers with low cost gas for decades to come.

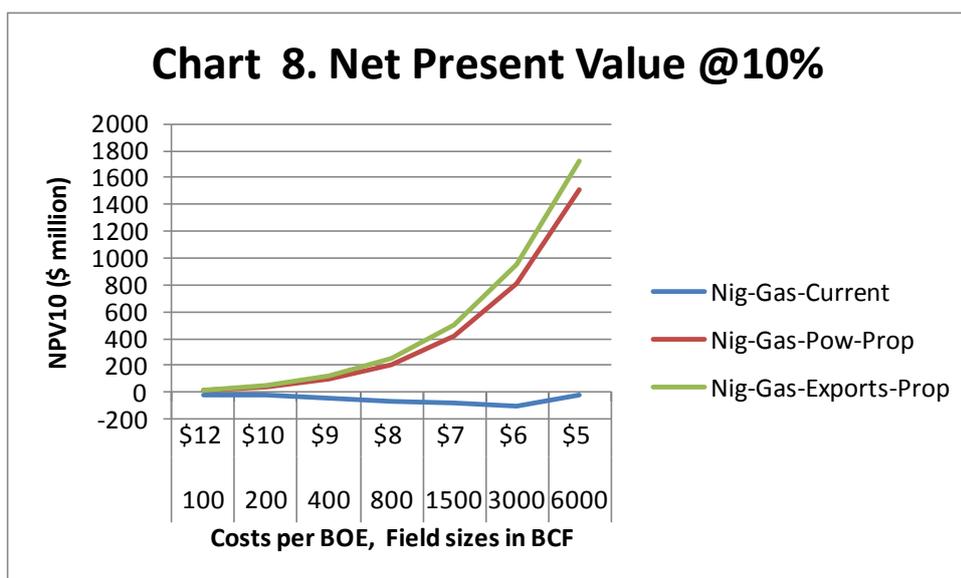


Chart 8 illustrates the dramatic difference in the important Net Present Value discounted at 10%. Under the current system, there is simply no value in developing gas-condensate fields for the domestic markets.

Under the system proposed by the IAT, there is considerable value in developing gas-condensate fields for the domestic market. This is in particular true for large gas-condensate fields. Exploration and development of such large fields is therefore encouraged under the IAT proposals, in particular through *Section 353(4)(b)*.

#### 2.2.4.2. Competitive Framework for Gas for Exports

The gas terms proposed by the IAT are fully competitive from the point of view of gas exports.

The following charts are based on the same cost and price data as used in subsection 2.2.4.1 of this report.

Chart 9 illustrates the undiscounted government take. Nigeria has a relatively low government take for small high cost fields. For very large low cost fields the government take in Nigeria is relatively high compared with other countries. On average the government take is very competitive.

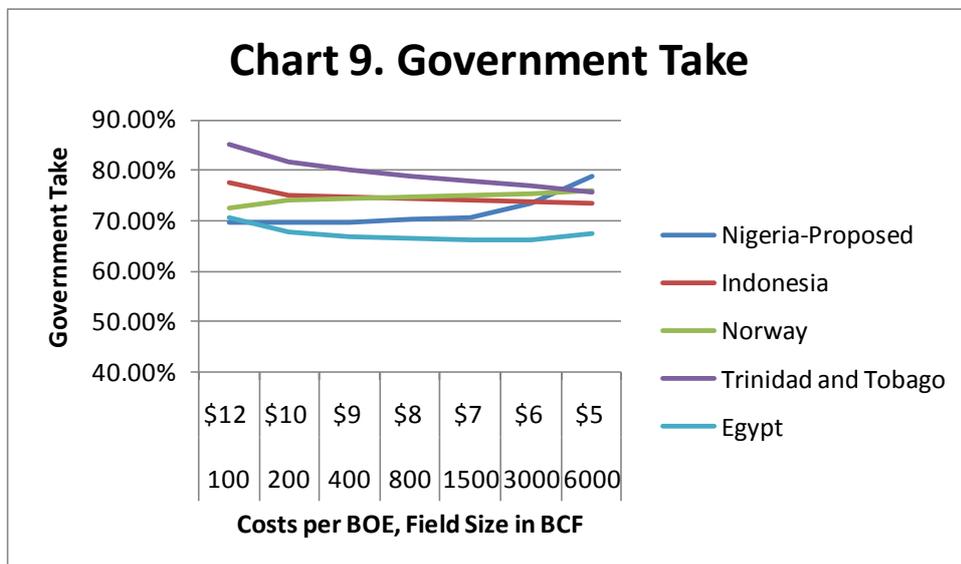
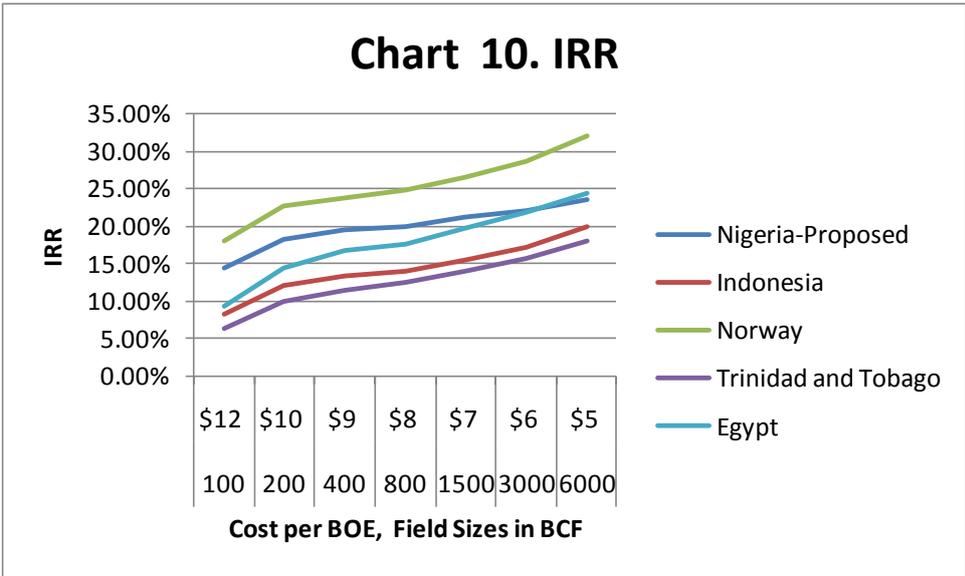
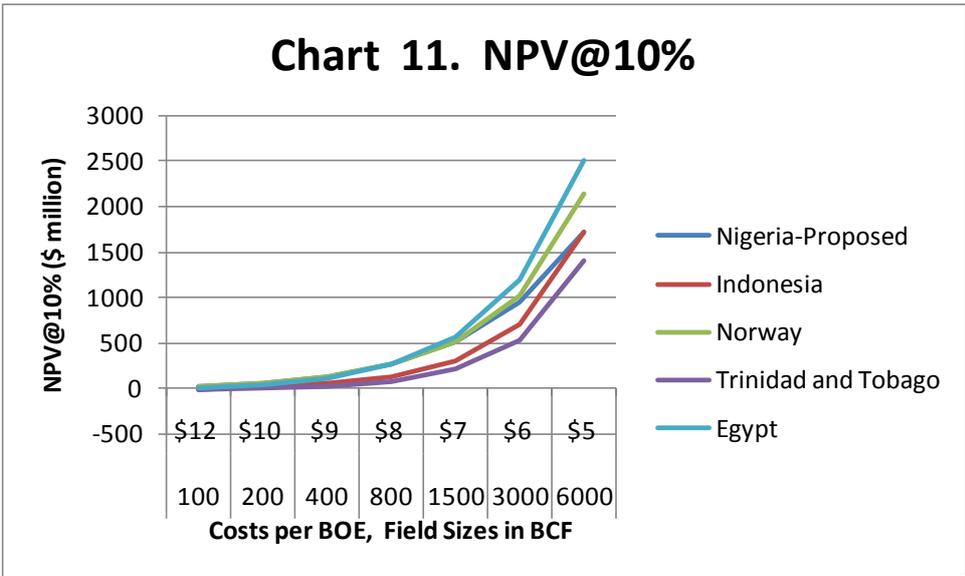


Chart 10 illustrates the IRR. Due to the favourable consolidation provisions for tax purposes, Nigeria has a very attractive IRR compared to other countries, in particular for small fields.



With respect to the Net Present Value discounted at 10%, Nigeria rates in the middle compared to other countries.



It should be noted that for deep water, the IAT now proposes production sharing terms for gas and condensates. Gas was not included in the production sharing contract terms before. Therefore, not only will onshore and shallow water gas be available for exports, but attractive and competitive terms are now also provided for deep water developments for export gas.

**The fiscal terms for production and development of gas-condensate fields proposed by the IAT are therefore competitive with other important LNG exporting countries.**

#### **2.2.5. Conclusion**

**The proposals of the IAT will lead to a rapid expansion of domestic gas supplies for power generation and for other strategic sectors, while creating a domestic gas market that is linked to international markets. The IAT expects the Nigerian gas market to evolve over time into a full free market where prices are set by the competition of gas producers and wholesale customers.**

**The proposals of the IAT will enable the nation to fully benefit from the low cost Nigerian gas resources in order to ensure that the Nigerian economy achieves its full economic potential.**

### **2.3. Objective: Increase revenues from deep water while increasing production**

**The objective is to establish a fiscal framework for deep water that provides a fair share of the economic rent for Nigeria, is competitive from an international perspective and provides a framework for further expansion of deep water oil and gas production.**

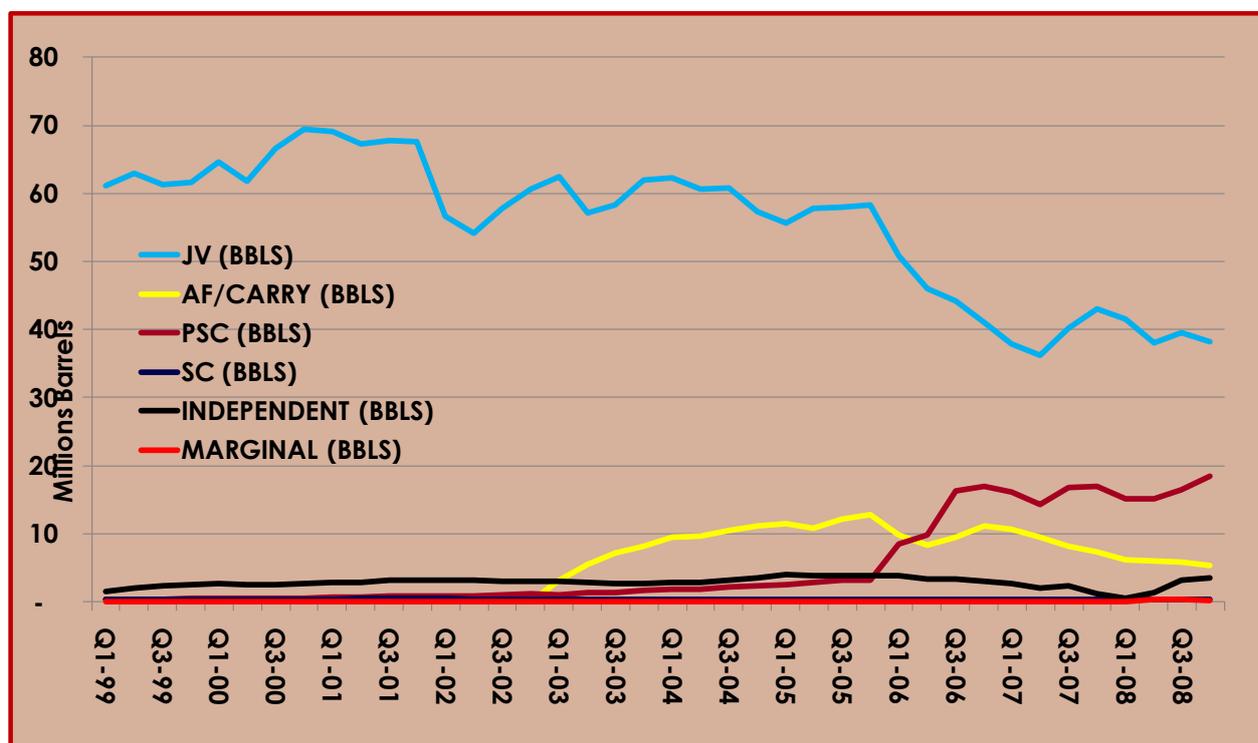
#### **2.3.1. Problems**

The PSCs that were concluded based on the 1993 model, provide for government revenues that are well below competitive levels. Even in 1993 these contracts were already overly generous for investors compared to other countries.

For deep water, in excess of 1000 meter water depth, there are no royalties. Therefore, the main revenues to the government are derived from the Petroleum Profits Tax. This tax is levied at a rate of 50%, but generous tax credits reduce the tax payments considerably. Under low prices and high costs, the tax payments could even be zero.

The State also receives the profit oil share of NNPC. This scale is based on a sliding scale based on cumulative production per contract area. On the first 350 million barrels the profit oil share is 20%. Over this level it is going up to 60% over 1500 million barrels. This means that on the first field in a contract area initially the profit oil share is low.

An important problem is that the production from JVs (with a high government take) is declining, while the production from 1993 PSCs (with a low government take) is increasing. This will have the effect of significantly eroding the Government revenue base.



A further problem is that some of the contract areas were granted to Nigerian individual companies, rather than to NNPC, and therefore the profit oil share is privately held. NNPC participates in some of the contracts. Nevertheless, this means that on the privately held part of such contracts, the main share of the government revenues consists only of the PPT payments.

Despite the over generous share on the first field under the 1993 PSCs, the rate of development of deep water production has been modest. There is a variety of reasons for this as follows:

- Most of the contract areas are granted under the model of the year 2000 PSCs. These PSCs have a fair share for Nigeria (taking into account the NNPC profit oil). However, due to the lack of tax consolidation there is no strong incentive to invest in such contracts compared to other opportunities.
- Some of the contract areas granted under the model of the year 2005 have terms that are clearly too onerous for investors under current economic conditions.
- Due to the profit oil split per contract area, smaller follow up fields in the same contract area, after an initial large fields is under production, have a much higher government take and are therefore in some cases unattractive.
- Gas terms and profit gas splits are not defined in the contracts and therefore there is uncertainty with respect to gas and condensate developments.

- The acreage management issues that were discussed under section 2.1 of this report also apply to a major degree to deep water PSCs. Since companies can “sit” on their acreage, there is no incentive to develop fields in Nigeria in the context of other obligations world wide.

### **2.3.2. Solutions**

The Legal Department of NNPC has informed the IAT that the government has the legal right to change the fiscal terms and conditions of the existing PSCs, despite certain contractual provisions in the 1993 PSCs.

**Based on this legal advice, the IAT proposes in the Redraft the following solutions:**

- **To establish a single fiscal regime for deep water which results in a significant increase in government take on first fields in the 1993 PSCs, but approximately maintains the government take on 2000 PSCs.**
- **To establish consolidation for Companies Income Tax and Nigerian Hydrocarbon Tax purposes for all developments in deep water in order to encourage investments in contract areas under the 2000.**
- **To ring fence the profit oil calculations on a field by field basis, so the scale starts at a low level of 20% for each field, and investments in smaller fields is encouraged, and**
- **Clarify that taxes will be levied directly on the profit oil/profit gas share.**

Following is a discussion of these proposals.

### **2.3.3. Discussion**

#### ***2.3.3.1. Establish single fiscal regime for deep water.***

The current fiscal regime for deep water depends on the PSC Model series, which are:

- The 1993 PSC Model series
- The 2000 PSC Model series, and
- The 2005 PSC Model series

Table 2 provides an overview of the terms and conditions of these PSCs for a water depth exceeding 1000 meters.

**Table 2**

Current fiscal terms for deep water PSCs for oil for more than 1000 meter water depth

	1993 PSCs	2000 PSCs	2005 PSCs
Royalties	0%	8%	8%
PPT Rate	50%	50%	50%
Credits/Allowances	50% ITC	50% ITA	50% ITA
Education Tax	2%	2%	2%
NDDC charge	3%	3%	3%
<b>Production Sharing:</b>			
Cost oil limit	100%	80%	80%
<b>Profit Oil split based on cumulative volume:</b>			
up to 350 mln bbls	20%	30%	n/a
up to 700 mln bbls	35%	35%	n/a
up to 1000 mln bbls	45%	47.5%	n/a
up to 1500 mln bbls	55%	55%	n/a
up to 2000 mln bbls	60%	65%	n/a
over 2000 mln bbls	negotiable	negotiable	n/a
<b>Profit Oil split based on R-factor:</b>			
Minimum R - 1.2	n/a	n/a	30%
Maximum R - 2.5	n/a	n/a	75%

For the current PSCs it is proposed to establish the fiscal terms summarized in Table 3.

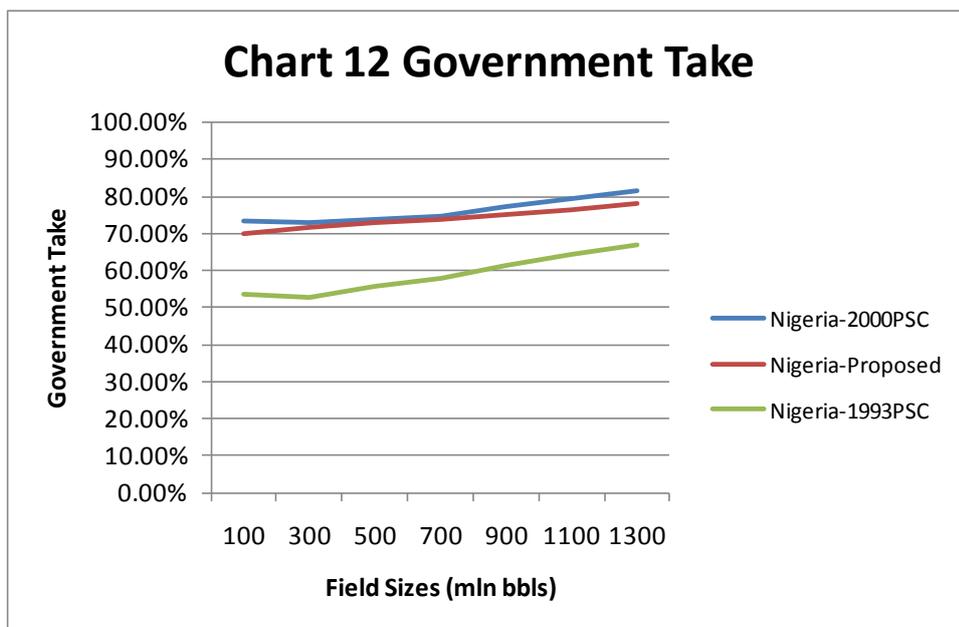
### Table 3

#### Proposed terms for all existing PSCs

<b>Royalties based on daily production:</b>	
up to 50,000 bopd	5%
up to 100,000 bopd	12.5%
over 100,000 bopd	25%
Royalties based on value	0% - 25%
Companies Income Tax Rate	30%
Nigerian Hydrocarbon Tax Rate	30%
Production Allowance per bbl	\$7.00
Education Tax	2%
NDDC charge	3%
<b>Production Sharing:</b>	
Cost oil limit	80%
<b>Profit Oil split based on cumulative volume:</b>	
up to 750 mln bbls	20%
up to 1000 mln bbls	30%
up to 2000 mln bbls	40%
over 2000 mln bbls	negotiable

The difference between the profit oil sliding scales based on volume is that under the current terms this sliding scale is based on the cumulative production from the contract area and under the proposed system on the cumulative production from each PML.

Chart 12 provides the government take of the proposed system for a price of US \$ 60 per barrel and total costs of US \$ 20 per barrel for the first field in a new contract area. This government take includes the NNPC/Private share. The main features for the government take for deep water are specified in the Redraft in *Section 337(2)(c), 338(2), 353(1)(c), 354(1)(b) and 404(3)*.



As can be seen the proposed system will generate a level of government take that is 19% more for a 300 million barrel field and 11% more for a 1300 million barrel field for the 1993 PSCs. However, at the same time the proposed system has a government take that is equal to or slightly less than the 2000 PSCs.

However, this would be for new fields in a new contract area. It should be noted that the production allowance of US \$ 7 per barrel would not apply to fields that are in production on the commencement of the Act. Therefore, on such fields the government take is much higher.

Much higher revenues will therefore be generated from the fields under 1993 PSC terms and

- that are currently in production,
- as well as from additional first fields in new contract areas which will be developed under the new terms.

It should also be noted that the proposed system has a price sensitive royalty scale and therefore under prices in excess of US \$ 70 per barrel, the government take will automatically be higher as well.

### **2.3.3.2. Establish a consolidated Companies Income Tax and Nigerian Hydrocarbon Tax.**

In order to increase production from deep water it is necessary to stimulate investment in new contract areas. **It is proposed that this is being done in two ways:**

- **Consolidation for all deep water areas for Companies Income Tax and Nigerian Hydrocarbon tax, and**
- **Clarifying that the contractor will be able to expense the expenditures for exploration and for the creation of assets to be owned by NNPC or another lessee, since the contractor will not own these assets.**

The combination of the expensing of exploration and capital expenditures for development and consolidation for the deep water area will have a strong positive economic impact. The ability to write off such investments from existing deep water production will be a strong incentive for contractors which currently produce from 1993 PSCs to invest in 2000 PSCs and 2005 PSCs.

**In this context it is important to emphasize that the consolidation concept is only applicable for taxation. As will be explained in the next subsection 2.3.3.3 ringfencing for production sharing and cost oil purposes will remain. In fact it is proposed to ringfence per PML, rather than per contract area.**

The following petroleum companies are current producing in Nigerian deep water. These companies would significantly benefit from the consolidation provisions.

#### **Table 4**

**List of current producers in deep water**

**Shell**

**Total**

**AGIP**

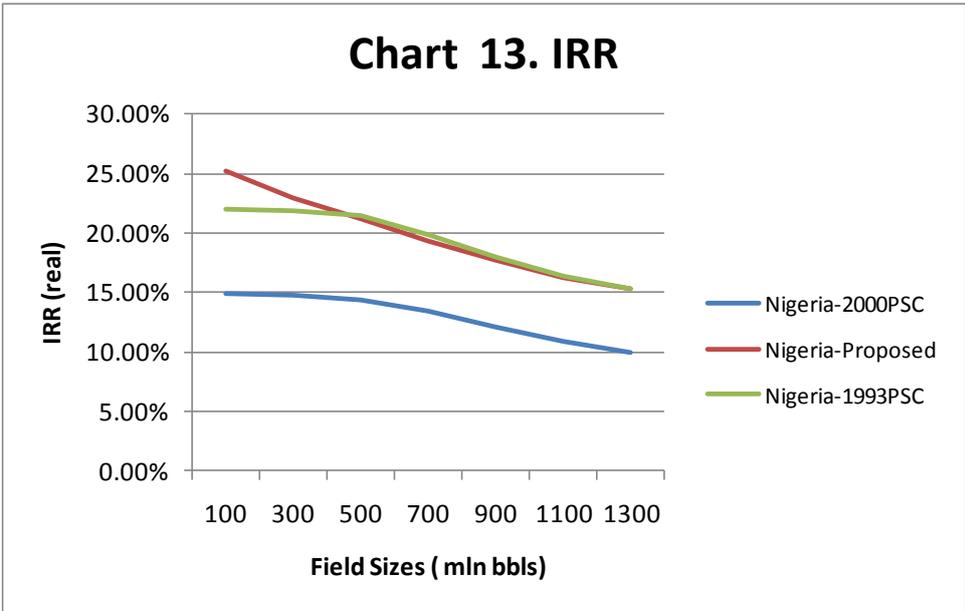
**ExxonMobil**

**Chevron**

**Statoil**

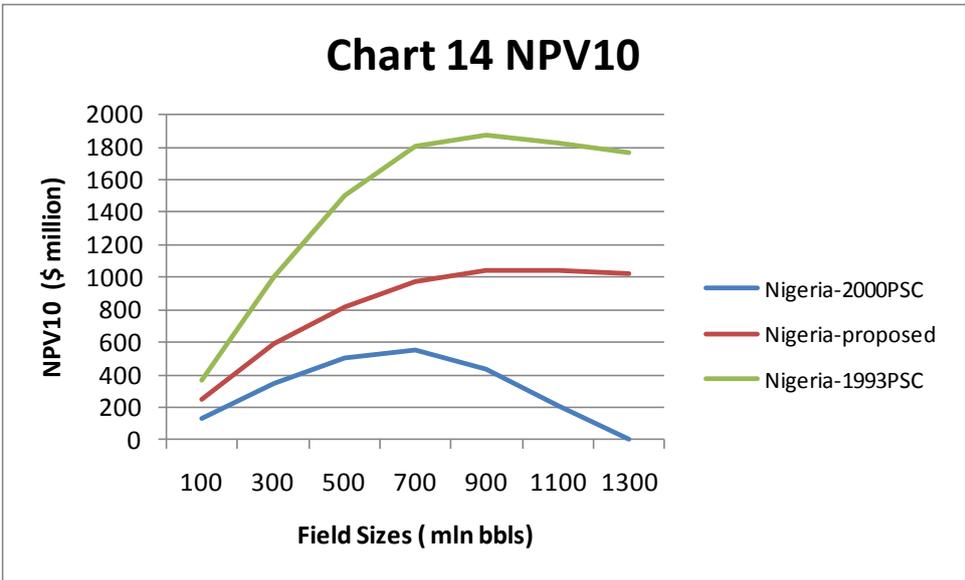
**Petrobras**

The incremental IRR will be very attractive under these conditions as is illustrated in Chart 13, which is based on the same cases as for the government take.



Despite the significant increase in government take, the incremental IRR is highly similar to the current 1993 PSCs and would be 5% to 10% higher than under the 2000 PSCs. This will provide for a strong incentive to invest in contract areas which currently consist of 2000 PSCs or 2005 PSCs.

Chart 14 illustrates the Net Present Value discounted at 10%.



As can be expected the NPV10 for a first field in a contract area will be considerably less under the proposed system compared to 1993 PSCs. However, the difference is much less for the second and further fields. Compared to the 2000 PSCs the NPV10 is considerably higher.

Based on this analysis, the IAT is of the view that investments in second or further fields in 1993 PSCs and investments in all fields in the 2000 PSCs and 2005 PSCs will be strongly encouraged.

The IAT proposal will therefore result in:

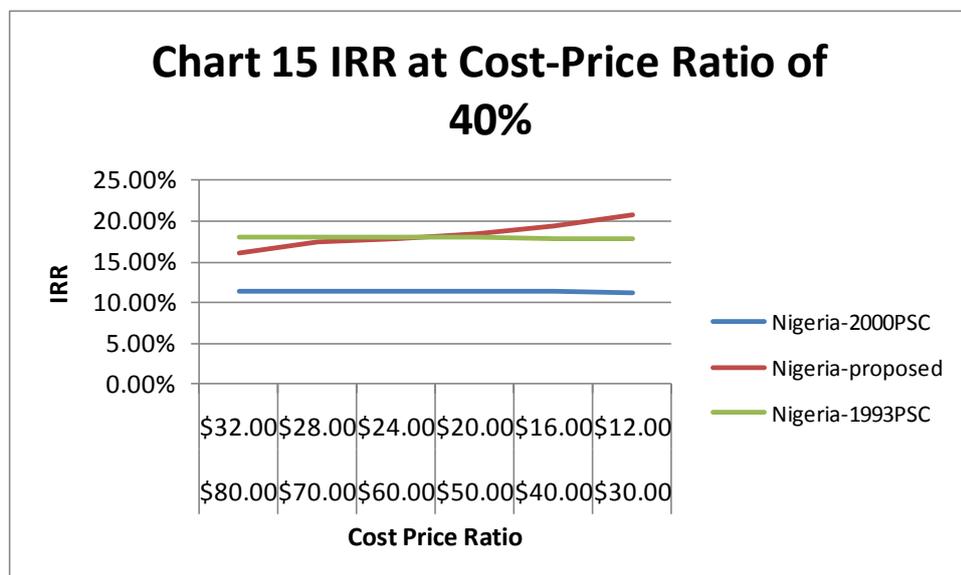
- A significant increase in government revenues from existing fields in 1993 PSCs, and
- A significant increase in investment in further fields in the 1993 PSCs and new fields in 2000 PSCs and 2005 PSCs.

What is very important is that this conclusion does not depend on the cost level assumption of US \$ 20 per barrel.

The following chart shows the IRR for the first fields in new contract areas based on a cost-price ratio of 40%.

This chart illustrates that the proposed system generates a much higher IRR than the 2000 PSCs, for the entire Cost-Price Ratio of 40%. This means that at a price of US \$ 60 per barrel fields with a total costs of US \$ 24 are much more attractive under the proposed terms than under the 2000 PSCs. The same applies when the oil price is US \$ 80 per barrel and the costs are US \$ 32 per barrel.

This means that the proposed system will stimulate the exploration and development of the next generation of more expensive fields.



Based on this analysis the IAT is of the view that the proposed terms will result in a significant increase in deep water production.

### **2.3.3.3. Ringfence production sharing per PML.**

A major problem with the 1993 PSC and 2000 PSC models is that the profit oil scale is based on cumulative production from the entire contract area. This means that if a large field is already producing in the contract area, the incremental economics of the next field will be based on cumulative production of the first large fields. For instance, under the 1993 PSCs, if the large field has already produced 700 million barrels, the profit oil of the next field will start at 45%, not 20%. The same is true for the 2000 PSCs.

This means that incremental investments in small follow up fields under the 2000 PSCs would be relatively unattractive. Under certain conditions the same would be true for the 1993 PSCs. This impedes re-investment in such fields.

It should be noted that currently, the fields are consolidated within the contract area. This means that the investments in new fields permit the deduction and cost recovery of such fields from existing production in the same contract area. This is an attractive feature.

**Under the proposed fiscal terms, the production sharing calculation would be ring fenced for each PML. All PMLs would already be consolidated for Companies Income Tax and Nigerian Hydrocarbon Tax purposes. Therefore, being able to “start the clock” at 20% for each new PML will be a significant encouragement to invests in further smaller fields. This new provision is included under Section 404(3).**

It is for this reason that the IAT expects investment and production in deep water to increase under the proposed terms.

### **2.3.3.4. Profit Oil will be taxable.**

An important change relative to the current system is the sequencing of the taxation. Currently, the taxation is calculated first on a contract area basis and the tax is paid in the form of “tax oil”. Afterwards the production sharing is calculated.

This means that the profit oil share to NNPC and private concessionaires is actually “tax free”.

**Under the proposed system NNPC and the private concessionaires will have to pay tax on their share of profit oil. In order to avoid dilution of these tax payments, the proposed Redraft requires owners of profit oil and similar petroleum income to create a special subsidiary that will be separately taxed as provided under Section 343(3) of the Redraft.**

At the same time, in order to avoid “double dipping”, when assets are transferred to NNPC will be counted as income of NNPC as is now provided for in the *Ninth Schedule, paragraph 5(4)*. Similar provisions are included for the Companies Income Tax under *Section 332*.

### **2.3.4. Competitiveness analysis**

Some IOCs have indicated that if the fiscal terms for deep water proposed by the IAT would be adopted, that the IOCs would leave Nigeria and invest somewhere else, because the terms would not be competitive. Given the seriousness of this matter it is important to provide an in-depth analysis of the competitiveness of the fiscal terms for deep water PSCs proposed by the IAT.

The competitiveness analysis will be done for IOCs that are currently producing in deep water and would consider possible further investments in new contract areas in Nigeria. The analysis is done for the first field in such a new contract area.

The analysis will be done by comparing the proposed terms with the terms of:

- Indonesia
- Angola
- Norway
- Brazil
- United Kingdom, and
- United States – Gulf of Mexico.

Analysis will be done for oil field sizes in the range of 100 to 1300 million barrels, for an oil price range of US \$ 30 to US \$ 140 per barrel and for total costs (capital and operating) ranging from US \$ 8 to US \$ 32 per barrel. Comparison is done assuming that prices and costs are the same in each country.

#### **2.3.4.1. Government Take analysis**

The Government Take in this analysis is defined as:

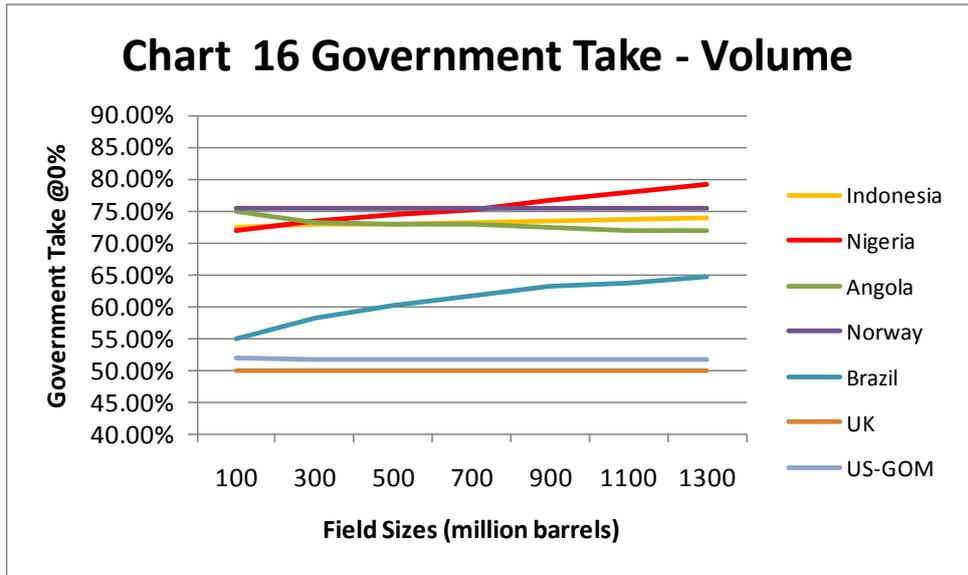
$$\text{Government Take} = \frac{\text{Government Revenues}}{\text{Gross Revenues} - \text{Total Costs}} \times 100\%$$

The Government Take can be determined on a discounted or undiscounted basis. The following charts display the government take on an undiscounted basis. With respect to Nigeria the government take includes the profit oil share, regardless of whether the profit oil is owned by NNPC or by private individuals.

In fiscal systems around the world the Government Take varies with:

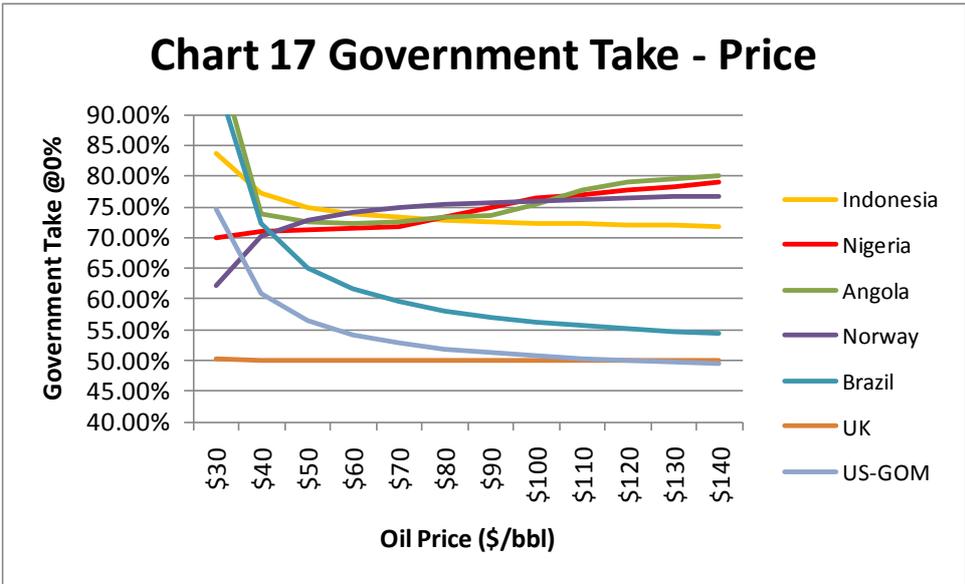
- Production volume
- Price, and
- Costs.

Chart 16 illustrates the Government Take assuming different field sizes, a price of US \$ 80 per barrel and costs of US \$ 20 per barrel.



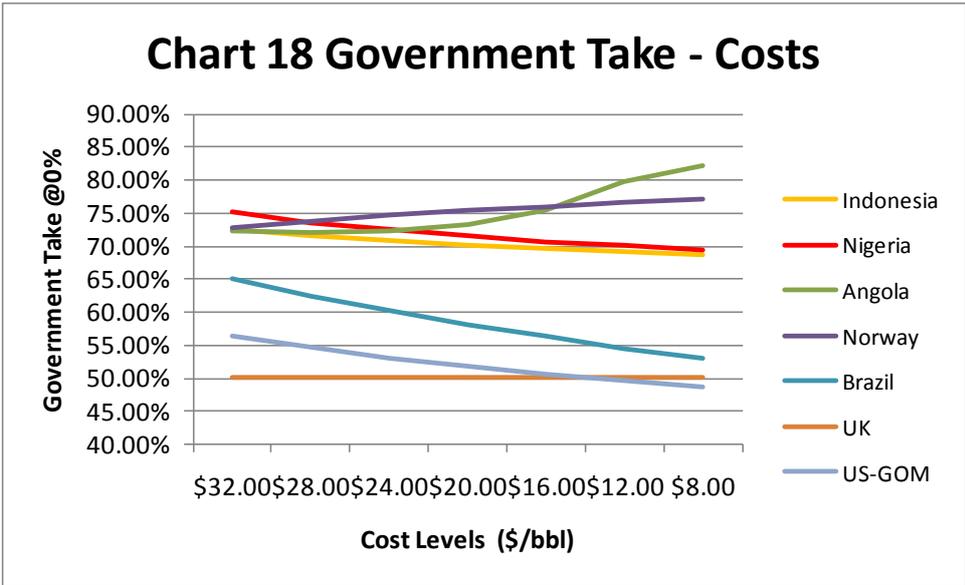
The proposed Nigerian system assures a high government take comparable to Norway, Indonesia, and Angola. The proposed Nigerian system has sliding scales whereby the government take goes up with higher levels of production, similar to Brazil. It is for this reason that the proposed government take is lower for small fields and higher for large fields. On very large fields, the government take in Nigeria would be higher than the six other countries.

Chart 17 illustrates the government take for a 300 million barrel field with a cost of US \$ 20 per barrel under varying prices.



The Nigerian government take is modest under low prices. This is due to the production allowance. At average prices in the range of US \$ 60 to US \$ 80 per barrel, the government take in Nigeria is less than Angola, Norway or Indonesia. Under high prices the government take increases as a result of the price sensitive royalty and is competitive with Angola.

Chart 18 illustrates the variation of the government take with costs for a 300 million barrel field at US \$ 80 per barrel.



Due to the royalties, which remain the same regardless of whether costs are high or low, the government take in Nigeria is relatively high under very high costs. At international levels of about US \$ 20 to US \$ 24 per barrel, the government take is less than Norway and Angola. At low costs the government take is much less than Norway or Angola. In fact the proposed government take for Nigeria deep water is similar to Indonesia.

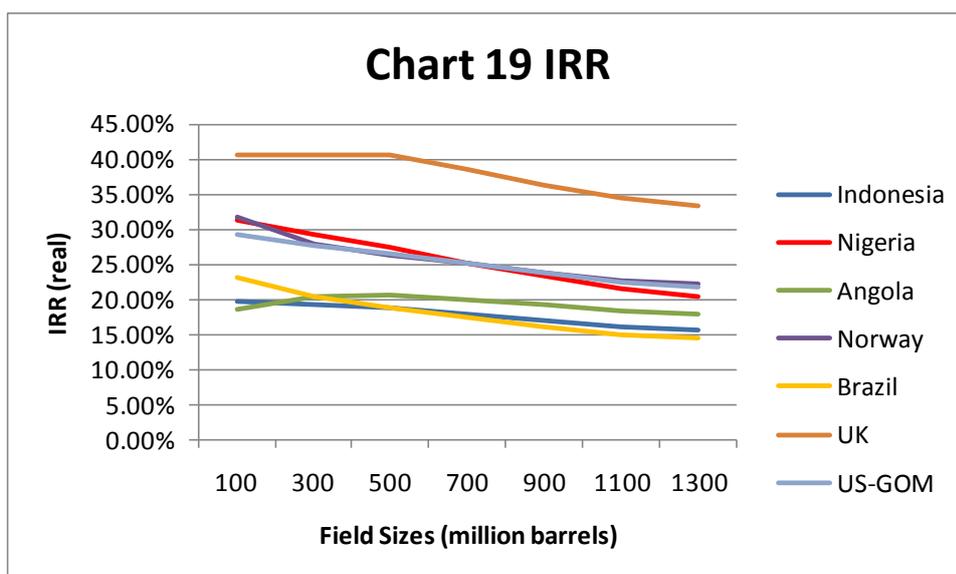
The IAT deliberately proposes a lower government take at lower costs in order to encourage IOCs to be efficient and produce Nigerian oil and gas at the lowest possible costs.

In general the government take analysis indicates that Nigeria is competitive with Norway, Angola and Indonesia, while the government take is generally much higher than Brazil, the UK or the US Gulf of Mexico.

Nigeria therefore would receive a fair competitive share of the resource wealth.

#### 2.3.4.2. Investor profitability analysis

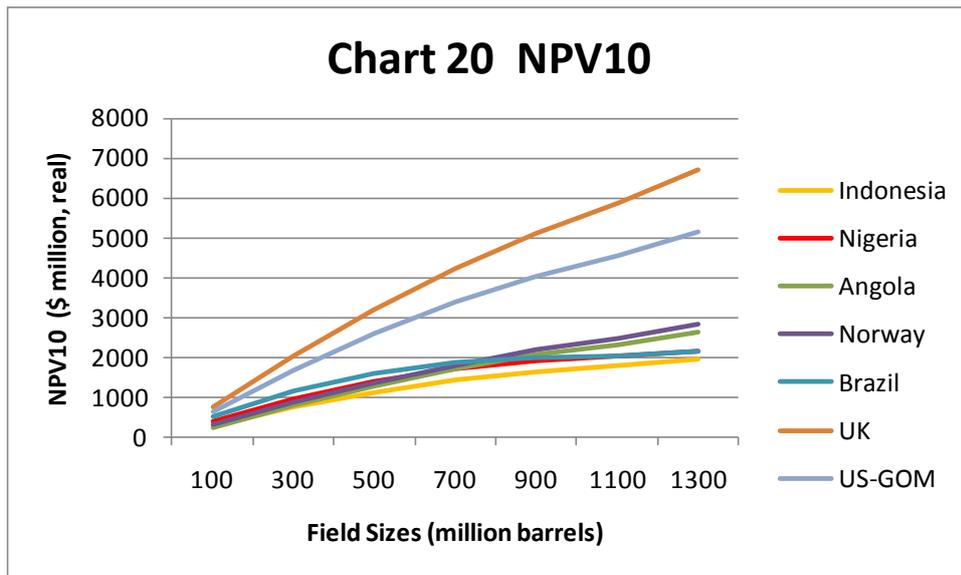
Chart 19 illustrates the IRR to the investor in the various countries for different field sizes assuming an oil price of US \$ 80 per barrel and costs of US \$ 20 per barrel.



The chart illustrates clearly how the IRR would be among the most attractive in the world. In fact in terms of IRR, the proposed Nigerian terms compete directly with Norway and the US Gulf of Mexico. The reason that the IRR is so attractive, despite the relatively high government take, is due to the consolidation of Companies Income Tax and Nigerian Hydrocarbon Tax for deep water. Also for both taxes, contractors can expense their expenditures related to the creation of assets for NNPC.

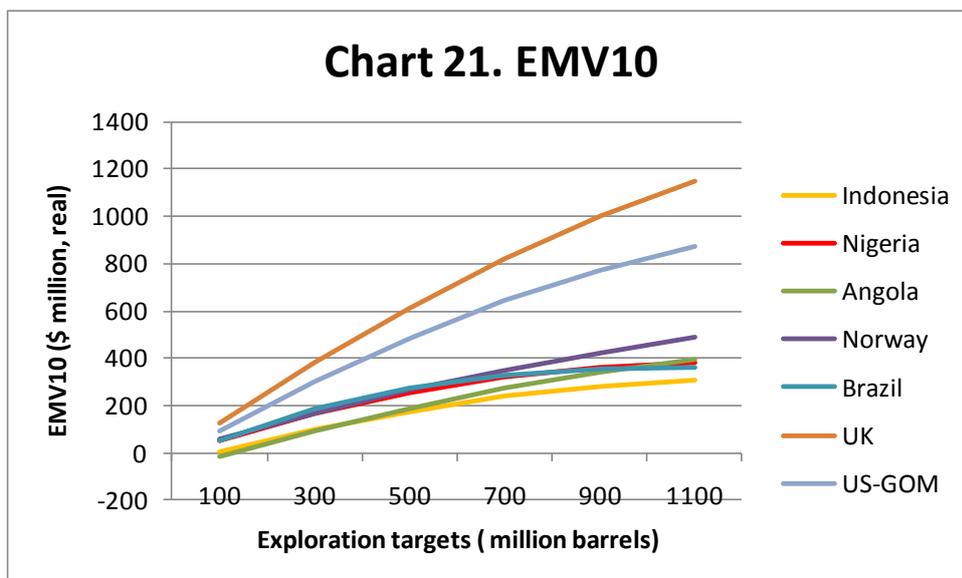
This means that companies which are already producing in deep water can deduct the exploration and capital expenditures directly from producing fields. This is a very strong re-investment incentive. The proposed Nigerian terms therefore are similar to Norway, where a high government take is combined with a relatively high level of profitability due to the timing of the cash flow.

Chart 20 illustrates the so-called Net Present Value discounted at 10% (“NPV10”). This is the profitability yardstick simulates the value of the field to the investor. Again this analysis is done for a price of US \$ 80 and a cost of US \$ 20 per barrel.



This chart illustrates how the NPV10 would be directly competitive with Norway, Angola, Indonesia and Brazil. The NPV10 is actually very similar to Brazil.

Chart 21 provides the so-called Expected Monetary Value discounted at 10% (“EMV10”). The analysis is done for a price of US \$ 80 and costs of US \$ 20 per barrel. The EMV10 is a direct reflection of the attractiveness of exploration. The EMV10 was determined assuming a success rate of one discovery for every 5 exploration wells.



The EMV10 for the proposed terms for Nigeria is clearly more attractive than for Angola and Indonesia. This is the direct result of the consolidation of taxation. Investors would therefore consider exploration in new blocks more attractive in Nigeria than in either Indonesia or Angola where the tax calculations are completely ring fenced block by block.

The EMV10 is very similar to Brazil and for the smaller fields also Norway. The attractive EMV10 is of great importance since it can be expected that many of the new prospects relate to smaller fields than the giant fields that have already been discovered.

#### **2.3.4.3. Investor drivers**

A very important issue in fiscal design is whether or not investors are encouraged to create a healthy petroleum industry on the basis of the fiscal system.

**One of the important reasons that the IAT proposes major change in fiscal terms is that the current system with its Investment Tax Credits and Investment Tax Allowances does not give sufficient incentives for investors to seek the lowest possible costs and create the most efficient operations.**

It is therefore important to test whether the proposed Nigeria deep water terms generally would provide the drivers to create a healthy petroleum industry.

Chart 22 illustrates the so-called “cost savings index” of the proposed system in comparison with other fiscal systems. The cost savings index is a parameter which illustrates how much percent of

a dollar saving is kept by the investor. The analysis is done for a 300 million barrel field at US \$ 80 per barrel price.

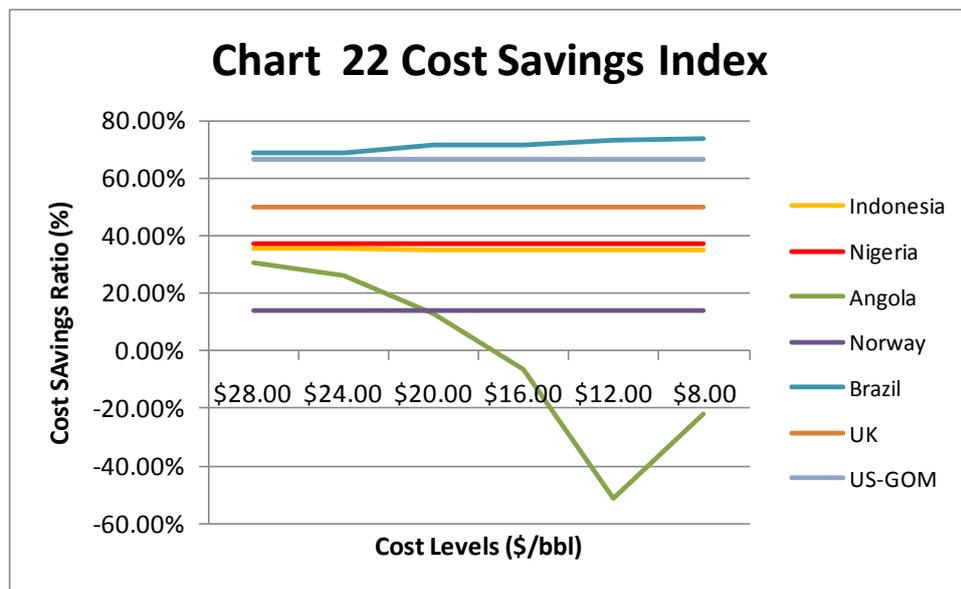


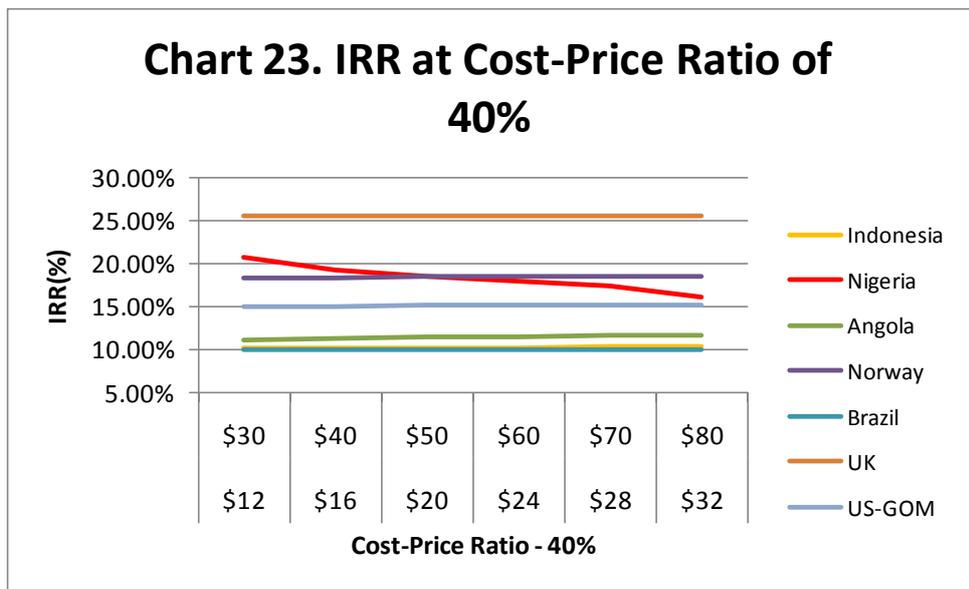
Chart 22 illustrates how if an investor in Nigeria deep water under the proposed system saves one dollar, the investor keeps \$ 0.37 or 37%. This is a very healthy cost savings index. It can be noted how in this respect Nigeria would be similar to Indonesia and would perform much better than Norway. It can also be observed how Angola has system that under certain conditions actually encourages wasteful expenditures. This is called “gold plating”. This creates serious impediments to create a healthy petroleum industry. The proposed system for Nigeria is therefore a sound fiscal system compared to Angola.

#### **2.3.4.4. Basin Development Indicator**

A strong objective which the IAT seeks to implement is to ensure a strong and ongoing development of the deep water areas. In this context, it is important that the fiscal system is designed for the future. It is likely that as developments proceed, investors will have to deal with increasingly costly and smaller fields.

A fiscal system should be designed to flexibly adjust to these circumstances and permit such developments, provided oil prices permit such developments to occur.

**The IAT therefore designed the fiscal system on the basis of a Cost-Price Ratio of 40%. This means that developments should be profitable as long as costs equal 40% of the price. Chart 23 illustrates how the proposed system in Nigeria is superior in this respect to many of its competitors. This chart illustrates the IRR at the Cost-Price Ratio of 40%.**



The chart indicates how the system proposed for Nigeria compares to Norway in this respect and would create favourable conditions compared to most countries in the world. The proposed system for Nigeria would be superior to Indonesia, Angola, Brazil and even the US Gulf of Mexico.

### 2.3.5. Conclusion

The competitiveness analysis demonstrates that the proposed system for Nigeria is fully competitive with other deep water areas and in fact offers a level of profitability that is attractive to competing jurisdictions. Statements that IOCs will leave Nigeria if the proposed system would be implemented are therefore without any foundation. In fact the IAT expects increased levels of investment in deep water areas leading to a higher level of production, in particular by companies which are currently already producing from deep water areas.

Yet at the same time, Nigeria will benefit from significantly higher revenues derived from contract areas that are currently under the regime of the 1993 PSC series.

## **2.4. Objective: Establish a stable fiscal framework and capture windfall profits under high prices**

**The objective is to establish a stable fiscal framework that adjusts automatically to different economic circumstances and may only have to be adjusted in small steps from time to time through legislative change to deal with new circumstances. The system would capture windfall profits under high prices.**

### **2.4.1. Problems**

The fiscal changes proposed in the Government Memorandum represent a dramatic change from the current situation.

The reason is that Nigeria has not fundamentally changed its petroleum legislative framework during the last 40 years. As a result the current Nigerian petroleum legislation is outdated and needs to be replaced. Many other countries have done so much earlier and more frequent than Nigeria.

The main factors determining the resource wealth with respect to oil and gas fields, are:

- The size of the fields and level of production,
- The oil and gas prices, and
- The costs

Currently, the system is not flexible with respect to the size of the fields or the price levels. Small fields and large fields pay the same royalty and the royalty is the same regardless of the price level.

The only variation in royalties is with geography, with different royalties for onshore, shallow water and deep water. There are also lower royalties for marginal producers, based on the size of the company, not the field size.

The Petroleum Profits Tax is structured as if it is a corporate income tax applicable to upstream operations. Yet, a separate companies income tax exists in Nigeria for midstream, downstream and other operations. This creates international tax credit issues. Therefore, the absence of a corporate income tax is a disincentive.

The Petroleum Profits Tax is applied at a uniform high rate of 85% for onshore and shallow water. The Investment Tax Allowances vary again with geography. Because the PPT is structured as a corporate income tax, it lacks the flexibility of some of the international petroleum resource taxes. The PPT is at too high a rate for onshore and shallow water and too inflexible to stimulate large scale investment in smaller fields and higher cost petroleum operations.

The current system is therefore not sufficiently flexible to adjust to a wide range of economic conditions. This lack of flexibility is a factor in the current decline of production in the onshore and shallow water.

#### **2.4.2. Solutions**

It is proposed to replace the current system with a system that adjusts more flexibly to different and changing economic conditions.

The IAT proposes to establish in the Government Memorandum a stable fiscal framework in the following manner:

- Split the previous PPTA into the Companies Income Tax (“CIT”) and the Nigerian Hydrocarbon Tax (NHT). The CIT will be the generally applicable CIT, which will be adjusted as part of the normal budget process. The NHT can be adjusted occasionally when circumstances so justify through legislative change,
- Create royalties that are sensitive to daily production, so small fields will automatically pay less and large fields will pay more. This will adjust the royalty automatically to the size of the field. This concept is applicable in many countries in the world, and
- Create in addition, royalties that are price sensitive for oil and gas, so under very high prices additional royalties are payable and windfall profits are avoided.

#### **2.4.3. Discussion**

##### **2.4.3.1. *Split PPT in CIT and NHT***

The IAT proposes to split the Petroleum Profits Tax into the Companies Income Tax (“CIT”) and a Nigerian Hydrocarbon Tax (“NHT”).

*Importance of the split in CIT and NHT.* In order to create a more flexible system it is important to split the PPT into a CIT and a “resource tax”. This will be the basis for the creation of a flexible system.

The vast majority of the countries in the world applies a normal corporate income tax to upstream operations. Over the last 40 years corporate income tax structures around the world have evolved considerably. Most nations now tax their corporation on a world wide basis. CIT paid in another nation can be credited against the tax obligations in the home nation in order to avoid double taxation. The vast majority of nations with petroleum companies that are investing or might invest in Nigeria would have such a system.

These countries include:

- USA
- Canada
- UK
- Germany
- Italy
- Japan
- Korea
- Russia
- Australia
- Argentina

However, for the tax credit system to work properly, the host nation has to have a “proper” CIT. This means a CIT which is calculated by the standards of the home country. As a result of this world wide network of tax credits in home countries, corporate income tax systems have become more similar and have to adhere to general standards. This in turn creates a high degree of inflexibility with respect to the possible overall design of the CIT in each country, if such country wants to attract foreign investment. Of course, each country can adjust in each budget the tax rate or rates, the depreciation provisions, loss carry forward provisions, etc.

“Resource Taxes” are not creditable and can therefore be structured flexibly in a manner that permits the nation to maximize the benefits from the petroleum resources.

By splitting the PPT into a CIT and NHT, Nigeria creates two important advantages:

- A proper corporate income tax is created which in principle will be creditable in most home countries of investors and of which the details can be adjusted normally with each budget as provided for in *Section 332* of the Redraft, and
- A flexible “resource tax” is created which can from time to time be adjusted to maximize the benefits from the petroleum resources for Nigeria, as provided for in *Part VIII(D)* of the Redraft.

The normal CIT system can now also be logically integrated with the respective withholding taxes, including withholding taxes on dividends. This is important since it is proposed that any company that wishes to be licensee or lessee in the upstream of Nigeria has to incorporate in Nigeria.

In following this concept, Nigeria creates a more “normal” overall taxation system, which is in line with international practices. Following is a table with the international experience in this regard. Many jurisdictions apply a royalty in addition to the resource tax. The “resource tax” has different names in different countries.

<b>Jurisdiction</b>	<b>Royalty</b>	<b>“Resource Tax”</b>	<b>Corporate Inc Tax</b>
Alaska	Yes	Petroleum Profits Tax	Yes
Most US states	Yes	Severance Tax	Yes
Canada -Federal	Yes	Profit sharing royalty	Yes
Alberta – Oil Sands	Yes	Profit sharing royalty	Yes
Newfoundland	Yes	Profit sharing	Yes
Colombia	Yes	Windfall profits tax	Yes
Bolivia	Yes	Direct Tax	Yes
Brazil	Yes	Special Profit Share	Yes
Norway	No	Hydrocarbon Tax	Yes
Netherlands	Yes	Profit Share	Yes
Denmark	No	Hydrocarbon tax	Yes
UK on old licenses	No	Petroleum Revenue Tax	Yes
Russia	No	Mineral Resource Extraction Tax	Yes
Algeria	Yes	Petroleum revenue tax	Yes
Ghana	Yes	Additional profits Tax	Yes
Namibia	Yes	Additional profits tax	Yes
Uganda	Yes	Additional profits tax	Yes
Tanzania	Yes	Additional profits tax	Yes
Thailand	Yes	Special Remuneratory benefit	Yes
China	Yes	Windfall Profits Tax	Yes
Australia	No	Petroleum Resource Rent Tax	Yes
New Zealand	Yes	Accounting Profits Royalty	Yes

*Importance of a consolidated CIT.* The splitting of the PPT in a CIT and NHT will also permit the creation of a CIT with the same rate that can be applied to the entire upstream sector in Nigeria, which means to onshore, shallow water, deep water and frontier acreage.

A fully consolidated CIT exists in the majority of the countries in the world. It is a very important instrument in promoting exploration in every part of the nation. This will be a very important instrument in Nigeria to promote the exploration of the frontier acreage. As an example, the cost of an exploration well or field development of a discovery in the Chad Basin can now be deducted from the revenues from onshore, shallow water or deep water production for CIT purposes. This will be a very important incentive for companies to take a new look at frontier acreage.

The nationwide fully consolidated CIT is also a very important instrument to permit small Nigerian owned companies to expand across Nigeria. A small company that has been successful in establishing significant onshore production can now risk to participate in a deep water exploration well, because such well will be deductible from its onshore production.

If Nigeria wants to successfully promote profitable Nigerian owned petroleum companies, it should provide a taxation system whereby a strong home base is offered for such companies. A fully nationwide consolidated CIT is an essential part of this concept. This is the way in which the vast majority of other countries with national petroleum reserves in the world is promoting their local companies, including the United States, United Kingdom, Norway, Canada, Australia, Russia, Argentina, Brazil, South Africa and China. Nigeria should therefore join in this concept.

Options on the “resource tax”. With respect to “resource” taxes, there are ring fenced systems and consolidated systems. The PPT is already fully consolidated for onshore and shallow water and therefore it is logical to make the NHT consolidated as well.

In this context, the proposal of the IAT follows the Norwegian model. The Norwegian Hydrocarbon tax of 50% is fully consolidated and is in addition to the corporate income tax of 28%. Norway has been unusually successful with its fiscal system.

However, in the case of Nigeria, there are two tax rates and therefore consolidation will take place in two groups as provided for in *Section 354(1)*:

- Onshore and shallow water with a tax rate of 50%, and
- Deep water, frontier acreage and bitumen deposits with a tax rate of 30%.

The Addax PSCs onshore and shallow water, will benefit significantly from this new consolidation concept, and in accordance with their contract they will be able to adjust to the lower tax rate of 50% for the NHT and 30% for CITA. Furthermore, these PSCs will benefit from the royalties which are now per PML.

Due to the consolidation of the 30% tax group, producers in deep water will have an extra incentive to invest in frontier acreage and in bitumen deposits.

The significant advantages of a consolidated NHT for deep water was already discussed in section 2.3 of this report.

Flexibility of the NHT and support for small fields and small operators. An important advantage of having a flexible NHT is that now this tax can be tailored to support the development of small fields in the onshore and shallow water. This is done through the production allowances in *Section 353(1)*. These production allowances for oil are:

- for onshore – the lower of US \$ 30 per barrel or 30% of the official selling price, up to a cumulative maximum of 10 million barrels per PML and the lower of US \$ 12 per barrel or 30% of the official selling price, for volumes exceeding 10 million barrels up to a cumulative maximum of 75 million barrels per PML;
- for shallow water areas –the lower of US \$ 30 per barrel or 30% of the official selling price, up to a cumulative maximum of 20 million barrels per PML and the the lower of US \$ 12 per barrel or 30% of the official selling price, for volumes exceeding 20 million barrels up to a cumulative maximum of 150 million barrels per PML;

The very significant allowance of US \$ 30 or 30% of the official selling price will create a situation where there is a very low NHT on very small fields.

It should be noted that this significant production allowance applies per PML. There is no limit to the number of small fields that a company can develop and therefore the amount of allowances. This means that a small company can develop 10 small fields of 10 million barrels or less and receive the full production allowance on all of them.

This will be an enormous incentive:

- for small Nigerian owned companies to dedicate themselves to the development of small oil fields in the onshore and shallow water, and
- to find foreign partners that can team up with them, which will receive the same allowances.

Together with the low royalties, the fiscal terms that would apply to small fields would be equal to or more favourable than typical terms in the United States or Canada. This will be an enormous incentive to start with the development of these small fields with lower well productivities and higher costs. Small fields operated by small Nigerian owned companies and their foreign partners will be a major contributor to local employment and business opportunities.

Cost administration under the NHT. The flexibility of the NHT also permits to create a tax that is easier to administer. In particular *Section 346* now lists a large number of deductions that will not be allowed for NHT purposes. Of particular significance is that interest and financing charges as well as headquarter costs outside Nigeria will not be deductible. This will make it much easier to administer the control of costs of the NHT.

Promotion of local content under the NHT. As will be discussed in section 2.10 of this report in more detail, *Section 346(q)* prohibits the deduction of 20% of costs incurred outside Nigeria. This will be a very strong provision to complement the new Nigerian content provisions.

#### **2.4.3.2. Royalties based on daily production volume**

The currently applicable royalty regulations are as follows:

## Table 5

### 1969 Royalty regulations

#### Crude oil and condensates

Onshore	20.0%
up to 100 m water depth	18.5%
up to 200 m water depth	16.5%
up to 500 m water depth	12.5%
up to 800 m water depth	8.0%
up to 1000 m water depth	4.0%
over 1000 m water depth	0.0%

#### Natural Gas

Onshore	7.0%
Offshore	5.0%

### 2006 Royalty regulations

#### Crude oil and condensates

Onshore	20.0%
up to 100 m water depth	18.5%
up to 200 m water depth	16.5%
up to 500 m water depth	12.0%
over 500 m water depth	8.0%
Inland Basins	10.0%

## Table 6

### 2000 Royalty regulations for onshore and shallow water

#### PSCs

##### Onshore

up to 2000 barrels of oil per day	5.0%
up to 5000 barrels of oil per day	7.5%
up to 10000 barrels of oil per day	15.0%
over 10000 barrels of oil per day	20.0%

##### up to 100 m water depth

up to 5000 barrels of oil per day	2.5%
up to 10000 barrels of oil per day	7.5%
up to 15000 barrels of oil per day	12.5%
over 15000 barrels of oil per day	18.5%

##### up to 200 m water depth

up to 5000 barrels of oil per day	1.5%
up to 10000 barrels of oil per day	3.0%
up to 15000 barrels of oil per day	5.0%
up to 25000 barrels of oil per day	10.0%
over 25000 barrels of oil per day	16.67%

### 2005 Royalty regulations for marginal field operations

up to 2000 barrels of oil per day	2.5%
up to 5000 barrels of oil per day	7.5%
up to 10000 barrels of oil per day	12.5%
over 10000 barrels of oil per day	18.5%

The 1969 Royalty regulations are applied to the 1993 series of PSCs in deep water.

The 2006 Royalty regulations are applied to the 2000 and 2005 series PSCs in deep water as well as onshore and shallow water production.

The 2000 Royalty regulations for onshore and shallow water PSCs only apply to these PSCs, the Addax PSCs. The sliding scale is per contract area.

The 2005 Royalty regulations for marginal field operations only apply to these operations. The sliding scale is applied to the production per company.

Under the proposed royalties, the concept of varying royalties with the level of production will now be expanded to all production. This is an important change which will make the fiscal terms more flexible. These sliding scales will apply to PMLs that will start producing after the commencement of the Act.

The proposed scales for oil in *Section 337(2)* of the Redraft are the following based on daily production levels per PML:

- for onshore areas, 5% of the production up to and including 2000 barrels per day, 12.5% of the production over 2000 barrels per day up to and including 5,000 barrels per day and 25% of the production over 5,000 barrels per day;
- for shallow water areas, 5% of the production up to and including 5,000 barrels per day, 12.5% of the production over 5,000 barrels per day up to and including 20,000 barrels per day and 25% of the production over 20,000 barrels per day; and
- for deep water areas, 5% of the production up to and including 50,000 barrels per day, 12.5% of the production over 50,000 barrels per day up to and including 100,000 barrels per day, and 25% of the production over 100,000 barrels per day.

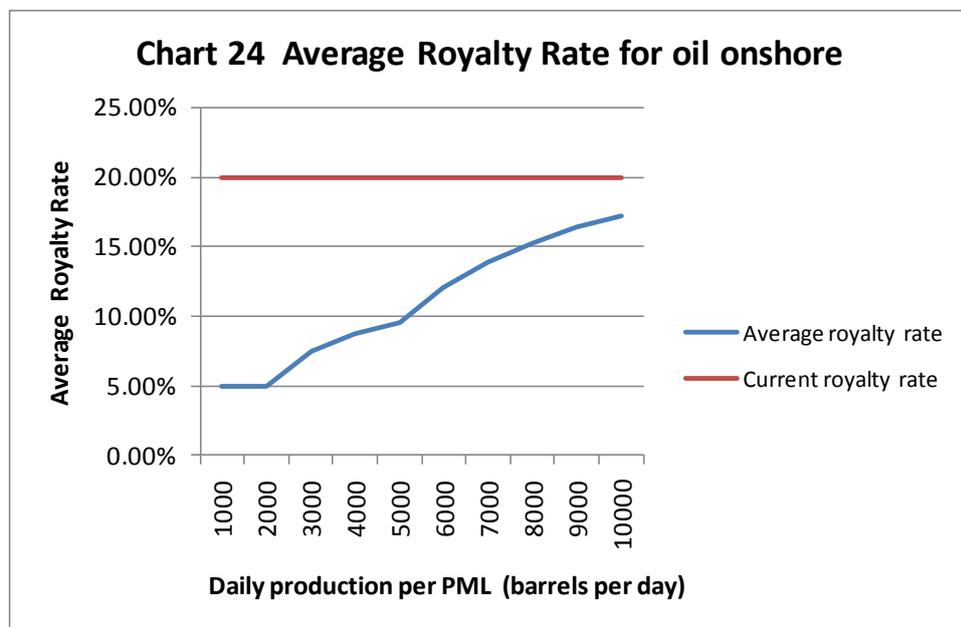
It should be noted that the royalty scale is incremental. As an example, if an onshore PML produces 3000 barrels per day of crude oil, the first 2000 barrels per day will still have a royalty of 5%, only the next 1000 barrels per day will have the royalty of 12.5%.

Chart 24 provides the onshore example how this new royalty scale will result in a much lower average royalty per PML. Even at 10,000 bopd the royalty will still be only 17.25%, which is below the current onshore rate of 20%. This new royalty rate should be a strong stimulus to develop small fields. What is important is that the new system now automatically adjust to the level of production per PML and will therefore automatically stimulate small field development.

The new scale will result in a slightly higher level of royalties for onshore and shallow water PSCs and for marginal field operations. With respect to the marginal field operations, this will be compensated by generous production allowances, resulting in an overall government take that will be much less than today.

All producers that produce from a PML with a small field will benefit from this lower rate, not just the marginal field operators. Since the royalty is per PML, a small Nigerian owned company could produce 50,000 barrels per day from 10 PMLs with 5,000 barrels per day each and still only pay a royalty of 9.5%, which is much less than the typical royalty onshore the United States for such levels of production. This is therefore an enormous stimulus for such small companies and a strong stimulus to develop new small fields.

At the same time if a large new field would be discovered and produced in the process, for instance, producing 20,000 barrels per day Nigeria would benefit from an average royalty of 21.13%. However, if production declines over the life of the field to 2,000 barrels per day the royalty would be gradually adjusted downward to a level of 5%. This is important, because this will stimulate the maximum economic recovery from the reservoirs.



It should be noted that the 20% royalty on existing fields will not change. Therefore, there will be no royalty revenue loss for Nigeria from existing production.

A similar sliding scale royalty is applied to gas and condensates. However, as was explained in section 2.2 of this report, the sliding scale is only two steps, with a top rate of 12.5% in order to encourage the development of gas for domestic consumption.

**The IAT proposes to encourage the development of gas for domestic consumption by establishing a low royalty for condensates. The most attractive gas fields to develop for domestic consumption are fields with a high condensate yield. The value of condensates is often more than the value of natural gas from such fields and therefore an attractive royalty regime for condensates creates a major stimulus for developing gas for the domestic market. This is a very important conceptual change from the current system.**

The proposed sliding scales for natural gas per PML are as follows:

- for onshore areas, 5% of the production up to and including 100 million cubic feet per day, 12.5% of the production over 100 million cubic feet per day;
- for shallow water areas, 5% of the production up to and including 200 million cubic feet per day, 12.5% of the production over 200 million cubic feet per day; and

- for deep water areas, 5% of the production up to and including 500 million cubic feet per day, 12.5% of the production over 500 million cubic feet per day.

The proposed sliding scales for condensates per PML are as follows:

- for onshore areas, 5% of the production up to and including 2000 barrels per day, 12.5% of the production over 2000 barrels per day;
- for shallow water areas, 5% of the production up to and including 5,000 barrels per day, 12.5% of the production over 5,000 barrels per day; and
- for deep water areas, 5% of the production up to and including 50,000 barrels per day, 12.5% of the production over 50,000 barrels per day.

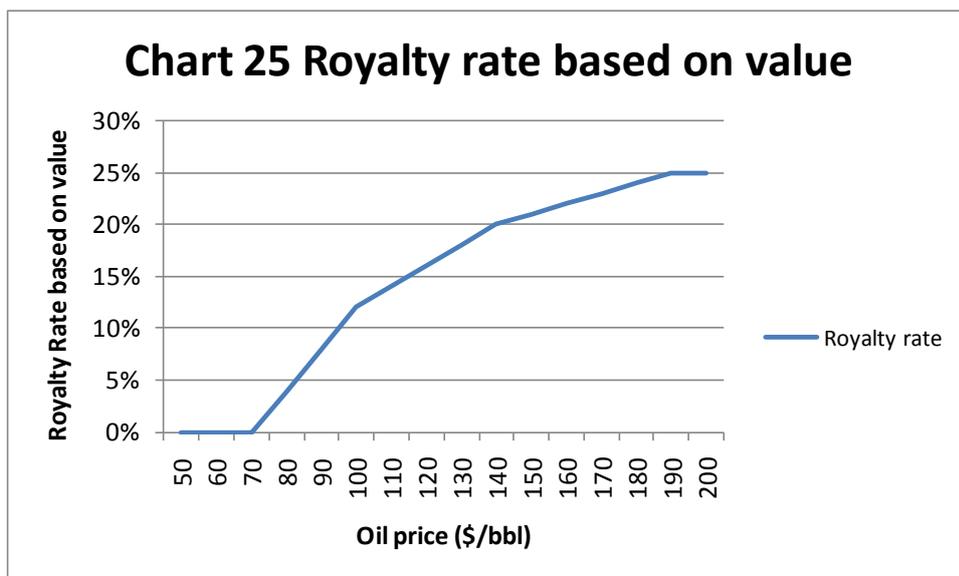
#### **2.4.3.3. Royalties based on value**

Another important royalty feature to make the fiscal system more flexible is the royalty based on value provided for in *Section 338*. This royalty rate is added to the royalty rate based on daily production.

For crude oil and condensates this royalty is defined as follows:

- 0% from US \$ 0 per barrel and up to and including US \$ 70 per barrel;
- over US \$ 70 per barrel and up to and including US \$ 100 per barrel the royalty rate shall increase by 0.4% royalty percentage for every US \$ 1 increase in value over US \$ 70 per barrel;
- over US \$ 100 and up to and including US \$ 140 per barrel the royalty rate shall be 12% plus 0.2% royalty percentage for every US \$ 1 increase in value over US \$ 100 per barrel;
- over US \$ 140 and up to and including US \$ 190 per barrel the royalty rate shall be 20% plus 0.1% royalty percentage for every US \$ 1 increase in value over US \$ 140 per barrel; and
- over US \$ 190 per barrel the rate shall be 25%.

Following chart illustrates the royalty rates for oil and condensates.



The slopes in the chart were determined in such a manner that the marginal royalty rate would always be reasonable. In other words, an investor should always have an incentive to seek the highest possible price, despite the higher royalty. This issue was already demonstrated with the Price Incentive Index in section 2.3.4.3 of this report.

The great advantage of a royalty based on value is that it makes the fiscal system very flexible and results in avoiding windfall profits in case of unexpectedly high prices. This means Nigeria will receive a fair share no matter the level of oil or gas prices. This greatly adds to the stability and flexibility of the fiscal system.

Windfall profits as occurred during 2008 due to high prices will be avoided. Nigeria will fully and immediately benefit from the higher prices through this feature.

As shown in Chart 17 of section 2.3.4.1 of this report, which illustrated the government take in relation to the oil price, the overall government take goes up automatically with higher prices.

#### **2.4.4. Analysis based on actuals**

Following is an analysis of the revenues associated with three PSCs and three JVs, based on the actual tax returns for the year 2008, in order to demonstrate how the terms proposed by the IAT will result in a very significant increase in government revenues. The “current terms” reflect the information from the actual tax returns. The “terms proposed by IAT” are the revenues that would result from these tax returns based on a recalculation of these tax returns under the proposed terms.

It should be noted that the year 2008 was a year of high oil prices and as a consequence the royalties based on value “clicked in” significantly. Illustrating the great importance of this new feature.

First the increased revenues from the PSCs are provided in Table 7.

**Table 7**  
**REVENUES FROM 3 PSCs BASED ON ACTUAL 2008**  
**PSC TAX RETURNS**

**CURRENT TERMS**

<b>Current Total Government Income</b>	
Royalties	\$143,319,445
Profit Oil	\$1,299,073,128
PPT	\$4,413,516,829
CIT	\$0
<b>Total</b>	<b>\$5,855,909,401</b>

**TERMS PROPOSED BY IAT**

<b>Total Government Income</b>	
Royalties	\$4,769,543,854
Profit Oil	\$1,325,459,165
NHT	\$1,739,577,961
CIT	\$1,476,444,588
<b>Total</b>	<b>\$9,311,025,568</b>

As can be seen from the above analysis application of the IAT proposed terms for these three tax returns would have increased the government revenues by a staggering \$ 3.45 billion more during the single year 2008.

Table 8 are the increased revenues from the JVs.

**Table 8**  
**REVENUES FROM 3 JVs BASED ON ACTUAL**  
**JV TAX RETURNS**

**CURRENT TERMS**

<b>Total Government Income</b>	
<b>Royalties</b>	<b>\$3,247,110,666</b>
<b>PPT</b>	<b>\$6,132,014,561</b>
<b>CIT</b>	<b>\$0</b>
<b>Total</b>	<b>\$9,379,125,227</b>

**TERMS PROPOSED BY IAT**

<b>Total Government Income</b>	
<b>Royalties</b>	<b>\$4,959,029,795</b>
<b>NHT</b>	<b>\$3,341,933,030</b>
<b>CIT</b>	<b>\$1,743,177,916</b>
<b>Total</b>	<b>\$10,044,140,741</b>

In this case, the increase would have been \$ 0.65 billion, primarily due to the increase in royalties based on value.

**2.4.5. Conclusion**

The new fiscal framework is a flexible framework based on the international experience of levying royalties, a corporate income tax and a resource tax. Such a system permits the creation of flexible royalties which automatically adjust to the level of production and price. The NHT, the “resource tax”, permits Nigeria to optimize the petroleum revenues with a flexible system, while creating a simpler administration. The resource tax also stimulates small field development. Under high price conditions windfall profits are avoided and significant additional government revenues will be earned.

Due to its inherent flexibility, the IAT expect this fiscal system to be stable. Small occasional adjustments will keep this system “up to date”, without causing disruption in the investments in Nigeria. In other words, Nigeria would establish a similar fiscal framework as many other countries have done, such as the United States, Canada and Norway.

## **2.5. Objective: Solve the Niger Delta crisis**

**The objective is to establish direct dividends payments to the communities in the Niger Delta that are directly impacted by the petroleum developments in order to create a more positive relationship between the petroleum industry and the local population.**

### **2.5.1. Problems**

The Niger Delta crisis is resulting in conditions where the petroleum industry cannot really reach its full potential. This is detrimental to Nigeria and the Niger Delta.

The Government has rather significant development programs in the Niger Delta. However, the local population does not feel part of these programs and the benefit of these programs does not always reach the communities that are impacted. Meanwhile these communities are living under abject poverty with failing basic social amenities such as water, electricity, health services and basic education.

Several oil companies have established extensive social responsibility programs involving employment, training and business opportunities for the local population. However, these programs reach only a small fraction of the total population.

### **2.5.2. Solutions**

**Based on the original ideas of the Presidential Adviser on Petroleum Matters, the IAT proposes in the Government Memorandum one of the most substantive and innovative concepts in the world to deal with the above crisis in support of the Amnesty Program, through:**

- **The creation of a significant direct dividend program, whereby as much as US \$ 600 million of dividends is paid annually to impacted communities in the Niger Delta,**
- **The dividends will be based on the impact value of the assets which impact on the communities in the onshore and offshore,**
- **Precise dividend amounts are established for each asset, such as a well, PPL acreage, gas processing plants, etc.,**
- **The dividends are payable directly from the operators to community cooperatives without further State or Federal involvement, and**
- **Communities can use these funds as the community cooperatives decide, including direct distribution to all members.**

**The additional costs of payment of dividends to impacted communities will have a significant impact on the cash flows of the petroleum companies. Therefore, a small general production allowance is proposed to compensate for these additional costs.**

### **2.5.3. Discussion**

Following is a discussion and explanation of the proposed dividend plan for impacted communities as contained in *Section 314* of the Redraft.

#### **2.5.3.1. Impacted Communities**

The main criterion of whether a community is impacted or not will be based on the environmental and social impact studies required under the proposed Redraft under *Part VII*. Therefore, any community for which environmental and social impact studies pursuant to *Part VII* of the proposed Redraft clearly and unambiguously identify serious and direct environmental impact(s) shall be considered an “impacted community”. This applies to the impact of onshore and offshore operations.

However, at the same time objective minimum impact criteria are being established in order to create certainty of dividend receipts for communities which are close to the operations. The objective minimum impact criteria for impacted communities are different for onshore and offshore operations.

For onshore operations the minimum criteria are that dividends will be distributed

- with respect to any well and facility, an equal share to all communities of which the centre is located within a radius of ten (10) kilometer from such well or facility,
- with respect to any gathering lines or pipelines, an equal share to all communities of which the centre is located within a corridor. The corridor is 2, 5 or 10 km wide depending on the diameter of the gathering line or pipeline, and
- with respect to a parcel of acreage of petroleum prospecting licences and petroleum mining leases, an equal share to all communities of which the centre is located within a radius of ten (10) kilometer from the midpoint of such parcel,

The centre of a community is the traditional centre.

For offshore operations the minimum criteria are that dividends will be distributed in equal amounts to all communities located within the relevant coastal State which is closest to the petroleum operations, determined as follows:

- with respect to any well and facility, the proximity of such wells and facilities to the salt water shoreline of the coastal State,

- with respect to any gathering lines or pipelines, the lines shall be divided in parts that are closest to the salt water shoreline of the various coastal States, and
- with respect to parcels of petroleum prospecting licences or petroleum mining leases, the proximity of the midpoint of the parcel to the salt water shoreline of the coastal State,

### **2.5.3.2. Amount of the dividends**

The amount of the dividends will be based on the impact values of the assets in the onshore and shallow water to 200 meter water depth. The initial impact values will be established in the Act, but these values will be occasionally reviewed, taking into consideration:

- (i) the replacement value of the assets,
- (ii) typical levels of pollution caused by the assets,
- (iii) typical levels of interference caused by the assets or related to the acreage,
- (iv) the strategic value of the assets to Nigerians in terms of establishing a secure supply of petroleum products for markets in Nigeria, of natural gas for power generation and for industrial use and of crude oil and condensates for refining operations.

The initial impact values are proposed to be the following:

- US \$ 20 per hectare for a parcel included in a petroleum prospecting license,
- US \$ 400 per hectare for a parcel included in a petroleum mining lease,
- US \$ 20,000 for each producing onshore well, including wells that are injecting, but excluding wells which have been suspended or are abandoned,
- US \$ 100,000 for each producing offshore well, including wells that are injecting, but excluding wells which have been suspended or are abandoned,
- US \$ 4 per meter of each flowing gathering line or flowing small diameter pipeline for petroleum or petroleum products up to and including a diameter of 15 cm (6 inch),
- US \$ 10 per meter of each flowing pipeline over 15 cm (6 inch) diameter up to and including a diameter of 30 cm (12 inch),
- US \$ 40 per meter for each flowing pipeline for petroleum and petroleum products over 30 centimeter (12 inch) diameter,
- US \$ 1 per square meter area occupied by any tank farm, loading facility, staging area, ware house or similar facilities,
- US \$ 10 per barrel equivalent total facility name plate capacity, based on 6000 cubic feet of gas per barrel of oil, for every:
  - (i) operating onshore and offshore field production facilities, FPSO, or other upstream facilities that handle or process petroleum, and
  - (ii) operating refineries or other midstream facilities that handle crude oil or condensates,
- US \$ 1 per Mcf name plate capacity for every operating gas conditioning plant, gas processing plant, natural liquids extraction plant, LNG plant, GTL plant or other midstream facilities that handle natural gas, and
- US \$ 10 per barrel based on the reasonable maximum daily loading capacity in barrels for operating onshore export terminals or offshore export terminals loading buoys.

These amounts will be adjusted with the adjustment factor of *Section 331*.

A preliminary estimate of the total amounts of dividends is \$ 630 million per year, determined as follows:

**Table 9**

**HOST COMMUNITY TOTAL DIVIDEND DISTRIBUTION PER YEAR**

(\$ million per year)

	Units	Amount	Rate	Total
PPL Acreage Onshore	sq km	45000	2000	90
PML Acreage Onshore	sq km	2500	40000	100
PPL Acreage Offshore	sq km	36000	2000	72
PML Acreage Offshore	sq km	1900	40000	76
Onshore wells	wells	2300	20000	46
Offshore wells	wells	400	100000	40
Gathering Lines	km	7000	4000	28
Small pipelines	km	4300	10000	43
Large pipelines	km	900	40000	36
tank farms	sq km	50	1000000	50
flow stations and plants	b/d	2500000	10	25
gas plants	Mcf/day	4000000	1	4
terminals	b/d	2000000	10	20
<b>TOTAL</b>				<b>630</b>

**2.5.3.3. Community Cooperatives**

Payments of dividends will be made directly by the petroleum companies and can only be made to the bank account of the community cooperatives established for this purpose by the local communities pursuant to applicable regulations under the Act.

It is proposed that such regulations set out among other issues:

- the membership of the community cooperatives, which shall include as a minimum all Nigerian citizens of 18 years and older residing in such communities subject to such residency requirements as may be provided for,
- the election and responsibilities of the boards and appointment of the treasurer of the community cooperatives,
- auditing and control procedures of dividends received and distributed by the community cooperatives, and

- the possibility for community cooperatives to create jointly regional cooperatives to which a percentage of the dividends can be transferred for joint planning and implementation of community projects.

The IAT proposes that the manner in which distribution of dividends shall be used or distributed shall be decided by the boards of the community cooperatives or regional cooperatives, based on the following options:

- (a) the dividends may be distributed equally to all members; or
- (b) the dividends may be distributed in part equally to all members and for remainder it may be used for:
  - (i) investments in shares or financial securities,
  - (ii) creation of community corporations for purposes determined by the board, or
  - (iii) such other activities that benefit the members of the community cooperatives or regional cooperatives.

It is proposed that the dividends should not replace current regular funding from Federal, State or other sources. Also the dividend payments will not replace programs that are ongoing and are being implemented by current operators with respect to employment, training and other social programs.

#### **2.5.3.4. Acts of vandalism**

The main purpose of the dividends from a national point of view is to secure peaceful operations in the Niger Delta. Therefore, if in any year an act of vandalism, sabotage or other civil unrest occurs that causes damage to wells or facilities allocated to a local community, such impacted community will forfeit the community dividends for such year. Also if any gathering lines or pipelines are inoperative due to acts of vandalism, sabotage or civil unrest, any communities along the gathering line or pipeline shall forfeit their respective community dividends with respect to such gathering line or pipeline during such year.

#### **2.5.3.5. Impact on investors**

With respect to pipelines, terminals and gas processing plants, the dividend payments to impacted communities will be included in the tariffs. Therefore, investors in such facilities will not be impacted by the dividend payments.

However, producers will be impacted in two ways:

- The higher pipeline and gas processing tariffs will result in a lower net back value for oil and gas, and
- The upstream assets and acreage holdings will result in significant dividend payments.

In order to compensate for such extra outlays on the part of producers, a special general production allowance applicable to onshore and shallow water is included in *Section 353 (9)*.

Furthermore, the dividend payments to impacted communities will be deductible for Companies Income Tax and Nigerian Hydrocarbon Tax and will be recoverable in onshore and shallow water PSCs as cost oil.

#### **2.5.4. Conclusion**

**The proposal by the Presidential Advisor and the IAT to pay dividends to impacted communities is the most extensive and comprehensive program ever designed in the world on this scale. The IAT hopes that the adoption of this program will create a sense of joint interest among the impacted communities and the petroleum companies and that this in turn will contribute to the peaceful and sustainable development of the Niger Delta.**

### **2.6. Objective: Create a viable National Oil Company with effective joint ventures**

**The objective is to create a self-financing and self-governing National Oil Company, which based on its own cash flow and resources can effectively contribute to a faster and more effective development of the petroleum industry of Nigeria and maintain a significant Nigerian owned presence in the industry.**

#### **2.6.1. Problems**

Currently, the NNPC combines the role of policy maker, regulator, tax collector and commercial entity. NNPC operates very much as a government department and is dependend on Government for its financial resources. The lack of commercial focus leads to inefficient operations and corruption.

A major problem is that the cash flow earned as working interest owner in the joint operating agreements needs to return under the Constitution to the Federation Account, rather than having this cash flow available for re-investment in the further development of oil and gas fields as would be the normal situation with most national oil companies in other countries in the world.

The budget of NNPC for new exploration and development of oil and gas has to go through the normal Government approval process as if NNPC is a government department. This makes it very difficult to plan and implement the exploration for and development of new oil and gas fields, since NNPC cannot plan and implement as any petroleum company would do.

In order to solve some of these problems NNPC has entered into so-called modified carried interest agreements, which in turn are disadvantageous to NNPC and the nation.

The lack of commercial focus makes it difficult for NNPC to systematically and aggressively invest in new gas infrastructure. It also makes it difficult to run the refineries under a regime whereby product prices are not deregulated.

### **2.6.2. Solutions**

The IAT proposes to follow the strong international trend as was also implemented in countries such as Algeria, Indonesia, Brazil and Colombia, to separate clearly the various functions:

- regulation should be done by the Regulatory Institutions,
- taxes should be collected by the FIRS, and
- NNPC Ltd should focus on becoming an efficient commercial entity similar to private corporations.

The IAT proposes in the Government Memorandum that:

- NNPC Ltd should be incorporated under the Companies and Allied Matters Act,
- NNPC Ltd will operate under the same terms and conditions as any other petroleum company in Nigeria and will pay all royalties and taxes, including taxes on its profit oil from PSCs,
- The full or partial privatization through the sale of shares on the Nigerian stock exchange will be pre-approved, and
- NNPC Ltd will have a professional Board.

The IAT proposes furthermore that:

- the current joint operating agreements will be converted into incorporated joint venture companies (IJVs) in order to ensure that the cash flow generated from petroleum production is with priority re-invested in exploration and development of oil and gas production and improved opportunities are created for the financing of the operations in order to ensure strong value creation,
- The IJVs will not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act in order to ensure that these companies can operate like any other private company with Boards that will make decisions on the basis of best international practice,
- The IJVs will be subject to all taxes and royalties and therefore there will be no loss in government revenues, and
- The shareholders of the IJVs will have access to oil and gas in proportion to the shareholding interests in order for NNPC to be able to play an effective role in the midstream and downstream operations.

### **2.6.3. Discussion**

#### **2.6.3.1. Incorporation under CAMA**

An important step in making NNPC a “normal” company is to incorporate NNPC under the Companies and Allied Matters Act.

***Section 78(1) provides for the fact that the Nigerian National Petroleum Company Limited, shall be a limited liability company established under the Companies and Allied Matters Act (“CAMA”) and shall be the successor of the Nigerian National Petroleum Corporation.***

By incorporating it under CAMA the NNPC Ltd will have to adhere to all provisions of this Act as any other company in Nigeria. This Act also sets out the overall framework of the organization and responsibilities of NNPC Ltd.

**A very important impact of this incorporation is that the revenues from the working interests in the joint operating agreements will no longer have to go to the Federation Account. Only the dividends paid by NNPC Ltd will go to the Federation Account. This will therefore instantly improve the financial position of NNPC Ltd. It will make the Board of NNPC responsible for the management of cash flow as in any other company.**

#### **2.6.3.2. Royalty and Tax regime applicable to NNPC Ltd.**

It is important to emphasize that the IAT proposal creates a NNPC Ltd that will be subject to the same royalties and taxes as any other petroleum company in Nigeria. The incorporation of NNPC Ltd will therefore not result in any loss of royalty and tax revenues to Nigeria.

In fact, FIRS will now become directly responsible for collecting taxes on all taxable income of NNPC Ltd and its subsidiaries. This means that there is now a direct role for FIRS with respect to the taxation of NNPC. The current role of NNPC to collect “tax oil” under production sharing agreement will be terminated under the new fiscal regime as described under section 2.4 of this report.

As discussed earlier, NNPC Ltd will create a special subsidiary as required under Section 343(3) for the payment of Companies Income Tax and Nigerian Hydrocarbon Tax on profit oil and profit gas received as a result of the production sharing agreements, where NNPC Ltd is the lessee.

NNPC Ltd will also be able to benefit from the special favourable Companies Income tax provisions for investment in midstream projects, such as refineries, pipelines, LNG plants, gas processing plants, etc.

### **2.6.3.3. Pre-approval of privatization of NNPC Ltd.**

**A remarkable provisions in the Redraft is *Section 78(6)*. This section provides for the fact that the Government may at any time after two years from the date of incorporation of the National Oil Company, decide to divest itself of any amount of shares in the National Oil Company.**

This is in fact a pre-approval of the full or partial privatization of NNPC Ltd.

The experience of companies such as Petrobras and Statoil is that these companies only reached their full potential once they were partially privatized and literally had to operate as any other private petroleum company.

The fact that this avenue is open under the proposed Redraft for NNPC Ltd provides a strong framework for the future of NNPC Ltd. An initial phase of corporatization which makes NNPC Ltd more efficient and more commercial can be followed up by a further phase whereby NNPC Ltd gains the benefit from being partially privatized.

It should be noted that there is also no limitation for the creation of subsidiaries and other legal entities of the National Oil Company may be jointly owned by the National Oil Company and other parties as provided for under *Section 78(5)*.

### **2.6.3.4. Board of NNPC Ltd.**

In order to achieve the objectives of operating in an efficient manner, NNPC must have a Board that can operate independently. In this respect *Section 83* stipulates that the members of the Board of the National Oil Company shall be guaranteed the authority and resources to fulfil their duties in a professional and objective manner without interference.

*Section 84* stipulates that the Board shall consist of a Chairman who shall be the Minister, and the following other members:

- Minister of Finance or his representative,
- Managing Director of NNPC Limited, and
- three persons to be appointed by the President, being persons who by reason of their ability, experience or specialised knowledge of the oil industry or of business or professional attainment are capable of making useful contributions to the work of the company.

The good governance of the Board is provided for in *Section 86* which provides that Board members shall discharge their responsibilities in accordance with the best standards, practices and principles of corporate governance and their actions shall be transparent and fully explained to affected stakeholders and where necessary, to the general public.

Furthermore, Section 87(e) stipulates that the Board shall make decisions which shall be guided by commercial and technical considerations that represent best practice in the petroleum industry.

Section 88 requires independent audits.

In general, therefore, the requirements of the Board of NNPC Ltd adhere to all international principles that are required to ensure the best possible guidance of the company.

#### **2.6.3.5. Creation of Incorporated Joint Venture Companies (IJVs).**

Currently, the Joint Ventures in the onshore and shallow water areas to which NNPC is a party are un-incorporated joint ventures or also called joint operating agreements. In these type of joint ventures the parties remain independent oil companies, but they share one or more projects on a working interest percentage basis.

**The IAT proposes in Section 160 to convert the current joint operating agreements into incorporated joint venture companies (“IJVs”).**

These IJVs would also be incorporated under CAMA. In other words it will be “normal” companies with responsibilities and obligations as all companies in Nigeria.

*Section 160(2)(d) provides for the fact that each incorporated joint venture company shall be owned by the parties to the existing joint operating agreements in proportion to their participating interests at the time of the incorporation. In other words if NNPC holds 60% of the current joint*

The transfer of all assets, interests and liabilities shall be completed within thirty (30) months from the commencement of the Act and the IJVs will be fully operational from that point in time. Until the IJVs are fully operational the current joint operating agreements will continue to function normally, with the current operators in charge. The objective is to ensure a smooth transfer of the operations to the IJVs so there are no obstacles or delays in production and investments.

The creation of the IJVs permit such IJVs to dedicate the entire cash flow of the company to further exploration and development of oil and gas fields or to distribute the profits as dividends back to the shareholders, based on decisions by the Board from time to time. This will guarantee that as long as new investment opportunities meet the criteria of the shareholders, further oil and gas will be developed and produced.

Of course, NNPC Ltd will hold the majority of the shares and therefore will have a majority of Board members. However, this does not mean that NNPC Ltd can overrule minority shareholders and dictate the developments. *Section 160(2)(a)* provides that a shareholders agreement will be negotiated in the first 15 months following the commencement of the Act. It is intended that this shareholders agreement will adequately protect the interests of the minority shareholders.

The creation of the IJVs will also permit the new companies to borrow as a company the capital that may be required to rapidly expand its operations. Since the IJVs have direct ownership of the rights to the production of the reserves contained in the PMLs owned by the IJV, the IJVs will have strong assets to borrow against. The net cash flow from the production can be dedicated as security for any borrowings, based on decisions by the Board. *Section 168(3)* specifically permits the Board to engage in any borrowings approved by the Board.

IJVs are therefore efficient corporate structures to rapidly expand exploration and production in the existing and new licences and leases. It should be noted that any new investments in oil and gas development will be done on the basis of the more attractive fiscal terms as discussed already in section 2.1 of this report.

The new IJV s will be operator of the licences and leases they own. However, in order to ensure a smooth transition it is anticipated that the personnel of the current operators will be transferred to the IJVs in order to continue the operations normally as established under the shareholders agreements.

#### **2.6.3.6. Fiscal Responsibility Act and Public Procurement Act**

Pursuant to *Section 160(2)(e)* the IJVs will not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act in order to ensure that these companies can operate like any other private company with Boards that will make decisions on the basis of best international practice

#### **2.6.3.7. Royalties and Taxes**

The conversion from joint operating agreements to IJVs will not result in any change in royalties and taxes. The IJVs will continue to pay the royalties as proposed in the Redraft as well as the Companies Income Tax and Nigerian Hydrocarbon Tax as provided for under *Section 163*.

There will therefore not be any loss of revenues to the Government as a result of these IJVs.

#### **2.6.3.8. Access to Oil and Gas**

*Section 165* stipulates that each shareholder to an incorporated joint venture company shall have the option to purchase from the incorporated joint venture company:

- (a) at the prices established in *Section 334* of the Redraft, a percentage of the crude oil, natural gas and condensates produced equal to its shareholding interest in the incorporated joint venture company; and
- (b) a percentage of the petroleum products, at prices established in the shareholders agreement equal to its shareholding interest in the incorporated joint venture company.

This means that NNPC can obtain the respective amounts of crude oil and condensates it needs to supply its Nigerian refineries. Also NNPC can deliver the respective gas to the domestic market for power generation or for supply to other strategic sectors.

#### **2.6.4. Conclusion**

**The changes proposed by the IAT for the restructuring of NNPC and its joint operating agreements will lead to a more efficient company with a significantly enhanced ability to strongly promote the further expansion of the oil and gas production. It will also enable NNPC Ltd to tackle the significant improvements required in the refining sector and to contribute to a rapid expansion of gas deliveries to the domestic market.**

### **2.7. Objective: Deregulate petroleum product prices**

**The objective is to fully deregulate petroleum product prices in order to create strong competition resulting in the lowest possible petroleum product prices for consumers and to create an attractive environment for investment in new refining capacity and distribution systems.**

#### **2.7.1. Problems**

The current situation where refineries are operated well below their capacity and Nigeria has to rely on the import of expensive petroleum products while creating occasional shortages of petroleum product supplies is not acceptable.

The government interference in the subsidization and allocation of petroleum products is also a source of corruption.

The main solution to these problems is the complete deregulation of the petroleum product prices.

It is difficult to upgrade refineries and make them work efficiently with petroleum product prices which do not reflect fair market value.

#### **2.7.2. Solutions**

The IAT proposes in the Government Memorandum that:

- The petroleum products markets should be completely deregulated,

- The Equalization Fund should be scrapped,
- Open access provisions will be established for bulk plants, product pipelines and terminals to permit effective competition in the downstream petroleum market,
- Strong price monitoring powers will be given to the Regulatory Institutions to prevent misuse of the free market environment, and
- The attractive fiscal incentives currently applicable to gas processing will also be extended to the construction and operation of domestic refineries.

### **2.7.3. Discussion**

#### **2.7.3.1. Deregulation of Petroleum Product Prices**

*Section 262* of the Redraft stipulates that in order to ensure a market related pricing and adequate supply of petroleum products to the domestic market, the pricing of petroleum products in the downstream product sector is hereby deregulated, with a view to removing economic distortions and creating fair market values for petroleum products in the Nigerian economy.

It is anticipated that the deregulation will take place based on an orderly sequence of events in such a manner that no disruptions occur in the supply of petroleum products. This sequence of events will be dealt with in regulations as part of the implementation of the Act.

However, the end goal will be a true free market for petroleum products. In order for a free market to work properly there will have to be adequate access to product pipelines, terminals and depots.

#### **2.7.3.2. Equalization Fund will be scrapped**

Once the market is fully deregulated and is operating properly, there will no longer be a need for the Equalization Fund.

It is therefore that *Section 105(3)* states that where the Government decides that petroleum product markets have been effectively deregulated, the Minister shall take the required actions to ensure that the Equalization Fund shall cease to exist and any assets shall be transferred to the Federal Government to be controlled and managed by the Directorate and at such time Part II-I Act shall then stand repealed.

In other words no new legislation is required to terminate the Equalization Fund. It is already contemplated in the Redraft.

#### **2.7.3.3. Open access provisions**

The Redraft proposed by the IAT contains a number of important provisions that will guarantee open access with regard to the distribution and marketing of petroleum products.

Currently, the most important product pipeline system is owned by the Pipeline and Products Marketing Company (“PPMC”). In Section 265(1) it is proposed that PPMC shall be unbundled in order to permit the creation of a limited liability company dealing with product pipeline transportation and bulk terminals and depots, to be known as the National Transport Logistics Company (“NTLC”), wholly owned by the Nigerian state. NTLC will be an open access facility.

*Section 267* establishes that NTCL shall not engage, directly or indirectly, in any other operational activity in the downstream petroleum sector, with the exception of bulk transportation. Transportation in the NTCL network shall be based on pipeline transport tariffs to be determined pursuant to *Section 275*.

*Section 268(1)(a)* guarantees that companies with commercial licences for petroleum product marketing or for refining shall have access to the regulated petroleum product pipelines system and regulated jetties and loading facilities and storage depots.

The open access conditions shall be based on regulations and be based on commercially viable terms as determined by the Petroleum Product Regulatory Authority (“Authority”).

*Section 274* determines that any company with a commercial licence for petroleum product marketing or a bulk consumer of petroleum products will have the right to construct and operate independent petroleum product pipelines and independent depots for its usage. Such independent pipelines and depots will not be subject to regulation. However, if there is uncommitted capacity in such systems there would be rights of access by companies with commercial licences for petroleum product marketing based on regulations.

*Section 275* provides for the regulatory institution to set tariffs for product pipelines, bulk storage of petroleum products and terminals, jetties and loading facilities.

In total the provisions in the Redraft add up to a complete open access regime. Therefore, there will be no restrictions to companies involved in product marketing to engage in intense competition.

#### **2.7.3.4. Price monitoring**

It is very important to establish effective price monitoring in conjunction with the deregulation of petroleum product prices. There is scope for oligopolistic practices and anti-competitive behavior of companies in a deregulated environment. This would undermine the goal of deregulation, which is to ensure that consumers enjoy the full benefits of the lowest possible petroleum product prices.

It is therefore that in *Section 278* the IAT proposes strong price monitoring provisions for the Authority with respect to petroleum product prices with full rights of inspection in all facilities. Where the Authority would determine that anti-competitive practices occur the Authority can take such measures as prescribed by regulations, including:

- Establishing ceiling prices
- Prohibiting certain practices
- Determining methodologies for establishing fair market value for certain products in certain areas of Nigeria or all of Nigeria.

In carrying out the required functions the Authority will have ample powers of inspection and to call witnesses, as provided in *Sections 279 and 280*.

*Section 281 and 282* establish the type of offences and related penalties that would apply. Penalties include the discontinuation by the company of the supply of petroleum products.

#### **2.7.3.5. Attractive fiscal terms for refining**

In order to encourage large scale investment in refining the IAT proposes in Section 332 to extend the benefits that apply to midstream gas operations under the Companies Income Tax also to midstream petroleum operations including refining. This will make tax holidays and accelerated write offs available for investments in refineries.

#### **2.7.4. Conclusion**

**The IAT proposes in the Redraft a comprehensive framework for the deregulation of petroleum product prices and for providing incentives to invest in refineries and other midstream infrastructure related to petroleum product prices. Full open access to all pipelines, depots, terminals and jetties will guarantee that there is no impediment to competition. Strong consumer protection provisions are included to prevent certain companies from engaging in anti-competitive practices.**

### **2.8. Objective: Create efficient regulatory powers with a strong midstream entity**

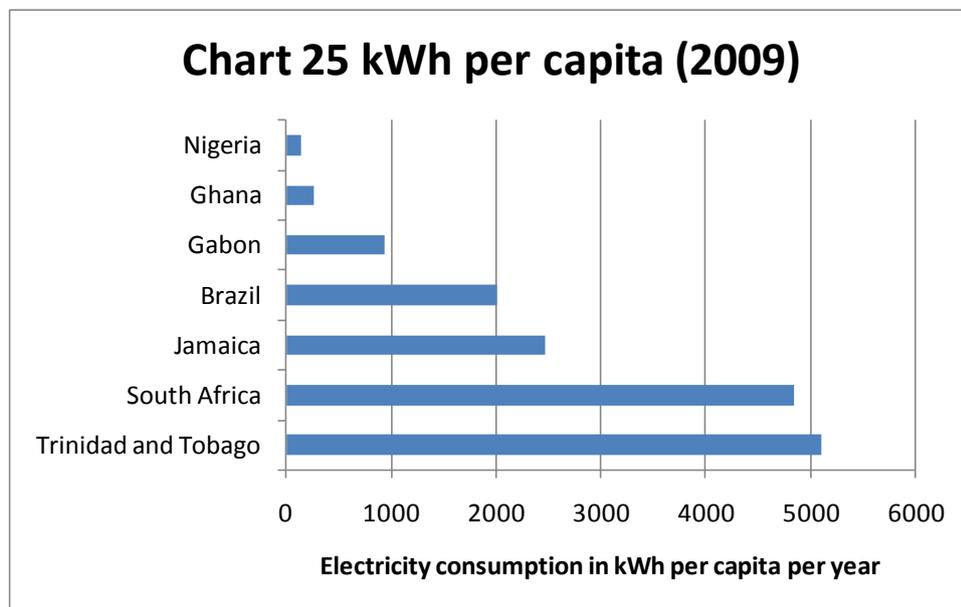
**The objective is to establish a clear and transparent regulatory framework, with shorter approval cycles and a clearer focus, with a strong midstream regulator in order to support the rapid development of gas infrastructure and new refining capacity.**

#### **2.8.1. Problems**

The fact that Nigeria is currently in a disastrous situation with respect to gas deliveries to power plants and refining performance is in part the result of the absence of a clear regulatory framework. Currently, the investment in new projects requires ad-hoc and discretionary decisions

with significant political interference, corruption, endless bickering and long approval cycles with poorly defined requirements and lack of coordination among agencies of Government.

The per capita electricity consumption in Nigeria is only 136 kWh per year. As is illustrated in Chart 25 below, this is a ludicrous low level compared to other African and Latin American countries. This failure is even more striking if it is realized that Nigeria has abundant low cost natural gas resources (of which significant volumes are still being flared).



The lack of adequate electricity creates poverty on a large scale in Nigeria and is one of the main causes of the lack of economic performance of the Nigerian economy compared to other nations.

**Mr. President has targeted this issue as front and central to the future of Nigeria. In section 2.2 of this Report, it was already discussed how the IAT proposes to strongly support this initiative with a comprehensive strategy to make gas available for domestic consumption in the power sector and other strategic sectors.**

**However, another very important reason for the complete failure of the domestic energy sector in Nigeria has been the ineffectual petroleum regulatory framework. Currently, no regulatory entity has a clear comprehensive responsibility to connect the low cost gas resources to the power sector. At this level, it will take decades for Nigeria to catch up with countries such as Brazil and South Africa, because nothing was done during the last decades by the existing regulatory entities to create an effective and efficient domestic energy sector. Normally, in other countries this is considered one of the main functions of the regulatory entities.**

The main problem of the current regulatory framework is the complete lack of focus on national economic development.

The focus of the Department of Petroleum Resources is just technical issues. They are a department dealing with technical issues in upstream, midstream and downstream. Because of the focus on technical issues, they do not have the means or the capability to play a role in commercial and economic issues, let alone contributing to an efficient and effective national economic framework. The Department of Petroleum Resources is clearly not responsible for defining and implementing a comprehensive national strategy to connect the gas resources to the power plants.

NAPIMS is dealing with some of the commercial issues and economic issues in the upstream. Their main function is cost control, benchmarking and forecasting. They have no responsibility for defining and implementing a comprehensive national strategy to connect the gas resources to the power plants.

PPPRA is responsible for the commercial and economic issues in the midstream and downstream sector. However, they lack the technical background and capacity to review comprehensive project development or understanding of integrated midstream and downstream projects. They have no responsibility for defining and implementing a comprehensive national strategy to connect gas resources to the power plants and other domestic industries.

**In short, there is no regulatory entity which is responsible for defining and implementing a comprehensive national strategy to connect gas resources to the power plants and other domestic industries.**

As a result of this vacuum, a “Gas Master Plan” was developed on an ad-hoc basis. Although this plan provides a comprehensive view of how in principle a system of gas pipelines and gas processing plants could be developed, it is not embedded in a regulatory entity. Therefore, the plan lacks the detail and precise definition that would be required for implementation. As a result, so far this plan is indeed only a plan. It has so far not been implemented in any significant manner during the last three years.

As discussed in section 2.2, the Redraft is therefore proposing a more detailed definition of the domestic gas supply obligation.

**Nevertheless, without a regulatory entity that can define and implement a comprehensive strategy that will connect the gas resources to the power plants and other gas based industries, based on large scale private investments, Nigeria will likely have difficulty catching up with other nations for a long time.**

### **2.8.2. Solutions**

**Project decisions should be through a “one stop shop” where all technical aspects and commercial aspects of a project can be reviewed by a single Regulatory Institution on the basis of a clear and efficient process and a short period for decision making.**

**It is proposed to adopt the concept of corporate structures in order to be able to attract the best possible professionals.**

**The IAT proposes in the Government Memorandum to create:**

- **A National Petroleum Directorate in order to act as secretariat to the Minister and coordinate the activities of the Regulatory Institutions and other entities.**
- **A Nigerian Petroleum Inspectorate in charge of all technical and commercial aspects of upstream operations,**
- **A National Midstream Regulatory Agency in charge of all technical and commercial aspects of midstream operations and be responsible for the connection of the large low gas resources to the power plants and other industries, and**
- **A Petroleum Products Regulatory Authority in charge of all technical and commercial aspects of downstream operations.**

**The IAT proposes a strong midstream regulator based on the favourable experiences of Algeria, the United States and Canada in establishing an extensive nation wide network of gas pipelines and gas processing plants to serve a rapid expansion of the domestic gas demand for power generation and other industrial sectors.**

**It is likely that for the next decade Nigeria will have still sufficient gas for exports as well. Algeria and Canada are among the most successful gas exporters in the world and therefore adopting a regulatory framework similar to these nations will also assist in the generation of additional revenues by Nigeria from exports of gas and the production of the related condensates.**

### **2.8.3. Discussion**

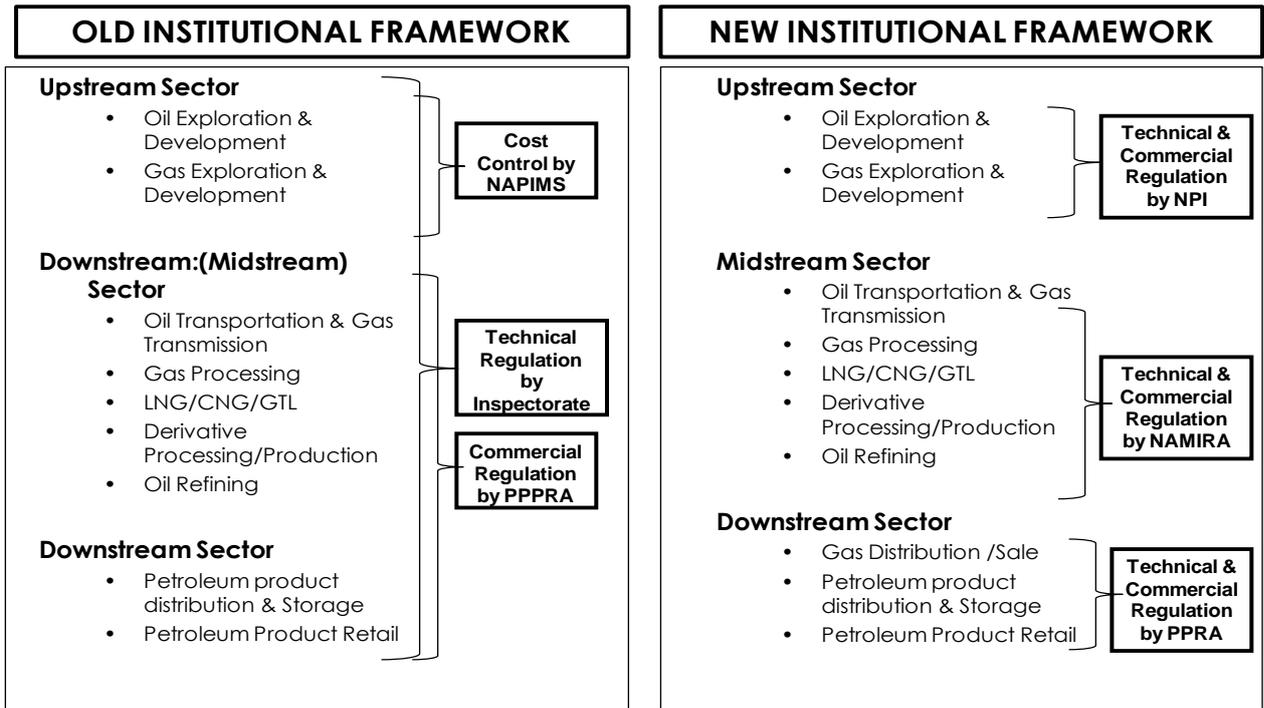
#### **2.8.3.1. One stop shop and corporate organization**

The broad concept of the IAT proposals is to create a re-alignment of the regulatory institutions in such a manner that for each of the petroleum sectors a “one stop shop” is being created. This means that it is proposed to combine all technical and commercial aspects of regulation in three entities under the general coordination of the Directorate:

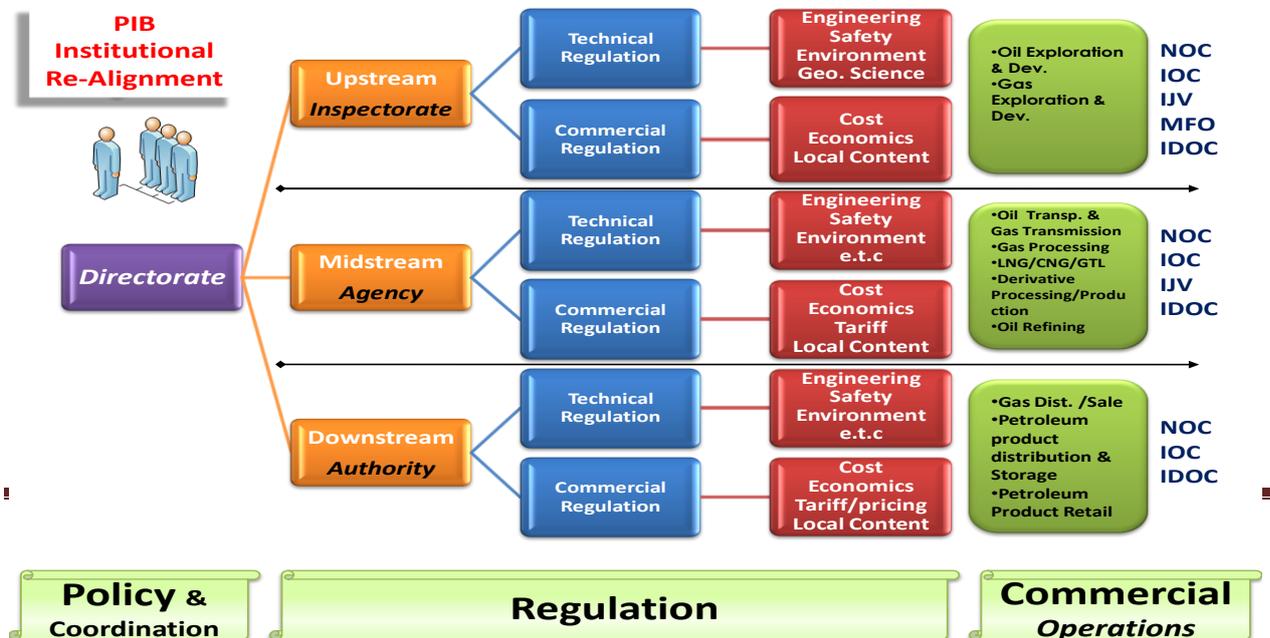
- **A Nigerian Petroleum Inspectorate (“Inspectorate”) in charge of all technical and commercial aspects of upstream operations,**

- A National Midstream Regulatory Agency (“Agency”) in charge of all technical and commercial aspects of midstream operations and be responsible for the connection of the large low gas resources to the power plants and other industries, and
- A Petroleum Products Regulatory Authority (“Authority”) in charge of all technical and commercial aspects of downstream operations.

The following chart illustrates the old institution framework compared to the new institutional framework



The following chart illustrates the realignment.



This means, for instance, that in order to approve a development plan for an oil or gas field, only a single submission is required to the Inspectorate. The Inspectorate will review all technical and commercial aspects of the plan and give a single approval for the developments.

For instance, in order to approve a gas transmission pipeline, only a single submission has to be made to the Agency. The Agency will review all technical and commercial aspects of the plan and give a single approval for the pipeline.

The same is true for an approval for a local gas distribution network, which will require only a single submission and approval by the Authority.

This means, for an upstream project, investors will not be “caught” between conflicting requirements of technical and commercial aspects of a project.

It does not make sense to approve a gas pipeline without having considered all technical and commercial aspects of the project. A decision on the diameter of a gas pipeline cannot be made without understanding the market it is supposed to serve and without comprehending the potential for use by other producers or consumers of the line.

Apart from the technical and commercial aspects it is important to integrate in the single approval decision, the environmental consequences as well as local content requirements.

In order to stimulate the more rapid development of the petroleum industry in Nigeria it is important to reduce the time required for regulatory decision making and approval.

This overall approach is well in line with international practices as will be demonstrated below in the next subsections of this report.

### **2.8.3.2. Corporate organization**

What is of fundamental importance is that the Directorate and the three Regulatory Institutions, as well as the other entities created in Part II, will have a corporate structure, rather than being typical government departments. This is being done to streamline decisions, but in particular to enable these corporations to attract professionals of the highest standards without being restricted by government salary scales and bureaucracy. Unless Nigeria is able to attract the best professionals in the management of the petroleum industry, Nigeria will never fully benefit from its petroleum resources.

### **2.8.3.3. The National Petroleum Directorate (“Directorate”)**

The Directorate is the secretariat of the Minister and coordinates the activities of the Institutions.

It is proposed to also organize the Directorate as a corporation. However, this corporate organization does not mean that the Directorate has independent decision making powers relative to the Minister. It is therefore clarified in Sections 12(3) and 13(b) of the Redraft that the Management Committee of the Directorate serves to implement the decisions of the Minister.

An important issue in the Redraft is in Section 13(x) which states that the Directorate has the custody on behalf of the Minister of petroleum vested in the Federal Government. This is an important implementation of the Constitution. This centralizes the management of the petroleum resources under the Minister.

The Bill provides for the fact that the Directorate, the Inspectorate, the Agency, the Centre and the Frontier Service are paid from a fees to be contributed by the petroleum industry equal to up to 2% of the value of fiscalized crude.

- modified to a US \$ 0.50 per barrel levy. This levy can now be credited against the royalties. The amounts are capped at US \$ 200 million per year.
- It is clarified that all funding must be appropriated by the National Assembly.

#### **2.8.3.4. Nigerian Petroleum Inspectorate (“Inspectorate”)**

The IAT proposal for the functions of the Inspectorate are contained in Section 39 of the Redraft. The functions are separated in technical functions described under Section 39(1) and cost and commercial functions described under Section 39(2).

Some of the important technical functions are:

- enforce and administer policies, laws and regulations relating to technical aspects of upstream petroleum operations,
- enforce approved regulations and standards relating to operations of the upstream petroleum sector, including oil and gas evaluation and management, upstream gas gathering, gas treatment and flares elimination,
- keep a register of all permits and PELs issued for upstream petroleum operations by the Inspectorate and PPLs and PMLs granted by the Minister and any renewals, amendments, suspensions or revocations thereof,
- ensure adherence to environmental standards that may be established by the government; by all operators and companies involved in any activity pertaining to the upstream petroleum operations;
- establish, monitor and regulate safety measures relating to the management of petroleum reserves and installations as well as exploration, development and production activities
- undertake evaluation of national reserves and reservoir management studies;
- assist the relevant entity under applicable legislation with conducting regular audits of the operations of operators and companies engaged in all aspects relating to exploration, production and development of crude oil and natural gas, including oil service companies, in order to ensure compliance with Nigerian Content requirements for upstream petroleum operations,
- maintain a petroleum industry data bank comprising all data acquired by or given to the Inspectorate in the exercise of its statutory functions;
- supervise and ensure accurate calibration and certification of equipment used for fiscal measures for upstream petroleum operations;

- advise the Minister on fiscal and other issues to enhance the operations of the petroleum sector and improve the benefits to Government from the sector;
- issue permits and any other authorisations necessary for all technical activities,
- set standards for the design, procurement, construction, operation and maintenance of all plants, installations and facilities that pertain to upstream petroleum operations;
- establish special laboratories with capabilities for data storage and testing, quality assurance and certification for upstream petroleum operations;
- ensure the promotion of the safe, orderly and optimal development of the upstream petroleum operations in the overall interest of the people of Nigeria, and
- conduct bidding rounds for the award of petroleum prospecting licenses and petroleum mining leases pursuant to the provisions of this Act;

Some of the important commercial functions are:

- to approve the general commercial concept of the overall design for all field development programmes in the upstream petroleum operations,
- to superintend and oversee the activities of all operators in the upstream petroleum operations in all areas pertaining to cost control and in pursuance of this, to approve commercial aspects of work programmes and field development plans for all operators in the upstream petroleum operations, including the National Oil Company,
- to provide regular cost information to the Directorate for the purpose of allocating petroleum quotas to cost effective operators,
- to develop cost benchmarks for the evaluation of opportunities in the upstream petroleum operations in a manner that takes into account petroleum industry specific issues, such as field size, depths of reservoirs, location of operations, technology applied, production methods and petroleum quality. A copy of any benchmarking report shall be forwarded to the FIRS,
- compute, determine, assess and ensure payment of royalties, rentals, fees, and other charges for upstream petroleum operations as stipulated in the Act and any regulations made hereunder, and
- to liaise with the Federal Inland Revenue Service on cost deductions under the relevant provisions of the Act and any other law in force.

**As can be noted, the Inspectorate will have all the technical and commercial functions and responsibilities to interact with the Ministry of the Environment and entities responsible for Nigerian content, in order to give a single project approval for a new development of an oil or gas field.**

The single approval for a development plan is contained in *Section 178(3)* which provides for the concept that the Inspectorate shall only approve a development plan, where the development plan:

- meets the technical standards that are required for the related works and where the location of the measurement point(s) and measurement processes and equipment are acceptable;
- results in the maximum recovery of crude oil, natural gas or condensates, from the field, taking into consideration a reasonable economic framework;
- meets adequate health, safety and environmental standards;
- represents an optimal commercial project in terms of use of midstream transport
- and processing facilities or use of production facilities owned by other lessees;

- does not involve excessive capital or operating expenditures based on the benchmarking analysis of the Inspectorate which would result in a reduction in anticipated petroleum revenues that would not be in the national interest;
- includes an approved Nigerian content plan pursuant to Part VI of this Act;
- includes an approved environmental management plan pursuant to section 199 of this Act and an acceptable decommissioning and abandonment plan;
- provides for the elimination of routine gas flaring, and
- does not relate to upstream gas operations that are undertaken to support midstream export gas operations where the Agency has made the determination that further export commitments of gas from Nigeria are not in the national interest.

**It should be noted that this single approval concept for a development plan is based on the best international practice.** The overall approach in the proposed Redraft is in this respect very similar to the practice and powers of the Norwegian Petroleum Directorate. Norway, is generally admired for the sound manner in which the upstream petroleum industry is being managed.

The Norwegian requirements for a development plan submission are almost identical to the ones proposed in *Section 178(3)*. To illustrate this, a quote is provided from the Norwegian petroleum activities regulation, which was last amended in 2006. The quote is from Section 21 of this regulations which described the content of the development plan:

***Section 21***

***Description of the development in the plan for the development and operation of a petroleum deposit***

*Description of the development with associated documentation shall be adapted to the extent of the development. The Description shall give an account of economic, resource related, technical, environmental and safety related aspects of the development.*

*The description of the development shall to the extent necessary contain:*

- a) *description of development strategy and development concept, as well as the criteria for the choices that have been made, description of subsequent development stages, if any, tie-ins with other fields, and if relevant co-ordination of petroleum activities,*
- b) *description of geological and reservoir engineering aspects, and production schedule,*
- c) *description of technical solutions, including solutions aimed at preventing and minimising environmentally harmful emissions,*
- d) *information of management systems, including information of the planning, organising and implementation of the development,*
- e) *information on operation and maintenance,*
- f) *information on economic aspects,*
- g) *information on what licenses, approvals or consents have been applied for, or that are planned to be applied for, pursuant to the other applicable legislation, if a facility is to be placed on the land territory or seabed subject to private property rights,*
- h) *information as to how the facilities maybe disposed of when the petroleum activities have ceased,*

- i) information on facilities for transformation or utilization comprised by the Act section 4-3,
- j) information on how the gas shall be marketed,
- k) description of technical measures for emergency preparedness,
- l) information on other factors of importance to the resource management,
- m) other information required pursuant to the safety regulations in force at any time.

The Ministry may require studies of alternative solutions.

**As is very clear from this quote of the regulations, Norway has also adopted the “one stop shop” approach. The Norwegian Petroleum Directorate does not just evaluate the technical aspects of the development plan proposal, while another entity looks at the commercial aspects. The Norwegian Petroleum Directorate considers all aspects of the development plan.**

#### **2.8.3.5. National Midstream Regulatory Agency (“Agency”)**

**The important recommendation of the IAT is to establish a strong midstream regulatory agency in order to ensure that the large low cost gas resources of Nigeria are connected to the power sector and other gas based industries on the basis of large scale private investments in pipelines and gas processing plants.**

The IAT proposal for the functions of the Agency are contained in *Section 68* of the Redraft.

Some of the important functions are:

- to regulate and co-ordinate the technical and commercial activities of the midstream petroleum operations in Nigeria in a non-discriminatory and transparent manner;
- regulating commercial midstream activities which include:
  - (i) midstream crude oil operations,
  - (ii) midstream domestic gas operations,
  - (iii) midstream export gas operations,
  - (iv) establishment of methodology for determining appropriate tariff for gas processing, gas transportation/transmission, and transportation of crude oil, bulk storage of oil and gas for midstream petroleum operations,
  - (v) establishment of appropriate pricing framework for sale of gas by operators in the midstream petroleum operations based on the fair market value with the exception of the gas prices determined pursuant to subsection (5) of section 304 of this Act, and
  - (vi) setting cost benchmark for midstream petroleum operations;
- issue and regulate technical and commercial licences and any other authorisations necessary for all midstream petroleum operations;
- keep a register of all technical and commercial licences issued and any renewals, amendments, suspensions or revocations thereof;

- ensure the provision of third party access to the transportation and transmission networks for midstream petroleum operations;
- promote competition and private sector participation in the midstream petroleum operations;
- ensure that all economic and strategic demands for downstream gas are met;
- In respect of midstream petroleum operations, to set rules for the administration of the open access regime; to regulate and administer the open access to transportation, transmission and bulk storage facilities;
- to monitor market behaviour including the development and maintenance of competitive markets in the midstream petroleum operations;
- establish, monitor and regulate technical, health, environmental and safety measures relating to the management of assets and activities in midstream petroleum operations;
- inspect the metering of pumps and any other facilities for midstream petroleum operations and ensure compliance with safety standards as prescribed by the Agency;
- set standards for the design, procurement, construction, operation and maintenance of all plants, installations and facilities that pertain to the midstream petroleum operations;
- ensure the promotion of the safe, orderly and optimal development of the midstream petroleum operations in the overall interest of the people of Nigeria;
- ensure the supply of gas to the strategic sectors, in accordance with the approved national gas pricing framework;
- establish parameters and codes of conduct for all operators in the midstream petroleum operations;
- promote transparency within the Agency and amongst the operators;

**The important aspect is that both technical and commercial licences are issued by the Agency.**

The one shop stop concept is implemented in *Section 205*. Any new project or modification or expansion of an existing project with respect to midstream petroleum operations shall require prior to any construction or operation a project approval certificate issued by the Agency. *Section 205(2)* sets out the features of such a project approval certificate. These shall be as follows:

- A technical licence issued by the Agency, which certifies that the project meets all technical requirements under the Act;
- A commercial licence issued by the Agency, which certifies that the applicant is a company permitted to own and operate the type of business required for the project.
- a declaration of the Agency that the project:
  - (i) meets all commercial requirements under the Act, and
  - (ii) does not involve excessive capital or operating expenditures based on the benchmarking analysis of the Agency, which would result in a reduction in anticipated petroleum revenues or increased consumer prices;
- a declaration of the Agency that the project meets all health, safety and environmental standards required under the Act;
- an approval of the Nigerian content plan for the project pursuant to Part VI-B of the Act;
- an approval of the environmental management plan pursuant to Part VII of the Act and an acceptable decommissioning and abandonment plan; and

- if the project involves the export of gas, a permit to export gas granted by the Agency

**This illustrates how a project cannot be approved unless it has met all standards required, based on a single approval by the Agency.**

**Again the concept for a single certificate is in line with international best practice.**

Canada has one of the most sophisticated midstream regulatory systems in the world for a number of reasons:

- Canada has a wide range of domestic oil and gas resources in many areas of Canada
- Canada has significant domestic needs for oil and gas and the requirement for significant transportation infrastructure, given the large size of the country, and
- Canada is a significant exporter of oil and gas.

Canada has been unusually successful in providing the lowest cost energy supply mix to its power sector on the basis of an extensive national pipeline system for oil and gas. Therefore, Canada is an excellent example to take into consideration for the design of a midstream regulator in Nigeria.

As Nigeria, Canada is a Federal nation.

Canada opted for the creation of a single powerful national regulator for the midstream sector, in the case of Canada, both for petroleum and electricity, the National Energy Board. In many respects the midstream regulator in the Redraft of the IAT is patterned on the Canadian experience, as well as similar agencies in the United States (FERC) and in Algeria, of course, adjusted to the specific circumstances in Nigeria.

The midstream sector in Canada is regulated by the National Energy Board, under the National Energy Board Act. Part III of the Act deals with pipelines. Pipelines can only be constructed and operated on the basis of a single certificate issued by the Board. Following is a quote from section 52 of the National Energy Board Act, which describes the conditions under which a certificate for a pipeline can be granted:

#### *Certificates*

#### *Issuance*

*52. The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline is and will be required by the present and future public convenience and necessity and, in considering an application for a certificate, the Board shall have regard to all considerations that appear to it to be relevant, and may have regard to the following:*

*(a) the availability of oil, gas or any other commodity to the pipeline;*

*(b) the existence of markets, actual or potential;*

*(c) the economic feasibility of the pipeline;*

(d) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the pipeline; and

(e) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.

**What is abundantly clear is that Canada only grants a certificate for an inter-provincial pipeline on the basis of a comprehensive evaluation of all technical and commercial factors by a single midstream regulator, including matters related to environment and Canadian content.**

In Canada there is no system of first getting a technical approval and subsequently dealing with a commercial regulator.

#### **2.8.3.6. Petroleum Products Regulatory Authority (“Authority”)**

The IAT proposal for the detailed functions of the Authority is contained in *Section 56*.

The most important functions are:

- to regulate and co-ordinate the commercial activities of the downstream petroleum operations in Nigeria in a non-discriminatory and transparent manner;
- to regulate on bulk storage and distribution and to set rules for petroleum products; petroleum product pipelines and regional storage depots;
- issue and regulate technical and commercial licences and any other authorisations necessary for all downstream petroleum operations;
- ensure security of fuel supply, market development and the development of competition;
- ensure the provision of third party access to the downstream products transportation and distribution networks;
- establish customer protection measures in accordance with the provisions of the Act;
- promote competition and private sector participation in the downstream petroleum operations, when and where feasible;
- to monitor market behaviour including the development and maintenance of competitive markets in the downstream petroleum operations;
- to arrest situations of abuse of dominant power and restrictive business practices in the downstream petroleum operations;
- establish, monitor and regulate technical, health, environmental and safety measures relating to the management of downstream assets, including but not limited to petroleum depots and distribution pipelines, and downstream gas distribution networks;
- inspect the metering of pumps and any other facilities at downstream retail outlets to ensure compliance with safety standards;
- set standards for the design, procurement, construction, operation and maintenance of all plants installations and facilities that pertain to the Downstream Petroleum Operations;
- establish parameters and codes of conduct for all operators in the downstream petroleum operations; and
- promote transparency within the Authority and amongst the operators;

The Authority will be responsible for all technical and commercial issues related to the downstream petroleum operations. However, in the context of the deregulation of the petroleum product prices the Authority will have the very significant task of ensuring adequate supplies of petroleum products at competitive prices all over the country.

#### **2.8.4. Conclusion**

The reorganization of the Regulatory Institutions proposed by the IAT will result in strong and efficient entities that can shorten periods required for approval, while ensuring that every project that is being initiated or expanded in Nigeria will do so in a manner that serves the national interest. The reorganization will create a major focus on a strong midstream regulator that will be able to concentrate on connecting the low cost gas resources to the power sector and other gas based industries and regenerating the refining sector in order to overcome decades of neglect. This will start the process of creation of an efficient domestic energy sector, based on large scale private investment, in order to catch up with other African and Latin American nations in gas and electricity consumption per capita and permit Nigeria to reach its full economic potential.

### **2.9. Objective: Create transparency and a non-discriminatory environment**

**The objective is to create a transparent framework where all information is publicly available and whereby discretionary decisions on the part of the Government are reduced to the barest minimum.**

#### **2.9.1. Problems**

Currently most data and transactions in the Nigerian petroleum industry are confidential. The entire text of a PSC or Joint Operating Agreement is confidential. Information on royalty and tax payments is confidential at the corporate level. Production information is confidential. Geological data are confidential.

This creates a situation where Nigerians and foreigners do not know what is going on in the petroleum sector.

No particular national interest is being served with this confidentiality.

Confidentiality creates corruption. Non confidentiality in conjunction with a free press is one of the most potent weapons in the fight against corruption.

Currently, another main problem is that there is an environment in which Government can make discretionary decisions in favour of particular “investors” which have a special relationship with the Government of the day. In Nigeria, such favoritism has reached the point, under previous Governments, where private individuals without any qualifications or financial resources have been given large petroleum concessions, which now have the potential of creating non taxable revenues in excess of a billion dollars through production sharing contracts without any financial contribution on the part of the concessionaires.

The ability to obtain important licences or contracts under very favourable conditions, simply based on connections with the Government, has encouraged “rent seeking” behaviour. This means private companies or individuals merely obtain licences or contracts in order to “peddle” these blocks to potential investors and assign such rights for tougher terms than the government provided to them. The difference is kept by such private companies or individuals. In other words, millions of dollars is earned (in some cases billions) by the mere activity of being granted a licence and being able to conclude production sharing contracts on such licences or assign such licences, without any useful or beneficial activity or input on the part of such private companies or individuals.

This is detrimental to Nigeria in two ways. Firstly, the margin which the “peddlers” obtain is government take that should have been earned by Nigeria in a competitive bidding process. Secondly, it destroys the competitive spirit that is essential for the creation of a truly privately owned Nigerian petroleum industry. Rather than focussing on creating wealth through capital investments, technology, research, efficient operations or otherwise, conditions are created to permit private companies and individuals to rob wealth from the nation through these corrupt practices.

### **2.9.2. Solutions**

**It is based on the foregoing, that the IAT in the Government Memorandum proposes a complete removal of confidentiality on a scale not seen before in the world as follows:**

- **Texts of licences, leases and contracts and all side letters should not be confidential and should be published on the Government website,**
- **Geological data should be accessible to all interested parties and production information should be freely available,**
- **All information on payments of royalties and taxes to government should be non confidential, and**
- **All production and lifting information should be available to the public**

**The IAT proposes in the Government Memorandum to put an end to discretionary practices through:**

- **Removal of discretionary powers on the part of the Minister to grant petroleum licences or leases or to grant fiscal incentives to particular individuals or companies,**

- **The strict requirement to grant all petroleum prospecting licences and petroleum mining leases through competitive bidding processes in which the only companies that can participate must be qualified through a transparent process, and**
- **Establishment of a non discriminatory fiscal system that applies equally to all companies**

**Also in order to reduce the negative impact on the nation from past largesse in terms of granting of petroleum rights, a requirement is introduced in the Redraft to pay Companies Income Tax and Nigerian Hydrocarbon Tax on profit oil shares or similar petroleum income.**

### **2.9.3. Discussion**

#### **2.9.3.1. Non-confidentiality and transparency**

The IAT proposes in *Section 173* a large number of measures to remove confidentiality from the upstream.

In *Section 173(1)* it is provided that any clauses protecting confidentiality in existing contracts with respect to payments of royalties, bonuses, and taxes shall be null and void and of no effect. In order to provide more insight in the tax calculations, licensees, lessees and contractors shall provide summaries of revenues and costs based on guidelines from the Directorate.

The only exception that is made is for proprietary intellectual property rights.

*Section 173(6)* provides for the fact that the text of any existing or future licence or lease or contract with the National Oil Company and any amendments or side letters thereto shall not be confidential and shall be published on the website of the Directorate. There is a strong penalty provision of US \$ 10,000 for every day that a company does not make the required information available to the Directorate.

*Section 173 (8)* is a very important provision that requires that all geological, geophysical, geochemical and other technical petroleum data obtained during the petroleum operations as determined by the Inspectorate shall be provided directly to the national petroleum data bank of the Inspectorate as soon as such data are being obtained by any licensee or lessee. Such data shall not be confidential.

The only exceptions are that data obtained under a petroleum prospecting license may be kept confidential for a period of 5 years or until such time the exploration period ends or the related acreage is relinquished, whatever is the earlier date.

With respect to petroleum exploration licenses the Directorate may agree to a period of confidentiality where the licensee obtains the data for the main purpose of selling this data to interested parties.

All data in the national petroleum data bank shall be accessible to any interested person under such terms as may be determined by the Inspectorate.

These provisions are critical in order to ensure the widest possible distribution of data about the Nigerian petroleum potential. This will enable potential new investors to select and evaluate potential areas that they are interested in and participate in future bidding rounds. In order to increase petroleum production, Nigeria needs to interest new investors in the country. The best way to do this is to take a non-confidential approach to the related data.

It is also essential for the stimulus of effective education and Research and Development in Nigeria that the geological, geophysical, geochemical and technical data are easily available to universities and other research institutions.

*Section 173(9)* provides for the fact that all information under *Section 362(1)* of the Act shall be non-confidential. This information relates to:

- the approved budgets of incorporated joint ventures and for production sharing contracts and information on project cost benchmarking and cost monitoring;
- production, lifting or exported crude and Natural Gas, LNG, CNG, NGLs, realisable prices, American Petroleum Institute gravity of various crude oil blends, schedule of shipping agents or companies involved in lifting crude oil, Natural Gas, LNG, CNG, NGLs stating names, addresses, quantity and value of crude oil lifted;
- names and addresses of licensed companies in the oil and gas industry, schedule and approved cost of all exploration and appraisal wells, schedule of licenses or leases granted categorised as to petroleum prospecting licences and petroleum mining leases and payments made thereon, production and lifting of crude oil specifying the affected terminals by the Inspectorate; and
- any other information that the FIRS may, by regulations, require, from time to time.

The disclosure requirements are not restricted to the upstream petroleum operations. With respect to midstream and downstream information also important disclosure requirements apply.

*Section 219* requires the registration of all technical licences for midstream and downstream activities, and the texts of such licences and all modification thereto shall be publicly available.

*Section 255 and 256* require the same procedure for all commercial licences for midstream and downstream and these documents shall also be publicly available.

### **2.9.3.2. Reduction of discretionary and discriminatory practices**

Crucial in eliminating “rent seeking” behaviour is to ensure that the Minister will not be able to grant under the Act licences or leases on a discretionary basis.

In order to discourage such rent seeking behaviour an important addition in the Redraft is *Section 2(1)* which states that the Minister “*shall only grant petroleum prospecting licences and petroleum mining leases through the processes established in the Act*”.

*Section 171(2)* is also very clear. The Minister may decide to grant or not to grant a licence or lease. However, where the Minister decides to grant a licence or lease it can only be:

- to the winning bidder pursuant to the bid process prescribed in *Section 189* of the Redraft, provided the winning bidder has complied with all requirements in the bid invitation; or
- directly to the National Oil Company, where the National Oil Company with the approval of the Inspectorate, has completed an open and transparent bid process, pursuant to *Section 189* of the Redraft.

There might be reasons why a Minister may not wish to grant a licence or lease. For instance, in Brazil, as a result of the giant Tupi discovery, it was decided to cancel and suspend bidding rounds in order to be able to evaluate the importance of the large discovery.

However, if the Minister decides to grant a licence or lease it can only be to the winning bidder of a bidding round.

*Section 189* in turn provides for a stringent competitive bid process.

*Section 189(1)* stipulates that the grant of a petroleum prospecting licence shall be by a bidding process conducted by the Inspectorate or the National Oil Company. This bidding process shall be open, transparent and competitive and non-discriminatory with respect to any company.

Sometimes a petroleum mining lease is directly offered, for instance, if a field discovered in a particular petroleum prospecting licence extends in an open block, so it is clear that the open block contains a potentially commercial discovery. In this case the same bid process applies.

*Section 189(2)* abandons the concept of determining the winning bidder based on a set of subjective criteria which can be easily manipulated. This section instead states that there can only be single bid parameters or a combination of these parameters based on a self-assessible point system. Which means that as soon as the envelopes are opened, the winning bidder will be known.

*Section 189(5)* provides for the fact that only bidders with the minimum experience and capacity can participate in a bid process.

*Section 189 (6)* provides that all bids shall be opened in public and in the presence of representatives of the Presidency, the Ministry of Finance, the Directorate and the Service.

What is also important is that the entire fiscal system established in *Part VIII* is fixed and cannot be adjusted to accommodate certain favoured companies. As was discussed before in section 2.4 the entire fiscal system itself was made flexible, so it would adjust automatically to various economic circumstances. It is therefore not necessary for the Government to give discretionary or discriminatory terms under certain conditions.

As was mentioned before, an important section is *Section 343(3)* which now establishes that private companies which were successful in the past in their “rent seeking” activities, will at least have to be taxed on their gains.

#### **2.9.4. Conclusion**

**The implementation of these provisions related to the elimination of confidentiality will transform Nigeria from one of the most opaque nations in Africa to one of the most open and transparent in the world.**

**At the same time the proposed Redraft establishes a tight framework in order to make the granting of discretionary or discriminatory benefits to favoured companies no longer possible.**

#### **2.10. Objective: Support Nigerian Content**

**The objective is to support Nigerian content and create a coherent framework between the Petroleum Industry Act and the Nigerian Oil and Gas Industry Content Development Act.**

##### **2.10.1. Problems**

Nigeria still suffers compared to other countries from a relatively low level of national content in the petroleum industry. The Nigerian Oil and Gas Industry Content Development Act, 2010, has resolved most of these issues. The main issue is therefore to create a coherent framework between the proposed Redraft and this Act.

##### **2.10.2. Solutions**

**The IAT proposes in the Redraft to ensure that the process and requirements under the Nigerian Oil and Gas Industry Content Development Act, 2010, are properly integrated with the provisions and objectives in the Redraft.**

**Specifically, the IAT proposes the following:**

- **Establishing that the licence, lease or permit can be revoked if there is no compliance with the Nigerian content requirements**
- **To create a focus with respect to the Petroleum Technology Development Fund to achieve a higher Nigerian content**
- **Integration of the Nigerian content provisions in the work obligations**
- **Requirement to have an approved Nigerian content plan before an upstream development plan can be approved**
- **Requirement to have an approved Nigerian content plan before a midstream or downstream project certificate can be issued,**
- **A general integration in Part VI of the Redraft with the Nigerian content provisions.**
- **The emphasis on Nigerian content is enhanced by making 20% of expenditures incurred outside Nigeria non deductible for Nigerian Hydrocarbon Tax, and**
- **Special support is provided for marginal field operators.**

### **2.10.3. Discussion**

The Nigerian content objectives are supported in a variety of ways under the Redraft.

*Section 8(4)* provides for the fact that a licence, lease, technical licence, commercial licence, contract or permit can be revoked if the holder or contractor does not comply with the Nigerian content provisions. This will provide the ultimate “stick” that these provisions are being lived up to.

*Section 124(1)(m)* makes an objective of the Petroleum Technology Development Fund to aim for 100% Nigerian content.

*Section 177(16)* specifically provides for the fact that work in accordance with the work obligations under the Redraft, cannot commence without an approved Nigerian content plan.

*Section 178(3)* makes a requirement that an upstream development plan cannot be approved without an approved Nigerian content plan.

*Section 205(2)* requires an approved Nigerian content plan prior to the approval of a midstream project certificate

*Section 206(2)* requires an approved Nigerian content plan prior to the approval of a downstream project certificate.

*Part VI* generally provides an integration of the Nigerian content provisions under existing legislation with the provisions of the Redraft.

*Section 346(q)* provides for the fact that 20% of capital and operating costs incurred outside Nigeria is not deductible for the purposes of Nigerian Hydrocarbon Tax and *Section 346(p)* makes 100% of administrative and headquarter costs incurred outside Nigeria non-deductible.

Under *Section 191(6)* of the Redraft, existing petroleum companies will have to give up areas that are currently being operated by marginal field operators. These areas will be given directly to these operators. This will allow them to become masters over their own fields under favorable royalty and tax provisions. This will be a strong stimulus for these Nigerian owned companies.

In *Section 426*, under definitions, a specific definition of a Nigerian content plan is included as follows:

*“Nigerian content plan” means the Nigerian Content Plan under the Nigerian Oil and Gas Industry Content Development Act, 2010.*

This ensures the integration of the Bill with the new Nigerian content act.

#### **2.10.4. Conclusion**

**The Redraft provides for an enhanced implementation of the Nigerian content provisions while providing an integration with the provisions and objectives of the Government Memorandum.**

### **2.11. Objective: Protect Health, Safety and Environment**

**The objective is to ensure that Nigeria adopts the best international practices in the pursuit of health, safety and a clean environment.**

#### **2.11.1. Problems**

Currently, unfortunately, in the Niger Delta pollution is a major problem for a variety of reasons.

Large scale flaring of gas is still common. The objective to eliminate routine gas flaring which was set more than a decade ago has not been achieved so far.

Act of vandalism have created repetitive ruptures of pipelines with the resulting consequences.

Oil is being stolen by the local population and subsequently “cooked” in illegal one barrel a day refineries in order to extract the diesel component for local use. The remaining oil ends up as pollution in the environment.

There is no comprehensive approach with respect to abandonment and decommissioning, and no systematic requirement for setting up abandonment funds or environmental remediation funds.

The inter-relation between the Ministry of the Environment and the various regulatory entities is not clear. Environmental considerations are not integrated in the approval process for upstream development plans and for midstream and downstream projects.

### **2.11.2. Solutions**

**The IAT proposes in the Government Memorandum:**

- **To clarify how the Regulatory Institutions should interact with the Ministry of Environment in order to achieve the goals of health, safety and environment,**
- **Directives of the Ministry of Environment prevail over Regulatory Institutions,**
- **To provide strong fiscal incentives as well as penalties for the elimination of gas flaring,**
- **The requirement for environmental management plans for all licences and leases,**
- **The requirement to establish environmental remediation funds,**
- **The establishment of modern abandonment and decommissioning practices,**
- **The requirement to establish an abandonment fund, and**
- **The power of the Minister to establish up to date petroleum safety and health practices through detailed petroleum regulations.**

### **2.11.3. Discussion**

#### **2.11.3.1. *Regulatory framework for health, safety and environmental matters.***

The modern practice in health, safety and environmental matters in the international petroleum industry is that regulatory entities play an active role in ensuring the strict compliance with the best international standards with respect to these provisions. Regulatory entities often play an active role in the creation and implementation of applicable regulations. However, the Ministry of Environment has the lead role as policy maker. The Regulatory entities are therefore supportive of the overall national environmental policies.

This general international concept is specifically clarified in *Section 322* of the Redraft. This section states that the Regulatory Institutions shall have responsibility over all aspects of health, safety and environmental matters in respect of the petroleum industry. However, these Institutions shall at all times ensure that any regulation or directive in respect of the petroleum industry, shall not conflict with any regulation or directive issued by the Federal Ministry of the Environment. This means the Ministry of the Environment is paramount.

Nevertheless, it is also understood that in the technical detail required for the management of the petroleum industry, the Regulatory Institutions are often better equipped to carry out these functions.

### **2.11.3.2. Fiscal incentives for the elimination of gas flaring**

Sofar, the elimination of routine gas flaring has made some progress, but the objective of complete elimination of routine gas flaring has not been achieved in a significant manner. This is shocking given the huge need for gas for domestic consumption.

An important reason for the lack of success has been the fact that with gas net back prices lower than in the vast majority of the nations in the world, or even negative, and extremely tough fiscal provisions for gas production, and the very low level of penalty for gas flaring, it was highly uneconomic to stop gas flaring.

It is well understood that elimination of routine gas flaring is an environmental and regulatory matter and therefore such elimination should be pursued regardless of the costs or economics. Nevertheless, it is not logical to provide what amounts to specific economic and fiscal disincentives.

The proposed attractive new gas pricing framework already discussed in section 2.2 of this report, and the application of fiscal incentives to elimination of routine gas flaring projects, as provided for under *Section 353(4)(a)* correct this imbalance. The economic framework for the elimination of gas flaring is now similar to most gas exporting countries in the world. Therefore, there is no longer a fiscal or economic reason why elimination of gas flaring should be pursued with less rigor than in other countries.

At the same time *Section 200(1)* permits the Minister to establish gas flaring penalties through regulation. This will establish a framework where penalties can be increased where the elimination of routine gas flaring remains unsuccessful.

It should be noted that these penalties are complemented by the penalties established for non compliance with the domestic gas supply obligation under *Section 307(1)*. The two penalties are additional.

Finally, as was already discussed under section 2.8 of this report, *Section 178(3)* makes it a condition for approval of a development plan that routine gas flaring has to be eliminated as part of the plan for a new oil or gas field.

The economic and fiscal incentives combined with two levels of penalties will provide a very strong framework to eliminate routine gas flaring within a short period of time.

### **2.11.3.3. Environmental management plans**

*Section 199* requires a detailed environmental management plan for every upstream project, while *Section 212(6)* requires the same plan for midstream and downstream operations.

The environmental management plan shall:

- contain the written environmental policy, objectives, and targets of the licensee or lessee;
- provide initial baseline information and establish a program for collecting further baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives;
- investigate, assess and evaluate the impact of the proposed activities on:
  - (i) the environment, and
  - (ii) the socio-economic conditions of any person who might be directly affected by the petroleum operations;
- develop an environmental awareness plan describing the manner in which the licensee or lessee intends to inform its employees of any environmental risks which may result from their work and the manner in which the risks must be dealt with in order to avoid pollution or degradation of the environment; and
- describe the manner in which the licensee or lessee intends to:
  - (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation,
  - (ii) contain or remedy the cause of pollution or degradation and migration of pollutants, and
  - (iii) comply with any prescribed waste management standards or practices.

The environmental management plan cannot be approved unless it meets all the requirements set out above.

What is important to emphasize is that the Regulatory Institution shall not approve the environmental management plan unless it has considered the comments of the Federal and State Ministries of Environment.

#### **2.11.3.4. Environmental remediation fund**

*Section 202(1)* and *Section 212(6)* of the Redraft propose the requirement of an environmental remediation fund. This fund can be audited by the licensee or lessee. In determining the amount of the financial contribution to the fund the Regulatory Institution shall take into consideration the size of the operations and a reasonable level of environmental risk that may be determined to exist.

Depending on the development of the project, the amount may be adjusted to a higher or lower amount.

The environmental remediation fund is established in order to enable the Regulatory Institution to use this fund in case the licensee or lessee fails to take the appropriate environmental measures.

### **2.11.3.5. Abandonment and decommissioning**

*Section 203* of the Redraft proposes extensive modern abandonment and decommissioning procedures. Any abandonment or decommissioning shall be carried out on the basis of guidelines set by the Regulatory Institution.

No abandonment or decommissioning shall take place without the approval of the Regulatory Institution. Such approval shall be based on a detailed programme submitted by the licensee or lessee and all relevant environmental, technical and commercial regulations or standards are complied with.

Except for the abandonment of wells, the Regulatory Institution shall consult interested parties and other relevant public authorities and bodies as part of the process.

What is important is that the Regulatory Institution may recall any licensee or lessee responsible for the decommissioning or abandonment programme with respect to a license or lease that has expired to carry out the respective obligations.

### **2.11.3.6. Abandonment Fund**

*Section 204* and *212(6)* require the establishment of an abandonment fund in order to ensure the proper abandonment and decommissioning of the wells, facilities and installations.

### **2.11.3.7. Regulations**

*Section 323* is very specific that every company engaged in any activities with respect to petroleum operations, shall comply with all environmental health and safety laws, regulations, guidelines or directives as may be issued by the Ministry of Environment, the Minister of Petroleum or the Regulatory Institutions, as the case may be.

This means the company shall comply with new regulations that may be issued, which did not exist at the time of the granting of the license or lease or technical or commercial licence.

As a result of the oil spill in the Gulf of Mexico it is likely that regulatory entities around the world will develop new regulations and directives with respect to deep water drilling operations. *Section 323* permits Nigeria to adopt any new international practices that may emerge and apply these practices to any petroleum operations.

#### **2.11.4. Conclusion**

**The IAT proposes a very comprehensive new framework to protect health, safety and the environment. It sets the conditions for the elimination of flaring in the near future and it requires modern environmental management plans with the necessary remediation fund to protect the environment. Also modern abandonment and decommissioning practices are introduced. The Redraft proposes a regulatory environment in which existing companies have to comply with new regulations to ensure that the obligations with respect to the protection of health, safety and the environment will on a continuous basis be updated on the basis of the latest international standards.**

### **3. OTHER IMPORTANT SECTIONS OF THE REDRAFT**

The other important sections in the Redraft proposed by the IAT will be discussed in the order of the numbering of the Parts and Sections.

#### **3.1. Part I – Fundamental Objectives**

Part I of the Bill has a number of introductory articles which set out the overall policies of the Federal Government. The Redraft proposes a number of changes to the Bill.

The main change that is proposed is to *Section 1*. The wording of this section needs to be brought in line with the Constitution. The section is now proposed as follows :

*“The property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf and the Exclusive Economic Zone is vested in the Federal Government of Nigeria.”*

Furthermore the Redraft establishes in *Section 3(1)* that the management of the petroleum resources has to *maximise the economic value and benefits to the Nigerian people*. It is important to enshrine this widely accepted international principle also in the petroleum legislation of Nigeria.

#### **3.2. Part II - Institutions**

Part II of the Bill deals with the powers and organization of Minister and the institutions.

Part II of the Redraft contains the following chapters:

- Minister
- National Petroleum Directorate (“Directorate”)
- Nigerian Petroleum Inspectorate (“Inspectorate”)
- Petroleum Products Regulatory Authority (“Authority”)
- National Midstream Regulatory Agency (“Agency”)
- Nigerian National Petroleum Company Limited (“Corporation”)
- Nigerian Petroleum Research Centre
- National Frontier Exploration Service
- Petroleum Equalisation Fund
- Petroleum Technology Development Fund

The issues related to the Directorate, Inspectorate, Agency and Authority have already been discussed in section 2.8 of this report and NNPC Ltd was already discussed in section 2.6 of this report.

The chapter regarding the Minister sets out the traditional powers of the Minister of Petroleum, including the power to make regulations.

The Redraft adds in *Section 11 (1)* the power of the Minister to prescribe fees and penalties. An important principle is that the petroleum administration should to a large degree be self-financing. The citizens of Nigeria should not have to contribute to the cost of the petroleum administration through general taxation.

The Redraft does not propose important changes to the other entities: the Nigerian Petroleum Research Centre, the National Frontier Exploration Service, Petroleum Equalisation Fund, and the Petroleum Technology Development Fund.

As explained in section 2.7 of this report, due to the proposed deregulation by the Government it is clarified that the Petroleum Equalisation Fund will stand repealed when deregulation is fully achieved.

Part II of the Bill is excessively repetitive with respect to sections related to the detailed organization of the various Institutions. Many sections are identical or similar. Therefore, the Redraft proposes to put these common sections jointly in a new *Part II-K*.

### **3.3. Part III – Upstream Petroleum**

In order to create an efficient acreage management system, *Section 170* of the Redraft establishes a national grid system similar to other countries. The national grid system will be based on parcels of 1 by 1 square kilometer based on the international UTM system. This UTM system has already identified each square kilometer in Nigeria.

It is important to have provisions for non-exclusive licences for exploration, such as reconnaissance activities by geophysical companies. Most countries permit these activities. It helps in collecting geophysical information prior to bidding rounds, so the nation obtains the best possible terms. Therefore, the Redraft in *Section 174* includes the possibility for such a non-exclusive petroleum exploration licence (“PEL”). Such a licence can be granted over any size area, including areas that are subject to petroleum prospecting licences and petroleum mining leases.

*Section 176* deals with the maximum size of a PPL, which is 500 square kilometers for the onshore and shallow water and 1000 square kilometers for deep water and frontier acreage.

In order to carry out petroleum development and production, the Bill includes petroleum mining leases (“PMLs”), which would replace the existing oil mining leases. *Section 183* of the Redraft proposes a total term that includes the term of the PPL. This means that the sooner discoveries are made, the longer a lessee can benefit from the production. The initial term for a PML is:

- Onshore and shallow water – total (incl PPL) 27 years
- Deep water and frontier – total (incl PPL) 30 years

This approach of a fixed total time period for the PPL plus the PML encourages early discovery, since the development and production phase will have a longer duration the sooner the discovery is made.

Each PML can be renewed for a period of 10 years, but under new conditions to be determined at the time of renewal.

Each PML will only be for the area of the field that is discovered. This means that if more than one discovery is made, a PML will be granted for each discovery. The area of the PML will only cover the field.

In order to ensure that a lessee develops its lease actively, *Section 183(3)(c)* establishes that leases may be revoked if production is not established:

- Within 5 years for onshore areas, and
- Within 7 years for offshore and frontier areas for the first PML and 10 years for the following PMLs.

*Section 192* of the Redraft proposes that a stricter process for the approval of assignments and change of control. It is proposed to give NNPC the right of first refusal in case of assignments.

Also a fee of 2% of the value of the transaction is being proposed, since many companies orchestrate assignments in a manner where they escape capital gains tax.

### **3.4. Part IV - Midstream and Downstream Project Approval and Licensing**

The important provisions related to project certificates have already been discussed in section 2.8 of this report.

The Bill includes provisions for commercial licenses for gas pipelines, gas pipeline networks, gas suppliers and gas distribution networks. However, the Bill is silent on licences for other possible midstream and downstream activities.

*Section 241* of the Redraft therefore proposes to include the granting of commercial licenses for a variety of projects in order to provide an investment framework for such new activities. Examples of such commercial licenses are:

- refineries,
- gas processing plants,
- liquid natural gas facilities,
- petroleum product pipelines,
- retail petroleum product distribution stations,
- petroleum product marketing.

Commercial licenses will also be granted to stimulate crude oil trading and petroleum product marketing.

### **3.5. Part V - Midstream operations, downstream products and special provisions with respect to natural gas**

All important provisions have already been discussed in sections 2.2 and 2.7 of this report.

### **3.6. Part VI - Indigenous Oil Companies and Nigerian Content**

All important provisions have already been discussed in sections 2.5 and 2.10 of this report.

### **3.7. Part VII - Health, Safety and Environment**

All important provisions have already been discussed in section 2.11 of this report.

### **3.8. Part VIII – Fiscal Provisions**

The fiscal terms as proposed in the Government Memorandum represent the largest overhaul of the government petroleum revenue system in the last four decades. This overhaul has four central objectives:

- To simplify the collection of government revenues,
- To cream off windfall profits in case of high oil prices
- To collect more revenues from large profitable fields in the deep offshore waters, and
- To create Nigerian employment and business opportunities, by encouraging investment in small oil and gas fields.

The rationale and contents of the fiscal provisions is already discussed at length under sections 2.1, 2.2, 2.3 and 2.4 of this report.

Some other important sections are discussed below.

*Section 330* of the Redraft solidifies the oversight function of FIRS as follows:

- All payments under Part VIII and other fees and levies are subject to the oversight function of the FIRS.

- The FIRS shall be entitled to carry out such verifications and inspections as the FIRS deems necessary in order to ensure the proper collection of revenues.
- The FIRS shall have the obligation to challenge any official sales prices for crude oil and condensates and values for natural gas, where such prices or values are determined in a manner that is less than required under the Act.
- The Inspectorate and the National Oil Company shall provide such information and documents to the FIRS as may be required in the exercise of its oversight function.

*Section 408* supports the proper verification of fiscal revenues by requiring the companies to establish electronic management information systems to which government officials will have access in order to ensure that government revenues are verified on a real time basis.

### **3.9. Part IX - Repeals, Transitional and Savings provisions**

A remarkable feature of the Bill is that 16 petroleum laws will be repealed. The Bill therefore constitutes a significant consolidation of previously existing legislation. This concept was maintained in *Section 410* of the Redraft.

*Section 411* of the Redraft proposes to apply the new terms to all upstream licences and leases and PSCs. A renegotiation provision for the production sharing contracts is proposed.

The creation of the new Institutions will involve considerable movement of staff. Under *Section 412 through 425* of the Redraft a more detailed process is suggested for the movement of staff to and from the various Institutions in order to ensure security of employment, pensions and benefits for current staff.

Following is an overview of the various proposed staff movements.

## STAFF MOVEMENTS

### From:

- 1 Ministry of Petroleum
- 2 Direct hiring, transfers, secondment
- 3 DPR + PI
- 4 NAPIMS
- 5 PPPRA
- 6 COMD
- 7 PPPRA
- 8 NAPIMS
- 9 DPR+PI
- 10 DPR+PI
- 11 NAPIMS
- 12 PPPRA
- 13 NAPIMS
- 14 NOC

### To:

- Head of Civil Service  
Directorate  
Inspectorate  
Inspectorate  
Inspectorate  
Inspectorate  
Authority  
Authority  
Authority  
Agency  
Agency  
Agency  
NOC  
NTCL

### **3.10. Part X – Interpretation and Citation**

*Section 426* includes significant proposed changes in definitions in order to improve the Bill. These changes include:

- modernize the definitions of crude oil, natural gas, condensates and bitumen
- introduce clear definitions of upstream, midstream and downstream petroleum operations
- include a definition of fair market value
- clarify the concepts of licence, lease, commercial licence and technical licence
- create the concepts of marketable gas and marketable gas delivery point, and
- introduce the concepts of wholesale and small customers for gas

## **4. DRAFTING RULES**

A document as important as the possible Petroleum Industry Act will be read all over the world by interested investors, petroleum companies, Nigeria's development partners and others.

Due to the significant importance of this possible Petroleum Industry Act, any potential misinterpretation of the wording should be reduced to a minimum.

It is on this basis that the IAT adopted an international drafting convention consistent with that of other English speaking nations.

Following is the convention that was adopted by the IAT:

### **1. *Interpretation Act 1990***

**The Interpretation Act 1990 defines certain rules for interpreting Nigerian legislation. The Redraft was prepared to be consistent with the Interpretation Act 1990. The Interpretation Act permits the use of "he" and "she". The Interpretation Act provides that enactment provisions are not necessary.**

### **2. *Drafting Style***

**The Act is to be written using as much as possible ordinary language, using technical terminology only if precision requires it. Verbs are to be used in the present tense unless the context requires an exception.**

**Sections are drafted to deal with a single idea or with a group of closely related ideas. Sections, subsections, paragraphs and subparagraphs should be kept short where possible-- typically one sentence. However, exceptions are permitted.**

**Redundant and archaic words and phrases should be avoided.**

**Terms that are not found in standard reference works should be avoided, and when used should be defined. Terms from languages other than English should be used only if they are generally understood and if there is no equally clear and concise way of expressing the concept in English.**

**Tables and mathematical formulas are to be used if they make the text clearer and more concise.**

**Derogations and restrictions ("notwithstanding", "despite" and "subject to") should be used sparingly and only if there is an inconsistency. If used it needs to be made clear which provision is meant to prevail.**

### **3. *Statements of a Mandatory Nature***

**"Shall" is to be used to impose a duty or (with "not" or "no") a prohibition. "May" is to be used to confer or indicate a power, right or choice.**

#### **4. *Numbering***

**Content of the Act is organized with sections, subsections, paragraphs and subparagraphs. Formatting for these are as follows:**

- (a) Sections begin with a capital letter, end with a period and are numbered in sequence with numbers, for example: 191.**
- (b) Subsections within a section begin with a capital letter, end with a period and are numbered in sequence with number between brackets, for example: (1).**
- (c) Paragraphs within a section or subsection begin with a lower-case letter, end with a semicolon and are organized alphabetically between brackets, for example: (a);**
- (d) Some sections have many paragraphs, therefore after (z), continue with (aa), (ab), etc.**
- (e) It is permissible for a section to have numbered paragraphs without division into subsections, for example: paragraph (a) of section 191**
- (f) Subparagraphs within a paragraph begin with a lower-case letter, end with a comma and are numbered in sequence with Roman numbers between brackets, for example: (ii),**
- (g) This Act has a number of schedules, these are numbered in sequence, for example: Schedule 1**
- (h) Definitions that form part of a section or subsection are separated by semicolons and begin with a lower-case letter and are not lettered or numbered. Subdivisions, if any, within an individual definition take the form of paragraphs and are indented, separated by commas, and identified as (a), (b), and so forth.**

#### **5. *Cross-references***

**References to subsections should be as follows: “subsection (3) of section 227 of this Act” rather than “subsection 227(3) hereof”. The words “section” and “subsection” should be lower case. However, if a reference is to the same section or subsection there is no need to add “of this Act”. For instance, references should be “subsection 3 of this section” or “paragraph (b) of this subsection”.**

**References to paragraphs should be as follows: “paragraph (g) of subsection (1) of section 39 of this Act” rather than “paragraph 39(1)(g)”.**

## 6. *Capitalisation*

All words, including defined terms, should be lower case. However, the following words and any similar words should have upper case in the first letter of the word:

- (a) **Names of Acts to which cross reference is made, for instance: Associated Gas Reinjection Act**
- (b) **Nigeria, Exclusive Economic Zone**
- (c) **National Assembly, Senate, Gazette, Federation**
- (d) **President, Minister, Auditor-General, Minister of Finance**
- (e) **Federal, State and Local Government(s), Government of the Federation, Government**
- (f) **Act, Law, Constitution**
- (g) **Part (referring to a Part of the Act)**
- (h) **Names of all the institutions, the national oil company and their abbreviations used in the Bill, for instance: National Petroleum Directorate**
- (i) **Regulatory Institution, Institution, Federation Account, Treasury, High Court**
- (j) **Service (where this refers to the Federal Inland Revenue Service)**
- (k) **Names of any organizations, for instance: Society of Petroleum Engineers**
- (l) **Board, Management Committee, Governing Board, Fund**
- (m) **Chairman, Director, Director-General, Secretary**
- (n) **US \$, Naira**
- (o) **Names of months and days, for instance: July, Sunday**
- (p) **PEL, PPL, PML, OPL, OML, PPTA, LNG, LIBOR and other defined abbreviations**
- (q) **Geographical names, such as: Henry Hub, United States**

## 7. *Definitions*

Words which are in Part X with respect to definitions should be in bold, for example: “**Government**” means the government of the Federal Republic of Nigeria.

**Different terms should not be used to express the same meaning and a defined term should not be used in a different sense than that of the definition for the defined term.**

8. *Spelling*

**UK English spelling should be used. Thus: "licence" is a noun, "license" is a verb, "licensee" is the holder of a licence; "authorisation" should be used rather than "authorization"; "capitalise" should be used rather than "capitalize".**

9. *Titles*

**Titles are used to succinctly indicate the Act's subject-matter.**

# **GOVERNMENT MEMORANDUM**

## **On the Petroleum Industry Bill, 2009**

### **PART I: FUNDAMENTAL OBJECTIVES**

#### **CLAUSE:**

- 1. Vesting of petroleum and natural gas**
- 2. Granting of licenses, leases and permits**
- 3. Management of petroleum resources**
- 4. Government participation**
- 5. Transparency and good governance**
- 6. Environment and air quality emissions**
- 7. Community development**
- 8. Nigerian content**

### **PART II - INSTITUTIONS**

#### **A. The Minister**

- 9. The Minister**
- 10. Functions and powers of the Minister**
- 11. Power to make regulations**

#### **B. The National Petroleum Directorate**

- 12. Establishment of the National Petroleum Directorate**
- 13. Functions of the Directorate**
- 14. Governing Board**
- 15. Director-General**
- 16. Tenure, remuneration and conditions of service of the Director-General**
- 17. Directors**
- 18. Disqualification**
- 19. Termination of appointment**
- 20. Vacation of office**
- 21. Appointment of new Director -General**
- 22. Structure of the Directorate**
- 23. Other staff**
- 24. Tenure, remuneration and conditions of service**
- 25. Pensions**
- 26. Financial provisions**
- 27. Funding**
- 28. Funding the Institutions**
- 29. Insurance provisions**
- 30. Power to accept gifts**
- 31. Borrowing powers**
- 32. Accounts and audits**
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34. Exemption from income tax
35. Notice of intention to commence suit
36. Service of notice

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39. Functions of the Inspectorate
40. Powers of the Inspectorate
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49. Resolution of disputes
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56. Functions
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58. Governing Board of the Authority
59. Funds
60. Public hearing
61. Power to resolve disputes
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63. Terms and conditions for the resolution of disputes
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65. Enforcement of determinations

## **E. National Midstream Regulatory Agency**

- 66. Establishment and scope of the Agency**
- 67. Objects**
- 68. Functions**
- 69. Powers of the Agency**
- 70. Governing Board of the Agency**
- 71. Funds of the Agency**
- 72. Public hearing**
- 73. Power to resolve disputes**
- 74. Publication of guidelines for dispute resolutions**
- 75. Terms & conditions for the resolution of disputes**
- 76. Registration of determinations**
- 77. Enforcement of determination**

## **F. Nigerian National Petroleum Company Limited**

- 78. The National Oil Company**
- 79. Transfer of assets and liabilities**
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- 82. Notice**
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- 85. Board Committees**
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- 92. Powers of the Centre**
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- 101. Powers**
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**103. Directors**

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**111. Functions**

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- 122. Sources of the Development Fund**
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- 130. Institutions**
- 131. Functions of the Governing Board**
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- 135. Termination of appointment**
- 136. Vacation of office**
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- 138. Remuneration of members of the Board or Supervisory Council**
- 139. Secretary**
- 140. Other staff**
- 141. Remuneration of other staff**
- 142. Pensions**
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- 144. Financial provisions of the Institution**
- 145. Power to accept grants**
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- 148. Accounts, reports and audits**
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## **THE PETROLEUM INDUSTRY BILL 2009**

### **A BILL**

### **FOR**

An Act to establish the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry, to establish guidelines for the operation of the upstream, midstream and downstream sectors, and for purposes connected with the same.

**ENACTED BY THE National Assembly Of The Federal Republic Of Nigeria-  
[Commencement]**

## **PART I: FUNDAMENTAL OBJECTIVES**

### **Vesting of petroleum and natural gas**

1. The property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf and the Exclusive Economic Zone is vested in the Federal Government of Nigeria.

### **Granting of licences, leases and permits**

2. (1) The Minister shall only grant a petroleum prospecting license or petroleum mining lease through the processes established in this Act.

(2) A company qualified under terms and conditions prescribed by the relevant institutions, may apply for the grant or award of a license or permit as the case may be, in accordance with the provisions of this Act, with respect to petroleum exploration licenses and any licenses or permits related to midstream or downstream petroleum operations.

### **Management of petroleum resources**

3. (1) The management and allocation of petroleum resources and their derivatives in Nigeria shall be conducted strictly in accordance with the principles of good governance, transparency and sustainable development of Nigeria and to maximise the economic value and benefits to the Nigerian people

(2) Subject to subsection (1) of this section, the main criterion for the management of petroleum resources shall be the total benefits that accrues to the sovereign state of Nigeria.

### **Government participation**

4. The Minister shall grant licences and leases, pursuant to section 2 of this Act, on the recommendation of the Inspectorate and in the public interest, may impose special terms and conditions that are not inconsistent with the provisions of this Act on any such licence or lease, including terms and conditions as to:

(a) participation by the Federal Government in the venture to which the licence or lease relates, on terms to be determined by the Minister for the licence or lease; and

(b) exploitation of any natural gas discovered.

### **Transparency and good governance**

5. In achieving their functions and objectives under this Act, the Institutions and the National Oil Company, shall be bound by the principles of the Nigerian Extractive Industries Transparency Initiative Act of 2007.

### **Environment and air quality emissions**

6. (1) The Federal Government shall honour International environmental obligations and shall promote energy efficiency and the provision of reliable energy.  
(2) In accordance with the provisions of subsection (1) of this section, the Federal Government, shall introduce and enforce integrated health, safety and environmental quality management systems with specific quality, effluent and emission targets for oil and gas related pollutants, without regard for fuel type such as gas, liquid or solid, in order to ensure compliance with international standards.

### **Community development**

7. The Federal Government, in co-operation with the state and local governments and communities, shall encourage and ensure the peace and development of the petroleum producing areas of the Federation through the implementation of specific projects aimed at ameliorating the negative impacts of petroleum activities.

### **Nigerian content**

8. (1) The Federal Government shall at all times promote the involvement of indigenous companies and manpower and the use of locally produced goods and services in all areas of the petroleum industry in accordance with existing laws and policies.  
(2) Where any contract for work or services is considered to be within the capabilities of Nigerian Companies, in accordance with any law relating to Nigerian content, the tender list shall be restricted to Nigerian Companies.  
(3) All companies involved in any area of the upstream, midstream or downstream petroleum industry shall, as a condition of their licence, lease, technical licence, commercial licence, contract or permit, as the case may be, comply with the terms and conditions of any law relating to the Nigerian content law in force at the time.  
(4) A company that fails to comply with the provisions of Part VI and any local content law as determined by the Regulatory Institutions may have any licence, lease, technical licence, commercial licence, contract or permit granted to it revoked.

## **PART II - INSTITUTIONS**

### **A-The Minister**

#### **The Minister**

9. The Minister in charge of petroleum resources shall be responsible for the co-ordination of the activities of the petroleum industry and shall have overall supervisory functions over petroleum operations and all the Institutions of the industry.

#### **Functions and powers of the Minister**

10. The Minister shall:
- a) represent the Federal Government in all transactions between the Government and any other person in respect of any matter contemplated by this Act;
  - b) exercise supervisory functions over the affairs and operations of the petroleum industry;
  - c) report developments in the petroleum industry to the Federal Executive Council annually;
  - d) advise the Federal Government on all areas pertaining to the oil and gas industry;
  - e) administer the petroleum industry through strategies and programmes that may be developed by the National Petroleum Directorate;
  - f) represent Nigeria at meetings of international organisations that are primarily concerned with the petroleum industry;
  - g) advise the President as to the appointments of the chief executive officers of the Institutions;
  - h) have access at all times to:
    - i) areas or right of ways covered by existing licences, leases and technical licences or any related offices or buildings where information or data are available for inspection under this Act, and
    - ii) all installations to which this Act applies, including refineries, storage depots, plants and stations of every description, for the purpose of inspecting the operations conducted therein and enforcing the provisions of this Act and any regulations made under it;
  - i) have powers to revoke the licences, leases, petroleum exploration licences, technical licences and commercial licences upon the advice of the Director-General of the relevant institution and consistent with the provisions of this Act;and
  - j) have rights of pre-emption of all petroleum and petroleum products marketed under the licences, leases and commercial licences in pursuit of national interest.

#### **Power to make regulations**

11. (1) On the recommendations of any of the Directors-General of the Institutions, the Minister may by regulations prescribe all matters which under this Act are required and necessary to give effect to this Act, including any applicable fees and penalties, consistent with the provisions of this Act.
- (2) The Minister may by writing under his hand delegate to the Director-General of the appropriate Institution any power conferred on the Minister by or under this Act except the power to make regulations.

## **B. -The National Petroleum Directorate**

### **Establishment of the National Petroleum Directorate**

12. (1) There is established a body to be known as the National Petroleum Directorate (in this Act referred to as “the Directorate”).
- (2) The Directorate shall:
- (a) be a body corporate with perpetual succession and a common seal.
  - (b) have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act may perform all acts that corporate bodies may perform by law.
- (3) The Directorate shall function as the secretariat of the Minister and shall take over any functions which were previously undertaken by the Ministry of Petroleum Resources and upon the effective date the Ministry of Petroleum Resources shall cease to exist.

### **Functions of the Directorate**

13. The functions of the Directorate shall be to:
- a) develop policies and instruments for effective coordination and operations of the Oil and Gas industry for the consideration and approval of the Minister;
  - (b) formulate, and develop strategies, implement the petroleum policy and other related policies approved for the petroleum industry by the Minister;
  - (c) coordinate and pay to the Directorate, the Inspectorate, the Agency and the Centre, the amounts designated for the funding of the said Institutions in accordance with their approved budgets as contained in the Appropriation Act, and collect any unspent amounts at the end of the financial year for payment back to the Federation Account;
  - (d) liaise and cooperate with the other Institutions, private and public organisations, institutions, enterprises and individuals operating in all sectors of the petroleum industry;
  - (e) ensure that the government derives maximum advantage from all petroleum operations for the economic benefit of the people of Nigeria;
  - (f) promote policies that will ensure the conduct of all activities in the petroleum industry in a transparent, cost effective, and competitive manner;
  - (g) promote open and competitive processes for:
    - (i) the allocation of licences and leases, and
    - (ii) upstream quota allocations and midstream and downstream petroleum and capacity allocations by the Regulatory Institutions;
  - (h) advise the Minister on the allocation of licences and leases and criteria and policy for quota allocations;
  - (i) formulate and promote policies and strategies to:
    - (i) stimulate investment and participation in all areas of the petroleum industry;
    - (ii) encourage the use of advanced technology in the petroleum industry; and
    - (iii) encourage Nigerian content in the industry;
  - (j) promote measures to increase the national reserves base;
  - (k) promote measures to increase productivity in all areas of the petroleum industry;
  - (l) promote the use of locally available raw materials;
  - (m) promote and ensure the use of Nigerian goods and services in all sectors including insurance, finance, and professional services as a first resort, without at any time compromising cost, quality and competence;

- (n) ensure regular consultation with all stakeholders of the Nigerian petroleum industry, including but not limited to:
- (i) the petroleum producing companies,
  - (ii) all companies operating in all sectors of midstream and the downstream petroleum industry,
  - (iii) Federal, State and Local Governments,
  - (iv) communities residing or conducting activities in areas where petroleum is produced,
  - (v) non-governmental organisations directly involved with matters pertaining to the petroleum industry, and
  - (vi) institutions and professional bodies relevant to the petroleum industry including the Nigerian Society of Engineers, the Society of Petroleum Engineers, the Nigerian Mining and Geosciences Society, the Nigerian Economic Society, the Nigerian Bar Association, National Association of Petroleum Explorationists, Nigerian Association of Energy Economists and the Nigerian Institute of Management;
- (o) receive data from the Institutions and all entities operating in the Nigerian petroleum industry for the purpose of formulating appropriate policies for the benefit of the State;
- (p) maintain economic, commercial and technical data relating to all areas of the industry;
- (q) relate with relevant international agencies, in accordance with the directives of the Minister;
- (r) promote the peaceful development of all sectors of the petroleum industry, in consultation with all stakeholders;
- (s) promote compliance with all legislation by all participants and stakeholders in the industry;
- (t) initiate periodic reviews of existing policies in the petroleum industry in consultation with the Institutions and all other stakeholders;
- (u) initiate periodic reviews of existing laws and regulations in the petroleum industry in consultation with all stakeholders and recommend improvements thereto;
- (v) conduct annual comprehensive assessments of the impact of development programmes of petroleum companies on communities with a view to evolving appropriate policies and guidelines for oil companies in respect of such programmes;
- (w) initiate measures that promote appropriate and indigenous technology for the petroleum industry in Nigeria;
- (x) have custody on behalf of the Minister of petroleum vested in the Federal Government; and
- (y) perform such other functions as contemplated under this Act or as the Minister may from time to time direct, in accordance with the terms prescribed by this Act.

#### **Establishment of a Management Committee**

14. (1) There is established a Management Committee for the Directorate (in this Act referred to as “the Management Committee”) which shall have the responsibility for implementing the directions of the Minister, and the Management Committee shall consist of:

- (a) a chairman, who shall be the Minister;
- (b) the Director-General of the Directorate; and
- (c) the Directors of the Directorate.

(2) The Directorate shall appoint a Secretary who shall keep the corporate records and the common seal of the Directorate and undertake such other functions as the Director-

General and the Directorate may from time to time direct. The Secretary shall be a lawyer with a minimum of 10 years post qualification experience.

<sup>First Schedule</sup>(3) The proceedings of the Management Committee of the Directorate and other ancillary matters shall be regulated as prescribed in the First Schedule to this Act.

### **Director-General**

15. (1) There shall be a Director-General for the Directorate who shall be appointed by the President.
- (2) The Director-General shall be a person with the necessary professional qualifications, relevant knowledge and twenty (20) years experience in the petroleum industry and who is able to show impartiality and objectivity without any conflict of interest in the petroleum industry.
- (3) The Director-General shall be the chief executive and accounting officer of the Directorate and shall be responsible for running the day-to-day affairs of the Directorate.
- (4) The Director-General shall have the status of a permanent secretary of the civil service of the Federal Republic of Nigeria.

### **Tenure, remuneration and conditions of service of the Director-General**

16. (1) The Director-General shall hold office for a period of 5 years and may be reappointed for another period of 5 years only, on such terms and conditions as may be specified in the letter of appointment.
- (2) The remuneration and conditions of service of the Director-General shall be such as would attract qualified professionals within the petroleum industry.

### **Directors**

17. (1) The Minister shall approve the appointment of Directors to assist the Director-General in managing and discharging the responsibilities of the Directorate.
- (2) The persons to be appointed Directors shall have extensive technical or managerial knowledge of the petroleum industry and shall be selected through a transparent recruitment process pursuant to regulations under this Act.
- (3) The remuneration, tenure and conditions of service of the Directors shall be at a level sufficient to attract qualified professionals within the petroleum industry.

### **Disqualification**

18. (1) No person shall be appointed a Director General unless he or she is a Nigerian citizen;
- (2) A person shall not be appointed a Director General or Director if he or she:
- (a) Has in terms of the laws in force in any country:
    - (i) been adjudged or declared bankrupt or insolvent,
    - (ii) made an assignment to, or arrangement or composition with his or her creditors which has not been rescinded or set aside,
    - (iii) been declared to be of unsound mind,
    - (iv) been convicted of an offence involving fraud or dishonesty, or

- (v) been disqualified by a competent authority from carrying out any assignment, responsibility or function in his or her professional capacity; or
- (b) has been disqualified by the Securities and Exchange Commission from holding a board appointment in any public company.

### **Termination of appointment**

19. The office of the Director-General shall become vacant:
- (a) three months, or such lesser period of time as is acceptable to the President, after the Director-General gives notice in writing to the President of his or her resignation;
  - (b) if he or she becomes disqualified under the provisions of section 18 of this Act; or
  - (c) on the expiration of his or her appointment.

### **Removal from office.**

20. The President shall require the Director-General to vacate his or her office if a disciplinary committee determines that he or she:
- a) has committed an act of gross misconduct;
  - b) has failed to comply with the terms and conditions of his or her office as stipulated by this Act; or
  - c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently.

### **Appointment of a new Director-General**

21. Upon the vacancy of the Director General's office, the President shall, subject to sections 15 and 18 of this Act, appoint a candidate to fill the vacancy.

### **Structure of the Directorate**

22. (1) Upon the advice of the Director-General, the Minister shall establish such Departments for the Directorate as may be deemed necessary.
- (2) Each Department shall be headed by a Director.

### **Other staff**

23. (1) The Directorate may, from time to time, appoint such experienced professionals as staff of the Directorate to assist it in the performance of its functions under this Act.
- (2) The staff of the Directorate appointed under subsection (1) of this section shall be on such terms and conditions of service as the Directorate may prescribe.
- <sup>1999 Constitution.</sup>(3) Staff of the Directorate shall be public officers as defined in the Constitution of the Federal Republic of Nigeria 1999.
- (4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

### **Tenure, remuneration and conditions of service**

24. The tenure, remuneration, and conditions of service of staff of the Directorate shall be such as would attract qualified professionals within the petroleum industry and shall take into account:
- (a) the specialised nature of work to be performed by the staff;
  - (b) the need to ensure financial sufficiency of the Directorate; and
  - (c) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

### **Pensions**

Cap p4 LFN 200425.(1) Service in the Directorate shall be approved service for the purpose of the Pensions Reform Act, and accordingly, officers and other persons employed in the Directorate shall be entitled to pensions and other benefits as are prescribed in the Act.

(2) Subsection (1) of this section does not prohibit the Directorate from appointing a person to any office on terms that preclude the grant of a pension or other retirement benefits in respect of that office.

(3) In the application of the provisions of the Pensions Reform Act 2004 to the Directorate, any power exercisable under that Act by a minister or other authority of the Federal Government, other than the power to make regulations, is hereby vested in and shall be exercisable by the Directorate and not by any other person or authority.

### **Financial provisions**

26. (1) The Directorate shall, not later than September in each year, present to the Minister, a budget showing the expected revenues and the expenditure which the Directorate proposes to expend in respect of the next succeeding financial year.

(2) The Directorate may during a financial year prepare and present to the Minister a supplementary budget relating to expenditures which were inadequately represented in the annual budget due to unforeseen circumstances.

(3) The Directorate may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.

(4) The financial year of the Directorate shall be for a period of twelve calendar months commencing on the 1<sup>st</sup> of January in each year.

### **Funding**

27. (1) The Directorate shall establish and maintain a fund which shall consist of:
- (a) such money as may, from time to time, be appropriated by the National Assembly;
  - (b) payments received pursuant to the provisions of section 28 of this Act;
  - (c) money raised for the purposes of the Directorate by way of gifts, loans and grants-in-aid;

- (d) subscriptions, fees and charges payable to the Directorate; and
- (e) all other monies that may, from time to time, accrue to the Directorate.

(2) The Directorate shall, from time to time, apply the proceeds of the fund established pursuant to subsection (1) of this section-

- (a) to the costs of administration of the Directorate;
- (b) to the payment of salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to staff of the Directorate or employees;
- (c) for maintenance of any property acquired or vested in the Directorate;

Cap.T22 LFN, 2004(d) for the purposes of investment, as prescribed by the Trustees Investments, or any other relevant statute; and

- (e) in connection with all or any of the functions of the Directorate as specified under this Act.

### **Funding the Institutions**

28 (1) Every lessee of a petroleum mining lease shall pay on a monthly basis an amount of US \$ 0.50 per barrel of crude oil and condensates and US \$ 0.01 per Mcf of gas, determined at the measurement points, into an account of the Directorate domiciled at the Central Bank, designated for the sole purpose of collecting the said value, for the use of, and to be shared by:

- (a) the Directorate;
- (b) the Inspectorate;
- (c) the Agency;
- (d) the Centre; and
- (e) the Frontier Service;

in accordance with approved budgets of each of these Institutions. Where the amounts paid to the accounts of the Directorate exceed US\$200 million in any year, such excess shall be paid to the Federation Account.

- (2) The amounts pursuant to subsection (1) shall be adjusted with the adjustment factor of section 331 of this Act or may be adjusted in accordance with guidelines issued by the Minister on the advice of the Directorate, and the amounts shall be
  - (a) at least the value of the combined total budgets of the Directorate, the Inspectorate, the Agency, the Centre, and the Frontier Service; and
  - (b) appropriated by the National Assembly.
- (3) Subject to the terms of subsection (1) of this section, the Directorate shall pay to the Directorate, the Inspectorate, the Agency, the Centre and the Frontier Service within thirty days from the commencement of the financial year the amounts pursuant to subsection (1) of this section.
- (4) At the end of the financial year, any funds not utilized shall be returned by the Inspectorate, the Agency, the Centre and the Frontier Service to the Directorate, and the Directorate shall return the said amounts to the Federation Account including any unencumbered funds of the Directorate itself.

- (5) Any payments by companies under subsection (1) of this section, may be credited by the companies against any obligations to pay royalties under Part VIII of this Act.

#### **Insurance provisions**

29. In order to accelerate the expansion of the Nigerian insurance and capital market, the Directorate shall support policies that would make it mandatory for operators in the petroleum industry in Nigeria to first utilize the Nigerian insurance and capital markets before resorting to the international market, for the purpose of insuring their assets and raising capital.

#### **Power to accept gifts**

30. (1) The Directorate may accept gifts of money or other property upon such terms and conditions, if any, as may be specified by the person or organisation making the gift provided such gifts are not inconsistent with the objectives and functions of the Directorate under this Act.
- (2) Nothing in subsection (1) of this section or in this Act shall be construed to allow the Director-General and other staff of the Directorate to accept gifts for their personal use.

#### **Borrowing powers**

31. The Directorate may, with the consent of the Minister of Finance, borrow money as may be required by the Directorate for the exercise of its functions under this Act, on such terms and conditions as the Minister may determine.

#### **Accounts and audits**

32. The Directorate shall keep proper accounts of its income and expenditure in respect of each year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed in accordance with guidelines published by the Auditor-General for the Federation.

#### **Annual reports**

33. The Directorate shall prepare and submit to the Minister, the President and the Minister of Finance not later than the month of July in each year a report in such form as the Minister may direct, on the activities of the Directorate during the immediately preceding year, and shall include in such report a copy of the audited accounts of the Directorate for the year and the Auditor-General's report thereon.

#### **Exemption from income tax**

34. (1) All income derived by the Directorate from the sources specified in section 27(1) of this Act shall be exempt from income tax.
- (2) Where contributions to the fund of the Directorate are made by a person subject to tax under the provisions of any law in force in Nigeria, all such contributions shall be tax deductible.

### **Notice of intention to commence suit**

35. (1) No suit shall be commenced against the Directorate before the expiration of a period of three months after written notice of intention to commence the suit shall have been served on the Directorate by the intending plaintiff or his agent.
- (2) The notice shall clearly state the:
- (a) cause of action;
  - (b) particulars of the claim;
  - (c) name, address for service and place of abode of the intending plaintiff; and
  - (d) relief claimed by the plaintiff.

### **Service of notice**

36. The notice referred to in subsection (2) of section 35 of this Act includes any summons, notice or other document required or authorised to be served on the Directorate under the provisions of this Act or any other enactment or law, may be served by:
- (a) delivering the same to the Director General or any Director of the Directorate; or
  - (b) sending it by registered post addressed to the Director General at the head office of the Directorate.

## **C -The Nigerian Petroleum Inspectorate**

### **Establishment of the Nigerian Petroleum Inspectorate**

37. (1) There is established a body to be known as the Nigerian Petroleum Inspectorate (in this Act referred to as “the Inspectorate”) which shall be a body corporate with perpetual succession and a common seal.
- (2) The Inspectorate shall have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act may perform all acts that corporate bodies may perform by law.
- (3) The Inspectorate shall be successor to the assets and liabilities of the Petroleum Inspectorate of the Nigerian National Petroleum Corporation and the Department of Petroleum Resources of the Ministry of Petroleum Resources upon the commencement of this Act.
- (4) All provisions of Part II-K of this Act shall apply to the Inspectorate.

### **Objects of the Inspectorate**

38. The objects of the Inspectorate shall be to:
- (a) organise and regulate the technical and commercial activities of the upstream petroleum operations;
  - (b) ensure the efficient, safe, effective and sustainable infrastructural development of upstream petroleum operations;
  - (c) monitor and approve costs in the upstream petroleum operations of Nigeria;
  - (d) ensure that all activities in upstream petroleum operations are carried out in such a manner that will realize or achieve optimal Government revenues;

- (e) promote the healthy, safe and efficient conduct of activities in the upstream petroleum operations in an environmentally acceptable manner; and
- (f) ensure the maintenance of standards and specifications which apply to the upstream petroleum operations.

### **Functions of the Inspectorate**

39 (1) The Technical functions of the Inspectorate shall be to:

- (a) enforce and administer policies, laws and regulations relating to technical aspects of upstream petroleum operations;
- (b) ensure and enforce compliance with the terms and conditions of all licences and leases issued in respect of the exploration and production for upstream petroleum operations;
- (c) ensure and enforce the compliance of all permits issued for upstream petroleum operations;
- (d) enforce approved regulations and standards relating to operations of the upstream petroleum sector, including oil and gas evaluation and management, upstream gas gathering, gas treatment and flares elimination;
- (e) keep a register of all permits and PELs issued for upstream petroleum operations by the Inspectorate and PPLs and PMLs granted by the Minister and any renewals, amendments, suspensions or revocations thereof;
- (f) carry out enquiries, tests, audits or investigations and take such other steps as may be necessary to monitor the activities of licensees or lessees and to secure and enforce compliance with licence or lease terms and conditions for upstream petroleum operations;
- (g) set and establish standards relating to technical aspects of the upstream petroleum operations, including environmental standards, which shall be established in collaboration with the Federal Ministry of Environment or any other relevant agency;
- (h) ensure adherence to environmental standards that may be established by the government by all operators and companies involved in any activity pertaining to the upstream petroleum operations;
- (i) establish, monitor and regulate safety measures relating to the management of petroleum reserves and installations as well as exploration, development and production activities within the onshore and offshore territory of Nigeria, including the Exclusive Economic Zone, where applicable for upstream petroleum operations;
- (j) undertake evaluation of national reserves and reservoir management studies;
- (k) administer all licences and leases for upstream petroleum operations granted by the Minister to any company, in accordance with prescribed terms;
- (l) assist the relevant entity under applicable legislation with conducting regular audits of the operations of operators and companies engaged in all aspects relating to exploration, production and development of crude oil and natural gas, including oil service companies, in order to ensure compliance with Nigerian Content requirements for upstream petroleum operations;
- (m) maintain a petroleum industry data bank comprising all data acquired by or given to the Inspectorate in the exercise of its statutory functions;
- (n) supervise and ensure accurate calibration and certification of equipment used for fiscal measures for upstream petroleum operations;

- (o) publish reports and statistics on activities in the Nigerian upstream petroleum operations and related matters that may be required, in the interests of the growth of the sector;
- (p) advise the Minister on fiscal and other issues to enhance the operations of the petroleum sector and improve the benefits to Government from the sector;
- (q) issue permits and any other authorisations necessary for all technical activities connected with, but not limited to the following:
  - (i) Seismic,
  - (ii) Drilling, and
  - (iii) design and construction of all facilities for upstream petroleum operations ;
- (r) set standards for the design, procurement, construction, operation and maintenance of all plants, installations and facilities that pertain to upstream petroleum operations;
- (s) establish special laboratories with capabilities for data storage and testing, quality assurance and certification for upstream petroleum operations;
- (t) perform technical evaluation and reviews required to evaluate and decide on submissions made to the Inspectorate by operators involved in upstream petroleum operations;
- (u) keep records, data and reports obtained from upstream petroleum operations, as may be required under any statute and giving any directive to any person, company or entity in respect thereof;
- (v) ensure the promotion of the safe, orderly and optimal development of the upstream petroleum operations in the overall interest of the people of Nigeria;
- (w) undertake by itself or through qualified expertise any of the foregoing and such other activities as are necessary or expedient for giving full effect to the provisions of this Act;
- (x) manage and administer, on behalf of the State and people of Nigeria, all unallocated acreage of crude oil and natural gas and all upstream petroleum data;
- (y) conduct bidding rounds for the award of petroleum prospecting licenses and petroleum mining leases pursuant to the provisions of this Act;
- (z) to enforce the right of parties in the upstream petroleum operations; and
- (aa) perform such other functions as contemplated under this Act or as the Minister may from time to time direct, in accordance with the terms prescribed by this Act.

(2). The cost and commercial functions of the Inspectorate shall be:

- (a) to approve the general commercial concept of the overall design for all field development programmes in the upstream petroleum operations;
- (b) to superintend and oversee the activities of all operators to which this Part II-C applies in the upstream petroleum operations in all areas pertaining to cost control and in pursuance of this, to approve commercial aspects of work programmes and field development plans for all operators in the upstream petroleum operations, including the National Oil Company;
- (c) to provide regular cost information to the Directorate for the purpose of allocating petroleum quotas to cost effective operators;
- (d) to develop cost benchmarks for the evaluation of opportunities in the upstream petroleum operations in a manner that takes into account petroleum industry specific issues, such as field size, depths of reservoirs, location of operations, technology applied, production methods and petroleum quality. A copy of any benchmarking report shall be forwarded to the Service;

- (e) compute, determine, assess and ensure payment of royalties, rentals, fees, and other charges for upstream petroleum operations as stipulated in this Act and any regulations made hereunder;
- (f) advise the National Oil Company to dispose available royalty Oil as the case may be on behalf of the Federal Government; and
- (g) to liaise with the Federal Inland Revenue Service on cost deductions under the relevant provisions of this Act and any other law in force.

(3).The technical and commercial functions of the Inspectorate as provided shall be carried out by separate departments within the Inspectorate.

### **Powers of the Inspectorate**

40. The Inspectorate shall have power to:

- (a) enforce the provisions of:
  - (i) this Part II-C and any regulations made thereunder,
  - (ii) any enactments prescribing activities of the petroleum industry made prior to this Part II-C and any regulations made in pursuance of powers given under them, and
  - (iii) any technical regulations referring to, or formerly administered by the Department of Petroleum Resources of the Ministry of Petroleum Resources or the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation;
- (b) order the sealing up of any premises whatsoever, including any facility or plant engaged in upstream petroleum operations, where there has been a contravention of this Act or any other related law;
- (c) in respect of the upstream petroleum operations and as and when necessary, issue technical guidelines on the generation, use, storage and transportation of radioactive sources and materials, in line with directives from the Nigerian Nuclear Regulatory Authority;
- (d) set standards and enforce the application of new technologies in the upstream petroleum operations;and
- (e) do such other things as are necessary and expedient for the effective and full discharge of any of its functions under this Act.

### **Establishment of a Governing Board**

41. (1) There is established a Governing Board of the Inspectorate (in this Part II-C referred to as “the Governing Board”) which shall be responsible for the management of the Inspectorate and shall consist of:

- (a) a chairman to be appointed by the President;
- (b) one representative of the National Petroleum Directorate not below the rank of a Director;
- (c) one representative each of the Agency and the Authority;
- (d) two persons to be approved by the Minister being persons who by reason of their ability, experience and specialized knowledge of the petroleum industry are selected pursuant to the Regulations;
- (e) three Directors who are full time staff of the Inspectorate approved by the Minister and are selected pursuant to the Regulations; and

(f) the Director-General of the Inspectorate.

(2) The persons appointed pursuant to paragraphs (a) (d) and (e) of subsection (1) of this section shall hold office for a period of 4 years subject to re-appointment for another period of 4 years only on such terms and conditions as may be specified in their letters of appointment.

(3) Appointments to the Board shall be part- time.

Second Schedule(4) The proceedings of the Board of the Inspectorate and other ancillary matters shall be as prescribed in the Second Schedule to this Act.

### **Funding**

42. (1) The Inspectorate shall establish and maintain a fund which shall consist of:

(a) such money as may be appropriated to the Inspectorate from time to time by the National Assembly for the purposes of this Act;

(b) a portion to be paid to the Inspectorate from the Directorate in accordance with the budget of the Inspectorate and the provisions of section 28 of this Act;

(c) charges that the Minister may approve to be imposed from time to time on petroleum producers as well as contractors and other companies operating in the upstream petroleum operations;

(d) fees paid in respect of services performed by the Inspectorate as contained in regulations made by the Minister on the recommendation of the Inspectorate;

(e) income received from publications produced by the Inspectorate;

(f) fees for reviews of environmental impact assessment reports and environmental evaluation reports and other related activities;

(g) fees for services rendered to non-petroleum producing companies and service companies and for other services performed generally in the upstream sector; and

(h) such money as may be received by the Inspectorate either in the course of its operations, in relation to the exercise of its powers and functions under this Act or in respect of any property vested in the Inspectorate.

(2) The Inspectorate shall apply the proceeds of the Fund under subsection (1) of this section:

(a) to meet the administrative and operating costs of the Inspectorate;

(b) to the payment of:

(i) salaries,

(ii) fees or other remunerations or allowances, and

(iii) pensions and other retirement benefits payable to members of the Inspectorate or its employees;

(c) for the maintenance of property acquired by, or vested in the Inspectorate;

Cap. T22, LFN 2004 (d) for purposes of investment, as prescribed by the Trustee Investments Act or any other relevant statute; and

(e) in connection with carrying out its functions under this Act.

(3) Any funds in excess of the requirements of the Inspectorate shall be paid to the designated account of the Federation Account.

### **Special powers**

43. The Inspectorate shall have power to investigate any person or organisation in relation to any of its functions or powers under this Act and in order to ascertain any violation of the provisions of this Act.

### **Special units etc.**

44. (1) For effective conduct of its functions, the Inspectorate shall have the following special units:

- (a) Investigation Unit; and
- (b) Prosecution Unit.

(2) Notwithstanding the provisions of subsection (1) of this section, the Inspectorate may set up technical committees to assist in the performance of its functions under this Act.

### **Duties of the special units**

45. (1) The Investigation Unit shall, while ensuring that due process is followed:

- (a) investigate offences under this Act;
- (b) collaborate with other government agencies and persons in relation to the detection or prosecution of offences under this Act;
- (c) maintain surveillance on oil and gas installations, premises and vessels where it has reason to believe that illegal petroleum operations are going on; and
- (d) have power to search, seize, detain and recommend for prosecution, any person suspected to have engaged or be engaged in illegal activities in relation to petroleum **or** in relation to any provision of this Act or any other enactment administered or enforced by the Inspectorate.

(2) The Prosecution Unit shall:

- (a) prosecute offenders under this Act;
- (b) support the Investigation Unit with legal advice and assistance where required;
- (c) conduct such legal proceedings as may be necessary towards the enforcement of this Act; and
- (d) perform such other duties as the Inspectorate may refer to it from time to time.

### **Power of search and arrest with warrant**

46. For the purposes of this Act, an officer of the Investigation Unit shall with a warrant obtained from a Federal High Court judge:

- (a) enter and search any premises or carrier including vehicles or any other instrumentalities whatsoever which he or she has reason to believe is connected with the commission of an offence;
- (b) arrest any person whom he or she reasonably believes to have committed an offence in respect of matters under the authority of the Inspectorate; and

(c) seize any item or substance which he or she reasonably believes to have been used in the commission of an offence under this Act.

### **Power to resolve disputes**

47. (1) The Inspectorate shall have the power to resolve disputes between persons who are subject to this part II-C and between any such persons and other persons regarding any matter under this part II-C with the exception of matters:
- (a) regulated by the Authority or Agency; or
  - (b) specifically and primarily governed by any other enactment in force and regulated by any other organ established for that purpose.
- (2) No dispute shall be referred to the Inspectorate by any person unless an attempt has been made by the parties concerned to resolve the dispute through negotiation.
- (3) The Inspectorate shall convene to resolve a dispute if it is satisfied that:
- (a) an agreement may not be reached, or shall not be reached between the parties to the dispute within a reasonable time;
  - (b) the notification of the dispute is not trivial, frivolous, or vexatious; and
  - (c) the resolution of the dispute would promote the objectives of this Act and any subsidiary legislation.
- (4) If one of the parties to the dispute has provided an undertaking that is relevant to the subject matter of the dispute and the Inspectorate, and has registered the undertaking, the parties may adopt the conditions of the undertaking for the purposes of resolving the dispute.

### **Notification of disputes**

48. (1) Where a party to a dispute in respect of a matter regulated by the Inspectorate so desires, that party shall write to notify the Inspectorate as to the existence of the dispute and to request the intervention of the Inspectorate.
- (2) The Inspectorate may intervene to resolve a dispute under this Act only if it is notified in writing of the dispute and requested by either or both parties to intervene.
- (3) The Inspectorate shall publish guidelines setting out the principles and procedures that it may take into account in resolving disputes or a class of disputes under this Part II -C.
- (4) Upon receipt of the notification of the dispute referred to in subsection (1) of this section, the Inspectorate shall, as soon as practicable, convene to resolve the dispute.

### **Resolution of disputes**

49. (1) In carrying out its functions the Inspectorate:
- (a) shall always be guided by the objective of establishing a sustained dispute-resolution process that is fair, just, economical and effective;
  - (b) shall at all times, endeavour to act according to the ethics of justice and the merits of each case; and
  - (c) shall not be bound by technicalities, legal form or rules of evidence.

(2) The terms and conditions of any determination of the Inspectorate under this Act shall be in writing and shall state the Inspectorate's reasons and the Inspectorate shall provide the parties to the dispute with a copy of its decision as soon as practicable.

(3) The costs of the Inspectorate in making a determination shall be paid in accordance with terms and conditions agreed by the parties prior to the commencement of the dispute resolution process.

### **Arbitration and mediation**

50. (1) For the purpose of the resolution of disputes the Inspectorate may act either as an arbitrator or mediator, except in disputes in which the Inspectorate is a party.

(2) When acting as an arbitrator the Inspectorate shall issue a decision on the matter.

(3) The Inspectorate may if it so wishes, appoint a person acceptable to all the parties to act as mediator or arbitrator on its behalf in respect of any dispute before it and the decision of the arbitrator shall be regarded as being the decision of the Inspectorate.

(4) Any decision of the Inspectorate shall be binding on the parties to the dispute.

Cap A19 LFN, 2004 (5) In disputes in which the Inspectorate is a party, the relevant provisions of the Arbitration and Conciliation Act, shall apply.

### **Judicial review**

51. (1) An aggrieved person shall have a right of appeal to the Federal High Court for a judicial review of questions of law and process pertaining to a determination or other action of the Inspectorate.

(2) Any determination or other action of the Inspectorate, that is the subject matter of the application for judicial review shall subsist and remain binding and valid until it is expressly reversed in a final judgement or order of the Federal High Court.

### **Register of decisions**

52. (1) The Inspectorate shall keep a register containing all decisions it makes for the purpose of the resolution of disputes.

(2) The register shall contain:

(a) the names of the parties to the dispute;

(b) a general description of the matter pertaining to the decision; and

(c) the date of the decision.

### **Enforcement of decisions**

53. (1) A decision made by the Inspectorate under this Part II-C may be enforced by the Court as if the decision is a judgement of such Court.

(2) No certificate under subsection (1) of this section is required if the enforcement action is taken by the Inspectorate under this section.

## **D- The Petroleum Products Regulatory Authority**

### **Establishment and scope of the Authority**

54. (1) There is established a body to be known as the Petroleum Products Regulatory Authority, (in this Act referred to as “the Authority”) which shall be a body corporate with perpetual succession and a common seal.
- (2) The Authority shall have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act perform all acts that corporate bodies may perform by law.
- (3) The Authority shall be responsible for the technical and commercial regulation of the downstream petroleum operations.
- (4) All objects and functions of the Authority in this part II- D are in respect of downstream petroleum operations.
- (5) All provisions of Part II-K of this Act shall apply to the Authority.

### **Objects**

55. The objects of the Authority shall be:
- (a) to promote the implementation of national technical and commercial policies for the downstream petroleum operations;
  - (b) to promote the efficient, effective and sustainable technical and commercial development of the downstream petroleum operations;
  - (c) to promote the efficient technical and commercial development and operation of the distribution network for the downstream petroleum operations;
  - (d) to encourage and facilitate investments in the downstream petroleum operations;
  - (e) to organise and regulate technical and commercial activities of the downstream petroleum operations;
  - (f) to promote, where appropriate, competitive markets for gas and gas services in the downstream petroleum operations;
  - (g) to promote the distribution of gas and petroleum products in the Downstream Petroleum Operation throughout Nigeria;
  - (h) to promote conditions that will enable petroleum products and gas, supply and distribution activities to be carried out on an equitable basis while protecting the rights and interests of licensees, customers and other stakeholders;
  - (i) to provide pricing framework for downstream gas and petroleum products based on the fair market value with the exception of the gas prices determined pursuant to subsection (5) of section 304 of this Act; and
  - (j) to promote security of gas supply, market development and competition.

### **Functions**

56. (1) The functions of the Authority shall be:
- (a) to regulate and co-ordinate the commercial activities of the downstream petroleum operations in Nigeria in a non-discriminatory and transparent manner;
  - (b) the regulation of commercial downstream activities to include establishment of methodology for calculating the fair market value of petroleum products

- (c) to regulate on bulk storage and distribution and to set rules for petroleum products; petroleum product pipelines and regional storage depots;
- (d) issue and regulate technical and commercial licences and any other authorisations necessary for all downstream petroleum operations;
- (e) enforce compliance with the terms and conditions of technical and commercial licences issued by the Authority;
- (f) keep a register of all technical and commercial licences issued and any renewals, amendments, suspensions or revocations thereof;
- (g) carry out enquiries, audits or investigations and take such other steps as may be necessary to monitor the activities of licensees and to secure and enforce compliance with technical and commercial licence terms and conditions;
- (h) ensure security of fuel supply, market development and the development of competition;
- (i) ensure the provision of third party access to the downstream products transportation and distribution networks;
- (j) develop market rules for trading in wholesale gas supplies to downstream gas distributors, following consultation with relevant stakeholders at such time as the Authority declares the need to have arisen;
- (k) establish customer protection measures in accordance with the provisions of this Act;
- (l) undertake consultation with customers, licensees and industry's participants affected by or with an interest in those of its decisions that have the potential to affect them and consider any responses to the consultation;
- (m) publish those decisions, directions or determinations that have implications for customers and industry participants together with the reasons for the decision, direction or determination;
- (n) promote the interests of customers taking into account the ability of licensees to effectively finance their licensed activities, provided that the Authority shall not be liable for any difficulties arising out of the inefficient or negligent operation of licensed activities by licensees;
- (o) promote the principles of sustainable resource and infrastructural development through the efficient supply and use of downstream gas and petroleum products;
- (p) promote competition and private sector participation in the downstream petroleum operations, when and where feasible;
- (q) ensure that all economic and practical demands for downstream gas are met;
- (r) to regulate and ensure the supply, distribution, marketing and retail of petroleum products;
- (s) to administer and monitor the national operating and strategic stocks as set by the Minister;
- (t) to monitor and enforce the actual application of petroleum product pricing formulae or framework for regulated products;
- (u) to monitor market behaviour including the development and maintenance of competitive markets in the downstream petroleum operations;
- (v) to arrest situations of abuse of dominant power and restrictive business practices in the downstream petroleum operations;
- (w) to enforce customer rights in relation to petroleum products and services;
- (x) to establish appropriate dispute settlement mechanism relating to the commercial rights and obligations of operators and customers in the Downstream Petroleum Operations;

- (y) establish, monitor and regulate technical, health, environmental and safety measures relating to the management of downstream assets, including but not limited to petroleum depots and distribution pipelines, and downstream gas distribution networks;
- (z) monitor and specify technical and safety controls on wholesale marketing, retail marketing, and bunkering of petroleum products;
- (aa) inspect the metering of pumps and any other facilities at downstream retail outlets to ensure compliance with safety standards;
- (ab) issue permits, technical licences and any other authorisations necessary for all technical activities connected with:
  - (i) downstream product operations, and
  - (ii) downstream gas distribution operations;
- (ac) set standards for the design, procurement, construction, operation and maintenance of all plants installations and facilities that pertain to the downstream petroleum operations;
- (ad) establish special laboratories with capabilities for data storage and testing, quality assurance and certification of gas and petroleum products and their derivatives, in the downstream petroleum operations;
- (ae) keep records, data and reports obtained and classifying such records, data or reports as may be required under any statute and giving any directive to any person, company or entity in respect thereof;
- (af) ensure the promotion of the safe, orderly and optimal development of the downstream petroleum operations in the overall interest of the people of Nigeria;
- (ag) to enforce the right of parties in the downstream petroleum operations; and
- (ah) perform such other functions as contemplated under this Act or as the Minister may from time to time direct, in accordance with the terms prescribed by this Act.

(2) The Authority in furtherance of the functions stated in subsection (1) of this section shall:

- (a) establish parameters and codes of conduct for all operators in the downstream petroleum operations;
- (b) monitor the financial viability of all operators in the downstream petroleum operations;
- (c) promote transparency within the Authority and amongst the operators;
- (d) develop and maintain a data base on the downstream petroleum operations particularly such data relating to the construction, conversion and operation of petroleum product and gas distribution pipelines, loading and storage facilities and make such information public;
- (e) advise government and other agencies on commercial matters relating to prices of petroleum products; and
- (f) undertake such related activities as are necessary for the efficient execution of its objects.

(3) The technical and commercial functions of the Authority as provided herein shall be carried out by separate departments within the Authority.

### **Powers of the Authority**

57. The Authority shall have the power:

- (a) to modify, extend, renew, suspend and revoke any technical or commercial licence issued by it pursuant to the provisions of this Part II-D;

- (b) to make recommendations to the Minister for the issuance, amendment or repeal of any regulations relevant to the provisions or requirements of this Act;
- (c) to monitor and enforce the application of pricing methodologies by licensees in accordance with the provisions of this Act;
- (d) subject to paragraph (e) of this section, to request and obtain any information or any document concerning licensed activities in the downstream petroleum operations from any licensee notwithstanding that they may contain business secrets, provided that any such information or documents shall be restricted to those which a company can be compelled to produce as evidence in a civil proceeding in a court of law;
- (e) where it considers it to be in the public interest-
  - (i) publish information provided by licensees, and
  - (ii) require licensees to publish certain information;
- (f) to impose and enforce relevant technical and commercial licence conditions and to enforce the specific requirements of the Act;
- (g) to institute legal proceedings against licensees for failure to comply with technical or commercial licence conditions or other requirements of the Act;
- (h) subject to the provisions of this Act, to issue legally binding determinations in respect of any dispute brought before it; and
- (i) to enforce the provisions of :
  - (i) any enactment and regulation prescribing activities of the Downstream Petroleum Operations made prior to the commencement of this Act, and
  - (ii) any regulations referring to, or formerly administered by the Petroleum Products Pricing and Regulatory Agency.
- (j) do such other things as are necessary and expedient for the effective and full discharge of any of its functions under this Act.

### **Governing Board of the Authority**

58. (1) There is established for the Authority a Governing Board which shall consist of:

- (a) a Chairman appointed by the President;
- (b) one representative of the National Petroleum Directorate;
- (c) one representative each of the Inspectorate and the Agency;
- (d) two persons to be approved by the Minister being persons who by reason of their ability, experience and specialized knowledge of the petroleum industry are selected pursuant to the Regulations;
- (e) three Directors who are full time staff of the Authority approved by the Minister and are selected pursuant to the Regulations; and
- (f) the Director-General of the Authority.

(2) The persons appointed under paragraphs (a) and (f) of subsection(1) of this section shall hold their membership for 4 years subject to re-appointment for another period of 4 years only on such terms and conditions as may be specified in their letters of appointment.

(3) Members of the Governing Board shall be persons of cognate experience in the areas of:

- (a) logistics, bulk transportation and storage and distribution and marketing of petroleum products and gas;
- (b) accountancy, administration, economics, finance or law; and gas infrastructure, commercialisation and marketing.

Third Schedule (4) The proceedings of the Board of the Authority and other ancillary matters shall be regulated as prescribed in the Third Schedule to this Act.

### **Funds**

59. (1) The Authority shall maintain a fund from which both the capital and recurrent expenditure of the Authority shall be defrayed and which shall consist of:
- (a) fees, charges and other income accruing to the Authority from things done by it under this Act;
  - (b) an administrative charge of 0.3% of the price of a litre of annual average consumption of white products per day to be inserted into the template;
  - (c) administrative charges to be decided by the Authority in respect of liquefied petroleum gas, compressed natural gas and any other fuel;
  - (d) fees and charges paid in respect of any services performed by the Authority including charges for mediation, arbitration, administrative and other services that the Authority may render in the course of the discharge of its functions;
  - (e) rents from the Authority's property;
  - (f) charges that may be imposed by the Authority upon any company or individual in the course of discharge of its functions;
  - (g) loans and grants-in-aid from national, bilateral and multilateral agencies; and
  - (h) such other money as may be received by the Authority in the course of its operations or in relation to the exercise of its powers and functions under this Act.
- (2) The Authority shall apply the proceeds of the Fund established under subsection (1) of this section:
- (a) to meet the administration and operating costs of the Authority;
  - (b) to the payment of-
    - (i) salaries,
    - (ii) fees or other remunerations or allowances, and
    - (iii) pensions and other retirement benefits payable to members of the Authority or its employees;
  - (c) for the maintenance of property acquired by, or vested in the Authority; and
- Cap. T22, LFN 2004 (d) for purposes of investment; as prescribed by the Trustee Investments Act, or any other relevant statute; and in connection with carrying out its functions under this Act.

### **Public hearing**

- 60 (1) The Authority may hold a hearing of any matter which under this Act or any other enactment it is required or permitted to conduct or on which it is required or permitted to take any action.
- (2) The Authority shall hold public hearings on matters regulated by the Authority, which the Authority determines to be of sufficient interest to the public.

(3) Where the Authority is required to or otherwise decides to hold a hearing, all persons having interest in such matter shall as far as is practicable be notified of the questions in issue and given adequate opportunities to make representations.

### **Power to resolve disputes**

61. (1) The Authority shall have the power to resolve disputes between:
- (a) persons whose activities are regulated by the Authority; and
  - (b) between such persons and other parties regarding any matter under this Part II-D and in respect of any subsidiary legislation made by the Minister in respect of activities of the Authority or the Petroleum Equalisation Fund.
- (2) No dispute shall be referred to the Authority unless-
- (a) an attempt has been made by the parties concerned to resolve the dispute through negotiation;
  - (b) a resolution cannot be reached under any other relevant or applicable dispute resolution procedure prescribed by this part, including but not limited to those pertaining to the wholesale market and the network code; and
  - (c) both parties are granted the opportunity to present their respective cases to the Authority.
- (3) For purpose of the resolution of disputes, the Authority may act either as an arbitrator or mediator.
- (4) When acting as an arbitrator, the Authority shall issue a determination on the matter.
- (5) The Authority may appoint a person acceptable to all parties to act as mediator or arbitrator on its behalf in respect of any dispute before it and the decision of the mediator or arbitrator shall be regarded as being the determination of the Authority.

### **Publication of guidelines for dispute resolution**

62. (1) The Authority may publish guidelines setting out the principles that it may take into account in resolving disputes.
- (2) The Authority shall convene to resolve a dispute if it is satisfied that:
- (a) an agreement may not or will not be reached between the parties to the dispute within a reasonable time; and
  - (b) the resolution of the dispute would promote the objects of this part or any of its subsidiary legislation enacted under this Act pertaining to the downstream petroleum operations.
- (3) The Authority shall be entitled to convene to resolve a dispute at its headquarters or at any other place in Nigeria.
- (4) The Authority may make recommendations to the Minister to issue regulations for the discharge of the functions and for the conduct of the proceedings of the Authority,

including but not limited to procedures for participation in the proceedings of dispute resolution between licensees, customers, wholesale customers and any other persons.

### **Terms and conditions for the resolution of disputes**

Cap A18, LFN 2004. 63. (1) Subject to any guidelines that may be issued by the Authority under this Part II-D, the Authority or, if the Authority deems fit, an arbitrator, may resolve the dispute in accordance with the Arbitration and Conciliation Act.

(2) The Authority may require either party to the dispute to pay any costs incurred by the Authority in appointing an arbitrator.

(3) The Authority, in carrying out its functions under subsection (1) of this section, shall be guided by the objective of establishing a dispute resolution process that is fair, just economical and effective and shall at all times act in accordance with to the ethics of justice and the merits of each case.

(4) The determination of the Authority shall:

(a) be properly recorded in writing;

(b) state the basis or bases for the determination; and

(c) be provided to the parties to the dispute as soon as practicable.

### **Registration of determinations**

64. (1) The Authority shall register all determinations that it makes pursuant to this Act.

(2) The register referred to in this section shall contain-

(a) the names of the parties to the dispute;

(b) a general description of the matter pertaining to the determination; and

(c) the date of the determination.

### **Enforcement of determinations**

65. Subject to the agreement of the parties, a determination of the Authority may be enforced by the Federal High Court as if the determination is a judgment of such court.

## **E. National Midstream Regulatory Agency**

### **Establishment and scope of the Agency**

66. (1) There is established a body to be known as the National Midstream Regulatory Agency, (in this Act referred to as “the Agency”) which shall be a body corporate with perpetual succession and a common seal.

(2) The Agency shall have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act perform all acts that corporate bodies may perform by law.

(3) The Agency shall be responsible for the technical and commercial regulation of the midstream petroleum operations.

(4) All objects and functions of the Agency in this Part II-E are in respect of midstream petroleum operations

(5) All provisions of Part II-K of this Act shall apply to the Agency.

### **Objects**

67. The objects of the Agency shall be-

(a) to promote the implementation of national technical and commercial policies for the midstream petroleum operations;

(b) to promote the efficient, effective and sustainable technical and commercial development of the midstream petroleum operations;

(c) to promote the efficient technical and commercial development and operation of the transportation network in the midstream petroleum operations;

(d) to encourage and facilitate investments in the midstream petroleum operations;

(e) to organise and regulate technical and commercial activities of the midstream petroleum operations;

(f) to promote, where appropriate, competitive activities in the midstream petroleum operations;

(g) to promote conditions that will enable transportation activities to be carried out in the midstream petroleum operations on an equitable basis while protecting the rights and interests of licensees and other stakeholders; and

(h) to establish and regulate the domestic gas aggregator.

### **Functions**

68. (1) The functions of the Agency shall be to:

(a) to regulate and co-ordinate the technical and commercial activities of the midstream petroleum operations in Nigeria in a non-discriminatory and transparent manner;

(b) regulating commercial midstream activities which include:

(i) midstream crude oil operations,

(ii) midstream domestic gas operations,

(iii) midstream export gas operations,

(iv) establishment of methodology for determining appropriate tariff for gas processing, gas transportation/transmission, and transportation of crude oil, bulk storage of oil and gas for midstream petroleum operations,

- (v) establishment of appropriate pricing framework for sale of gas by operators in the midstream petroleum operations based on the fair market value with the exception of the gas prices determined pursuant to subsection (5) of section 304 of this Act, and
  - (vi) setting cost benchmark for midstream petroleum operations;
- (c) publish the tariff and prices from time to time;
  - (d) regulate on bulk storage and transportation, transmission and set rules for the common carrier systems for crude oil and gas in the midstream petroleum operations;
  - (e) issue and regulate technical and commercial licences and any other authorisations necessary for all midstream petroleum operations;
  - (f) enforce compliance with the terms and conditions of technical and commercial licences issued by the Agency;
  - (g) keep a register of all technical and commercial licences issued and any renewals, amendments, suspensions or revocations thereof;
  - (h) carry out enquiries, audits or investigations and take such other steps as may be necessary to monitor the activities of licensees and to secure and enforce compliance with technical or commercial licence terms and conditions;
  - (i) ensure the provision of third party access to the transportation and transmission networks for midstream petroleum operations;
  - (j) promote the principles of sustainable infrastructural development in the midstream petroleum operations;
  - (k) promote competition and private sector participation in the midstream petroleum operations;
  - (l) ensure that all economic and strategic demands for downstream gas are met;
  - (m) In respect of midstream petroleum operations, to set rules for the administration of the open access regime; to regulate and administer the open access to transportation, transmission and bulk storage facilities;
  - (n) to administer and monitor the national operating and strategic stocks for crude oil and gas as may be set by the Minister;
  - (o) to monitor and enforce the actual application of tariff and pricing framework as determined by the Agency;
  - (p) to monitor market behaviour including the development and maintenance of competitive markets in the midstream petroleum operations;
  - (q) to arrest situations of abuse of dominant power and restrictive business practices in the midstream petroleum operations;
  - (r) to enforce the right of parties in the midstream petroleum operations;
  - (s) to establish appropriate dispute settlement mechanism relating to the commercial rights and obligations of parties in the midstream petroleum operations;
  - (t) establish, monitor and regulate technical, health, environmental and safety measures relating to the management of assets and activities in midstream petroleum operations;
  - (u) inspect the metering of pumps and any other facilities for midstream petroleum operations and ensure compliance with safety standards as prescribed by the Agency;
  - (v) issue permits and any other authorisations necessary for all technical activities connected with midstream petroleum operations;
  - (w) set standards for the design, procurement, construction, operation and maintenance of all plants, installations and facilities that pertain to the midstream petroleum operations;

- (x) establish special laboratories with capabilities for data storage and testing, quality assurance and certification of crude oil, gas and their derivatives, in the midstream petroleum operations;
- (y) keep records, data and reports obtained and classifying such records, data or reports as may be required under any statute and giving any directive to any person, company or entity in respect of midstream petroleum operations;
- (z) ensure the promotion of the safe, orderly and optimal development of the midstream petroleum operations in the overall interest of the people of Nigeria;
- (aa) issue clean certificates of inspection at the oil terminals to exporters of crude oil upon satisfaction that the requirements as to quality and quantity have been complied with;
- (ab) ensure the supply of gas to the strategic sectors, in accordance with the approved national gas pricing framework; and
- (ac) perform such other functions as contemplated under this Act or as the Minister may from time to time direct, in accordance with the terms prescribed by this Act.

(2) In furtherance of the functions stated in subsection (1) of this section, the Agency shall:

- (a) establish parameters and codes of conduct for all operators in the midstream petroleum operations;
- (b) monitor the financial viability of all operators in the midstream petroleum operations;
- (c) promote transparency within the Agency and amongst the operators;
- (d) develop and maintain a data base on the midstream petroleum operations particularly such data relating to the construction, conversion and operation of crude oil transportation and gas transportation/transmission pipelines, bulk storage facilities for oil and gas and make such information public;
- (e) advise government and other agencies on commercial matters relating to tariff and pricing framework; and
- (f) undertake such related activities as are necessary for the efficient execution of its objects.

(3) The technical and commercial functions of the Agency as provided herein shall be carried out by separate departments within the Agency

### **Powers of the Agency**

69. In order to fulfil its functions under this Act, the Agency shall have the power:

- (a) to modify, extend, renew, suspend and revoke any technical or commercial licence issued by it pursuant to the provisions of this Part II-E;
- (b) to make recommendations to the Minister for the issuance, amendment or revocation of any regulations relevant to the provisions or requirements of this Act;
- (c) to monitor and enforce the application of tariff and pricing framework by licensees in the midstream petroleum operations in accordance with the provisions of this Act;
- (d) subject to paragraph (e) of this section, to request and obtain any information or any document concerning licensed activities in the midstream petroleum operations from any licensee notwithstanding that they may contain business secrets, provided that any such information or documents shall be restricted to those which a company can be compelled to produce as evidence in a civil proceeding in a court of law;
- (e) where it considers it to be in the public interest:

- (i) publish information provided by licensees, and
  - (ii) require licensees to publish certain information;
- (f) to impose and enforce relevant technical and commercial licence conditions and to enforce the specific requirements of the Act;
- (g) to institute legal proceedings against licensees for failure to comply with technical or commercial licence conditions or other requirements of the Act;
- (h) subject to the provisions of this Act, to issue legally binding determinations in respect of any dispute brought before it;
- (i) to enforce the provisions of:
- (i) any enactments and regulations prescribing activities of the Midstream Petroleum Operations made prior to the commencement of this Act,
  - (ii) any regulations referring to, or formerly administered by the Department of Petroleum Resources of the Ministry of Petroleum Resources or the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation; and
- (j) do such other things as are necessary and expedient for the effective and full discharge of any of its functions under this Act.

### **Governing Board of the Agency**

70. (1) There is established a Governing Board of the Agency (in this Part II-E referred to as “the Governing Board”) which shall be responsible for the management of the Agency and shall consist of:
- a) a Chairman appointed by the President;
  - b) one representative of the Nigerian Petroleum Directorate;
  - c) one representative each of the Inspectorate and the Authority
  - (d) two persons to be approved by the Minister being persons who by reason of their ability, experience and specialized knowledge of the petroleum industry are selected pursuant to the Regulations;
  - (e) three Directors who are full time staff of the Agency approved by the Minister and are selected pursuant to the Regulations;and
  - (f) the Director-General of the Agency;
- (2) The persons appointed pursuant to paragraphs (a), (e) and (f) of subsection (1) of this section shall hold office for 4 years subject to re-appointment for another period of 4 years only on such terms and conditions as may be specified in their letters of appointment.
- (3) Members of the Governing Board shall be persons of cognate experience in the areas of-
- a) logistics, refining, gas processing, and transportation of petroleum (oil, gas and condensates);
  - b) accountancy, administration, economics, finance or law; and
- gas infrastructure, commercialisation and marketing.

**Fourth Schedule** (4) The proceedings of the Board of the Agency and other ancillary matters shall be as prescribed in the Fourth Schedule to this Act.

### **Funds of the Agency**

71. (1) The Agency shall establish and maintain a fund which shall consist of:

- (a) such money as may be appropriated to the Agency from time to time by the National Assembly for the purposes of this Act;
  - (b) a portion to be paid to the Agency by the Directorate in accordance with the budget of the Agency and the provisions of section 28 of this Act; and
  - (c) fees and charges paid in respect of any services performed by the Agency including administrative charges and other services that the Agency may render in the course of the discharge of its functions, such fees and charges to be decided in accordance with regulations issued by the Minister in accordance with the terms of this Act.
- (2) The Agency shall apply the proceeds of the fund established under subsection (1) of this section-
- (a) to meet the administration and operating costs of the Agency;
  - (b) to the payment of:
    - (i) salaries,
    - (ii) fees or other remunerations or allowances, and
    - (iii) pensions, gratuities and other retiring benefits payable to members of the Agency or its employees;
  - (c) for the maintenance of property acquired by, or vested in the Agency;
  - Cap. T22 LFN, 2004 (d) for purposes of investment; as prescribed by the Trustee Investments Act, or any other relevant statute; and
  - (e) in connection with carrying out its functions under this Act.
- (3) Any funds in excess of the requirements of the Agency shall be paid to the designated account of the Federation Account.

### **Public hearing**

72. (1) The Agency may hold a hearing of any matter which under this Act or any other enactment it is required or permitted to conduct or on which it is required or permitted to take any action.
- (2) The Agency shall hold public hearings on matters regulated by the Agency, which the Agency determines to be of sufficient interest to the public.
- (3) Where the Agency is required to or otherwise decides to hold a hearing, all persons having interest in such matter shall as far as is practicable be notified of the questions in issue and given adequate opportunities to make representations.

### **Power to resolve disputes**

73. (1) The Agency shall have the power to resolve disputes between:
- (a) persons whose activities are regulated by the Agency; and
  - (b) between such persons and other parties regarding any matter under this Part II-E and Part II-I, and in respect of any subsidiary legislation made by the Minister in respect of activities of the Agency.

- (2) No dispute shall be referred to the Agency unless:
- (a) an attempt has been made by the parties concerned to resolve the dispute through negotiation;
  - (b) resolution cannot be reached under any other relevant or applicable dispute resolution procedure prescribed by this part, including but not limited to those pertaining to the wholesale market and the network code; and
  - (c) both parties are granted the opportunity to present their respective cases to the Agency.
- (3) For purpose of the resolution of disputes the Agency may act either as an arbitrator or mediator.
- (4) When acting as an arbitrator the Agency shall issue a determination on the matter.
- (5) The Agency may appoint a person acceptable to all parties to act as mediator or arbitrator on its behalf in respect of any dispute before it and the decision of the mediator or arbitrator shall be regarded as being the determination of the Agency.

#### **Publication of guidelines for dispute resolution**

74. (1) The Agency may publish guidelines setting out the principles that it may take into account in resolving disputes.
- (2) The Agency may convene to resolve a dispute if it is satisfied that:
- (a) an agreement may not or will not be reached between the parties to the dispute within a reasonable time; and
  - (b) the resolution of the dispute would promote the objects of this part or any of its subsidiary legislation enacted under this Act pertaining to the midstream petroleum operations.
- (3) The Agency shall be entitled to convene to resolve a dispute at its headquarters or at any other place in Nigeria.
- (4) The Agency may make recommendations to the Minister to issue regulations for the discharge of the functions and for the conduct of the proceedings of the Agency, including but not limited to procedures for participation in the proceedings of dispute resolution between licensees, customers, wholesale customers and any other persons.

#### **Terms and conditions for the resolution of disputes**

75. (1) Subject to any guidelines that may be issued by the Agency under this Part II-E, the Agency or, if the Agency deems fit, an arbitrator, may resolve the dispute in accordance with the Arbitration and Conciliation Act. Cap A18, Laws of the Federation of Nigeria 2004.

(2) The Agency may require either party to the dispute to pay any costs incurred by the Agency in appointing an arbitrator.

(3) The Agency, in carrying out its functions under subsection (1) of this section, shall be guided by the objective of establishing a dispute resolution process that is fair, just economical and effective and shall at all times act in accordance with to the ethics of justice and the merits of each case.

(4) The determination of the Agency shall:

(a) be properly recorded in writing;

(b) state the basis or bases for the determination; and

(c) be provided to the parties to the dispute as soon as practicable.

### **Registration of determinations**

76. (1) The Agency shall register all determinations that it makes pursuant to this Act.

(2) The register referred to in this section shall contain:

(a) the names of the parties to the dispute;

(b) a general description of the matter pertaining to the determination; and

(c) the date of the determination.

### **Enforcement of determination**

77. Subject to the agreement of the parties, a determination of the Agency may be enforced by the Federal High Court as if the determination is a judgment of such court.

## **F. Nigerian National Petroleum Company Limited**

### **The National Oil Company**

78. (1) The Nigerian National Petroleum Company Limited (“The National Oil Company”), shall be a limited liability company established under the Companies and Allied Matters Act and shall be the successor of the Nigerian National Petroleum Corporation (“the Corporation”).

(2) Within three months of the effective date, the Minister shall cause the National Oil Company to be incorporated, subject to the approval of the President.

(3) The tenure of the Board of Directors of the National Oil Company and appointments to the Board shall be determined in accordance with the provisions of the Articles of Association of the National Oil Company.

(4) Ownership of the National Oil Company shall be vested solely in the Federal Government of Nigeria at the time of incorporation;

(5) Subject to section 265 of this Act, subsidiaries and other legal entities of the National Oil Company may be jointly owned by the National Oil Company and other parties.

(6) Notwithstanding the provisions of subsection (4) of this section the government may at any time after two years from the date of incorporation of the National Oil Company, decide to divest itself of any amount of shares in the National Oil Company.

(7) The National Oil Company shall not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act.

### **Transfer of assets and liabilities**

79. (1) The assets, interests and liabilities of the Corporation shall be transferred to the National Oil Company.

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(2) The assets of the subsidiaries of the Corporation listed under the Public Enterprises Privatisation and Commercialisation Act shall be de-listed from the effective date of this Act and the power of attorney earlier assigned to the Bureau of Public Enterprises shall stand vacated.

(3) The assets, interests and liabilities of the Corporation shall be the assets, interests and liabilities of the National Oil Company on the date of its incorporation and the National Oil Company shall without further assurance be entitled to enforce or defend all obligations for or against the Corporation as if the National Oil Company were the original party to such obligations.

(4) For the avoidance of doubt, all bonds, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements subsisting immediately before the transfer date and to which the Corporation was a party shall, on and after that transfer date, be as fully effective and enforceable against or in favour of the National Oil Company as if, instead of the Corporation, the National Oil Company had been named therein.

(5) Any pending action or proceeding brought by or against the Corporation immediately before the transfer date may be enforced or continued by or against the National Oil Company as the successor of the Corporation.

(6) Notwithstanding the provision of subsection (5) of this section:

(a) an action or proceeding shall not be commenced against the National Oil Company in respect of any employee, asset, interests, or liabilities if the time for commencing the action or proceeding would have expired, had the transfer not been made; and

(b) the transfer of assets and liabilities to the National Oil Company shall not be deemed to create any new cause of action in favour of a

(i) holder of a debt instrument issued by the Corporation before the transfer date; or

(ii) party to a contract with the Corporation that was entered into before the transfer date.

(7) For the purposes of this section and Part III-A of this Act, “assets, interests and liabilities” means assets, interests and rights of all types (both tangible and intangible, real and personal), liabilities and obligations.

### **Guarantees to subsist**

80. (1) Any guarantee given by the Federal Government of Nigeria or any person in respect of any debt or obligation of the Corporation, and which was effective immediately before the transfer of assets and liabilities of the Corporation to the National Oil Company shall remain fully effective against the Government in relation to the repayment of a debt or performance of an obligation by the National Oil Company.

(2) Notwithstanding any applicable legislation, the National Oil Company shall be free to borrow funds as may be decided by the Board.

### **Transfer of employees and conditions of service**

81. (1) With effect from the transfer date, the employees of the Corporation shall be deemed to be employees of the National Oil Company on terms no less favourable than those enjoyed immediately prior to such transfer, and service with the National Oil Company shall be deemed to be service qualifying for employment-related-entitlements as may be specified under any relevant enactment.

(2) The National Oil Company shall continue to fulfil all statutory obligations in respect of pension schemes to which the Corporation was obliged in respect of its employees, prior to the transfer of assets to the National Oil Company.

### **Notice**

82. The Minister shall by notice published in the Gazette record satisfaction that the assets and liabilities of the Corporation have been transferred to the National Oil Company in accordance with the provisions of this part of this Act.

### **The Board**

83. Subject to the provisions of this and other relevant laws, members of the board of the National Oil Company shall be guaranteed the authority and resources to fulfil their duties in a professional and objective manner without interference.

### **Composition of the Board**

84. (1) The Board shall consist of a Chairman who shall be the Minister, and the following other members:

- (a) Minister of Finance or his representative;
- (b) Managing Director of NNPC Limited;
- (c) three persons to be appointed by the President, being persons who by reason of their ability, experience or specialised knowledge of the oil industry or of business or professional attainment are capable of making useful contributions to the work of the company.

(2) There may be appointed by the members an alternate chairman to act as the chairman in the absence of the substantive chairman.

### **Board Committees**

85. (1) Members of the Board shall within the first three months develop a formal and transparent board nomination and selection process for the committees of the Board.

(2) Further to subsection (1) of this section, the mandate, composition and working procedures of committees of the Board shall be well defined and disclosed by the Board to the shareholders.

(3) Where possible, the Board shall assign non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest, including but not limited to:

- (a) ensuring the integrity of financial and non-financial reporting;
- (b) nominations of board members and key executives; and
- (c) Board remuneration.

### **Principle of corporate governance to be applied.**

86. Board members shall discharge their responsibilities in accordance with the best standards, practices and principles of corporate governance and their actions shall be transparent and fully explained to affected stakeholders and where necessary, to the general public.

### **Responsibilities of the Board**

87. The Board of the National Oil Company shall at all times:

- (a) be responsible for the strategic guidance of the National Oil Company in accordance with the guidelines established by the shareholders for the effective monitoring of the National Oil Company's management by the Board;
- (b) be accountable to the National Oil Company and the shareholders;
- (c) act in good faith and on a fully informed basis, and exercise due diligence and care in the best interests of the National Oil Company, the shareholders and the sustainable development of Nigeria;
- (d) apply high ethical standards in performing its duties to the National Oil Company, taking into account the interests of its stakeholders; and
- (e) make decisions which shall be guided by commercial and technical considerations that represent best practice in the petroleum industry.

### **Functions of the Board**

88. The functions of the Board shall include:

- (a) reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures;

- (b) monitoring the effectiveness of the National Oil Company's governance practices and making changes as required;
- (c) selecting, compensating, monitoring and, when necessary, replacing management executives and overseeing succession planning;
- (d) aligning key executive and board remuneration with the longer term interests of the National Oil Company, its shareholders and stakeholders;
- (e) monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related National Oil Company transactions;
- (f) ensuring the integrity of the National Oil Company's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards; and
- (g) overseeing the process of disclosure and communications to shareholders and the public.

### **Rights of shareholders**

89. (1) Shareholders of the National Oil Company shall be entitled to full disclosure about the National Oil Company, which disclosure shall include, but not be limited to, material information on:

- (a) the financial and operating results of the National Oil Company;
- (b) National Oil Company objectives;
- (c) major share ownership and voting rights;
- (d) remuneration policy for members of the board and key executives, and information about board members (including their qualifications, the selection process, other National Oil Company directorships) and whether they are regarded as independent by the board;
- (e) related National Oil Company transactions;
- (f) foreseeable risk factors in National Oil Company activities;
- (g) issues regarding employees and other stakeholders; and
- (h) governance structures and policies, in particular, the content of any other corporate governance code or policy and the process by which it is implemented.

(2) Information relating to the operations and activities of the National Oil Company shall be prepared and disclosed in accordance with high quality international standards of accounting and financial and non-financial disclosure requirements.

(3) An annual audit of the National Oil Company shall be conducted by an independent, competent, experienced and qualified auditor that shall be accountable to the shareholders and shall provide an external and objective assurance to the Board and shareholders that

the financial statements fairly represent the financial position and performance of the National Oil Company in all material respects.

(4) External auditors shall be accountable to the shareholders and shall owe a duty to the National Oil Company to exercise due professional care in the conduct of the audit.

## **G. The Nigerian Petroleum Research Centre**

### **Establishment of the Nigerian Petroleum Research Centre**

90. (1) There is established a body to be known as the Nigerian Petroleum Research Centre (in this Act referred to as “the Centre”) which shall be a body corporate with perpetual succession and a common seal.

(2) The Centre shall have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act perform all acts that corporate bodies may perform by law.

(3) The corporate headquarters of the Centre shall be in Port Harcourt with offices in such other place as the Supervisory Council may determine with the approval of the Minister.

(4) All provisions of Part II-K of this Act shall apply to the Centre, except for such provisions that apply only to the Regulatory Institutions.

### **Functions of the Centre**

91. The functions of the Centre shall be to:

(a) carry out research in all areas pertaining to the petroleum industry, but primarily in the areas of exploration and production and process technology, with the primary focus on the need to develop:

(i) new technologies, and

(ii) design capabilities suitable for the needs of Nigeria;

(b) carry out research and advise the Minister and the Directorate on matters relating to exploration and production outside Nigeria;

(c) advise the Minister, the Directorate and the Inspectorate, as the case may be, on

(i) the technical evaluation of any acreage whatsoever, and

(ii) the value of any licences or leases, particularly during the bidding round process;

(d) collaborate with the Inspectorate and undertake analyses and re-evaluation of any data and information that may be provided by operators;

(e) domesticate and acquire patents on any new technologies that may be discovered or invented and market these new technologies to any person, subject to the approval of the Minister;

(f) undertake routine analyses and consultancies for all customers/operators on a commercial basis;

(g) organise training courses, workshops, seminars and conferences for the purpose of promoting the functions of the Centre, capacity building, increasing Nigerian content and sensitising the government and people of Nigeria on issues relating to the petroleum industry;

- (h) collect and collate independent data from Research Institutes and Universities locally and abroad;
- (i) operate data services for other regulatory agencies, government and potential investors in return for fees chargeable at commercial rates;
- (j) collate and review all literature and data on the industry emanating from universities and research institutes at home and abroad and downsize these into a data bank;
- (k) provide assistance in operating the data bank to be maintained by the Inspectorate pursuant to paragraph (m) of subsection (1) of section 39 of this Act;
- (l) carry out environmental impact assessments of any projects in the petroleum industry for any person in return for fees at commercial rates;
- (m) advise government on policy formulation on all issues that are relevant to increase Nigerian Content levels in the Nigerian petroleum industry;
- (n) collaborate with other research institutes within and outside the country on activities of common interest;
- (o) carry out research or investigation into the availability of local raw materials for use in the petroleum industry;
- (p) carry out research on engineering activities as they relate to the petroleum industry and for operators, either jointly or in collaboration;
- (q) where necessary and as requested by the Inspectorate, to collect samples at well-sites and to carry out analyses, either independently or jointly with operators of the licence or lease, as the case may be; and
- (r) do any other matter incidental to the functions listed in this section.

### **Powers of the Centre**

92. The Centre shall have:

- (a) power to charge fees at commercial rates for its services to any government or person; and
- (b) access to licence, lease, or contract areas, well-sites, storage depots, refineries and any other places where activities relating to the petroleum industry are carried out, for purposes of collecting samples for independent analyses and for the Centre's research.

### **Supervisory Council**

93. (1) There is established a Supervisory Council of the Centre (in this Part II-G referred to as "the Supervisory Council") which shall be responsible for the management of the Centre and shall consist of:

- (a) a chairman to be appointed by the President;
- (b) one representative not below the rank of a Director from the:
  - (i) Nigerian Petroleum Inspectorate,
  - (ii) Nigerian Petroleum Directorate,
  - (iii) Ministry of Science and Technology, and
  - (iv) Petroleum Technology Development Fund;
- (c) one representative of the Nigerian National Petroleum Company Limited not below the rank of a General Manager;
- (d) one representative of oil exploration and production companies operating in Nigeria;
- (e) two petroleum scientists appointed on the recommendation of the Council of Registered Engineers of Nigeria and the Council of Nigerian Mining and Geosciences Society;
- (f) one representative of the Nigerian Academy of Sciences;

- (g) three Directors who are full time staff of the Centre approved by the Minister and are selected pursuant to the Regulations; and
- (h) the Director-General of the Centre.

(2) The Chairman of the Supervisory Council shall be a person knowledgeable in the petroleum industry with cognate experience of not less than 15 years.

(3) Persons appointed under paragraphs (a), (g), and (h) of subsection (1) of this section shall hold office for 4 years in the first instance subject to re-appointment for another period of 4 years only.

(4) Members of the Supervisory Council shall be paid such remuneration and allowances as may be determined from time to time by the Minister.

Fifth Schedule (5) The proceedings of the Supervisory Council and other ancillary matters shall be regulated by the Fifth Schedule to this Act.

### **Powers of the Supervisory Council**

94. (1) The Supervisory Council shall be responsible for determining the overall policy and programmes of the Centre and for ensuring the implementation of such policies and programmes in accordance with the functions of the Centre.

(2) Without prejudice to subsection (1) of this section, the Supervisory Council shall:

- (a) approve the research and training programmes of the Centre;
- (b) determine the fees to be paid for research, consulting, training and other services that may be offered by the Centre; and
- (c) promote any other activity that in the opinion of the Supervisory Council will help to achieve the objectives of the Centre.

### **Directors of the Centre**

95. (1) There shall also be appointed by the Supervisory Council, Directors who shall assist the Director-General in managing and discharging the responsibilities of the Centre.

(2) The persons to be appointed Directors shall be accomplished researchers of national and international repute in the field of physical sciences, engineering or geosciences with demonstrable knowledge and experience in matters pertaining to the oil and gas industry.

(3) The remuneration, tenure and conditions of service of the Directors shall be at a level sufficient to attract qualified professionals within the oil industry and shall be determined in accordance with guidelines prescribed by the Minister.

### **Provision of library facilities**

96. The Centre shall provide and maintain a library comprising books, publications and other educational materials as may be approved by the Supervisory Council for the advancement of knowledge of petroleum matters, for research purposes, and for other purposes concerned with the objects and functions of the Centre.

### **Funds of the Centre**

97. (1) The Centre shall maintain a fund from which both the capital and recurrent expenditure of the Centre shall be defrayed and which shall consist of:
- (a) an amount from the account of the Directorate or an authorized portion of the budget of the Centre, in accordance with the provisions of this Act;
  - (b) money appropriated for that purpose from time to time by the National Assembly; and
  - (c) fees paid in respect of services rendered by the Centre.
- (2). The Centre shall apply proceeds of the fund established pursuant to subsection (1) of this section towards the disbursement of all its expenditure, including the day-to-day administration of its operations and the performance of its functions under this Act.
- (3) Any funds in excess of the requirements of the Centre shall be paid to the designated account of the Federation Account.

## **H: National Frontier Exploration Service**

### **Establishment**

98. (1) There is established a body to be known as the National Frontier Exploration Service (in this Act referred to as “the Frontier Service”) which shall be a body corporate with perpetual succession and a common seal.
- (2) The Frontier Service shall have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act may perform all acts that corporate bodies may perform by law.
- (3) All provisions of Part II-K of this Act shall apply to the Frontier Service, except for those provisions that only apply to Regulatory Institutions.

### **Objects of the Frontier Service**

99. The Objects of the Frontier Service shall be to:
- (a) promote efficient, sustainable exploration of hydrocarbons in the frontier basins of Nigeria;
  - (b) evaluate all unassigned concessions in Nigeria; and
  - (c) undertake activities to stimulate the interest of local and international oil companies in exploration of the frontier basins of Nigeria so as to increase Nigeria’s petroleum reserves.

### **Functions of the Frontier Service**

100. The functions of the Frontier Service shall be to:
- a) assist the Inspectorate in the regulation of petroleum exploration activities in all unassigned frontier acreage in Nigeria;

- b) identify opportunities and increase information about the petroleum resource base within all frontier acreage in Nigeria, in a cost effective manner and with demonstrable technical and operational excellence;
  - c) develop exploration strategies and portfolio management for the exploration of the unassigned frontier acreage in Nigeria;
  - d) promote and stimulate the interest of petroleum exploration and production companies in all unassigned frontier exploration acreage in Nigeria;
  - e) provide exploration related services to Government and its Agencies on request; and
- f) undertake any studies and analyses on all unassigned frontier acreage in Nigeria including:
- (i) aeromagnetic and gravity data interpretation,
  - (ii) sedimentological studies of any wells previously drilled in the frontier acreage using old and newly generated data,
  - (iii) high resolution biostratigraphic analysis and the preparation of any photocatalogues,
  - (iv) sequence stratigraphic analysis, petrophysical analysis, petroleum geochemical analysis and any other analysis,
  - (v) petrophysical and dipmeter sedimentology studies,
  - (vi) petrography and mineralogical studies,
  - (vii) digitization of all well logs,
  - (viii) scanning, vectorization and workstation interpretation of any seismic sections,
  - (ix) transcriptions of magnetic seismic tapes, and
  - (x) basin modelling.

### **Powers**

101. The Frontier Service shall have the power to:
- (a) enter into contracts with any person which in the opinion of the Frontier Service will facilitate the discharge or exercise of its duties or powers under this Part II-H;
  - (b) charge fees at commercial rates for its services to any government or person;
  - (c) enter any licence, lease, contract, or permit areas within the frontier acreage, including well-sites, storage depots, refineries and any other places where activities relating to the petroleum industry are carried out, for the purposes of collecting data and samples in pursuance of the functions of the Frontier Service; and
  - (d) do such other things as are necessary and expedient for the effective and full discharge of its functions under this Part II-H.

### **The Governing Board of the Frontier Service**

102. (1) There is established for the Frontier Service a Governing Board (in this Act referred to as “the Board”) which shall consist of:
- a) a Chairman, appointed by the President;
  - b) a Director-General; and
  - c) the Directors of the Frontier Service.

Sixth Schedule (2) The proceedings of the Board of the Frontier Service and other ancillary matters shall be regulated by Sixth Schedule to this Act.

## **Directors**

103 (1) There shall be appointed, Directors who shall assist the Director-General in managing and discharging the responsibilities of the Frontier Service.

- (2) The persons to be appointed Directors shall be suitably qualified by having extensive technical or managerial knowledge of the petroleum industry and shall be chosen through a prescribed and transparent recruitment process.
- (3) The remuneration, tenure and conditions of service of the Directors shall be at a level sufficient to attract qualified professionals within the petroleum industry.

## **Funding**

104. (1) The Frontier Service shall establish and maintain a fund which shall consist of:
- (a) such money as may, from time to time, be appropriated to the Frontier Service by the Federal, State or Local Government;
  - (b) a portion for the use of the Frontier Service in accordance with the provisions of section 28 of this Act;
  - (c) money raised for the purposes of the Frontier Service by way of gifts, loans and grants-in-aid;
  - (d) subscriptions, fees and charges payable to the Frontier Service; and
  - (e) all other monies that may, from time to time, accrue to the Frontier Service.
- (2) The Frontier Service shall, from time to time, apply the proceeds of the fund established pursuant to subsection (1) of this section:
- (a) to the costs of administration of the Frontier Service; and
  - (b) to the payment of salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to staff of the Frontier Service or employees;
- (3) Any funds in excess of the requirements of the Frontier Service shall be paid to the designated account of the Federation Account.

## **I - Petroleum Equalisation Fund**

### **Establishment of the Equalisation Fund**

105. (1) There is established a Fund to be known as the Petroleum Equalisation Fund (“the Equalisation Fund”) into which shall be paid:

- (a) any net surplus revenue recovered from petroleum products marketing companies pursuant to this Act; and
- (b) such sums as may be provided for that purpose by the Federal Government.

(2) The Equalisation Fund shall be a body corporate with perpetual succession and a common seal and the power to acquire, hold and dispose of property and subject to this Act perform all acts that corporate bodies may perform by law.

(3) Where the Government decides that petroleum product markets have been effectively deregulated, the Minister shall take the required actions to ensure that the Equalization Fund shall cease to exist and any assets shall be transferred to the Federal Government to be controlled and managed by the Directorate and at such time this Part II-I shall then stand repealed.

(4) Sections 133, 134, 135, 136, 141, 142, 144 and 148 of Part II-K shall apply to the Equalization Fund.

### **Establishment of the Petroleum Equalisation Fund Management Board**

106. (1) There is established a body to be known as the Petroleum Equalisation Fund Management Board (in this Act referred to as “the Board”) which shall manage the Equalisation Fund.

(2) The Board shall consist of-

- (a) a representative of the National Petroleum Directorate who shall be the Chairman;
- (b) a representative of the Federal Ministry of Finance;
- (c) a representative of the Authority;
- (d) a representative of National Association of Road Transport Owners;
- (e) a representative of the Major Marketers Association of Nigeria;
- (f) a representative of the Independent Petroleum Marketers Association of Nigeria;
- (g) a representative each of the Nigerian Labour Congress and the Trade Union Congress of Nigeria;
- (h) three Directors who are full time staff of the Fund, to be nominated by the staff of the Equalisation Fund; and
- (i) the Executive Secretary.

(3) The Chairman shall hold office for a period of 4 years subject to re-appointment for another period of 4 years only on such terms and conditions as may be specified in his or her letter of appointment.

(4) Membership of the Board shall be part-time.

Seventh Schedule (5) The provisions of the Seventh Schedule to this Act shall have effect with respect to the composition of the Board and other matters contained therein.

### **Functions of the Board**

107. The Board shall:

- (a) determine the method by which net surplus revenue shall be collected from petroleum products marketing companies;
- (b) recover such net surplus revenues from the sale of petroleum products from petroleum products marketing companies, as shall be prescribed as such by the Authority; and

- (c) inspect and inquire about any activity relating to the movement or storage of petroleum products and to that extent, to inspect books and facilities, take measurements, and inquire into the correctness of information provided in support of claims for reimbursement.

### **Powers of the Board**

108. The Board shall:

- a) receive any net surplus revenue recovered from petroleum products marketing companies pursuant to this Part II-I;
- b) receive any such sums as may be provided for the purpose of the Equalisation Fund by the Federal Government of Nigeria;
- c) hold the Equalisation Fund in safe custody and in trust, for the reimbursement of petroleum products marketing companies suffering loss solely and exclusively as a result of the sale by them of petroleum products at uniform benchmark prices throughout the country, being benchmark prices set by the Authority pursuant to this Act;
- d) make payment of all disbursements of the Equalisation Fund authorised under or by virtue of this Act;
- e) account for all money collected, paid or otherwise expended in relation to the Equalisation Fund and pursuant to the provisions of this part II-I;
- f) keep proper public accounts and records of transactions on the Equalisation Fund;
- g) prepare in respect of each financial year a statement of accounts in such form as the Minister may direct;
- h) ensure the proper administration of the Equalisation Fund in accordance with the provisions of this Part II-I;
- i) make rules and regulations for carrying out the functions of the Equalisation Fund; and
- j) do such other things as are necessary, expedient, legal, and in conformity with the provisions of this Act for the efficient performance of and in connection with all or any of the functions of the Board as specified under this Part II-I.

### **Utilisation of the Fund**

109. The Equalisation Fund shall be utilized for:

- (a) the proper administration of the Equalisation Fund;
- (b) the reimbursement of petroleum products marketing companies for any loss sustained by them solely and exclusively as a result of sales by them of petroleum products at uniform prices throughout Nigeria, being benchmark prices set by the Authority; and
- (c) the management of the Board.

### **Executive Secretary**

110. (1) There shall be an Executive Secretary for the Fund, who shall be appointed by the President.

(2) The Executive Secretary shall be a person with the necessary professional qualifications, relevant knowledge and twenty (20) years experience in financial and accounting matters relevant to the petroleum industry and who is able to show impartiality and objectivity without any conflict of interest in the petroleum industry.

(3) The Executive Secretary shall be the chief executive and accounting officer of the Board and shall be responsible for running the day-to-day affairs of the Board.

### **Functions**

111. The Executive Secretary shall be responsible for:

- (a) the day to day management of the Equalisation Fund, subject to the directives of the Board;
- (b) determining the net surplus revenue recoverable from any petroleum products marketing company and accruing to that company from the sale by it of petroleum products at such prices, as may be sold in accordance with the methodology established by the Authority;
- (c) determining the amount of reimbursement due to any petroleum products marketing company which has suffered loss as a result of the operation of the enactment as aforesaid;
- (d) the payment of all disbursements authorized under or by virtue of this Act;
- (e) accounting for all monies collected, paid or otherwise expended under this Act and publishing same in the way and manner prescribed by the Board in consultation with the Authority; and
- (f) carrying out such other functions as may, from time to time, be specified by the Board.

### **Other officers of the Board**

112. The Board may also, on the advice of the Executive Secretary, appoint as employees of the Board such number of persons as may be necessary for the administration of the Equalisation Fund, who shall be subject to the general control of the Executive Secretary and who shall perform such duties as the Executive Secretary may direct.

### **Collection of net surplus revenue**

113. Net surplus revenue due and payable by petroleum products marketing companies shall be payable to the Equalisation Fund in accordance with directives issued by the Board from time to time, and the Equalisation Fund shall have no obligation to issue a demand notice in respect thereof nor shall the failure to issue a demand notice constitute a defence for non-payment of outstanding sums.

### **Bridging and equalisation allowances**

114. Nothing in section 113 of this Act shall derogate from the right of any petroleum products marketing companies maintaining storage facilities to collect bridging and equalization allowances prior to the release of petroleum products to petroleum products marketing companies and to remit same to the Board in accordance with such directives as may be issued by the Board.

## **Claims**

115. (1) Petroleum products marketing companies may, as necessary, bring claims for the recovery of losses sustained under paragraph (b) of section 108 of this Act in the manner prescribed by the Board.

(2) Where a company brings a claim under sub-section (1) of this section, the Board shall with the written request of the Executive Secretary, and with or without notice, have the right to enter upon, inspect and inquire about any activity relating to the movement or storage of petroleum products and to that event, to inspect books and facilities, take measurements, and to inquire into the correctness of information provided in support of claims for reimbursement.

(3) The Board shall have the power to-

- (a) demand details of production, supplies, loading and dispatches from refining companies, import terminals and storage facilities; and
- (b) gain unimpeded access to information relating to petroleum product imports, refining and sales collated and maintained by any government agency, including third party monitoring agencies, with authority to monitor or inspect petroleum products.

(4) The power provided under subsection (3) of this section is limited to refining facilities, reception terminals, storage facilities and retail outlets.

(5) Decisions as to payment of claims shall be made by the Board within thirty days from the date on which the claim was first made and where the claim is successful, payments shall be made within ten working days from the date of the said decision.

(6) Where a claim is successful and the Board fails to pay the said claim to the company in accordance with the terms and conditions of this section, the Board shall pay a sum equal to ten percent of the amount due.

## **Calculation of surplus revenue recoverable**

116. The net surplus revenue recoverable from a petroleum products marketing company under this Act shall be calculated by reference to the volume of the affected products sold on zonal basis and to the amount by which the uniform prices at which the products were sold exceeded, or were less than, the prices of those products prevailing immediately before the fixing of the uniform prices of the products.

## **Prescribed dates for payment and penalty for non-payment**

117. (1) The Board shall by notice served on the petroleum products marketing company concerned, specify the date on which any surplus revenue due from that petroleum products marketing company shall be paid to the Board.

(2) If any sum is not paid within 21 days of the specified date, a sum equal to ten per centum of the amount unpaid shall be added for each month or part of a month after the date on which payment should have been made.

(3) The Board may for just cause, waive in whole or in part any penalty imposed under this section.

(4) Where the Board waives a penalty under the provisions of subsection (3) of this section, the Board shall give its reasons in writing.

#### **Certificate as evidence**

118. A copy of an entry in the accounts of the Board or other extract from the records of the Board shall, when certified by the Executive Secretary, be received in all courts as prima facie evidence of the truth of the contents thereof and as the case may be, of the debt to the Board by any petroleum products marketing company.

#### **Reporting obligations**

119. (1) All petroleum product importers, including the National Oil Company, and petroleum products marketing companies shall, prior to or no later than 21 days following each importation, report details of all petroleum products imported into Nigeria to the Equalisation Fund, such reports to include quantities, date of delivery and place of discharge.

(2) All licensed petroleum product storage facilities, including storage facilities belonging to the National Oil Company shall on a monthly basis, deliver to the Board:

- (a) logs of product movements into and out of the facilities; and
- (b) returns of bridging and equalization allowances collected from petroleum products marketing companies and remitted to the Board.

(3) Marketing companies shall deliver quarterly statements of all petroleum products lifted and discharged, including details of load and discharge points, and dates and times of such loading and discharging to the Board.

(4) In addition to the reporting obligations contained in this section, the Executive Secretary may, with the approval of the Board:

- a) require any petroleum products marketing company to furnish such returns and keep such records or any other relevant information as he or she may determine as necessary for the proper administration of the provisions of this Act; and
- b) produce them for examination by the Executive Secretary or whoever he or she may mandate to perform this function, as may appear to the Executive Secretary necessary for the proper administration of the provisions of this Act.

#### **Dispute settlement**

120. (1) Disputes between a company and the Equalisation Fund in respect of any matter under this Act shall be referred to the Authority and shall be subject to the dispute resolution processes in subsection (2) of this section.

(2) Disputes in which the Equalisation Fund is a party, the relevant provisions of the Arbitration and Conciliation Act, shall apply.

## **J – The Petroleum Technology Development Fund**

### **Establishment of the Petroleum Technology Development Fund**

121. (1) There is established a Fund to be known as the Petroleum Technology Development Fund (in this Act referred to as “the Development Fund”) which shall be a body corporate with perpetual succession and a common seal.

(2) The Development Fund shall have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act perform all acts that corporate bodies may perform by law.

(3) All provisions of Part II-K of this Act shall apply to the Development Fund, except for provisions that solely apply to Regulatory Institutions.

### **Sources of the Development Fund**

122. There shall be paid into the Development Fund money comprising-

Cap LFN, 2004 (a) the balance of monetary assets outstanding at the commencement of this Act in the accounts of the Petroleum Technology Development Fund Act;

(b) all sums payable to or received by the Government of the Federation on matters contained in terms of any agreement made by the Government and any company in relation to petroleum prospecting licenses or petroleum mining leases;

(c) funds and grants accruing from multilateral agencies, bilateral institutions and related sources dedicated partly or wholly for the development of technology, capacities and capabilities in the Nigerian petroleum industry;

(d) fees payable for services rendered to local and foreign institutions, agencies and companies in petroleum and management services;

(e) penalty fees resulting from:

(i) non-compliance with expatriate quota provisions in terms of number and life-span on quota position for companies operating in the petroleum industry in Nigeria, and

Cap 171, LFN, 2004 (ii) violation of the Nigerian content policy of positions occupied by expatriates as provided by the Immigration Act, and any other relevant law for all companies operating in the petroleum industry in Nigeria.

(f) any other sum, from time to time freely donated or accruing to the Government or the Development Fund for development of petroleum technology, capacities and capabilities or the training and education of Nigerians in the petroleum industry as the Board established under section 125 of this Act may direct; and

(g) moneys in the said Development Fund together with interest (if any) payable in respect thereof.

### **Reserve account**

123. (1) The Inspectorate which is responsible for the collection of such sums under section 122 of this Act shall ensure the prompt payment of all such sums directly into the Development Fund's Reserve Account with the Central Bank of Nigeria not more than 60 days after payment has been received by the Inspectorate.

(2) All monies stipulated under section 122 of this Act shall be collected and paid into the Development Fund's Reserve Account with the Central Bank of Nigeria.

(3) At the beginning of every financial year the Board shall approve the Development Fund's Programme of Action with its cost implications following which the approved amount shall be released promptly to the Development Fund by the Accountant General of the Federation to cover its operations for that financial year.

(4) A copy of the approved Programme of Action referred to in subsection (3) of this section shall be submitted to the relevant committees of the National Assembly for the purpose of facilitating their oversight functions over the Fund.

(5) The monies in the Development Fund's Reserve Account not disbursed to the Development Fund shall be held or invested in low risk international government bonds as shall be determined by the Board.

(6) Interest income accruing from the bonds shall be paid directly to the Development Fund's Reserve Account at the beginning of every financial year.

(7) The Development Fund shall maintain operational accounts with any bank as may from time to time be approved by the Board.

(8) The annual statement of the Development Fund's Reserve Account with the Central Bank of Nigeria shall be prepared by the Accountant General of the Federation and submitted to the Auditor General of the Federation within seven months of the end of the financial year to which they relate.

(9) The certified annual accounts of the Development Fund's Reserve Account and the audit report thereon, together with a report on the operations of the Development Fund, shall be submitted to the Federal Executive Council annually by the Minister.

### **Purpose of the Development Fund**

124. (1) The funds of the Development Fund shall be used for the purposes of training Nigerians to qualify as graduates, professionals, technicians and craftsmen in the fields of engineering, geology, science and management and other related fields in the petroleum industry in Nigeria or abroad; and in particular, and without prejudice to the generality of the foregoing, the funds shall be utilised to:

- a) enhance and develop world-class infrastructure and facilities in tertiary institutions that provide courses of study relevant to the oil and gas industry;

- b) provide scholarships and bursaries, wholly or partially in universities, institutions, and in petroleum undertakings in Nigeria or abroad;
- c) maintain, supplement, or subsidise such training or education as specified in this subsection;
- d) make suitable endowments to faculties in Nigerian universities, colleges, or institutions as may be approved by the Board;
- e) initiate, design and implement effective indigenous research and capacity development for Nigeria's petroleum industry;
- f) coordinate with research centres in Nigeria and abroad on the adaptation of technology and innovations appropriate for the needs of the Nigerian petroleum industry;
- g) use existing human resources development facilities in Nigeria for an expanded manpower development programme in the petroleum industry;
- h) where applicable, support skill acquisition programmes aimed at enhancing employment in the petroleum industry in Nigeria;
- i) periodically compute, evaluate and update the basic needs of Nigeria's petroleum industry in terms of skills, expertise and know-how;
- j) make available appropriate library to support the Petroleum Training Institute, suitable books and training equipment in the Nigerian tertiary institutions;
- k) finance participation in seminars and conferences which are connected with the petroleum industry in Nigeria or abroad;
- l) promote in-country fabrication and manufacturing of equipment used in the Nigerian petroleum industry; and
- m) generally facilitate the attainment of 100 percent Nigerian content in the petroleum industry.

### **Establishment of the Board**

125. (1) There is established a Board of the Development Fund to be known as the Petroleum Technology Development Fund Board (in this Part II-J referred to as "the Board") which shall be responsible for the management of the Development Fund.

(2) The Board shall consist of:

- (a) the Minister of Petroleum as chairman;
- (b) one representative each of the:
  - (i) Federal Ministry of Finance Incorporated,
  - (ii) Federal Ministry of Education,
  - (iii) Federal Ministry of Science and Technology, and
  - (iv) The Accountant General of the Federation;
- (c) one representative each of the:
  - (i) Nigerian Petroleum Inspectorate,
  - (ii) Petroleum Technology Association of Nigeria,
  - (iii) Council of Registered Engineers of Nigeria, and
  - (iv) Academic Staff Union of Universities;
- (d) two persons to be approved by the Minister being persons who by reason of their ability, experience and specialized knowledge of the petroleum industry are selected pursuant to the Regulations;
- (e) two Directors who are approved by the Minister and are selected pursuant to the Regulations;; and
- (f) the Executive Secretary.

(3) Membership of the Board shall be on a part-time basis.

Eighth Schedule (4) The supplementary provisions set out in the Eighth Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters contained therein.

### **Specific functions of the Board**

126. (1) The Board shall:

- (a) provide general policy guidelines relating to the functions of the Development Fund;
- (b) recommend annual programme of action for the Development Fund to be approved by the Minister ;
- (c) approve annual budget of the Development Fund;
- (d) approve the appointment, promotion and discipline of management staff of the Development Fund;
- (e) update the President on its activities and progress through annual audited reports; and
- (f) do such other things as are necessary, expedient, legal, and in conformity with the provisions of this Act for the efficient performance of and in connection with all or any of the functions of the Board as specified under this Part II-J.

(2) The Board may delegate any of its functions to the Executive Secretary.

### **Duties of Executive Secretary**

127. The Executive Secretary shall, subject to the direction of the Board, be responsible:

- (a) for the day to day administration of the Development Fund;
- (b) for keeping the books and proper records of the proceedings of the Board;
- (c) for the assessment of contributions under this Act and the collection and payment of moneys to the Development Fund;
- (d) for payment of all disbursements authorised under or by virtue of this Act;
- (e) for accounting for all moneys collected, paid or otherwise expended under this Act;
- (f) for ensuring the utilisation of the fund for the purposes set out under section 124 of this Act;
- (g) for ensuring a publication in the national press of a notice inviting applications for scholarship under the Development Fund and giving a list of eligible courses and the minimum educational requirements;
- (h) for ensuring that successful applicants who meet the minimum requirements are notified in writing and their names published in the national press;
- (i) for the administration of the secretariat of the Board;
- (j) for the general direction and control of all other employees of the Development Fund; and
- (k) for the creation and modification of organisational structure of the Development Fund as may be necessary to enhance the Development Fund's functions under this Act.

### **Investment of Development Fund**

CapT22 LFN 2004 128. The Development Fund may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds in any security prescribed by the Trustees Investment Act, or in such other securities.

## **Information**

Act No. 36 2007. 129. A member of the Board or any officer or employee of the Development Fund shall, subject to the provisions of the Nigerian Extractive Industries Transparency Initiative Act 2007 and any law in force in Nigeria relating to freedom of information:

- (a) not, for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a member of the Board or as an officer or employee of the Development Fund;
- (b) treat as confidential, any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act; and
- (c) not disclose any information referred to under paragraph (b) of this section, except when required to do so by a court of law or in such other circumstances as may be prescribed by the Development Fund, from time to time.

## **K- Common Provisions with respect to the Inspectorate, Authority, Agency, Centre, Frontier Service, the Development Fund and for some sections of the Equalisation Fund**

### **Institutions**

130. (1) In this Part II-K of the Act, “Institution” shall mean any of the Inspectorate, the Authority, the Agency, the Centre, the Frontier Service or the Development Fund.

(2) With respect to sections 133, 134, 135, 136, 141, 142, 144 and 148 of this Part II-K, “Institution” shall mean any of the Institutions under subsection 130(1) or the “Equalisation Fund”.

### **General functions of the Governing Board or Supervisory Council**

131. The Governing Board or the Supervisory Council, as the case may be, of the Institution shall ensure that such Institution performs its statutory functions as contained in this Act.

### **The Director General or Executive Secretary**

132. (1) There shall be a Director-General for the Institution, or in the case of the Development Fund the Executive Secretary, who shall be appointed by the President.

(2) The Director-General, or in the case of the Development Fund the Executive Secretary, shall be a person with the necessary professional qualifications, relevant knowledge and twenty (20) years experience in the petroleum industry, in particular with respect to issues that relate to the functions of the Institution, and who is able to show impartiality and objectivity without any conflict of interest in the petroleum industry.

(3) The Director-General shall be the chief executive and accounting officer of the Institution and shall be responsible for running the day-to-day affairs of the Institution.

(4) The Director-General shall have the status of a permanent secretary of the civil service of the Federal Republic of Nigeria.

(5) The Director-General shall perform such other functions as the Board or Supervisory Council, as the case may be, may determine.

### **Tenure, remuneration and conditions of service of the Director General or Executive Secretary**

133 (1) The Director General, or Executive Secretary as the case may be, shall hold office for a period of 5 years and may be re-appointed for a further term of 5 years only, and on such terms and conditions as may be specified in his or her letter of appointment.

(2) The remuneration and conditions of service of the Director-General shall be such as would attract qualified professionals within the petroleum industry.

### **Disqualification**

134. (1) No person shall be appointed a Director General, or Executive Secretary as the case may be, unless he or she is a Nigerian citizen.

(2) A person shall not be appointed a Director General or Director if he or she;

- (a) has, under the laws in force in any country:
  - i) been adjudged or declared bankrupt or insolvent,
  - ii) made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside,
  - iii) been declared to be of unsound mind,
  - iv) been convicted of an offence involving fraud or dishonesty, or
  - v) been disqualified by a competent authority from carrying out any assignment, responsibility or function in his or her professional capacity; or
  
- (b) has been disqualified by the Securities and Exchange Commission from holding a board appointment in any public company.

### **Termination of appointment**

135. The office of the Director-General or Executive Secretary, as the case may be, or a member of the Governing Board shall become vacant:

- (a) three months, or such lesser period of time as is acceptable to the President, after the Director-General gives notice of his or her resignation;
- (b) if he or she becomes disqualified under the provisions of Section 134 of this Act; or
- (c) on the expiration of his or her appointment.

**Vacation of office.**

136. The President shall require the Director-General or the Executive Secretary, as the case may be, or member of the Governing Board to vacate his or her office if a disciplinary committee determines that he or she:

- (a) has committed an act of gross misconduct;
- (b) has failed to comply with the terms and conditions of his or her office as fixed by this Act; or
- (c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently as a member.

**Appointment of a new Director-General.**

137. Upon the vacancy of the Director-General's office or Executive Secretary's office as the case may be, or a member of the Governing Board the President shall appoint a candidate to fill the vacancy in accordance with the terms of section 132 of this Act.

**Remuneration of members of the Board or Supervisory Council**

138. (1) Members of the Board, or Supervisory Council, shall be paid from the funds of the Institution:

- (a) remuneration in accordance with the guidelines of the Directorate; and
- (b) such allowances as the Board or Supervisory Council may determine from time to time to meet any reasonable expenses incurred by such members in connection with the business of the Institution.

(2) The Directorate while making such guidelines shall have due regard to:

- (a) the specialised nature of the work to be performed by the Institution;
- (b) allowances paid in the private sector to board members with equivalent responsibilities, expertise and skills.

(3) With respect to the Authority, the Directorate shall furthermore consider the need to ensure the financial self-sufficiency of the Authority.

**Secretary**

139. (1) The Board or the Supervisory Council, as the case may be, shall appoint a Secretary who shall keep the corporate records and the common seal of the Institution and undertake such other functions as the Director-General, and the Board or the Supervisory Council, as the case may be, may from time to time direct, provided that there will be no need to appoint a Secretary with respect to the Development Fund.

(2) The Secretary shall be a lawyer with a minimum of 10 years post qualification experience.

**Other staff**

140. (1) The Institution may, from time to time, appoint such professionals experienced in the petroleum industry and other persons as staff of the Institution to assist in the performance of its functions under this Act.

(2) Staff of the Institution appointed under subsection (1) of this section shall be appointed on such terms and conditions of service as the Institution may prescribe.

1999 Constitution(3) Staff of the Institution shall be public officers as defined in the Constitution of the Federal Republic of Nigeria 1999.

(4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

### **Remuneration of the staff of the Institution**

141. The remuneration, tenure and conditions of service of staff of the Institution shall be at a level sufficient to attract qualified professionals within the petroleum industry, based on guidelines prescribed by the Directorate based on the recommendations of the Board or Supervisory Council, as the case may be, and shall take into account:

- (a) the specialised nature of work to be performed by the staff; and
- (b) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

### **Pensions**

Cap P4 LFN 2004 142. (1) Service in the Institution shall be approved service for the purpose of the Pensions Reform Act and accordingly, officers and other persons employed in the Institution shall be entitled to pensions and other benefits as prescribed in the Act.

(2) Subsection (1) of this section shall not prohibit the Institution from appointing a person to any office on terms that preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.

(3) In the application of the Pensions Reform Act to the Institution, any power exercisable under the Act by a Minister or other agency of the Government of the Federation, other than the power to make regulations, is hereby vested in and shall be exercisable by the Institution and not by any other person.

(4) Subject to the Pensions Reform Act and notwithstanding the provisions of this section, the Inspectorate shall continue to fulfil all obligations in respect of pensions schemes to which the Petroleum Inspectorate of the Nigerian National Petroleum Corporation or the Department of Petroleum Resources of the Ministry of Petroleum Resources was obliged in respect of its employees, prior to the transfer of assets to the Inspectorate.

### **Transfer of service**

143. Any Institution may request for the services of any experienced staff of any other Institution to be transferred to the Institution if in its opinion such services cannot be obtained elsewhere in the country, and the person shall have the right to refuse or accede to this request.

### **Financial provisions of the Institution**

144. (1) The Institution shall, not later than September in each year, present to the Minister, a budget showing the expected income and expenditure which the Institution proposes to expend in respect of the succeeding financial year insofar as the amount so budgeted does not exceed the total amount accruable to the Inspectorate from its sources of funding in any financial year.

(2) The Institution may during a financial year prepare and present to the Minister, a supplementary budget relating to expenditures which were inadequately represented in the annual budget due to unforeseen circumstances.

(3) The Institution may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.

(4) The financial year of the Institution shall be for a period of twelve calendar months commencing on the 1<sup>st</sup> of January in each year.

#### **Power to accept grants**

145. (1) The Institution may accept grants of money or other property upon such terms and conditions, if any, as may be specified by the person or organisation making the grant, provided such grants are not inconsistent with the objectives and functions of the Inspectorate under this Act.

(2) Nothing in subsection (1) of this section or in this Act shall be construed to allow the Director-General and other staff of the Institution to accept grants for their personal use.

#### **Borrowing powers**

146. The Institution may, with the consent of, or in accordance with the general authority given by the Minister of Finance, borrow such sums of money as the Institution may require in the exercise of its functions under this Act or its subsidiary legislation.

#### **Annual budget**

147. The annual budget of the Institution shall be approved by the Governing Board, or Supervisory Council as the case may be, prior to submission to the Minister pursuant to subsection (1) of section 144 of this Act.

#### **Accounts, reports and audit**

148. (1) The Institution shall keep proper accounts and other records relating to such accounts in respect of all of the Institution's activities, funds and property including such particular accounts and records as may be required.

(2) The Institution shall not later than six months after the financial year prepare and submit to the Auditor-General of the Federation, a statement of accounts in respect of that particular financial year.

(3) The Institution shall present a half yearly report of all its activities including decisions, procedures, regulations and applicable licences, leases, exploration licences, technical licences and commercial licences to the Minister, the President and the Ministry of Finance.

(4) A summary of the reports mentioned in subsections (2) to (3) of this section shall be published annually on the website of the Institution and in at least two newspapers of nationwide circulation in Nigeria for public notice no later than the 31<sup>st</sup> of July of each year provided such publication shall exclude confidential data pertaining to national security, commercial sensitivity or personnel privacy.

(5) Further to the provisions of this section, there shall always be a presumption in favour of releasing information to the public, which the Institution must rebut by showing good reasons for withholding such information from the public.

(6). The Institution shall appoint an auditor in accordance with the guidelines for the appointment of auditors issued by the Auditor-General of the Federation and shall cause its accounts to be audited within six months after the end of each year.

#### **Mid-year and annual reports**

149. (1) The Institution shall submit to the National Assembly, the reports pursuant to section 148 of this Act, not later than 31st July of each year.

#### **Exemption from income tax**

150. All income derived by the Institutions from the sources specified in Part II of this Act shall be exempt from income tax and all contributions made by persons subject to the payment of tax shall be tax deductible.

#### **Procedures on decisions, orders, public hearing and related matters**

151. (1) The Regulatory Institution shall ensure that all its decisions and orders:

- (a) contain an explanation or the basis for the decision or order;
- (b) are properly recorded in writing and other appropriate permanent forms; and
- (c) are accessible to the public at reasonable times and places.

(2) The Regulatory Institution shall issue written reasons in respect of any decisions or orders affecting the existing rights and duties of any person.

(3) The Regulatory Institution may issue written reasons in respect of any other decision or order as the Regulatory Institution deems necessary.

#### **Interim orders**

152. The Regulatory Institution may make interim orders pending the final disposition of a matter before it.

#### **Reference to court**

153. (1) Where any question of law arises from an order or decision of the Regulatory Institution, it may on its own volition or at the request of any person so affected by such order, refer such question for the decision of the Federal High Court.

(2) Where a question has been referred under subsection (1) of this section, the Regulatory Institution shall state the question in the form of an originating summons and file same with the Registrar of the Federal High Court.

#### **Restrictions on legal proceedings**

154. (1) Court processes, proceedings or suits, against the Institutions shall be attended to and handled by the Institutions, except in respect of criminal matters.

(2) Any suit or proceedings against the Institution, a member of the Governing Board or Supervisory Council, as the case may be, or any employee of the Institution for any act, omission or default in respect of its functions and powers under this Act or any other enactment shall be brought within twelve months after the act, neglect or default complained of or in the case of a

continuance of damage or injury, within twelve months after such damage or injury may have ceased.

(3) No suit shall commence against the Institution before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Institution by the intending plaintiff or his agent.

(4) The notice shall clearly and explicitly state:

- (a) the cause of action;
- (b) the particulars of the claim;
- (c) the name, place of abode and address for service of the intending plaintiff; and
- (d) the relief which is being claimed.

### **Service of documents**

155. The notice referred to in subsection (2) of section 154 of this Act and any other process required or authorized to be served upon the Inspectorate under the provisions of this Act or any other enactment may be served by:

- (a) delivering the same to the Director-General, or Executive Secretary, as the case may be, or any other principal officer of the Institution; or
- (b) sending it by registered post addressed to the Director-General or Executive Secretary as the case may be, at the head office of the Inspectorate.

### **Judicial review**

156. (1) An aggrieved person shall have a right of appeal to the Federal High Court for a judicial review of questions of law and process pertaining to a determination or other action of the Regulatory Institution.

(2) Any determination or other action of the Regulatory Institution that is the subject matter of the application for judicial review shall subsist and remain binding and valid until it is expressly reversed in a final judgement or order of the Federal High Court.

### **Service of notice on the Institution**

157. Any summons, notice or other document required or authorised to be served upon the Institution under the provisions of this Act or any other enactment or law may be served by delivering the same to the Director General, or the Executive Secretary as the case may be, of the Institution or the Secretary to the Institution at the head office of the Institution.

### **Judgment against the Institution**

158. (1) Where a judgment of the Court awards any sums of money against the Institution, the said amounts shall be paid from the general reserve funds of the Institution that generate revenues, subject to the provisions of the Fiscal Responsibility Act and otherwise it shall be paid by the Federal Government.

(2) Where the Institution has filed a notice of appeal, the provisions of subsection (1) of this section shall be subject to any directions that may be given by the court.

### **Indemnity of Governing Board and employees**

159. (1) Every member of the Governing Board, or Supervisory Council as the case may be, and every employee of the Institution shall be indemnified out of the assets of the Institution against any liability incurred in defending any proceeding against the Institution, whether civil or criminal, if such proceedings are brought against the person in his or her capacity as a member of the Governing Board, or Supervisory Council as the case may be, or employee.

(2) Notwithstanding the provisions of subsection (1) of this section, the Institution shall not indemnify any member of the Governing Board, or Supervisory Council as the case may be, or employee of the Institution for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be, or conduct acts which such person knew or should have known to be unlawful.

## **PART III - upstream PETROLEUM**

### **A - Incorporated joint venture companies**

#### **Establishment of incorporated joint venture companies**

160 (1) In accordance with section 79 of this Act, the assets, interests and liabilities held by the Nigerian National Petroleum Corporation in respect of the existing joint operating agreements for the exploration and production of petroleum in Nigeria will be vested in the National Oil Company.

(2) (a) Within fifteen months from the commencement of this Act the National Oil Company and the other parties to the existing joint operating agreements for upstream and midstream operations listed in Schedule 10 shall form limited liability companies (referred to in this Part III as “incorporated joint venture companies”). One or more incorporated joint venture companies will be created for each existing joint operating agreement listed in Schedule 10. The incorporated joint venture companies shall be formed under the Companies and Allied Matters Act. The National Oil Company and the other parties to the existing joint operating agreements shall:

- (i) execute the shareholders agreements,
- (ii) approve the memorandum and articles of association, and
- (iii) incorporate such companies;

(b) Each shareholders agreement shall set out the conditions and timeline for transfer of the assets, interests and liabilities governed by an existing joint operating agreement to the incorporated joint venture company;

(c) The transfer of all assets, interests and liabilities shall be completed within thirty (30) months from the commencement of the Act and during this period the respective operators of the joint operating agreements shall continue to operate the operations under these agreements;

(d) Each incorporated joint venture company shall be owned by the parties to the existing joint operating agreements listed in Schedule 10 in proportion to their participating interests at the time of the incorporation;

(e) The incorporated joint venture companies shall not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act;

- (f) If an incorporated joint venture company is not formed within the time period contemplated in paragraph (b) of this subsection, the Minister shall direct the National Oil Company and the other parties to the existing joint operating agreement to take the steps contemplated by paragraph (b) of this subsection on terms and conditions determined by the Minister; and
- (g) If assets, interests or liabilities are not transferred within the time period contemplated in paragraph (c) of this subsection, the Minister shall direct the National Oil Company and the other parties to the existing joint operating agreement to transfer the assets, interests and liabilities on terms and conditions determined by the Minister, taking into account the terms and conditions agreed for transfers by other incorporated joint venture companies.
- (h) Any non compliance with the provisions of paragraphs (f) or (g) or both of this subsection shall be grounds for revocation of the respective licences and leases.
- (3) the incorporation of each incorporated joint venture company shall be approved by the Minister and shall be subject to the following:
- (a) The respective shareholding interests of the parties may be changed five years after incorporation, provided that the National Oil Company may only increase its shareholdings and any sale of shares by the other parties shall be subject to the right of first refusal by the National Oil Company;
  - (b) Each incorporated joint venture company shall carry out upstream petroleum operations, midstream petroleum operations or both;
  - (c) Each incorporated joint venture company shall hold any petroleum prospecting licences and any petroleum mining leases held under the existing joint operating agreement on the completion date of the transfer contemplated by paragraphs (b) and (c) of subsection (2) of this section.
  - (d) The incorporated joint venture company shall at all times be the operator of petroleum operations under each of its petroleum prospecting licenses and petroleum mining leases.
  - (e) An incorporated joint venture company may contract for specific petroleum services but may not enter into any contract or group of contracts which would have the effect of transferring, directly or indirectly, any of the functions as operator pursuant to paragraph (d) of this subsection;
  - (f) Each incorporated joint venture company shall by publication on its website make public the details related to its establishment, including its shareholders agreement, memorandum and articles of association and any amendments or side letters thereto;
  - (g) An incorporated joint venture company may render any services related to its operations other than financial and insurance services, to any other incorporated joint venture company established pursuant to this Part III-A, the National Oil Company, or to other companies under such conditions as established in the articles of association of the incorporated joint venture company;
  - (h) No incorporated joint venture company shall be permitted to carry out any operations defined in this Act as downstream petroleum operations;
  - (i) The term of each incorporated joint venture company established pursuant to this Part III-A shall be for a period determined by a unanimous decision of the shareholders; and
  - (j) Each incorporated joint venture company shall have its head office and main operational offices in Nigeria.

### **Organization of incorporated joint venture companies**

161. (1) Each incorporated joint venture company shall have a Board of Directors to be appointed by the shareholders of the incorporated joint venture company.

- (2) Each Board of Directors of an incorporated joint venture company shall be made up of Nigerians and nationals of other countries who shall be persons:
- (a) who have distinguished themselves in their various capacities;
  - (b) who have unblemished records of honesty and integrity; and
  - (c) who will be able to exercise independence and objectivity with respect to the affairs of the incorporated joint venture company.
- (3) The National Oil Company shall have the right to appoint a majority of the members of the Board of Directors for each of the incorporated joint venture companies, where the National Oil Company owns the majority of the shares.
- (4) The appointment and functions of the Chairman, the term of office of the other Directors, and matters related to meetings and notices of the Board of Directors shall be defined in the articles of association.
- (5) The powers of the Board of Directors for each incorporated joint venture company shall be established in the articles of association relating to each incorporated joint venture company, provided, inter alia, that the Board of Directors shall have the power to approve the annual work program and budget and any revisions thereof.
- (6) Decisions of the Board of Directors of each incorporated joint venture company shall comply with resolutions passed in the shareholder's meetings of each respective incorporated joint venture company.
- (7) The Board of Directors may create subcommittees, provided the provisions of subsections (2) and (3) of this section shall apply mutatis mutandis.
- (8) The shareholders of each of the incorporated joint venture companies under this section shall have the power to appoint the Managing Director for the incorporated joint venture company who shall be a member of the Board of Directors.
- (9) The Managing Director of each incorporated joint venture company shall be in charge of the daily administration of the business of the incorporated joint venture company and shall have the powers and duties provided for in the articles of association relating to the incorporated joint venture company.
- (10) The National Oil Company shall have the right to appoint the majority of the members of the management for each incorporated joint venture company as determined in the shareholders agreement and the other shareholders shall appoint the remaining members of the management. At least 80% of the management shall at all times be Nigerian nationals.
- (11) Decision making by the Managing Director and the Board shall be guided by commercial and technical considerations that represent best practice in the petroleum industry.

### **Special provisions relating to the shares of an incorporated joint venture company**

162. (1) Shares in each incorporated joint venture company shall be made up of common shares which shall give equal and same rights to each shareholder.
- (2) The shares held by the National Oil Company in each of the incorporated joint venture companies shall at all times during the life of each incorporated joint venture company remain non transferable either by way of sale, assignment, mortgage or pledge to any other entity other than another entity wholly owned by the Federal Government of Nigeria.
- (3) No holder of shares of an incorporated joint venture company shall encumber, grant as guarantee, assign or transfer (except for a transfer to an entity which is exclusively owned by the ultimate parent company of the transferring shareholder) its shares without the prior written

consent of the National Oil Company. Any change in the control of any shares other than of the National Oil Company shall require prior approval of the National Oil Company.

**Special provisions relating to rents, royalties, taxes and other levies payable by an incorporated joint venture company**

163. Each incorporated joint venture company shall be subject to the payment of rents, royalties and taxes in the manner prescribed in this Act.

**Special provisions relating to the tax effect of the initial capitalization and creation of an incorporated joint venture company**

164. The initial capitalization of each incorporated joint venture company and the transactions required to create the incorporated joint venture company shall not create any additional tax liabilities for any of the parties to the incorporated joint venture company or for any person or entity, provided all assets, interests and liabilities are transferred to the incorporated joint venture company at their net book value.

**Special right of shareholders to the incorporated joint venture company to purchase petroleum and any derivatives**

165 (1) Each shareholder to an incorporated joint venture company shall have the option to purchase from the incorporated joint venture company:

(a) at the prices established in section 334 of this Act, a percentage of the crude oil, natural gas and condensates produced equal to its shareholding interest in the incorporated joint venture company; and

(b) a percentage of the petroleum products, at prices established in the shareholders agreement equal to its shareholding interest in the incorporated joint venture company.

(2) Where parties do not opt to purchase crude oil, natural gas, condensates or petroleum products or do not purchase the full volume they are entitled to, the incorporated joint venture company may sell such excess petroleum to any person for fair market value.

(3) Any income received by an incorporated joint venture company established pursuant to this Part III-A as a result of the export of petroleum may be held in bank accounts abroad and may be used to pay its obligations which are payable outside Nigeria, subject to any payment obligations under Part VIII of this Act.

(4) The transfer of abroad by the incorporated joint venture company of any proceeds or funds in Nigeria shall be subject to Central Bank of Nigeria regulations.

**Pro rata dividend distribution**

166. (1) Each incorporated joint venture company shall distribute its dividends pro rata among the number of issued shares held by each shareholder to the incorporated joint venture company.

(2) Each dividend payment shall be subject to any withholding tax applicable under the Companies Income Tax Act.

## **Dividend policy**

167. The dividend distribution policy of each incorporated joint venture company shall ensure a prudent management of the operations given the financial conditions and projections of future investments. Any excess shall be declared as dividends or result in other benefits to the shareholders, subject to the provisions of subsection (1) of Section 162 of this Act.

## **Special provisions relating to financing of operations**

168. (1) Each incorporated joint venture company shall finance any exploration for new prospects, development of new fields, or any other incremental investments in accordance with the approved annual work program and budget from the cash flows of the incorporated joint venture company and borrowings as approved by its Board of Directors.

(2) Where the cash flow of an incorporated joint venture company or borrowing capacity are insufficient to finance the work program for incremental investments approved by the Board of Directors, the shareholders shall consult as to the manner in which further financing can be raised.

(3) Notwithstanding any applicable legislation, the incorporated joint venture company shall be free to borrow any funds in such manner as may be decided by the Board of Directors.

## **B – Other upstream issues**

### **Administration of acreage and vesting of data in the Federal Government**

169. (1) All acreage for exploration, development and production of petroleum in Nigeria shall be administered by the Inspectorate.

(2) The title to all data related to upstream petroleum operations pursuant to subsection (8) of section 173 of this Act are hereby vested in the Federal Government and shall be administered by the Inspectorate.

(3) (a) Where important crude oil or natural gas discoveries, or both, are made in a basin defined as frontier acreage the Minister may reclassify such basin from frontier acreage to general onshore area.

(b) Any reclassification shall not affect the fiscal terms in Part VIII of this Act, applicable to existing licences and leases in such basin.

### **National grid system**

170. (1) After consultation with the Surveyor General of the Federation, the Inspectorate shall adopt a national grid system for acreage management and such grid system shall be based on the Universal Transverse Mercator system.

(2) The basic unit shall be a parcel of one (1) by one (1) kilometer, subject to adjustment zones and the national boundary, in which case a parcel shall be the part of the parcel in the adjustment zone or on Nigerian territory as described in section (1) of this section. The Inspectorate shall

define a numbering system for the parcels which shall allow for the subdivision and aggregation of these parcels.

(3.)The grid system shall be used for the definition of license and lease areas, relinquishments, bid procedures, identification of well locations, petroleum conservation measures and such other regulatory and acreage management procedures as are applicable. Subject to the provisions of subsection (1) of section 191 of this Act, any current boundaries of licenses and leases that do not conform with the new grid system shall remain unaltered, and parcels shall be apportioned accordingly.

(4) The Inspectorate may subdivide a parcel in 4, 16 or 64 equal units for the purposes of subsection (3) of this section.

### **Licences and leases**

171. (1) There shall be the following licences or leases:

- (a) a licence, to be known as petroleum exploration licence, to carry out prospecting on a non exclusive basis;
- (b) a licence, to be known as a petroleum prospecting licence, to carry out petroleum exploration operations; and
- (c) a lease, to be known as a petroleum mining lease, to search for, win, work, carry away and dispose of crude oil and natural gas.

(2) Subject to the provisions of this Act, the Minister on the recommendation of the Inspectorate, may grant a petroleum prospecting license or petroleum mining lease and where the Minister decides to grant such licence or lease:

- (a) it shall be to the winning bidder pursuant to the bid process prescribed in section 189 of this Act, provided the winning bidder has complied with all requirements in the bid invitation; or
- (b) directly to the National Oil Company, where the National Oil Company with the approval of the Inspectorate, has completed an open and transparent bid process, pursuant to section 189 of this Act, for potential contractors for contracts with the National Oil Company pursuant to section 172 of this Act, on the basis of a model contract approved by the Directorate.

(3) Subject to the provisions of this Act, the Minister on the recommendation of the Inspectorate, may grant a petroleum exploration license to any qualifying company, over any area, including areas that are subject of petroleum prospecting licenses or petroleum mining leases.

(4) Every petroleum prospecting licence or petroleum mining lease shall be in respect of crude oil and natural gas, provided that under special circumstances to be defined by the Inspectorate a petroleum mining lease may be granted for either crude oil or natural gas.

Cap C20LFN 2004(5) Only companies incorporated under the Companies and Allied Matters Act that comply with the conditions prescribed by the Inspectorate, shall be entitled to be licensees, lessees or contractor parties under the terms of this Part III of the Act.

- (6) The conditions prescribed in subsection (5) of this section shall include the requirement to be a company that qualifies pursuant to the qualification criteria determined in the bid invitation. Such criteria shall be different for operators and non-operators in the following respects:
- (a) the criteria for operator shall establish that the operator shall have the financial means and the technical qualifications to carry out the upstream petroleum operations in a safe manner and in accordance with the highest international standards; and
  - (b) the criteria for non-operator shall establish that the non-operator shall have the financial means to adequately finance his obligations.
- (7) It shall be a condition under any petroleum prospecting licence and petroleum mining lease that at all times a company that qualifies as operator shall be operator of the upstream petroleum operations.

### **Power to enter into contracts**

172. (1) Where the Minister grants any licence or lease under paragraph (a) of subsection (2) of section 171 of this Act, the National Oil Company or any other oil company, by such grant and without further assurance, shall be empowered to enter into any contract for the exploration, prospecting, production and development of oil or gas, or both, as the case may be, in respect of any licence or lease held by the National Oil Company or other oil company, upon such terms and conditions as the National Oil Company or other company may determine, and with any company qualified under conditions prescribed by this Act.

(2) The model contracts referred to in paragraph (b) of section (2) of section 171 of this Act include:

- (a) production sharing contracts for the exploration, development and production of crude oil or natural gas, or both, on terms under which the financial risk-bearing party shall be reimbursed for costs where a discovery is made; and all parties to the contract shall be entitled to a share of production as established in the contract from the relevant contract area;
  - (b) risk service contracts for the exploration, development and production of crude oil or natural gas, or both, on terms under which the financial risk-bearing party shall be reimbursed for costs where a discovery is made and shall be entitled to payment in cash or in kind from petroleum produced from the contract area;
  - (c) concession contracts for exploration, development and production of crude oil or natural gas, or both, on terms under which the counter party participates with the National Oil Company in an incorporated or unincorporated joint venture and shall be entitled to a working interest share in kind from the petroleum produced from the contract area or distributions from the incorporated joint venture;
  - (d) any contract being a variation of the contracts pursuant to paragraph (a), (b) or (c) of this subsection, which for the time being are internationally acceptable mode of contracts for exploration and production of oil or natural gas or both, as the case may be.
- (3) The power to enter into contracts given under this section shall not confer the right to assign an interest in any licence or lease, except in compliance with the terms of section 192 of this Act.

### **Confidentiality clauses**

173. (1) Confidentiality clauses or other clauses contained within any licences, leases, agreements or contracts for upstream petroleum operations that are for the purpose of preventing access to information and documents by third parties in respect of any payments of:

- (a) royalties;
  - (b) fees and bonuses of whatever sort; and
  - (c) taxes
- shall be null, void and of no effect.

(2) Subsections (1) and (4) of this section shall not apply to proprietary intellectual property rights owned by any of the parties to a licence, lease, agreement or contract to which the said subsection (1) and (4) applies, which shall be exempted from the scope of mandatory disclosure to the extent that confidentiality in such cases is protected by any law in force in Nigeria relating to the freedom of information, or by any treaty obligations of Nigeria under international law.

(3) The question of whether information or documents are proprietary intellectual property rights and within the ambit of subsection (2) of this section shall be decided by the Directorate. The Directorate shall seek the views of the relevant parties prior to making any such decision.

(4) Every company involved as licensee, lessee or contractor shall for each license and lease provide a yearly summary of all revenues and costs on which the payments under subsection (1) of this section were based within three years after the termination of each calendar year and the provisions with respect to confidentiality under subsection (1) of this section shall apply to the requirement to provide such summaries.

(5) The Directorate shall define the required detail and classification of the summary under subsection (4) of this section and such summaries shall be non confidential and published on the website of the Directorate together with the revenue information pursuant to subsection(1) of this section.

(6) The text of any existing or future licence or lease or contract with the National Oil Company and any amendments or side letters thereto shall not be confidential and shall be published on the website of the Directorate and the provisions of sub-section (1) of this section apply.

(7) The texts pursuant to subsection (6) of this section shall be on the website of the Directorate within one year after the commencement of this Act, and where such information is not supplied to the Directorate, a company in default shall pay a penalty of US \$ 10,000 for every day such information is not available after the date required to the Directorate.

(8) All geological, geophysical, geochemical and other technical petroleum data obtained during the petroleum operations as determined by the Inspectorate shall be provided directly to the national petroleum data bank of the Inspectorate as soon as such data are being obtained by any licensee or lessee. Such data shall not be confidential, except for data obtained under a petroleum prospecting license for a period of 5 years or until such time the exploration period ends or the related acreage is relinquished, whatever is the earlier date. With respect to petroleum exploration licenses the Directorate may agree to a period of confidentiality where the licensee obtains the data for the main purpose of selling this data to interested parties. All data in the national petroleum data bank shall be accessible to any interested person under such terms as may be determined by the Inspectorate.

(9) All information pursuant to subsection (1) of section 362 of this Act shall be non-confidential and the Inspectorate shall publish this information on their website.

#### **Petroleum exploration licence**

174. (1) The holder of a petroleum exploration licence shall have the non-exclusive right to carry out geological, geophysical and geochemical exploration for crude oil and natural gas, within the area of his licence, and drill wells not deeper than one hundred and fifty (150) meters, provided, however, that a petroleum exploration license granted exclusively to the Frontier Service may include the right to drill wells to any depth.

(2) A petroleum exploration licence shall be for not more than three years and shall not include any right or option to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the said licence area.

(3) A petroleum exploration license may cover an area that includes petroleum prospecting licences and petroleum mining leases, provided, however, that the holders of such licences and leases shall have no obligation to purchase the results of the surveys.

(4) Any petroleum exploration licenses shall be granted by the Inspectorate.

#### **Petroleum prospecting licence**

175. The holder of a petroleum prospecting licence shall have:

(a) the non-exclusive rights pursuant to subsection (1) of section 174 of this Act as well as the exclusive right to drill wells deeper than hundred and fifty (150) meters for petroleum exploration operations within the area of his licence; and

(b) have the right to carry away and dispose of crude oil or natural gas won during petroleum exploration operations as a result of production tests, subject to the fulfilment of obligations imposed by or under this Act and any other enactment in force at the time.

#### **Duration and area of petroleum prospecting licence**

176. A petroleum prospecting licence shall be:

(a) with respect to onshore and shallow water areas, for a duration of not more than five years, consisting of an initial exploration period of three years and a renewal period of two years, with a possibility for further extensions due to appraisal periods, pursuant to subsection (7) of section 177 of this Act and significant gas discovery periods, pursuant to subsection (10) of section 177 of this Act and other extensions permitted under this Act. The petroleum prospecting licence area shall not be more than five hundred ( 500) square kilometres and not be less than one parcel; and

(b) with respect to deep water areas and frontier acreage, for a duration of not more than eight years, consisting of an initial exploration period of five years and a renewal period of three years, with a possibility for further extensions due to appraisal periods, pursuant to subsection (7) of section 177 of this Act and significant gas discovery periods, pursuant to subsection (10) of section 177 of this Act and other extensions permitted under this Act. The initial petroleum prospecting licence area shall not be more than one thousand (1000) square kilometres and not be less than one parcel.

### **Work commitment, commercial discovery and significant gas discovery during petroleum prospecting licence**

177. (1) A petroleum prospecting licence shall contain the requirement for the licensee to commit to a work program.

(2) During the initial exploration period, the licensee shall commit to the drilling of at least one exploration well to a specified minimum depth, provided, however, that the licence may make provisions for more than one well to a minimum depth.

(3) Where the licensee requests a renewal, the licensee shall commit to the drilling of at least one further exploration well to a specified minimum depth, provided that the licence may require more than one well to a minimum depth during such renewal.

(4) An exploration well shall be a well that in the opinion of the Inspectorate is aimed at discovering petroleum in a separate field in which petroleum has not been previously discovered.

(5) Any exploration well drilled in excess of the work program specified in the licence during the initial period can be credited to the work obligation under the renewal.

(6) Where the licensee makes a discovery during the initial period or renewal, the licensee shall inform the Inspectorate within one hundred and twenty (120) days after making such discovery whether the licensee considers that the discovery merits appraisal.

(7) In case the licensee considers that a discovery merits appraisal, the licensee shall submit to the Inspectorate for approval:

(a) a commitment to an appraisal program of a duration of not more than two years and of a scope and nature that will permit the licensee to declare a commercial discovery in case results of the appraisal are positive; and

(b) the appraisal area which shall not be larger than the parcels covering the reasonable outer boundary of the discovery as well as a zone of not more than two (2) km surrounding such outer boundary within the license area. The selection method under this subsection shall also apply to significant gas discovery retention areas pursuant to subsection (10) of this section.

(8) Upon the approval of the appraisal program and appraisal area by the Inspectorate, the licensee shall promptly carry out the committed appraisal program. The Inspectorate shall decide on the appraisal program and appraisal area within sixty (60) days after the submission.

(9) Upon the completion of the appraisal program, the licensee shall:

(a) declare a commercial discovery;

(b) declare a significant gas discovery; or

(c) inform the Inspectorate that the discovery is of no interest to the licensee.

(10) Where a significant gas discovery has been declared, the licensee shall be entitled to retain such significant gas discovery area for a retention period of not more than 10 years from the declaration of a significant gas discovery and where portion of the acreage of

petroleum prospecting license have otherwise been relinquished, the significant gas discovery retention area shall continue to subsist as a petroleum prospecting license until the expiration of the retention period or the declaration of a commercial discovery. Any significant gas discovery retention area shall be selected in the same manner as an appraisal area pursuant to paragraph (b) of subsection (7) of this section and must be approved by the Inspectorate.

(11) Where in the opinion of the Inspectorate a commercial opportunity to sell the gas materializes based on information provided by the Agency with respect to domestic gas demand during the retention period in accordance with subsection (10) of this section, the Inspectorate shall invite the licensee to make a declaration of a commercial discovery pursuant to subsection (9) of this section with respect to the significant gas discovery and present a development plan with a commitment to execute such development plan in accordance with section 178 of this Act.

(12) Where the licensee does not make a declaration of a commercial discovery within one year of the invitation of the Inspectorate pursuant to subsection (11) of this section the petroleum prospecting license shall be revoked, provided any such commercial declaration has to be made prior to the end of the retention period pursuant to subsection (10) of this section.

(13) Where the licensee does not make a declaration of a commercial discovery prior to the expiry of the retention period pursuant to subsection (10) of this section the significant gas retention area shall be relinquished, and where the last significant gas retention area has been relinquished, the licence shall expire.

(14) Where the licensee declares the discovery of no interest pursuant to paragraph (c) of subsection 9 of this section the Inspectorate may require the relinquishment of the parcels that cover the structure of the discovery.

(15) Any commitments under this section shall be supported by a bank guarantee or performance bond from a reputable international bank and acceptable to the Inspectorate, and shall be for the full amount of the committed work with respect to subsections (1), (2), (3) and paragraph (a) of subsection (7) of this section and for a percentage of the amount of the committed work, as determined by the Inspectorate, with respect to subsection (11) of this section.

(16) The licensee shall not commence work required under this section unless he has an approved Nigerian content plan, with respect to:

(i) the drilling of wells during the initial exploration period pursuant to subsection (2) of this section,

(ii) drilling of wells during the renewal of the exploration period pursuant to subsection (3) of this section,

(iii) appraisal work pursuant to subsection (7) of this section, and

(iv) any work on a significant gas discovery pursuant to subsection (10) of this section.

### **Commercial discovery and development plan**

178. (1) Where the licensee declares a commercial discovery pursuant to paragraph (a) of subsection (9) of section 177 of this Act, the licensee shall within the period provided for in subsection (5) of this section submit a development plan for the reservoirs comprising the commercial discovery to the Inspectorate as well as a commitment to carry out the work described in the development plan in a manner acceptable to the Inspectorate.

(2) The Inspectorate shall evaluate the technical and commercial merits and the costs of the development plan and where the development plan meets all requirements established by the Inspectorate, the development plan shall be approved pursuant to subsection (5) of this section.

(3) The Inspectorate shall only approve the development plan, where the development plan:

(a) meets the technical standards that are required for the related works and where the location of the measurement point(s) and measurement processes and equipment are acceptable;

(b) results in the maximum recovery of crude oil, natural gas or condensates, from the field, taking into consideration a reasonable economic framework;

(c) meets adequate health, safety and environmental standards;

(d) represents an optimal commercial project in terms of use of midstream transport and processing facilities or use of production facilities owned by other lessees;

(e) does not involve excessive capital or operating expenditures based on the benchmarking analysis of the Inspectorate which would result in a reduction in anticipated petroleum revenues that would not be in the national interest;

(f) includes an approved Nigerian content plan pursuant to Part VI of this Act;

(g) includes an approved environmental management plan pursuant to section 199 of this Act and an acceptable decommissioning and abandonment plan;

(h) provides for the elimination of routine gas flaring, and

(i) does not relate to upstream gas operations that are undertaken to support midstream export gas operations where the Agency has made the determination that further export commitments of gas from Nigeria are not in the national interest.

(4) Where a licensee does not submit a development plan and work commitment pursuant to subsection (1) of this section, the licence may be revoked.

(5) Where the licensee has declared a commercial discovery, the appraisal period or the significant gas discovery retention period shall be extended from the respective maximum periods of two or ten years and the license shall continue to subsist, until the process regarding the grant of a lease has been completed, without prejudice to the provisions of section 183 of this Act, provided the licensee shall submit a development plan meeting all requirements pursuant to subsection (3) of this section within two years after declaring a commercial discovery. The Inspectorate shall give its final decision to approve or disapprove a development plan within hundred and eighty (180) days after the submission of the development plan that meets the criteria of subsection (3) of this section.

(6) Any work commitments related to the development plan shall be supported by a bank guarantee or performance bond for a percentage of the amount of the committed work, as

determined by the Inspectorate, from a reputable international bank and acceptable to the Inspectorate.

### **Unitization**

179. (1) If a petroleum discovery in the license area extends beyond the boundaries of the license area, the Inspectorate may require that the upstream petroleum operations related to such discovery shall be carried out on the basis of a unitized development with the licenses or leases into which such discovery extends.
- (2) If some or all of the area into which such discovery extends is not under any licence or lease, the Inspectorate shall promptly offer the open area for bids pursuant to section 189 of this Act.
- (3) The licensee and the licensee(s) and/or lessee(s) of the area(s) into which such discovery extends shall make a proposal to the Inspectorate for a joint development plan and joint production of the discovery within two years after the request of the Inspectorate pursuant to subsection (1) of this section.
- (4) If the proposal is not approved by the Inspectorate or the parties do not present a unitization proposal pursuant to subsection (3) of this section, in the time specified by the Inspectorate, the Inspectorate may require an expert appointed by the Inspectorate to prepare the unitization proposal, at the expenses of the licensees or lessees as the case may be and such plan shall be binding on all related licensees and lessees.

### **Petroleum mining leases**

180. (1) A petroleum mining lease shall be granted for each commercial discovery of crude oil or natural gas, or both, to the licensee of a petroleum prospecting licence who has:
- (a) satisfied all the conditions imposed on the licence or otherwise imposed on the licensee by this Act; and
  - (b) has received approval(s) for the related development plans from the Inspectorate.
- (2) A petroleum mining lease may be granted pursuant to the provisions of subsection (2) of section 171 of this Act, where a prospective lease area contains:
- (a) a discovery of crude oil or natural gas or both, which in the opinion of the Inspectorate is commercial;
  - (b) a petroleum field or fields with suspended wells or continuing commercial production, where the corresponding petroleum mining lease has been revoked or has expired; or
  - (c) a bitumen deposit and such lease may include an appraisal phase.
- (3) Subject to subsection (6) of this section, a licensee may propose that a separate petroleum mining lease may be granted for each commercial discovery in the petroleum prospecting licence, prior to the termination of the petroleum prospecting licence.
- (4) Notwithstanding the grants of any petroleum mining leases under subsection (3) of this section, the petroleum prospecting licence shall continue for the remaining license area for the duration of the license.

(5) The area of a petroleum mining lease derived from a petroleum prospecting license shall be proposed by the licensee, based on an independent engineering report, which shall not be binding on the Inspectorate and the proposed lease area shall be subject to the approval of the Inspectorate. The area shall contain every parcel within the outer boundary of the field based on oil-water contacts or other reservoir limits and includes a zone surrounding such boundary consisting of all parcels that are in whole or in part within one (1) kilometre of such outer boundary, provided, however, that the lease shall not contain any parcels that are:

- (a) outside the original license area from which the lease is derived;
- (b) in areas relinquished by the licensee; or
- (c) in an existing petroleum mining lease.

(6) Where during the petroleum prospecting license period the outer boundary of the commercial discovery changes, due to further drilling and other exploration, or due to further petroleum discoveries in deeper or shallower formations, the Inspectorate may approve a modification of the area of the petroleum mining lease to include such further parcels as are appropriate based on the criteria established in subsection (5) of this section.

(7) Where two or more petroleum mining leases derived from the same petroleum prospecting license in the opinion of the Inspectorate constitute a single field based on an interpretation of geological and/or petroleum engineering data that proves that the field is a single field, such leases shall be considered as one petroleum mining lease, even if their boundaries do not join with another lease and the granting date of such single lease shall be the date of the first lease that was granted.

(8) A petroleum mining lease shall not consist of an area that is less than one parcel or where a parcel has been subdivided pursuant to subsection (4) of section 170 of this Act less than one subdivision of such parcel.

#### **Exclusive right to conduct operations**

181 (1). A lessee shall have the exclusive right to carry out upstream petroleum operations in or under the said lease area.

(2) A lessee shall have the right to continue to explore in the lease area.

(3) A petroleum mining lease for the purpose of carrying out upstream petroleum operations shall only be granted on the basis of a firm commitment to:

- (a) develop and produce the bitumen deposit or the commercial discovery of crude oil or gas in the lease area in accordance with the approved development plan; or
- (b) restart or continue petroleum production.

(4) During the term of the lease, the Inspectorate shall:

- (a) verify the implementation of the work commitments and compliance with the approved development plan;
- (b) monitor the capital and operating costs; and
- (c) ensure that the upstream petroleum operations at all times are carried out at the required standards under this Act.

### **Domestic gas supply obligation**

182. (1) The Agency shall determine in accordance with section 304 of this Act, the periods that the domestic market has to be supplied with gas in accordance with the domestic gas supply obligation. The Inspectorate shall ensure that all lessees comply with the domestic gas supply obligations.
- (2) During such periods as determined pursuant to subsection (1) of this section, the Inspectorate shall require the lessee producing gas to carry out all such works and operations as may be required to increase production in order to dedicate a specific volume of the gas produced towards the requirements of the domestic market.
- (3) The volume of gas to be dedicated by each lessee for the domestic gas supply obligation shall be based on an allocation system among lessees as determined by the Inspectorate from time to time, in coordination with the Agency and based on plans submitted by the lessees pursuant to subsection (1) of section 306 of this Act.
- (4) The Inspectorate shall at all times ensure that the weighted average benchmarked unit costs of supply of the fields dedicated to the domestic gas supply obligation shall not be in excess of the benchmarked unit costs of fields dedicated to:
- (a) exports, or
  - (b) sales of wholesalers in the domestic market pursuant to subsection (3) of section 293 of this Act.
- (5) The Inspectorate shall determine the amount of condensates related to sales under the domestic gas supply obligation and allocate such condensates pursuant to subsection (3) of this section on a barrel of condensate per million cubic feet basis.
- (6) Any lessee who does not comply with the domestic gas supply obligation as directed by the Inspectorate shall not be entitled to supply gas to any midstream gas export operations in addition to such other penalties as may apply under this Act and where the lessee is only supplying gas to midstream gas export operations, the lessee shall be directed by the Inspectorate to suspend production.

### **Duration and renewal**

183. (1) Where a petroleum mining lease is directly granted pursuant to subsection (2) of section 180 of this Act based on the award process pursuant to section 189 of this Act, such lease may be for a term of not more than twenty years.
- (2) Where a petroleum mining lease is derived from a petroleum prospecting license, the term for each lease shall expire:
- (a) twenty-seven years from the date of the grant of the related petroleum prospecting license for onshore and shallow water areas; and
  - (b) thirty years from the date of the grant of the related petroleum prospecting license for deep water areas and frontier acreage.
- (3) For petroleum mining leases the following provisions shall apply:

(a) where a petroleum mining lease is not in commercial production within the development period of paragraph (b) or (c) of this subsection, from the granting of the petroleum mining lease such lease may be revoked at the end of such development period, which period is included in the duration established in subsection (2) of this section. The acreage shall be vested with the Federal Government and controlled and administered by the Inspectorate and may be subject to a new grant in accordance with subsection (2) of section 180 of this Act;

(b) the development period for petroleum mining leases granted pursuant to subsection (2) of section 180 of this Act shall be established in such leases; and

(c) the development period for petroleum mining leases granted pursuant to subsection (1) of section 180 of this Act shall be:

(i) 5 years for onshore leases, and

(ii) 7 years for offshore leases and leases in frontier acreage, for the first PML derived from the license, and 10 years for subsequent PMLs derived from the license.

(4) Where a lease continues to be in commercial production, the lease may be renewed in accordance with section 184 and other provisions of this Act for a further term of not more than ten years and upon the termination of such renewal, the area shall be relinquished and may be subject to a new grant in accordance with subsection (2) of section 180 of this Act.

(5) Where a lease has been in commercial production but such production has terminated and no commercial production has occurred from the lease for a period of one hundred and eighty (180) days, other than for reasons of force majeure, repairs, maintenance, upgrading of facilities, construction of new facilities or other causes justified in the opinion of the Inspectorate, the lease may be revoked. Where a lessee intends to suspend production for more than hundred and eighty (180) days, and intends to recommence production at a later date, such lessee shall submit to the Inspectorate a specific plan and commitment to restart production.

#### **Conditions for renewal of lease**

184. (1) Not less than twelve months before the expiration of a petroleum mining lease, the lessee may apply in writing to the Minister for a renewal of the lease either in respect of the whole of the leased area or any part thereof and the renewal may be granted if the lessee has paid all fees, rent and royalties under this Act due in respect of the lease and has performed all his obligations under the lease.

(2) Such renewal shall be on new terms and conditions as determined by the Minister on the recommendation of the Directorate and the lessee shall pay a renewal bonus of an amount specified by the Directorate on the date of such renewal.

#### **Relinquishment**

185. (1).Every petroleum prospecting license, which initially is larger than ten parcels, shall provide for the obligation to relinquish a number of parcels equal to at least fifty ( 50%) of the original license area upon the expiration of the initial exploration period pursuant to section 176 of this Act, provided, that any parcels included in petroleum mining leases, appraisal and significant gas discovery retention areas may be retained by the licensee and shall not require relinquishment.

(2) Upon the expiration of the renewal period for the license pursuant to section 176 of this Act, the licensee shall relinquish all parcels that are not part of petroleum mining leases, appraisal areas or significant gas discovery retention areas.

(3) Upon the expiration of any appraisal period of a prospecting licence, all parcels related to the appraisal area shall be relinquished unless the licensee has declared a commercial discovery for such appraisal area.

(4) Upon the expiration of any significant gas discovery retention period of a prospecting licence, all parcels related to the significant gas discovery retention area shall be relinquished unless the licensee has declared a commercial discovery for such significant gas discovery retention area.

(5) Ten years after the granting of a lease for the purpose of producing crude oil or natural gas, or both, the lessee may retain all parcels that are in commercial production and shall relinquish all parcels that are not in commercial production.

(6) The licensee or lessee shall not have any priority rights or negotiation rights with respect to parcels relinquished by the licensee or lessee.

(7) The relinquished parcels shall be vested with the Federal Government of Nigeria and shall be administered by the Inspectorate and can only be issued on the basis of a bidding rounds pursuant to section 189 of this Act.

(8) Any rent paid in respect of the area of the license or lease to be relinquished shall not be refundable, and such relinquishment shall be without prejudice to any obligation or liability imposed by or incurred under the license or lease.

(9) The shape and size of the area to be retained and of the area to be relinquished or surrendered shall be approved by the Inspectorate.

### **Surrender of licence**

186 (1) Without prejudice to any provisions on relinquishment, a licensee or lessee shall be entitled at any time to surrender part or whole of the licensed or leased area provided three months notice in writing is given to the Inspectorate prior to such surrender and provided such licensee or lessee has complied with all obligations under the license or lease.

(2) No rent paid prior to the surrender shall be refundable.

### **Right of ways**

187. Subject to the provisions of all the relevant laws and on such terms and conditions as may be approved by the Inspectorate, the licensee or lessee shall be entitled to such right of ways for the laying, operation and maintenance of gathering lines, telephone lines and the like through or across areas as the licensee or lessee may require.

### **Right of ways reserved for the Inspectorate and the Agency**

188. (1) The Inspectorate and the Agency may reserve in accordance with applicable law such right of ways, easements or other rights over any area of a petroleum prospecting licence or petroleum mining lease, as in the opinion Inspectorate or Agency are necessary or desirable for the laying, operation and maintenance of pipelines, telephone lines and power lines; and any right of ways or other rights so reserved shall continue for the benefit of any entity to whom the Inspectorate or the Agency may subsequently grant the same.

(2) Licensees and lessees may not object to the grant of rights of way, easements or other rights over any areas of a petroleum prospecting license or petroleum mining lease unless they affect the health, safety or environment of licensee's or lessee's activities.

### **Award process**

189. (1) The grant of a petroleum mining lease, not derived from a petroleum prospecting license, or a petroleum prospecting licence in respect of any territory in, under or upon the territory of Nigeria shall be by a bidding process conducted by the Inspectorate, or conducted by the National Oil Company pursuant to paragraph (b) of subsection (2) of section 171 of this Act, in consultation with the Inspectorate, which bidding process shall be open, transparent and competitive and non-discriminatory with respect to any company.

(2) The winning bidder shall be determined on the basis of the following bid parameters:

(a) single bid parameter, which can be based on:

(i) a signature bonus,

(ii) a royalty percentage that increases the royalty based on daily production pursuant to section 337 of this Act,

(iii) a work commitment in terms of number of wells to a specified minimum depth during the initial exploration period, or

(iv) work units; or

(b) a combination of the parameters indicated under paragraph (a) of this subsection, based on a point system that is self-assessable by the bidder in such a manner that the bidder will bid the respective points and the highest points shall determine the winning bidder.

(3) For the avoidance of doubt, no discretionary awards shall be given under any circumstances whatsoever, except as provided for under paragraph (b) of subsection (2) of section 171 of this Act and subsections (4), (5) and (6) of section 191 of this Act.

(4) The Minister shall direct the Inspectorate to call for bids in accordance with a process that shall be made available to the general public through publications on the website of the Inspectorate and in at least two newspapers with international coverage and two newspapers with national coverage.

(5) Where the Inspectorate calls for bids pursuant to sub-section (1) of this section, the Inspectorate shall establish the technical, legal, economic and financial requirements as well as the minimum experience and capacity necessary for would be licensees, lessees, and contractors, which shall be contained in guidelines prepared by the Directorate, and licensees, lessees and contractors shall be chosen in accordance with these guidelines.

(6) All bids received based on the bid parameters established in paragraph (2) of this section shall be opened in public and in the presence of representatives of the Presidency, the Ministry of Finance, the Directorate and the Service.

### **Right of participation**

190. Pursuant to section 4 of this Act, a licence or lease may include the right of the Government to a participating interest in the licence or lease and in this case the Minister may exercise this right to participate in accordance with the terms of the said licence or lease.

### **Relinquishment from current licences and leases and marginal fields**

191. (1) With respect to any existing oil prospecting licenses or oil mining leases, including such licenses and leases that are subject to production sharing contracts, the holder of the oil prospecting license or oil mining lease (“holder”) shall select prior to the relinquishment date within such oil prospecting licenses or oil mining leases, the portions of such licences and leases that the holder intends to continue to explore, develop and produce or to propose as discoveries for appraisal, significant gas discovery/retention areas or a commercial discovery pursuant to this Act and based on the parcels pursuant to the acreage selection process established in this Act as follows:

(a) discoveries which in the opinion of the holder merit appraisal pursuant to subsection (6) of section 177 of this Act and for which the licensee or lessee is prepared to present the appraisal program pursuant to this Act;

(b) discoveries which the holder has made a declaration of a commercial discovery pursuant to paragraph (a) of subsection (9) of section 177 of this Act and is prepared to submit a development program pursuant to this Act;

(c) discoveries which the holder has made a declaration of a significant gas discovery pursuant to paragraph (b) of subsection (9) of section 177 of this Act;

(d) discoveries which development is underway based on an approved development plan;

(e) discoveries in which regular commercial production is occurring; and

(f) where the total acreage selected pursuant to paragraph (a),(b),(c),(d) and (e) of this subsection is less than 50% of the acreage of the oil prospecting licence or oil mining lease, the holder shall have the option to select further parcels up to 50% of such license or lease as petroleum prospecting license for the purpose of carrying out further exploration, provided the holder commits to the minimum work program and all other obligations pursuant to this Act.

(2) On or prior to the relinquishment date, the holder shall relinquish all parcels from the oil prospecting license or oil mining lease areas with the exception of the parcels selected pursuant to subsection (1) of this section.

(3) The relinquishment date for the purpose of subsections (1) and (2) of this section shall be the latest of:

(a) two years after the commencement of this Act;

(b) the expiration date of the oil prospecting license; and

(c) with respect to oil mining leases, ten years after the oil prospecting license was granted from which the oil mining lease was derived.

(4) The Minister shall convert the areas selected pursuant to subsection (a) and (b) of subsection (1) of this section into appraisal areas of petroleum prospecting licenses under this Act and areas selected pursuant to paragraph (c) of subsection (1) of this section into significant gas discovery retention areas of petroleum prospecting licenses under this Act, subject only to the areas complying with the selection methodology established under this Act and with respect to paragraph (a) of subsection (1) of this section the approval of the appraisal program. Where the lessee or licensee selects acreage pursuant to paragraph (f) of subsection (1) of this section, the Minister shall convert such area upon the approval of the respective work program.

(5) The Minister shall convert the areas selected pursuant to paragraphs (d) and (e) of subsection (1) of this section, into petroleum mining leases under this Act with a term of up to 20 years, subject only to the areas complying with the selection methodology established in subsection (5) of section 180 of this Act.

(6) Notwithstanding the provisions of section 189 of this Act, the operators of marginal fields at the commencement of this Act, shall be entitled within three months after the commencement of this Act, to apply for petroleum mining leases for the fields being operated as marginal fields, for such parcels as approved by the Inspectorate that conform with the marginal fields. The relevant parcels shall be relinquished forthwith by the holders of oil mining leases at the request of the Minister and the corresponding petroleum mining leases shall be granted to such marginal operators over such fields.

(7) The Inspectorate shall carry out the bidding process pursuant to the provisions of section 189 of this Act over any parcels relinquished pursuant to subsection (2) of this section and not granted to marginal field operators pursuant to subsection (6) of this section.

(8) The Agency shall grant technical and commercial licences pursuant to Part IV of this Act, to all existing pipelines, bulk storage depots and terminals, and other midstream facilities on existing oil mining leases and oil prospecting licenses under this section after application for such licenses pursuant to subsection (10) of sections 209 and subsection (2) of section 227(2) of this Act.

(9) With respect to any petroleum prospecting licenses which are the subject of incorporated joint ventures and are converted pursuant to subsection (4) of this section, the Minister, at the request of the holder, may include an initial suspension period of a duration recommended by the National Oil Company, in order to ensure an orderly financing of the incorporated joint ventures pursuant to section 168 of this Act. Such suspension period shall extend the duration of the PPL with the duration of such suspension period and such suspension period may be different for each license.

#### **Assignment, mergers and acquisitions**

192. (1) A licensee, lessee or any contractor party shall not assign his licence, lease or contract, or any right, power or interest therein without the written consent of the Minister. Any mergers, acquisitions or change of control, including change of control in the parent companies, shall be treated as an assignment for the purpose of such Ministerial consent to the extent of the value of Nigerian petroleum assets in such transaction.

(2) An application for assignment shall be in accordance with terms and conditions that may be specified in a regulation made pursuant to this Act.

(3) Subject to subsection (6) of this section, the Minister shall consent to an assignment if the proposed assignee is able to show to the satisfaction of the Minister that:

- (a) the proposed assignee is a company incorporated in Nigeria;
- (b) the proposed assignee is of good reputation;
- (c) the proposed assignee has sufficient technical knowledge, experience and financial resources to enable it to effectively carry out the responsibilities under the license or lease which is to be assigned; and
- (d) the proposed assignee if it functions as operator, such assignee shall have proven operating experience with respect to operations to be carried out under the license or lease which is to be assigned.

(4) Where a licensee, lessee, or contractor party proposes to transfer its stake to another company, or merges, either by acquisition or exchange of shares, including change of control of parent companies, outside Nigeria, it shall be treated as an assignment in Nigeria and shall be subject to the terms and conditions of this Act and any regulations made under it.

(5) Any assignment, merger, acquisition or change of control, including change of control of parent companies, must first be reported to the National Oil Company, and any terms and conditions, including the net book value of the assets and value of intangible assets, where applicable, must be provided.

(6) The National Oil Company shall have the right of first refusal with respect to any transactions pursuant to subsection (1) of this section in a manner prescribed in regulations under this Act.

(7) A fee of 2% of the fair market value of the transaction shall be verified by the Inspectorate and be paid to the Federation Account. Such a fee shall not be deductible for tax purposes.

(8) Any assignment pursuant to this section shall be fully disclosed by the company to the Service in the tax return.

#### **Grounds for revocation of licence or lease**

193. (1) The Minister may revoke a license or lease if the licensee or lessee:

- (a) is controlled directly or indirectly by a person who is a citizen of, or subject of any country which is a country the laws of which do not permit citizens of Nigeria or Nigerian companies to acquire, hold and operate petroleum concessions or contracts on conditions which the Directorate finds to be reasonably comparable to the conditions upon which such concessions or contracts are granted to subjects of the country;
- (b) in the opinion of the Inspectorate, is not conducting operations continuously and in a vigorous and businesslike manner and in accordance with good oil field practice;
- (c) is not fulfilling his or her obligations under the special conditions of his or her licence or lease;
- (d) fails to pay fees or its rent or royalties as they fall due, whether or not they have been demanded by the Inspectorate, within the period specified by or in pursuance of this Act;
- (e) has failed to furnish any reports on its operations that are prescribed by this Act or any other act in force within the stipulated time;

- (f) has assigned or otherwise transferred his interest in the license or lease to any person or company without the prior written consent of the Minister as is required by section 192 of this Act; and
  - (g) has not complied with such other specific requirements for which revocation is a consequence under this Act.
- (2) The Minister shall revoke a license or lease if the licensee or lessee:
- (a) has obtained or acquired the license or lease on the basis of false representations or corrupt practices; or
  - (b) is owned or controlled by a former or present public officer who has obtained the license or lease through misuse of public office.

### **Representation permitted before revocation**

194. (1) Where the Minister receives information from the Inspectorate of any of the acts listed in section 193 of this Act, the Minister shall within one month of the matter coming to his knowledge, inform the licensee or lessee of the grounds on which a revocation is contemplated and shall invite the licensee or lessee to make any representation to the Minister if the licensee or lessee so desires and if the Minister is satisfied with the explanation, the licensee or lessee may be asked to rectify the matter complained of pursuant to subsection (1) of section 193 of this Act within a period specified by the Minister.

(2) Where:

- (a) under subsection (1) of section 193 of this Act a licensee or lessee is unable to offer satisfactory explanation as is required in subsection (1) of this section or does not rectify the matter complained of within the specified period, the Minister shall revoke the licence or lease,
- (b) under subsection (2) of section 193 a licensee or lessee is unable to disprove the matters under paragraph (a) or (b) of subsection (2) of section 193 of this Act, the Minister shall revoke the license or lease.

(3) For the avoidance of doubt the revocation of any licence or lease in accordance with the provisions of this Act shall not be rescinded.

(4) Notice of revocation sent to the last known address of the licensee or lessee or his legal representative in Nigeria and published in the Federal Gazette shall, for all purposes, be sufficient notice of the revocation of the licence or lease.

(5) Revocation shall be without prejudice to any liabilities which the licensee or lessee may have incurred, or to any claim which may be made by the Federal Government against the licensee or lessee.

### **Fees**

195. There shall be paid in respect of licences and leases granted under this Act such fees as may be contained in this Act and in any regulations made by the Minister on the recommendation of the Inspectorate.

### **Protected objects**

196. (1) In the course of upstream petroleum operations, no person shall injure or destroy any tree or object which is:

- (a) of commercial value; or
- (b) the object of veneration;

to the people resident within the petroleum prospecting licence or petroleum mining lease area, as the case may be.

(2) A licensee or lessee who causes damage or injury to a tree or object of commercial value or which is the object of veneration shall pay fair and adequate compensation to the persons or communities directly affected by the said damage or injury.

### **Compensation**

197. The amount of compensation payable under section 196 shall be fair and adequate in consultation with designated persons and representatives which shall include a licensed valuer, in accordance with regulations prescribed under this Act.

### **Effect of failure to pay compensation**

198. (1) Where a licensee or lessee fails to pay compensation, the license or lease shall be suspended until the amount awarded is paid.

(2) Where the licensee or lessee fails to make payment within thirty days after the suspension of the said licence or lease in accordance with subsection (1) of this section, the Minister may revoke the said licence or lease.

### **Environmental quality management**

199. (1) Every licensee or lessee engaged in petroleum operations shall, within one year of the commencement of this Act, or within three months after having been granted the license or lease, submit an environmental management plan to the Inspectorate for approval. The environmental management plan shall:

- (a) contain the written environmental policy, objectives, and targets of the licensee or lessee;
- (b) provide initial baseline information and establish a program for collecting further baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives;
- (c) investigate, assess and evaluate the impact of the proposed exploration and production activities on:

- (i) the environment, and
  - (ii) the socio-economic conditions of any person who might be directly affected by the petroleum operations;

- (d) develop an environmental awareness plan describing the manner in which the licensee or lessee intends to inform its employees of any environmental risks which may result from their work and the manner in which the risks must be dealt with in order to avoid pollution or degradation of the environment; and

- (e) describe the manner in which the licensee or lessee intends to:

- (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation,
- (ii) contain or remedy the cause of pollution or degradation and migration of pollutants, and
- (iii) comply with any prescribed waste management standards or practices.

(2) The Inspectorate, in consultation with the Federal and State Ministries of Environment shall approve the environmental management program if:

- (a) it complies with the subsection (1) of this section; and
- (b) the licensee or lessee has the capacity, or has provided for the capacity to rehabilitate and manage negative impacts on the environment.

(3) The Inspectorate shall not approve the environmental management plan unless it has considered the comments of the said Federal and State Ministries of Environment.

(4) The Inspectorate may call for additional information from the licensee or lessee and may direct that the environmental management program in question be adjusted in such way as the Inspectorate may require.

(5) The Inspectorate may at any time after the approval of an environmental management program and after consultation with the licensee or lessee concerned, approve an amended environmental management program.

(6) No chemicals shall be utilized for upstream petroleum operations, unless the Inspectorate has granted the applicable permits.

### **Gas flaring penalties**

200. (1) The lessee shall pay such gas flaring penalties as the Minister may determine from time to time.

(2) The lessee shall install all such measurement equipment as ordered by the Inspectorate to properly measure the amount of gas being flared.

### **Consultation with State departments**

201. (1) When considering an environmental management plan, the Inspectorate shall consult with the Federal Ministry of the Environment and the State Ministries of Environment where the licence or lease is situated and with any other relevant bodies in the area where the licence or lease is situated.

(2) The Federal and State Ministries of Environment, and any other bodies that the Inspectorate may consult, shall submit their written comments within thirty days of the date of request.

### **Financial contribution for remediation of environmental damage**

202. (1) As a condition for the grant of the said licence or lease and prior to the approval of the environmental management plan by the Inspectorate, every licensee or lessee shall pay the prescribed financial contribution to an environmental remediation fund established by the

Inspectorate, subject to audit by the lessee, in accordance with guidelines as may be issued by the Inspectorate from time to time, for the rehabilitation or management of negative environmental impacts with respect to the license or lease. In determining the amount of the financial contribution the Inspectorate shall take into consideration the size of the operations and a reasonable level of environmental risk that may be determined to exist.

(2) If the licensee or lessee fails to rehabilitate or manage, or is unable to undertake such rehabilitation or to manage any negative impacts on the environment, the Inspectorate may, upon written notice to such holder, use all or part of the fund contemplated in subsection (1) of this section to rehabilitate or manage the negative environmental impact in question.

(3) The licensee or lessee must annually assess its environmental liability and increase its financial contribution to the satisfaction of the Inspectorate pursuant to the provisions of subsection (1) of this section.

(4) If the Inspectorate is not satisfied with the assessment and financial contribution contemplated in this section, the Inspectorate may appoint an independent assessor to conduct the assessment and determine the financial contribution.

#### **Abandonment, decommissioning and disposal**

203. (1) The decommissioning and abandonment of onshore and offshore petroleum wells, installations, structures, utilities and pipelines shall be conducted in accordance with good oil field practice and in accordance with guidelines issued by the Inspectorate, provided that such guidelines, shall be in line with the guidelines and standards set by the International Maritime Organisation with respect to offshore petroleum installations and structures. No decommissioning or abandonment shall take place without the approval of the Inspectorate.

(2) The Inspectorate shall by written notice, require a licensee or lessee to commence the decommissioning and abandonment of a well, installation, structure, utility and pipeline where such decommissioning or abandonment is required under good oil field practices or the guidelines.

(3) A licensee or lessee may request the Inspectorate by written notice to issue a notice pursuant to subsection (2) of this section.

(4) Upon such a notice in subsection (2) of this section, the lessee or licensee, shall prior to any decommissioning or abandonment submit to the Inspectorate, a programme setting out:

- (a) estimate of the cost of the proposed measures;
- (b) details of measures proposed to be taken in connection with the decommissioning of disused installations, structures and/or pipelines as the case may be;
- (c) descriptions of the methods to be employed to undertake the work programme, which shall be in line with best oil field practices, sustainable field and environmental development; and
- (d) steps to be taken to ensure maintenance and safeguard where any installations, structures or pipelines are to remain disused and in position, or are to be partly removed.

(5) Except for the abandonment of wells, upon the submission of the decommissioning programme by the licensee or lessee to the Inspectorate, consultations shall be made with interested parties and other relevant public authorities and bodies.

(6) The programme referred to in subsection (4) of this section shall not be approved unless all relevant environmental, technical and commercial regulations or standards are complied with.

(7) Before the Inspectorate approves an application or programme for decommissioning or abandonment, it shall ensure that:

- (a) considerations and recommendations are taken in the light of individual circumstances;
- (b) the potential for reuse of the pipeline together with other existing facilities in connection with further hydrocarbon developments is considered before decommissioning;
- (c) all feasible decommissioning options have been considered and a comparative assessment made;
- (d) any removal or partial removal of an installation, structure or pipeline is to be performed in a manner that guarantees sustainable environmental development; and
- (e) any recommendation to leave an installation, structure or pipeline in place is made with regard to its likely deterioration and to the present, possible, and future effects on the environment.

(8) The Inspectorate may recall any licensee or lessee responsible for the decommissioning or abandonment programme with respect to a license or lease that has expired to carry out obligation under this Act.

(9) The Inspectorate shall ensure that a list of all the petroleum installations, structures and pipelines onshore and offshore Nigeria and their current status is compiled and made available or accessible to the public.

### **Funding**

204. The Inspectorate shall require a lessee to set up and manage an abandonment fund for the purpose of abandonment, decommissioning and disposal for the use by the lessee during abandonment, decommissioning or disposal with the approval of the Inspectorate and such funds shall be accessible by the Inspectorate in case the lessee fails to carry out the obligations under section 203 of this Act.

## **Part IV – MIDSTREAM AND DOWNSTREAM PROJECT APPROVAL AND LICENSING**

### **A - Project Approval**

### **Project approval for midstream petroleum operations**

205. (1) Any new project or modification or expansion of an existing project with respect to midstream petroleum operations shall require prior to any construction or operation a project approval certificate (“project approval certificate”) issued by the Agency.

(2). The project approval certificate of the Agency shall consist of:

(a) A technical licence issued by the Agency pursuant to this Part IV, which certifies that the project meets all technical requirements under this Act;

(b) A commercial licence issued by the Agency pursuant to this Part IV, which certifies that the applicant is a company permitted to own and operate the type of business required for the project.

(c) a declaration of the Agency that the project:

(i) meets all commercial requirements under this Act, and

(ii) does not involve excessive capital or operating expenditures based on the benchmarking analysis of the Agency, which would result in a reduction in anticipated petroleum revenues or increased consumer prices;

(d) a declaration of the Agency that the project meets all health, safety and environmental standards required under this Act;

(e) an approval of the Nigerian content plan for the project pursuant to Part VI-B of this Act;

(f) an approval of the environmental management plan and an acceptable decommissioning and abandonment plan pursuant to subsection (6) of section 212 of this Act; and

(g) if the project involves the export of gas, a permit to export gas granted by the Agency pursuant to section 309 of this Act.

(3) A project approval certificate with respect to midstream petroleum operations shall only be granted to a company that has been incorporated under the Companies and Allied Matters Act, and that has complied with all the conditions prescribed by the Agency.

(4) An application for a project approval certificate shall contain copy of the registered technical licence for the project and a copy of the registered commercial licence for the midstream petroleum operations associated therewith.

### **Project approval for downstream petroleum operations**

206. (1) Any new project or modification or expansion of an existing project with respect to downstream petroleum operations shall require prior to any construction or operation a project approval certificate issued by the Authority.

(2). The project approval certificate of the Authority shall consist of:

(a) A technical licence issued by the Authority pursuant to this Part IV, which certifies that the project meets all technical requirements under this Act;

(b) A commercial licence issued by the Authority pursuant to this Part IV, which certifies that the applicant is a company permitted to own and operate the type of business required for the project;

(c) a declaration of the Authority that the project:

(i) meets all commercial requirements under this Act, and

(ii) does not involve excessive capital or operating expenditures based on the benchmarking analysis of the Authority, which would result in a reduction in anticipated petroleum revenues or increased consumer prices;

- (d) a declaration of the Authority that the project meets all health, safety and environmental standards required under this Act;
  - (e) an approval of the Nigerian content plan for the project pursuant to Part VI-B of this Act;
  - and
  - (f) an approval of the environmental management plan and an acceptable decommissioning and abandonment plan pursuant to subsection (6) of section 212 of this Act.
- (3) A project approval certificate pursuant to subsections (1) and (2) of this section shall only be granted to a company that has been incorporated under the Companies and Allied Matters Act, and that has complied with all the conditions prescribed by the Authority
- (4) A Nigerian content plan shall not be required for independent pipelines and independent depots as contemplated by section 274.
- (5) A Nigerian content plan shall not be required for projects requiring an investment below the level established in subsection (1) of section 313 of this Act.
- (6) An application for a project approval certificate shall contain a copy of the registered technical licence for the project and a copy of the registered commercial licence for the downstream petroleum operations associated therewith.

## **B – Technical Licensing**

### **Technical licencing by the Agency**

207. (1) The Agency shall be responsible for the issuance and administration of all technical licences related to midstream petroleum operations.
- (2) The technical licences issued pursuant to this section shall be in respect of the construction and operation of all tank farms, depots, oil pipelines, gas pipelines, condensate pipelines, gas processing plants, gas liquefaction plants, refineries, or other facilities and infrastructure required for midstream petroleum operations in Nigeria.
- (3) No person shall conduct any midstream petroleum operations requiring tank farms, depots, oil pipelines, gas pipelines, condensates pipelines, gas processing plants, gas liquefaction plants, refineries or other facilities or infrastructure without a technical licence issued by the Agency.
- (4) Any person who:
- (a) engages in any of the activities set out in subsection (3) without a technical licence therefor;
  - or
  - (b) in applying for a technical licence, knowingly makes a statement which is false or misleading in any material particular;
- shall be liable to a fine of US \$ 200,000, which amount shall be adjusted yearly by the adjustment factor under Section 331 of this Act, and in the case of a company, the responsible officers or managers shall also be guilty of an offence and upon conviction shall be liable to imprisonment for a term of up to two years, provided that proceedings in respect of any such offence shall be

commenced only by the Agency. In addition to any of the foregoing, the Agency may, after due enquiry and adequate arrangements made to ensure that users and customers are not adversely affected, suspend or revoke any technical licence issued on the basis of false or misleading information.

#### **Technical licensing by the Authority**

208. (1) The Authority shall be responsible for the issuance and administration all technical licences related to downstream petroleum operations.

(2) The technical licences issued pursuant to this section shall be in respect of construction and operation of all tank farms, depots, petroleum product pipelines, gas distribution networks, petroleum product distribution stations or other facilities and infrastructure required for downstream petroleum operations in Nigeria.

(3) No person shall conduct any downstream petroleum operations requiring tank farms, depots, petroleum product pipelines, gas distribution networks, petroleum product distribution stations or other facilities or infrastructure without a technical licence issued by the Authority.

(4) Any person who:

(a) engages in any of the activities set out in subsection (3) of this section without a technical licence therefor; or

(b) in applying for a technical licence, knowingly makes a statement which is false or misleading in any material particular;

shall be liable to a fine of US \$ 200,000, which amount shall be adjusted yearly by the adjustment factor under Section 331 of this Act, and in the case of a company, the responsible officers or managers shall also be guilty of an offence and upon conviction shall be liable to imprisonment for a term of up to two years, provided that proceedings in respect of any such offence shall be commenced only by the Authority. In addition to any of the foregoing, the Authority may, after due enquiry and adequate arrangements made to ensure that users and customers are not adversely affected, suspend or revoke any technical licence issued on the basis of false or misleading information.

#### **Issuance, renewal or modification of technical licences**

209. (1) The responsible Regulatory Institution may issue, renew or modify individual technical licences issued in pursuance of Section 207 or Section 208 of this Act.

(2) An application for the issuance, renewal or modification of a technical licence shall be made to the Regulatory Institution in the form and manner prescribed by applicable regulations and shall be accompanied by the prescribed fee, if any, together with such information or documents as may be prescribed in regulations.

(3) The responsible Regulatory Institution may furnish any person applying for the issuance, renewal or modification of a technical licence with such non-confidential information as the applicant may require which may facilitate the filing of the application.

(4) An applicant for a technical licence that is an affiliate of a company that has applied for or holds any other technical licence in respect of any sector of the petroleum industry in Nigeria,

shall disclose such interest in its application.

(5) The responsible Regulatory Institution shall consider all information presented in respect of an application for a technical licence, including representations from interested parties in favour of or against the issuance, modification or renewal of the technical licence;

(6) Where a technical licence is issued, renewed or modified, a notice of the issuance, renewal or modification shall be published in at least two national news papers.

(7) Where an application is refused, the refusal shall be communicated to the applicant in writing within two weeks of the date of the refusal, stating the reasons for such refusal and giving the applicant a reasonable period within which to make further representations with respect to the application.

(8) The responsible Regulatory Institution shall duly consider any representation made by an applicant in respect of a refusal of a technical licence application.

(9) No further application or representation shall be made by an applicant or considered by the responsible Regulatory Institution in the event that representations in respect of a refusal of an application have been considered and rejected by the Regulatory Institution.

(10) Any company who at the commencement of this Act was engaged in any activity requiring a technical licence under this Act shall, within one year of the commencement of this Act, apply to the responsible Regulatory Institution for the issuance of an appropriate technical licence.

#### **Advertisement of technical licence applications**

210. (1) When an application is made for the issuance, renewal or modification of a technical licence, the applicant shall publish a notification of the application in at least two Nigerian newspapers with nationwide circulation, in a manner prescribed in the applicable regulations.

(2) Following the publication in subsection (1) of this section, any interested person may comment on or make representations to the responsible Regulatory Institution in respect of the application within the period of time prescribed in the applicable regulations, which period of time must be indicated in the published notification.

(3) Following the issuance, modification or renewal of a technical licence the applicant shall publish the notification thereof in a manner prescribed in the applicable regulations.

#### **Technical licence regulations**

211. The Minister shall make regulations establishing the procedures and other matters relating to technical licences for midstream petroleum operations and for downstream petroleum operations under this Part, which shall prescribe, among other things, the following:

- (a) the procedure, form, criteria, timescale and fees for technical licence applications, including any criteria for the grant of the technical licence and the grounds on which technical licences may be refused;
- (b) the duration of technical licences and the procedure, form, criteria and timescale for their renewal;

- (c) the procedure, form and timescale for publishing notification of an application for the issuance, modification or renewal of a technical licence;
- (d) the procedure, form, criteria and timescale for technical licence modifications, including the process for changing standard and special technical licence conditions and the public consultation process required as part of the technical licence modification procedures; and
- (e) the procedure, form, criteria and timescale for the transfer or surrender, suspension or revocation of a technical licence.

### **Technical licence conditions**

212. (1) Every licensee shall:
- (a) comply with any directions given by the responsible Regulatory Institution in relation to matters specified in the technical licence;
  - (b) undertake any obligations specified in the technical licence;
  - (c) secure the approval of the responsible Regulatory Institution prior to undertaking any matter requiring approval as specified in the technical licence;
  - (d) comply with industry codes and standards;
  - (e) restrict the use of certain types of information deemed to be sensitive by the responsible Regulatory Institution, provided that this condition is not in contravention with any law relating to freedom of information that may be in force at the time;
  - (f) prepare and submit to the responsible Regulatory Institution such information and periodical reports as the Regulatory Institution may require; and
  - (g) operate its projects related to midstream or downstream petroleum operations, as the case may be, according to the standards of a reasonable and prudent operator as specified by the applicable Regulatory Institution.
- (2) Conditions applicable to a technical licence may cease to have effect or may be modified under circumstances specified in the technical licence or pursuant to the provisions of section 209 of this Act.
- (3) Technical licences issued by a Regulatory Institution to licensees of the same class shall contain similar conditions, which shall be standard technical licence conditions for that class and any differences in conditions contained in technical licences issued to licensees of the same class shall only be on reasonable ground. The responsible Regulatory Institution shall be responsible for developing the classification used in this subsection.
- (4) A technical licence may specify a date or time period on which licensed activities shall commence after the date of the issuance of the corresponding project approval certificate.
- (5) The responsible Regulatory Institution may provide that a licensed facility shall be for:
- (a) the exclusive use of the licensee;
  - (b) all or part of the period of the technical licence;
  - (c) a specific purpose;
  - (d) a specified geographical area or route; or
  - (e) any combination of the foregoing.
- (6) A technical licence shall include provisions for decommissioning and abandonment, an environmental management plan and an environmental remediation fund applying the provisions

of sections 196, 197, 198, 199, 200, 201, 202, 203 and 204 of this Act.

#### **Duration of a technical licence**

213. (1) A technical licence issued pursuant to this Part shall be for a period of twenty-five (25) years in the first instance.

(2) A technical licence may be renewed for such periods as the responsible Regulatory Institution may determine subject to the criteria and in accordance with the procedure prescribed by the applicable regulations, provided however that any renewal shall not exceed twenty-five (25) years.

(3) The responsible Regulatory Institution may set new or different technical licence conditions upon the renewal of a technical licence, subject to the processes set out in section 209 of this Act.

#### **Assignment**

214. (1) A technical licensee shall not, directly or indirectly, assign its technical licence or any rights or obligations arising from such technical licence without the prior written consent of the Regulatory Institution.

(2) An application for the assignment of a technical licence shall be made to the responsible Regulatory Institution, which may require the applicant to publish a notice of the application in such form and in the manner and within the period prescribed in applicable regulations.

(3) In determining whether a technical licence may be assigned, the responsible Regulatory Institution shall follow the same procedures with such modifications as may be appropriate in the circumstances, apply the same rules and criteria, and consider the same issues with respect to the qualifications of the applicant as if the party to whom the technical licence is being assigned or transferred is itself applying for a new technical licence, and shall, in so doing, duly consider the representations made to it by third parties in respect of the application.

(4) The responsible Regulatory Institution shall, subject to subsection (3) of this section, communicate its refusal or approval of an application for the assignment or transfer of a technical licence in writing.

(5) If the responsible Regulatory Institution refuses an application for an assignment of a technical licence, it shall provide the applicant with written reasons for such refusal and shall state a reasonable period of time within which further representations may be made by the applicant or by third parties in respect of the application.

(6) The responsible Regulatory Institution may approve an assignment of a technical licence, subject to such conditions as it may consider appropriate, in which case it shall provide the applicant with written reasons for such conditions.

#### **Amendment of a technical licence**

215. (1) A Regulatory Institution may modify any technical licence conditions or include additional conditions, subject to subsection (2) of this section.

(2) A Regulatory Institution shall not modify or include additional conditions to a technical licence unless it has:

- (a) consulted with the Minister, industry participants and stakeholders, giving reasons for the proposed modification or addition and having properly considered any representations or objections raised;
- (b) given the affected licensee written notice of its intention to do so together with a draft copy of the proposed new or modified conditions; and
- (c) given the licensee an opportunity to make written submissions to the Regulatory Institution in respect of the proposed modification or addition within the time period specified in applicable regulations, which shall not be less than thirty days from the date of the written notice.

### **Contravention and enforcement of technical licence conditions**

216. (1) Where in the opinion of a Regulatory Institution a technical licensee has contravened or is about to contravene the conditions of a technical licence, the Regulatory Institution may publish a notice in such manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention of the technical licence:

- (a) specifying the actual or potential contravention;
- (b) directing the licensee to do, or not to do, such things as it may specify;
- (c) specifying the remedy and the period of time for compliance; and
- (d) notifying the licensee of its intention to issue an enforcement order.

(2) The licensee and any other interested party shall be entitled to make representations against or in support of the enforcement notice by a date specified in the notice.

(3) If a licensee fails to comply with a notice served pursuant to subsection (1) of this section, the responsible Regulatory Institution may issue an enforcement order.

(4) Failure to comply with an enforcement order shall constitute an offence.

(5) The Regulatory Institution shall not issue an enforcement order if:

- (a) the licensee is able to demonstrate to the satisfaction of the Regulatory Institution that it has not contravened or is about to contravene the condition of a technical licence; or
- (b) the licensee has ceased to contravene a condition of a technical licence.

(6) If the licensee fails to comply with the enforcement order the Regulatory Institution may institute legal proceedings against the licensee to ensure compliance.

(7) Where it is found that the licensee contravened a provision of the license the Regulatory Institution shall impose an appropriate penalty in accordance with applicable regulations.

### **Surrender of technical licence**

217. (1) In accordance with any applicable regulations and upon application to the responsible Regulatory Institution, a licensee may apply to surrender its technical licence if:

- (a) the licensed activity is no longer required; or
- (b) in the opinion of the licensee the licensed activity is no longer economic.

(2) A licensee applying to surrender its technical licence shall comply with all requirements of this Act in respect of decommissioning and abandonment of installations and reclamation of land before the surrender of the technical licence.

(3) Where the licensee has commenced activities and has ongoing operations, it shall, unless a shorter period is stipulated in the technical licence, give the responsible Regulatory Institution at least twelve months notice in writing of its intention to surrender its technical licence.

#### **Revocation or suspension of technical licence**

218. The responsible Regulatory Institution may after giving (six) months notice of its intention, suspend or revoke a technical licence:

- (a) if the licensee has contravened or continues to contravene a condition of the license, a regulation or a provision of this Act and the Regulatory Institution has given six months notice of its intention to suspend or revoke the said technical licence;
- (b) if the licensee becomes insolvent or bankrupt; or
- (c) if a licensee fails to commence activities within the period of time prescribed in the technical licence.

#### **Mandatory registration with the Regulatory Institution**

219. (1) Any company which has been issued a technical licence shall register such licence in the register pursuant to section 221 of this Act with the responsible Regulatory Institution and provide such information concerning the activities of the undertaking as may be prescribed by applicable regulations.

(2) The Agency and the Authority shall each establish, maintain and make publicly available a register of all technical licences issued by it and of all renewals, modifications, assignments, suspensions, surrenders and revocations of such technical licences.

(3) A registration established pursuant to subsection (2) of this section, shall be in a form as may be prescribed by applicable regulations.

(4) The effective date of a technical licence shall be the date such licence is registered.

#### **Preparation of licenses and duplicates**

220. (1) The issuance, modification and renewal of technical licences by a Regulatory Institution under this Part IV-B shall be prepared in duplicate, one copy being delivered by the Regulatory Institution to the technical licensee and the other retained by the Regulatory Institution.

(2) A Regulatory Institution shall not issue a technical licence until the requisite fees have been paid.

#### **Register of memorials**

221. The Agency and Authority shall each maintain the register in the form of an appropriate electronic data base with a memorial of the issuance, assignments, surrenders, revocations, forfeitures, changes of address, changes of name or any other matter affecting the status of or any interest in any technical licence, together with the dates of such entries.

#### **Effect of registration**

222. The registration of a technical licence under this Part shall be conclusive evidence:

- (a) that the rights described therein are vested in the person named as the licensee within the

said technical licence; and

(b) of the conditions and other provisions to which the licensee is subject.

### **Public access to the registry**

223. (1) The registers established by the Agency and the Authority under section 221 of this Act shall be accessible to the public during the hours and upon the days designated by the Regulatory Institution.

(2) Upon the payment of the prescribed fee, a member of the public shall be entitled to obtain a certified true copy of any document or record contained in the register referred to in section 221 of this Act.

### **Disclosure of confidential or other information**

224. (1) Where:

(a) any member or employee of a Regulatory Institution in the course of his duties, acquires information relating to the financial affairs of any licensee, or to any commercial secret; or

(b) any other person who indirectly acquires such or other information required to be kept confidential under the provisions of this Act from any employee of the Regulatory Institution; he or she shall not make use of such information, or disclose it to any other person except under the conditions stated in subsection (2) of this section.

(2) Subsection (1) of this section shall not prohibit any licensee or person from disclosing any information otherwise required to be kept confidential:

(a) for the purpose of legal proceedings under this Part or any other law; or

(b) to another employee of the same or another Regulatory Institution.

(3) No member or employee of a Regulatory Institution shall, for personal gain, make use of any information acquired by him in the course of his duties for a period of five years after the date on which he ceased to be a member or employee.

(4) Any person who contravenes this section shall be guilty of an offence and liable on conviction to:

(a) the forfeiture of any proceeds accruing to him or her as a result of the said offence; and

(b) a fine not exceeding US \$ 40,000, which fine shall be adjusted yearly by the adjustment factor of section 331 of this Act, or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

## **C- Commercial Licensing**

### **Commercial licencing by the Agency**

225. (1) The Agency shall be responsible for the issuance and administration of all commercial licences related to midstream petroleum operations.

(2) A commercial licence shall permit a company to conduct midstream petroleum operations

specified in the licence and to own and operate a business engaged in such operations.

(3) No person shall conduct any midstream petroleum operations without a commercial licence issued by the Agency.

(4) Any person who:

(a) engages in midstream petroleum operations without a commercial licence therefor; or

(b) in applying for a commercial licence, knowingly makes a statement which is false or misleading in any material particular;

shall be liable to a fine of US \$200,000, which amount shall be adjusted yearly by the adjustment factor of Section 331 of this Act, and in the case of a company, the responsible officers or managers shall also be guilty of an offence and upon conviction shall be liable to imprisonment for a term of up to two years, provided that proceedings in respect of any such offence shall be commenced only by the Agency. In addition to any of the foregoing, the Agency may, after due enquiry and adequate arrangements made to ensure that users and customers are not adversely affected, suspend or revoke any commercial licence issued on the basis of false or misleading information.

### **Commercial licencing by the Authority**

226. (1) The Authority shall be responsible for the issuance and administration of all commercial licences related to downstream petroleum operations.

(2) A commercial licence shall permit a company to conduct downstream petroleum operations specified in the licence and to own and operate a business engaged in such operations.

(3) No person shall conduct any downstream petroleum operations without a commercial licence issued by the Authority.

(4) Any person who:

(a) engages in downstream petroleum operations without a commercial licence therefor; or

(b) in applying for a commercial licence, knowingly makes a statement which is false or misleading in any material particular;

shall be liable to a fine of US \$ 200,000, which amount shall be adjusted yearly by the adjustment factor of Section 331 of this Act, and in the case of a company, the responsible officers or managers shall also be guilty of an offence and upon conviction shall be liable to imprisonment for a term of up to two years, provided that proceedings in respect of any such offence shall be commenced only by the Authority. In addition to any of the foregoing, the Authority may, after due enquiry and adequate arrangements made to ensure that users and customers are not adversely affected, suspend or revoke any commercial licence issued on the basis of false or misleading information.

### **Other activities requiring a commercial licence**

227. (1) A Regulatory Institution may, with the approval of the Directorate and pursuant to applicable regulations, prescribe additional activities to be undertaken only on the basis of a commercial licence.

(2) Any company which at the commencement of this Act was engaged in any activity requiring a commercial licence under this Act shall, within one year of the commencement of this Act, apply to the Regulatory Institution for the issuance of an appropriate commercial licence.

(3) For the purpose of this Part IV-C, the term “operator” shall refer to any company holding a commercial licence.

#### **Commercial licence for a midstream transportation pipeline**

228. (1) Subject to section 225 of this Act, and upon the approval of the Agency of an application by a qualified company and the payment of the prescribed fee, the Agency may issue to that company a commercial licence for a midstream transportation pipeline, for the purpose of transporting crude oil, gas or condensates, with the exclusive right to own, operate and maintain a midstream transportation pipeline within a route as defined in the commercial licence, including such spur lines as may be required to reach wholesale gas customers or major customers of crude oil or condensates. Each pipeline or pipeline extension shall require a separate commercial licence.

(2) In considering an application for a commercial licence for a midstream transportation pipeline the Agency shall consider the economic viability of, and the potential demand for the use of a transportation pipeline.

(3) In considering an application the Agency shall benchmark the capital and operating costs proposed by the applicant, and determine whether such cost are excessive and whether such excessive cost would have a negative impact on the values for royalty purposes pursuant to section 334 of this Act or would impact on consumer prices. A copy of any benchmarking report shall be forwarded to the Service.

(4) The commercial licensee of a transportation pipeline shall undertake the activities contemplated by the commercial licence in a manner best calculated to comply with the obligations to:

- (a) operate and maintain economical, safe and reliable transportation infrastructure, taking into account any strategic plans that may be formulated by the Agency;
- (b) where feasible, meet requests of customers for transportation above contractual volumes;
- (c) shut down its transportation systems in emergencies and in order to carry out maintenance;
- (d) manage the transportation pipelines as a reasonable and prudent operator; and
- (e) do nothing that, in the opinion of the Agency, prevents, restricts or distorts competition.

#### **Conditions applicable to a commercial licence for a midstream transportation pipeline**

229. (1) In addition to such conditions as may be imposed by the Agency under the terms of this Act, a commercial licensee of a midstream transportation pipeline shall:

- (a) not be transporter of crude oil, condensates or gas to customers in Nigeria directly on its own account;
- (b) conduct its licensed activities safely and reliably in compliance with any law and prescribed health and safety provisions pursuant Part VII of this Act;

(c) have due regard for the effect of its licensed activities on the environment and comply with requirements for environmental protection, management, and restoration under this Act and any law; and

(d) mark, maintain and secure the boundaries of any pipelines and associated infrastructure constructed under the terms of its commercial licence and any law then in force.

(2) Transporters on a midstream transportation pipeline can be producers or buyers of crude oil, condensates or gas, or other companies which are not the transportation pipeline owner, provided, however, that affiliates of the transportation pipeline owner may be transporters under such conditions as determined by the Agency.

### **Commercial license for a gas transportation network**

230. (1) Subject to the provisions of section 225 of this Act, and upon approval by the Agency of an application by a qualified company and the payment by such company of the prescribed fee, the Agency may issue to that company a commercial licence for a gas transportation network within an area and for routes as defined in the commercial licence, including such spur lines as may be required to reach wholesale gas customers, authorizing the conduct of midstream petroleum operations specified in the commercial licence, including:

- (a) the conveyance of gas through the transportation network;
- (b) balancing the inputs and offtakes from the transportation network;
- (c) providing third party access to the transportation network; and
- (d) charging for the use of the transportation network.

(2) The Agency may issue a commercial licence for a gas transportation network within a geographically defined area to a single network operator; provided however, that the Agency may issue commercial licences for midstream transportation pipelines to other parties for the operation of isolated or dedicated pipelines.

### **General duties and powers of a gas transportation network operator**

231. (1) The gas transportation network operator shall exercise the rights and obligations imposed on it in a manner best calculated to:

- (a) operate an efficient and economical transportation network for the safe and reliable conveyance of gas in such a manner as is designed to meet all reasonable demands for gas;
- (b) operate nominations and balancing mechanisms and an equitable curtailment of gas transportation whenever technical or operational expediencies so require;
- (c) ensure equitable and transparent access to the transportation network;
- (d) establish and publish terms and conditions for access to the network, which terms and conditions shall be approved by the Agency; and
- (e) enter into agreements with transportation pipeline owners, distributors, and, where appropriate, wholesale customers, for connection to and operation of the gas transportation network.

(2) Subject to the provisions of this Act and to facilitate the conduct of its licensed activities, the Agency may grant to a gas transportation network operator:

- (a) the power to request for and obtain from all transporters, information required to operate the nominations and balancing mechanism, to operate the network or to facilitate competition;
- (b) subject to any restrictions or conditions imposed by the Agency with respect to both the level and structure of its charges, the right to recover, on the basis of an invoice, expenses

reasonably incurred in undertaking its licensed activities; and

(c) the right to purchase gas for its own pipeline operations for purposes such as testing and commissioning of facilities, for compression purposes and for line fill.

### **Conditions applicable to a commercial licence for a gas transportation network**

232. (1) In addition to such conditions as may be imposed by the Agency pursuant to this part, the Agency may furthermore develop market rules in accordance with the provisions of this Part, which shall be complied with by the gas transportation network operator.

(2) Transporters on a gas transportation network can be producers of gas, or other companies which are not the gas transportation network owner, provided, however, that affiliates of the gas transportation network owner may be transporters under such conditions as determined by the Agency.

### **Commercial license to supply gas to wholesale customers**

233. (1) Subject to section 225 of this Act, and upon the approval by the Agency of an application made by a qualified company and the payment of the prescribed fee, the Agency may issue to that company a commercial licence to supply gas to wholesale customers.

(2) (a) An upstream gas producer intending to supply gas to an aggregator or a wholesale buyer shall be a qualified supplier within the meaning of the provisions of this Part and shall be entitled to apply for and be issued the commercial licence to supply gas to wholesale customers by the Agency; and

(b) for the purpose of this section upstream gas producers shall include:

(i) the Nigerian National Petroleum Company and its successor the Nigerian National Petroleum Company Limited,

(ii) any lessee producing natural gas which is subject to royalties pursuant to Part VIII-C of this Act,

(iii) any contractor of a contract pursuant to subsection (1) of section 171 of this Act, where such contract enables the contractor to sell gas,

(iv) any incorporated joint venture company pursuant to section 160 of this Act,

(v) any working interest holder in a lease or contract pursuant to subparagraphs (ii) and (iii) of this paragraph,

(vi) any shareholder of an incorporated joint venture company who has made a gas purchase agreement with the incorporated joint venture pursuant to subsection (1) of section 165 of this Act,

(vii) any shareholder of a company who qualifies as an upstream gas producers under subparagraphs (ii), (iii) and (v) of this paragraph and who under his shareholder agreement has the right to sell gas produced by such company, and

(viii) any company pursuant to subsection (3) of section 343 of this Act.

(3) A company proposing to be an aggregator, other than the domestic gas aggregator pursuant to paragraph (a) of subsection (1) section 305 of this Act, shall be entitled to apply for and may be issued a commercial licence to supply gas to wholesale customers by the Agency, where such company is technically and financially qualified as a gas marketing company.

(4) A commercial licence to supply gas to wholesale customers shall authorise the licensee to purchase gas and to sell and deliver gas to wholesale customers at any location in Nigeria and on the basis of an export permit pursuant to section 309 of this Act also to purchasers outside Nigeria.

### **Wholesale customers**

234. The sale of gas to wholesale customers by a licensee shall be subject to the provisions of this Act. The Agency shall determine the various classes of large volume gas purchasers that shall be considered wholesale customers pursuant to section 285 of this Act.

### **Domestic gas supply obligations**

235. All upstream gas producers with a commercial licence to supply gas to wholesale customers pursuant to subsection (2) of section 233 of this Act shall comply with the domestic gas supply obligations under Part V-C of this Act.

### **Conditions applicable to a commercial licence to supply gas to wholesale customers**

236. In addition to such conditions as may be imposed by the Agency pursuant to this Part, a commercial licensee to supply gas to wholesale customers shall:

- (a) ensure a reliable and efficient supply of gas to customers on request, provided that it is economical to do so;
- (b) request security or apply a credit scoring methodology approved by the Agency in deciding whether supply is economical;
- (c) subject to safety and network capacity constraints, supply gas on request to a customer who is willing and able to pay for connection to the transportation network;
- (d) conduct licensed activities safely and reliably in compliance with any law in force and any health and safety regulations issued pursuant to this or any other Act;
- (e) comply with customer protection measures in accordance with the provisions of this Part; and
- (f) do nothing that, in the opinion of the Agency, may prevent, restrict or distort competition.

### **Commercial license to distribute gas**

237. (1) Subject to section 226 of this Act, and upon approval by the Authority of an application made by a qualified company and the payment of the prescribed fee, the Authority may issue to that company a commercial licence to distribute gas granting the exclusive right to own and operate a distribution system and to distribute gas within a local distribution zone.

(2) The licensee of a commercial licence to distribute gas shall be entitled to apply for, hold and operate a license for the exclusive supply of gas within the local distribution zone to small customers.

(3) In considering an application for a commercial licence to distribute gas, the Authority shall consider the economic viability of, and the potential demand for its use.

(4) In considering the application the Authority shall benchmark the capital and operating costs proposed by the applicant, and determine whether such cost are excessive and whether such excessive cost would have a negative impact on consumer prices. A copy of any benchmarking report shall be forwarded to the Service.

(5) The geographical limits of each local distribution zone shall be defined in the relevant commercial licence to distribute gas.

### **Obligations of a commercial licence to distribute gas**

238. The commercial licensee of a licence to distribute gas shall undertake the activities contemplated by the commercial licence to distribute gas in a manner best calculated to comply with the obligations:

(a) to develop, operate and maintain an economical distribution network for the safe and reliable conveyance of gas;

(b) to ensure a reliable and efficient distribution of gas to customers on request, provided that it is economical to do so;

(c) subject to safety and network capacity constraints, to distribute gas on request to any customer who is willing and able to pay for connection to the distribution network;

(d) to conduct licensed activities safely and reliably, in compliance with any law in force and any health and safety regulations issued pursuant to this Act or any other Act;

(e) to connect all customers within its local distribution zone in accordance with prescribed regulations, if it is economically practicable to do so;

(f) to co-operate with the Authority in the development of the network code;

(g) to offer and publish terms and conditions of access to its distribution network as required;

(h) to comply with customer protection measures in accordance with the provisions of this Act; and

(i) to do nothing to prevent, restrict or distort competition.

### **Rights of the licensee of a commercial licence to distribute gas**

239. (1) Subject to the provisions of this Act and in order to facilitate the conduct of its licensed activities, the Authority may grant the licensee of a commercial licence to distribute gas the right:

(a) to enter the premises of a customer in order to read meters, to test metering equipment or to disconnect customers and remove meters; and

(b) to recover, on the basis of an invoice, costs reasonably incurred in the provision of appropriate infrastructure, subject to any restriction or conditions imposed by the Authority with respect to both the level and structure of a distributor's charges.

(2) Reasonably incurred costs referred to in subsection (1) of this section shall include any amounts paid to the Authority as fees.

### **Conditions applicable to a commercial licence to distribute gas**

240. (1) In addition to such conditions as may be imposed by the Authority pursuant to this Act, or that may be prescribed by regulations issued pursuant to this Act, each licensee shall:

(a) conduct its licensed activities in accordance with safe and reliable standards and in compliance with prescribed management, health, and safety regulations issued pursuant to this Act or any other Act;

(b) comply with any requirements for environmental protection, management, and restoration under this Act and any law in force;

(c) mark, maintain and secure the boundaries of the gas distribution pipelines constructed as prescribed; and

(d) comply with customer protection measures set out in Part V-B of this Act.

(2) The commercial licensee of a licence to distribute gas shall connect customers within its local distribution zone in the manner prescribed by applicable regulations, provided that it is economical and practical to do so.

(3) The Authority shall settle any disputes that may arise in relation to the distribution network between the licensee and its customers.

(4) The holder of a commercial licence to distribute gas shall consult stakeholders on proposed development projects within its local distribution zone and shall duly consider all representations received.

### **Other commercial licences**

241. (1) In addition to the commercial licences contemplated in sections 228 through 240 of this Act, the Regulatory Institutions may issue commercial licences for other midstream petroleum operations and downstream petroleum operations, as the case may be, and determine the powers, rights, duties and obligations related to such commercial licences based on applicable

regulations.

(2) Such types of commercial licences shall include, but not be limited to commercial licences to own and operate refineries, separate gas conditioning plants, gas processing plants, liquid natural gas facilities, compressed natural gas facilities, upgrading facilities for bitumen, petroleum product pipelines, GTL plants, retail petroleum product distribution stations or carry out crude oil and condensate trading or petroleum product marketing.

### **Matters relating to issuance of commercial licences and applications**

242. (1) The responsible Regulatory Institution may issue, renew, or modify individual commercial licences issued in accordance with Section 225 and 226 of this Act.

(2) An application for the issuance, renewal, or modification of a commercial licence shall be made to the Regulatory Institution in the form and manner prescribed by applicable regulations, and accompanied with the prescribed fee, if any, and any other information or documents that may be prescribed in regulations.

(3) The responsible Regulatory Institution may furnish any person applying for the issuance, renewal or modification of a commercial licence with such non-confidential information as the applicant may require which may facilitate the filing of the application.

(4) An applicant for a commercial licence that is an affiliate of a body corporate that has applied for or holds any other commercial licence shall disclose such interest to the Regulatory Institution in its application.

(5) The responsible Regulatory Institution shall consider all information presented in respect of an application for a commercial licence including representations from interested parties in favour of or against the issuance, modification or renewal of the said commercial licence;

(6) Where a license is granted, renewed, modified or extended under this section, a notice of the grant, renewal, or modification shall be published in at least two national news papers.

(7) Where an application is refused, the refusal shall be communicated to the applicant in writing within two weeks of the date of the refusal, stating the reasons for such refusal and giving the applicant a reasonable period within which to make further representations with respect to the application.

(8) The responsible Regulatory Institution shall duly consider any representation made by an applicant for a commercial licence in respect of the refusal of a commercial licence application.

(9) No further application or representation shall be made by an applicant, or considered by the responsible Regulatory Institution in the event that representations in respect of a refusal of an application have been considered and rejected by the Regulatory Institution.

### **Advertisement of commercial licence applications**

243. (1) When an application is made for the issuance, renewal, or modification of a commercial licence under the provisions of this Part IV-C, the applicant shall publish a

notification of the application in at least two Nigerian newspapers as may be prescribed in any applicable regulations.

(2) Following the publication in section (1) of this section, any interested person may comment on or make representations to the responsible Regulatory Institution in respect of the application in accordance with the prescribed periods of time in the applicable regulations, which periods of time must be indicated in the published notification.

(3) Following the issuance, modification or renewal of a commercial licence the applicant shall publish the notification thereof in at least two Nigerian newspapers with nationwide circulation, in accordance with the applicable regulations.

### **Commercial licence regulations**

244. The Minister shall make regulations establishing the procedures and other matters relating to commercial licences for midstream petroleum operations and for downstream petroleum operations under this Part, which shall prescribe among other things, the following:

(a) the procedure, form, criteria, periods of time, and fees for commercial licence applications, including any criteria for the grant of the commercial licence, and the grounds on which commercial licenses may be refused;

(b) the duration of licenses and the procedure, form, criteria and timescale for their renewal;

(c) the procedure, form and periods of time for publishing notification of an application for the issuance, modification, or renewal of a commercial licence;

(d) the procedure, form, criteria and periods of time for commercial licence modifications, including the process for changing standard and special commercial licence conditions and the public consultation process required as part of the commercial licence modification procedures; and

(e) the procedure, form, criteria and timescale for the transfer or surrender or suspension or revocation of a commercial licence.

### **Commercial licence conditions**

245. (1) Every licensee shall:

(a) comply with any directions given by the responsible Regulatory Institution in relation to matters specified in the commercial licence;

(b) undertake any obligations specified in the commercial licence;

(c) secure the approval of the responsible Regulatory Institution prior to undertaking any matter requiring approval as specified in the commercial licence, provided that no activities under a commercial licence with respect to construction and operation of a new project can take place unless the project approval certificate has been granted;

(d) comply with industry codes, standards and market rules;

- (e) comply with price or revenue restrictions imposed by the responsible Regulatory Institution in accordance with the provisions of this Act;
- (f) restrict the use of certain types of sensitive information;
- (g) prepare and submit to the responsible Regulatory Institution true and sufficient annual statements of accounts for each licensed activity in such form, and containing such particulars as the Regulatory Institution may require and produce such books upon the request of duly authorized officers of the Regulatory Institution;
- (h) adhere to undertakings made within a business plan submitted as part of the commercial licence application process;
- (i) prepare and submit to the responsible Regulatory Institution such information and periodical reports as the Regulatory Institution may require;
- (j) publish terms of access to its facility, plant, transportation or distribution pipeline or network as the case may be; and
- (k) operate its commercial licence according to the standard of a reasonable and prudent operator.

(2) Conditions applicable to a commercial licence may cease to have effect or may be modified under circumstances specified in the commercial licence.

(3) Commercial licences granted by the Regulatory Institution to licensees of the same class shall contain similar conditions, which shall be standard commercial licence conditions for that class.

(4) Any differences in conditions contained in commercial licences issued to licensees of the same class shall only be on reasonable grounds. The Regulatory Institution shall be responsible for developing the classification used in this subsection.

(5) Subject to the provisions of this Act, a Regulatory Institution shall have the power to include special conditions specific to a particular commercial licence or licensee provided that such special commercial licence conditions shall be designed to meet specific circumstances and shall not unduly disadvantage one licensee in relation to another.

(6) A Regulatory Institution may specify a date after the grant of a commercial licence on which licensed activities shall commence, which shall with respect to a licence applicable to a new project after the date of the grant of the project approval certificate.

(7) The Regulatory Institution may provide that a licensed activity shall be exclusive for all or part of the period of the commercial licence, for a specific purpose, for a specified geographical area or route, or for any combination of the foregoing.

#### **Separation of certain licensed activities**

246. (1) Subject to subsection (2) of section 229 of this Act and the approval of the Minister

and at such time as the Regulatory Institution determines that it is practical and necessary to facilitate competition, the Regulatory Institution may introduce commercial licence conditions, requiring the separation of licensed activities, which conditions may prohibit a licensee from also holding commercial licences of another type.

(2) Sales between a licensee and an affiliate of that commercial licensee shall be undertaken in a manner that:

- (a) ensures that the pricing between both entities is at a transparent arms length basis; and
- (b) reflects the pricing and tariff principles contained in the appropriate sections of this Act.

(3) No licensee shall directly or indirectly acquire an interest in, purchase, or otherwise affiliate with another licensee or an affiliate of a licensee without the prior written consent of the responsible Regulatory Institution.

### **Non-discrimination**

247. Except on the basis of objectively justifiable and identifiable differences which shall be communicated to all customers, licensees shall not discriminate between customers or classes of customers, or their related undertakings, or network users, in respect of access, tariffs, prices, conditions or standards of service, unless expressly permitted by the responsible Regulatory Institution.

### **Duration of a commercial licence**

248. (1) A commercial licence issued pursuant to this Part shall be valid for a period of twenty-five (25) years in the first instance.

(2) A commercial licence may be renewed for such periods as the responsible Regulatory Institution may determine, subject to the criteria and in accordance with the procedure prescribed by the applicable regulations, provided however that any one renewal shall not exceed twenty-five (25) years.

(3) The responsible Regulatory Institution may set new or different commercial licence conditions upon the renewal of a commercial licence, subject to the processes set out in section 242 of this Act.

### **Assignment**

249. (1) A commercial licensee shall not, directly or indirectly, assign its commercial licence or any rights or obligations arising from such commercial licence without the prior written consent of the Regulatory Institution.

(2) An application for the assignment of a commercial licence shall be made to the responsible Regulatory Institution, in accordance with applicable regulations.

(3) In determining whether a commercial licence may be assigned, the responsible Regulatory Institution shall follow the same procedures, with such modifications as may be appropriate in the circumstances, and apply the same rules and criteria and consider the same issues with respect to the qualification of the applicant as if the party to whom the commercial licence is being assigned

or transferred is itself applying for a new commercial licence, and shall, in so doing, duly consider the representations made to it by third parties in respect of the application.

(4) Subject to subsection (3) of this section, the responsible Regulatory Institution shall communicate its refusal or approval of an application for the assignment or transfer of a commercial licence to the licensee in writing.

(5) If the responsible Regulatory Institution refuses an application for an assignment of a commercial licence, it shall provide the applicant with written reasons for such refusal and shall state a reasonable period of time within which further representations may be made by the applicant or by third parties in respect of the application.

(6) The responsible Regulatory Institution may approve an assignment of a commercial licence, subject to such conditions as it may consider appropriate, in which case it shall provide the applicant with written reasons for such conditions.

#### **Amendment of a commercial licence**

250. (1) A Regulatory Institution may modify any commercial licence conditions or include additional conditions, subject to subsection (2) of this section.

(2) A Regulatory Institution shall not modify or include additional conditions to a commercial licence unless it has:

(a) consulted with the Minister, industry participants and stakeholders, giving reasons for the proposed modification or addition and having properly considered any representations or objections raised;

(b) given the affected licensee written notice of its intention to do so together with a draft copy of the proposed new or modified conditions; and

(c) given the licensee an opportunity to make written submissions to the Regulatory Institution in respect of the proposed modification or addition within the time period specified in applicable regulations, which shall not be less than thirty days from the date of the written notice.

(3) The Regulatory Institution shall not modify or include additional conditions to the commercial licence conditions of any type of commercial licence if:

(a) such modification, suspension, revocation or inclusion would adversely interfere with the performance of contractual obligations assumed by the licensee with customers on the basis of such commercial licence; or

(b) result in any licensee being unduly disadvantaged in competing with another licensee or licensees of the same type or with suppliers of competing fuels, in the case of a commercial licence to supply gas to wholesale customers.

(4) The procedure to be followed in modifying or adding any commercial licence conditions shall be as contained in the applicable regulations.

(5) A licensee may appeal against a proposed commercial licence modification subject to the provisions of this Part.

### **Contravention and enforcement of commercial licence conditions**

251. (1) Where in the opinion of a Regulatory Institution a commercial licensee has contravened or is about to contravene the conditions of a commercial licence, the Regulatory Institution may publish a notice in such manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention of the said commercial licence:

- (a) specifying the actual or potential contravention;
- (b) directing the licensee to do, or not to do, such things as it may specify;
- (c) specifying the remedy and the timescale for compliance; and
- (d) notifying the licensee of its intention to issue an enforcement order.

(2) The licensee and any other interested party shall be entitled to make representations against or in support of the enforcement notice by a date specified in the notice.

(3) If a licensee fails to comply with a notice served pursuant to subsection (1) of this section, the responsible Regulatory Institution may issue an enforcement order. Failure to comply with an enforcement order shall constitute an offence.

(4) The Regulatory Institution shall not issue an enforcement order if:

- (a) the licensee is able to demonstrate to the satisfaction of the Regulatory Institution that it has not contravened or is about to contravene the condition of a commercial licence; or
- (b) the licensee has ceased to contravene a condition of a commercial licence.

(5) Where it is found that the licensee contravened a provision of the license the Regulatory Institution shall impose an appropriate penalty in accordance with applicable regulations.

(6) If the licensee fails to comply with an enforcement order the Regulatory Institution may institute legal proceedings against the licensee to ensure compliance.

### **Surrender of a commercial licence**

252. (1) The licensee may, in accordance with applicable regulations and upon application to the responsible Regulatory Institution, surrender the commercial licence if:

- (a) the licensed activity is no longer required; or
- (b) in the opinion of the licensee the licensed activity is no longer economic.

(2) Where the licensee has commenced activities and has ongoing operations, it shall, unless a shorter period is stipulated in the commercial licence, give the responsible Regulatory Institution

at least twelve months notice in writing of its intention to surrender its commercial licence.

### **Revocation or suspension of a commercial licence**

253. The Regulatory Institution may after giving (six) months notice of its intention, suspend or revoke a commercial licence if the licensee has contravened or continues to contravene a condition of the commercial licence, a regulation or a provision of this Act and the Regulatory Institution has given six months notice of its intention to suspend or revoke the said commercial licence.

### **Grounds for the revocation of a commercial licence**

254. A commercial licence may be revoked:

- (a) if the licensee becomes insolvent or bankrupt; or
- (b) if a licensee fails to commence activities within the period of time prescribed in the commercial licence.

### **Mandatory registration with the Regulatory Institution**

255. Any company which has been issued a commercial licence shall register such licence in the register pursuant to section 258 of this Act with the responsible Regulatory Institution and provide such information concerning the activities of the undertaking as may be prescribed by applicable regulations.

### **Register of licenses**

256. (1) The Agency and Authority shall each establish, maintain and make publicly available a register of all commercial licences issued by it and of all renewals, modifications, assignments, suspensions, surrenders and revocations of such commercial licences.

(2) A registration established pursuant to subsection (1) of this section, shall be in a form as may be prescribed by applicable regulations.

(3) The effective date of a commercial licence shall be the date such licence is registered.

### **Preparation of licenses and duplicates**

257. (1) The issuance, modification and renewal of commercial licences by a Regulatory Institution under this Part IV-C shall be prepared in duplicate, one copy being delivered by the Regulatory Institution to the commercial licensee and the other retained by the Regulatory Institution.

(2) A Regulatory Institution shall not issue a commercial licence until the prescribed fees have been paid.

### **Register of memorials**

258. (1) The Agency and Authority shall each maintain the register in the form of an

appropriate electronic data base with the memorials of all commercial licences issued by it are kept.

(2) The memorial of any commercial licence shall contain entries of issuance, renewals, assignments, surrenders, revocations, forfeitures, changes of address, changes of name or any other matter affecting the status of or any interest in any commercial licence, together with the dates of such entries.

### **Effect of registration**

259. The registration of a commercial licence under this Part shall be conclusive evidence:

(a) that the rights described therein are vested in the person named as the licensee within the said commercial licence; and

(b) of the conditions and other provisions to which the licensee is subject.

### **Public access to the registry**

260. (1) The registers established by the Agency and the Authority under section 258 of this Act shall be readily accessible to the public during the hours and upon the days designated by the Regulatory Institution.

(2) Upon the payment of the prescribed fee, a member of the public shall be entitled to obtain a certified true copy of any document or record contained in the register referred to in section 258 of this Act.

### **Disclosure of confidential or other information**

261. (1) Where:

(a) any member of the Board or employee of a Regulatory Institution in the course of his or her duties, acquires information relating to the financial affairs of any person, or to any commercial secret; or

(b) any other person who indirectly acquires such or other information required to be kept confidential under the provisions of this Act from any member of the Board or employee of the Regulatory Institution;

he or she shall not make use of such information, or disclose it to any other person except under the conditions stated in subsection (2) of this section.

(2) The provisions of subsection (1) of this section shall not prohibit a person from disclosing information referred to in that subsection except:

(a) for the purpose of legal proceedings under this Act or any other law; or

(b) to another or employee of the same or another Regulatory Institution

(3) No member or employee of a Regulatory Institution shall, for personal gain, make use of any information acquired by him in the course of his duties for a period of five years after the date on

which he ceased to be a member or employee.

(4) Any person who contravenes this section shall be guilty of an offence and liable on conviction to:

(a) the forfeiture of any proceeds accruing to him on account of the contravention; and

(b) to a fine not exceeding US \$ 40,000, which fine shall be adjusted yearly by the Adjustment Factor of Section 331 of this Act, or to imprisonment for a period not exceeding two years or to both fine and imprisonment.

## **Part V – MIDSTREAM OPERATIONS, DOWNSTREAM PRODUCTS AND SPECIAL PROVISIONS WITH RESPECT TO NATURAL GAS**

### **A - Operations**

#### **Deregulation**

262. To ensure a market related pricing and adequate supply of petroleum products to the domestic market, the pricing of petroleum products in the downstream product sector is hereby deregulated, with a view to removing economic distortions and creating fair market values for petroleum products in the Nigerian economy.

#### **Refining**

263. Only qualified refining companies can be issued a commercial licence to carry out refining operations.

#### **Duties of refining companies**

264. Every holder of a commercial licence to carry out refining operations shall:

- a) supply to the downstream domestic market refined petroleum products at fair market value;
- b) undertake whatever investments that are required to upgrade its refinery and to increase its refining capacity in order to fulfil its obligations to the Agency under this section;
- c) from the inception of its commercial licence, have open access to logistics facilities such as harbours, petroleum bulk storage and transportation facilities and pumping installations in accordance with the terms of this part, and at tariffs approved by the Regulatory Institution; and
- d) own any and all storage facilities integral to the refinery.

#### **Reorganization of midstream and downstream NOC assets**

265. (1) The Pipeline and Products Marketing Company (“PPMC”) shall be unbundled in order to permit the creation of a limited liability company dealing with product pipeline transportation and bulk terminals and depots, to be known as the National Transport Logistics Company (“NTLC”), wholly owned by the Nigerian state.

(2) The Nigerian Gas Company (“NGC”) shall be unbundled in order to permit the creation of a limited liability company dealing with midstream gas pipeline transportation, known as National Gas Transportation Company (“NGTC”), majority owned by the Nigerian state.

(3) The allocation of existing assets and liabilities of PPMC and NGC shall be determined by the National Oil Company.

(4) The Agency shall issue to the companies under subsections (1) and (2) of this section such technical and commercial licences as required under this Act.

#### **Transfer of ownership**

266. (1) On the effective date, or no later than one month after the incorporation of both the National Oil Company and the NTLC, the ownership of the product pipelines and applicable depot systems operated by the PPMC shall be transferred to the NTLC, except for such depots required for marketing by the National Oil Company, which will be retained by the National Oil Company.

(2) The city-gate terminals and gas distribution systems shall be retained by the National Oil Company.

#### **Limits on National Transport Logistics Company**

267. The National Transport Logistics Company shall not engage, directly or indirectly, in any other operational activity in the downstream petroleum sector, with the exception of bulk transportation.

#### **Open access**

268. (1) (a) Companies with commercial licences for petroleum product marketing or for refining shall have access to the regulated petroleum product pipelines system and regulated jetties and loading facilities and storage depots;

(b) holders of commercial licences to supply gas to wholesale customers shall have access to gas pipelines, crude oil pipelines, condensate pipelines, gas pipeline networks, gas processing plants, gas conditioning plants and natural gas liquids extraction plants pursuant to the applicable regulations made pursuant to section 241 and section 244 of this Act; and

(c) companies with commercial licences for crude oil and condensate trading shall have access to crude oil pipelines and regulated terminals, jetties and loading facilities and storage depots for crude oil and condensates pursuant to the applicable regulations pursuant to section 241 of this Act.

(2) The access conditions pursuant to subsection (1) of this section shall be:

(a) in the manner prescribed by this Act and other regulations, guidelines or directives from the relevant Regulatory Institution; and

(b) on such commercially viable terms as may be determined by the relevant Regulatory Institution from time to time.

#### **Contract for pipeline capacity**

269. Companies which are provided access pursuant to section 268 of this Act may contract for capacity with the respective owners of the pipelines, pipeline networks, regulated jetties and loading facilities and storage depots:

(a) in the manner prescribed by this Act and other regulations, guidelines and directives from the relevant Regulatory Institution; and

(b) on commercially viable terms as may be determined by the relevant Regulatory Institution from time to time.

### **Non-discrimination**

270. The NTLC shall not discriminate between customers or classes of customers regarding access, tariffs, prices, conditions or services, except on grounds defined by the Authority.

### **Rights to uncommitted capacity in independent facilities**

271. (1) Companies with commercial licences for petroleum product marketing shall have rights of access to uncommitted capacity in:

- (a) independent petroleum product pipelines that are deemed to be strategic to the national interest; or
- (b) independent petroleum product storage facilities that are deemed to be strategic to the national interest.

(2) The rights to uncommitted capacity in subsection (1) of this section shall be:

- (a) in the manner prescribed by this Act and other regulations, guidelines and directives from the Authority; and
- (b) on commercially viable terms as may be determined by the Authority from time to time.

### **Interconnections**

272. The Regulatory Institutions shall require commercial licensees of midstream transportation pipelines and of downstream product pipelines to allow interconnections with the facilities of other licensees, provided that:

- (a) the interconnection is technically feasible, and
- (b) the licensee requesting the interconnection bears the costs of creating the interconnection.

### **Indemnification**

273. Any contract with the NTLC pursuant to section 269 of this Act shall provide for indemnification of losses.

### **Independent pipelines and depots**

274. (1) Subject to section 271 of this Act, nothing in this Act shall preclude any company with a commercial licence for petroleum product marketing or a bulk consumer of petroleum products from constructing and operating independent petroleum product pipelines and independent depots for its usage.

(2) Subject to section 271 of this Act, the pipelines and depots referred to in subsection (1) of this section shall not be subject to the commercial regulation of the Authority.

(3) Notwithstanding the provisions of subsection (2) of this section, where operators of independent petroleum product pipelines and independent depots enter into open access agreements with third parties, such pipelines and depots shall be subject to the commercial regulation and supervision of the Authority.

(4) Pipelines and depots shall be considered independent where they have not been declared strategic to the national interest pursuant to section 271 of this Act and are for the exclusive use of the company.

### **Tariff methodology**

275. (1) The responsible Regulatory Institution shall prescribe tariffs for:

(a) transportation by pipelines for natural gas, crude oil, condensates and petroleum products;

(b) gas transportation networks and gas distribution networks; and

(c) where such facilities are determined by the responsible Regulatory Institution to be open access facilities pursuant to subsection (1) of section 268 and other provisions of this Act:

(i) bulk storage of crude oil and petroleum products in depots,

(ii) use of terminals, jetties and loading facilities, and

(iii) processing in gas processing plants, gas conditioning plants and natural gas liquids extraction plants

(2) Tariffs for activities referred to in subsection (1) of this section shall be set according to one or more tariff methodologies adopted by the Regulatory Institution for regulating prices and such tariff methodologies shall:

(a) allow an operator that operates efficiently to recover the full cost of its business activities including a reasonable return on the capital invested in such business;

(b) provide incentives for continued improvement of the technical and economic efficiency of the business;

(c) provide incentives for the continued improvement of quality of services;

(d) avoid undue discrimination among categories of consumers; and

(e) gradually reduce cross-subsidies among different categories of consumers.

(3) In establishing tariff methodologies, the Regulatory Institution shall take into account the existence of any subsidy given to the operators from which they directly benefit, any favourable financing terms, and any other matter that impacts directly or indirectly on tariff methodologies.

(4) Prior to approving a tariff methodology the Regulatory Institution shall give notice in the official Gazette and in at least two newspapers of nationwide circulation of the proposed establishment of a tariff methodology and such notice shall

(a) indicate a period within which any aggrieved person may raise objections on the proposed methodology; and

(b) the date of a public hearing the Regulatory Institution shall conduct for discussion of that methodology.

- (5) Prior to the establishment of the tariff methodology, the Regulatory Institution shall:
- (a) consider any representations made by applicants, operators, consumers, prospective customers, consumers' associations, associations of prospective customers and such other persons reasonably interested; and
  - (b) obtain evidence, information or advice from any person possessing relevant expert knowledge.
- (6) The Regulatory Institution shall fix a date upon which the tariff methodology shall come into effect and it shall cause the notice of that day to be given in the official Gazette and published in at least one national newspaper.
- (7) If it appears to the Regulatory Institution that a tariff methodology should be changed, it shall conduct a public hearing on the proposal to change the methodology and give notice of it in accordance with the terms of subsection (5) of this section, indicating the period within which any persons may make representations to the Regulatory Institution in connection with the proposal.
- (8) The Regulatory Institution may confirm the proposed changes to tariff methodology after taking into account any objections or representations received in response to notices issued under subsection (5) of this section and shall comply with the provisions of subsection (7) of this section.
- (9) Every person upon whom any duty has been imposed in connection with setting tariffs shall be so bound by the operative tariff methodology adopted through the method prescribed in this section.
- (10) Every midstream and downstream operator shall display at its office a current copy of the tariff methodology applicable to such operator.
- (11) No midstream and downstream operator shall pass the costs of any fines or penalties incurred under this Act or any other law on to the consumers as an operational cost.
- (12) Upon the commencement of this Act the following provisions shall apply to pipelines until such provisions have been reviewed and amended by the Agency:
- (a) for existing pipelines that are subject to international agreements of which Nigeria is a party, the tariffs shall apply as per such agreements;
  - (b) for existing pipelines for which a tariff has been approved by the Government of Nigeria such tariff shall continue for the period such tariff was approved;
  - (c) for existing pipelines for which a tariff has not been approved and for new pipelines or pipeline expansions, a level tariff shall be determined based on the initial life of the pipeline or pipeline expansion of 20 years and the real project rate of return applicable to the yearly rate base shall be 13%;
  - (d) With respect to new pipelines, the initial life shall be determined from the start up of the pipeline;

(e) With respect to pipelines existing at the commencement of this Act for which no tariff was approved, the initial life shall be reduced by the number of months such pipeline has been operational prior to the commencement of this Act and the rate base upon the commencement of this Act to which the real project rate of return shall be applied shall be reduced assuming a straight line depreciation. Where such reduced initial life is zero or less, the Agency shall determine the tariff based on the provisions of this Section 275; and

(f) The capital costs of pipelines existing at the commencement of the Act for which no tariff was approved shall be reduced by the tax value of any deductions claimed with respect to the capital and other costs of such pipelines for the purposes of the Petroleum Profits Tax Act.

(13) Upon the commencement of this Act the following provisions shall apply to gas processing plants, gas conditioning plants and natural gas liquids extraction plants subject to new tariffs as may be prescribed by the Agency:

(a) for plants with a name plate capacity of less than 50 million cubic feet per day, the initial life of the plant shall be deemed to be 10 years and the real project rate of return applicable to the yearly basis for rate determination shall be 15%;

(b) for plants with a name plate capacity of more than 50 million cubic feet and less than 500 million cubic feet per day, the initial life of the plant shall be deemed to be 15 years and the real project rate of return applicable to the yearly basis for rate determination shall be 14%;

(c) for plants with a name plate capacity of more than 500 million cubic feet per day, the initial life of the plant shall be deemed to be 20 years and the real project rate of return applicable to the yearly basis for rate determination shall be 13%;

(d) with respect to new plants, the initial life shall be determined from the start up of the plant;

(e) with respect to plants existing at the commencement of this Act, the initial life shall be reduced by the number of months such plants have been operational prior to the commencement of this Act and the basis for rate determination upon the commencement of this Act to which the real project rate of return shall be applied shall be reduced assuming a straight line depreciation. Where such reduced initial life is zero or less, the Agency shall determine the tariff based on the provisions of this section; and

(f) the capital costs of plants existing at the commencement of the Act shall be reduced by the tax value of any deductions claimed with respect to the capital and other costs of such plants for the purposes of the PPTA.

### **National strategic stock**

276 The Authority shall:

(a) administer and ensure distribution and storage of the national strategic stocks of petroleum products in accordance with guidelines set by the Minister on the recommendation of the Authority;

(b) determine the amount to be charged as a levy for the financing of the national strategic stock, which shall be levied upon petroleum products at the exit of any refinery and on imports at the exit of the import terminals; and

(c) designate, in conjunction with the appropriate authorities and national security agencies, the strategic points across the country where the national strategic stocks shall be distributed and maintained.

### **Operating stock**

277. The Authority shall ensure that all companies with a commercial licence for petroleum product marketing maintain operating stocks in accordance with guidelines set by the Authority.

### **Price monitoring of petroleum products and natural gas**

278. (1) The Regulatory Institutions shall monitor:

(a) the prices of petroleum products and natural gas in the downstream and midstream sectors of the domestic market to ensure that such products and gas are sold at fair market prices; and

(b) any activity of any operator that, in the opinion of the Regulatory Institutions, may adversely affect the prices of petroleum products and natural gas in the downstream and midstream sectors.

(2) In monitoring the prices of petroleum products and natural gas, the Authority shall:

(a) inspect gas meters and the metering of pumps and other facilities at retail outlets to ensure they conform to the standards set by the Authority;

(b) inspect all facilities at retail outlets to ensure that the products and natural gas conform to such quality standards as set by the Inspectorate, the Agency and the Authority, to the extent that non-compliance is likely to affect the prices of petroleum products or natural gas; and

(c) inspect any facility used in the storage and transportation of petroleum products in whatsoever quantity, whether used legally or otherwise, to ensure that no petroleum product is transported or stored in a manner capable of creating scarcity or artificial hikes in the price of the products.

(3) Where the responsible Regulatory Institution is of the view that any commercial licensee is engaged in practices that lead to petroleum product(s) or natural gas prices being higher than the fair market value, the responsible Regulatory Institution may take such measures that are required to address such anti-competitive or other activities, including but not limited to:

(a) determining ceiling prices for certain periods of time in certain regions or all of Nigeria for all commercial licensees, or for commercial licensees involved in anti-competitive activities;

- (b) prohibiting certain transactions that have resulted in anti-competitive activities; and
- (c) prescribing a methodology to determine the fair market value of one or more petroleum products or natural gas in certain regions or all of Nigeria for a specified period of time and require such value to be used as the sales price of such petroleum products or natural gas to customers, for all commercial licensee or for commercial licensees involved in anti-competitive activities.

### **Powers**

279. (1) The Regulatory Institution shall have the power to investigate any operator or any other person to ascertain if an offence has been or is about to be committed under the provisions of this Part V.

(2) In the exercise of the functions contained in subsection (1) of this section the Regulatory Institution shall have the power to summon any witness to appear before it.

### **Power of inspection**

280. (1) Any person(s) authorised by the Regulatory Institution for the purposes of this Act may:

(a) enter any property upon which a licensed activity is taking place at any reasonable time and inspect any facility, equipment, machinery, book, account or other document found on that premises; and

(b) require any person to furnish the Regulatory Institution with such information, returns or other particulars as may be necessary for the proper administration of this Part V-A;

(2) The Regulatory Institution may require that the accuracy of any information, return or particulars furnished pursuant to subsection (1) of this section be verified by an affidavit.

(3) No information obtained by the Regulatory Institution under this section that is non-generic, confidential, personal, commercially sensitive or proprietary in nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relate to or by an order of the Federal High Court.

### **Offences**

281. (1) No person or company shall:

(a) obstruct or assault any officer of the Regulatory Institution or any person authorised by the Regulatory Institution in pursuance of the powers given to the Regulatory Institution under this Act;

(b) refuse any officer of the Regulatory Institution access to any premises, facilities or retail outlets, or refuse to submit to a search of any premises, facilities or retail outlets by any authorised officer or agent of the Authority;

(c) refuse to acknowledge the receipt of any summons by the Regulatory Institution issued and duly delivered to any person; or

(d) fail to comply with any lawful demand, notice, order or requirement of an officer or authorised person of the Regulatory Institution in the execution of his or her duties under this Act.

(2). No person or company shall:

(a) remove, destroy or damage any pipeline or other works or installations utilised for the purpose of supplying petroleum products;

(b) sell petroleum products above the fair market value;

(c) furnish a statement or incomplete information calculated to mislead or wilfully delay or obstruct the Regulatory Institution and its officers in the exercise of their duties;

(d) fail to cooperate with the Regulatory Institution in its investigation of any suspected crime or corrupt practice;

(e) discriminate among third parties in the allocation of capacity, access to open access facilities and payment of regulated prices and tariffs; or

(f) use or permit its pipelines, equipment, or other facilities to be used for or in relation to the commission of any criminal or civil offence.

### **Penalty**

282. (1) Any person who violates the provisions of Section 281(1) and 281(2) of this Act shall:

(a) be liable to payment of a fine as prescribed by the Regulatory Institution; and

(b) reimburse any affected midstream or downstream operator for injuries suffered as a result of the said violation of the provisions of this Part V-B, which reimbursement shall include, where applicable, the replacement of any petroleum products illegally taken or of any damaged equipment.

(2) Where such company or person is unable to pay the penalty or to reimburse the midstream or downstream operator as prescribed under subsection (1) of this section, he or she, or in the case of a company, every officer responsible for the management of the company, shall be liable to imprisonment for a period of not less than two years and not more than five years.

(3) Where an offence has been committed under the provisions of section 281(1) and 281(2) of this Act the affected company or person shall discontinue the supply of petroleum products until any damage, alteration, malfunction or loss has been rectified and all safety issues have been resolved.

### **Dispute settlement**

283. (1) The Agency shall be responsible for the resolution of disputes between operators or operators and wholesale customers in the midstream sector in respect of all matters to which this Act pertains and in accordance with the provisions of this Act.

(2) The Authority shall be responsible for the resolution of disputes between operators in the downstream sector or between consumers and operators in the downstream petroleum sector in respect of all matters to which this Act pertains and in accordance with the provisions of this Act.

## **B – Specific Provisions Applicable to Midstream and Downstream Gas and petroleum products**

### **Network code**

284 (1) In consultation with licensees and other stakeholders, the Regulatory Institution shall establish a network code governing the operation of the midstream gas transportation network or downstream gas distribution network.

(2) The network code for a midstream gas transportation network or downstream gas distribution network shall include but shall not be limited to:

- (a) a connection policy, standard terms for connection to the transportation network and distribution network, and a statement of the connection charging methodology;
- (b) the structure of charges and the applicable tariffs charged for using the transportation network and distribution networks;
- (c) registration arrangements;
- (d) metering, allocation and settlement arrangements; and
- (e) governance arrangements;

(3) The network code for a midstream gas transportation network shall furthermore include but shall not be limited to:

- (a) a mechanism by which users reserve capacity in the transportation network or distribution network, and, in the event that at any time there is a greater demand for access than there is available capacity, a mechanism for allocating capacity between users;
- (b) the nomination of :
  - (i) the seller of the wholesale gas being conveyed,
  - (ii) the purchaser of the wholesale gas being conveyed, or
  - (iii) a willing third party,

to take responsibility for matters that may arise with respect to gas in transit through the network, such matters to include but not be limited to the amount of gas injected into or withdrawn from the network, nominating volumes, payment for the use of the network and payment for overruns and shortfalls of gas;

(c) requirements for the provision of information to the transportation network operator and the distributor about the volume, timing and flow rate of injections into and withdrawals from the transportation network or distribution network, as the case may be; and

(d) where required, arrangements for balancing the wholesale gas being conveyed.

(4) The Regulatory Institution shall make copies of the network code available to interested parties upon payment of a prescribed fee.

### **Wholesale gas market**

285. (1) Following consultations with interested stakeholders, the Agency shall make recommendations to the Minister to issue regulations:

(a) defining the class or classes of customers that, from time to time, shall constitute wholesale customers under this Act and specifying the qualifying criteria for such classification; provided that

(b) licensees of gas distribution systems pursuant to Section 237 of this Act and of GTL plants pursuant to Section 241 of this Act, shall be wholesale customers.

(2) Regulations made under subsection (1) of this section may be amended as necessary to facilitate and encourage competition among suppliers, and any amendment of such regulations which results in a change in the class of customers shall not affect the rights and obligations of parties under gas supply contracts entered into prior to such amendment.

### **Wholesale customers**

286. Wholesale customers shall be entitled to secure gas from any commercial licensee entitled to supply gas to wholesale customers.

### **Third party access**

287. Where a transportation or distribution pipeline is isolated from the main transportation network or distribution, the Regulatory Institution shall develop separate terms of access for such isolated transportation or distribution pipeline.

### **Access to transportation and distribution**

288. (1) Third party access to the transportation network and distribution network shall be:

(a) on a non-discriminatory basis between system users with similar characteristics;

(b) in respect of any available capacity, provided that such capacity is not subject to a previous contractual commitment;

(c) in accordance with and governed by the terms and conditions of the network codes approved by the Regulatory Institution;

(d) on the condition that the applicant for access is or becomes a party to and undertakes to comply with the applicable network code; and

(e) subject to the principles in sections 290 and 291 of this Act.

(2) Connection agreements may be entered into between:

(a) a customer and a distributor;

(b) a transportation pipeline owner and a transportation network operator;

(c) a distributor and the transportation network operator, when a distribution network connects to the main transportation network; or

(d) a supplier and a transportation pipeline owner or transportation network operator.

### **Disputes in respect of third party access**

289. (1) Disputes in respect of third party access shall be resolved by a determination of the Regulatory Institution.

(2) Appeals against determinations made by the Regulatory Institution in connection with third party access may be referred to arbitration in accordance with the procedure specified in the Arbitration and Conciliation Act.

### **Gas pricing**

290. (1) Where gas prices are not determined by the Minister pursuant to subsection 304(5) of this Act and the Regulatory Institution determines:

(a) that a particular licensed activity is a monopoly service;

(b) that competition has not yet developed to such an extent as to protect the interests of customers; or

(c) that a particular licensee is a dominant provider;

then the Regulatory Institution shall have the power to regulate the gas prices charged or the revenues earned by licensees in respect of such activities, in a manner consistent with the duties of the Regulatory Institution under this Act and in accordance with the pricing principles set out in section 291 of this Act.

(2) The Regulatory Institution shall consult with licensees, industry participants and stakeholders before undertaking a gas pricing review or establishing a methodology for regulating prices and revenues earned by licensees providing monopoly or dominant services.

### **Gas pricing principles**

291. In the exercise of its powers to regulate prices charged to final consumers connected to a gas distribution network and the revenues earned by commercial licensees to distribute gas, the Regulatory Institution shall at all times be guided by the following principles:

- (a) gas prices shall be disaggregated into the component elements of the supply chain, including the costs of wholesale gas, transportation, distribution and supply;
- (b) the prices charged for each licensed activity shall reflect the costs incurred for the efficient provision of that activity;
- (c) prices charged shall permit a reasonable return for licensees on their investments; and
- (d) no price discrimination between customers with similar characteristics, such as similar size or a similar consumption profile.

### **Approval and publication of charging structures and tariff and pricing structures**

292 (1) Subject to price or revenue regulations issued pursuant to this Act, all licensees which are subject to regulated tariffs pursuant to section 275 of this Act shall:

- (a) propose tariffs and tariff methodologies for the approval of the Regulatory Institution, prior to the application of such charges;
- (b) impose tariffs in accordance with such approval; and
- (c) publish such tariffs in a manner that ensures that the customers of such licensees are able to identify and calculate the full extent of all charges for which they will become liable.

(2) Regulated customer gas prices shall reflect:

- (a) the costs incurred in the purchase of wholesale gas, provided such costs reflect fair market value;
- (b) the transportation tariff;
- (c) the distribution tariff, if the customer is connected to a distribution network;
- (d) efficient supply charges covering billing, metering and other services relating to gas supply; and
- (e) a reasonable return for the gas distributor.

### **Wholesale gas prices**

293. (1) (a) Any supplier and wholesale customer, which is not part of the strategic sector, shall be free to negotiate any contract on an arms length basis; and

(b) Where a wholesale customer is part of a strategic sector, a sale to such wholesale customer shall not be subject to subsection (5) of section 304 of this Act, where the volumes so contracted do not reduce the domestic gas supply obligation.

(2) The Agency shall have power to monitor wholesale gas supply transactions in order to ensure that the transfer price between the wholesale gas supplier and customer is undertaken on fair market value basis. Where the transactions are undertaken on the basis of a price that is less than the fair market value, the Agency shall indicate such matter in the report provided to the Inspectorate and the Service pursuant to section subsection (3) of section 293 of this Act.

(3) Within 14 days of the conclusion of a wholesale gas transaction, the supplier shall provide the Agency with information relating to the transaction including, where applicable, the cost incurred by the gas producer in the production and supply of the gas and all other information relevant to the price at which the gas is sold as well as the relevant gas purchase and sale agreement. The Agency shall report all such prices to the Inspectorate and the Service.

(4) The information provided to the Agency by the supplier in compliance with the provisions of subsection (3) of this section shall be classified by the Agency as confidential information and may not be disclosed to any persons or institutions, except the Service and the Inspectorate, for a period of five years commencing from the date of the submission of the information to the Agency.

(5) The supplier shall be guilty of an offence and liable to a fine not exceeding US \$ 40,000, which fine shall be adjusted yearly by the Adjustment Factor of Section 331 of this Act, if it:

(a) knowingly conceals information required under subsection (3) of this section; or

(b) provides information which is false or misleading in any material particular with respect to the information required in subsection (3) of this section.

### **Determinations**

294. (1) The Regulatory Institution shall investigate any case of suspected anti-competitive behaviour and make necessary determinations thereon as contemplated in sections 297 and 298 of this Act.

(2) The Regulatory Institution may impose penalties if the licensee is adjudged to have conducted its activities in a non – competitive manner.

(3) A determination made by the Regulatory Institution in respect of any matter within this Part shall be legally binding and subject to appeal before the Federal High Court.

### **Customer protection**

295. (1) In order to protect the interests of customers, the Regulatory Institution may make recommendations to the Minister to issue regulations requiring suppliers or distributors, as the case may be, and by such means as the regulations may specify:

- (a) to publish their terms of supply or distribution;
- (b) to establish or to facilitate the establishment of a forum at which customers are able to express their views and to raise concerns;
- (c) to formulate and adhere to such standards of performance as are, in its opinion, necessary to ensure the safety, reliability and quality of supply and distribution services to customers; and set penalties for failure to comply;
- (d) to prepare and submit reports to the Regulatory Institution indicating their performance levels and the status of their operations in respect of licensed activities, at such times as may be prescribed by regulations or in their respective technical and commercial licences, and at least on an annual basis; and
- (e) to develop and adhere to customer service codes, setting out the practices and procedures to be followed in the conduct of specified licensed activities including but not limited to practices and procedures for:
  - (i) the installation, testing, maintenance and reading of meters,
  - (ii) fault repairs and responses to customer emergencies,
  - (iii) the connection and disconnection of customers,
  - (iv) responding to customer complaints and complaint resolution,
  - (v) billing and invoicing,
  - (vi) the extension of payment and credit facilities,
  - (vii) the provision of information to customers and the use and protection of customer information, and
  - (viii) the establishment of special services for economically or socially disadvantaged customers.

(2) All customer service codes shall be approved by the Regulatory Institution prior to publication and may be reviewed at intervals as may be considered necessary by the Regulatory Institution.

(3) Customer codes shall be made available to all customers on request.

(4) Licensees shall notify customers of customer service codes that shall be adhered to by licensees by advertising the availability of the customer service codes in a form and manner prescribed in guidelines issued Regulatory Institution.

### **Provision of service to customers and public service**

296. (1) The Authority may, at its discretion and at such time or times as it deems appropriate, to designate distributors and suppliers of last resort to provide services to customers:

(a) in the event that an existing distributor for a local distribution zone or a supplier becomes insolvent, or is unable to provide licensed services, or has had its technical or commercial licence suspended or revoked;

(b) in the event that the distributor for a local distribution zone or supplier refuses or fails to fulfil the terms of its commercial licence to distribute or supply gas to customers; and

(c) in such other circumstances as the Authority may, deem appropriate;

provided that any reasonable additional costs associated with the obligation to act as distributor or supplier of last resort shall be recoverable through appropriate charging arrangements agreed with the Authority.

(2) The Regulatory Institution may, following consultations with licensees, customers, and other interested stakeholders, make recommendations to the Minister to issue regulations imposing public service obligations on licensees in relation to matters including, but not limited to:

(a) security of supply;

(b) economic development and the achievement of wider economic policy objectives;

(c) environmental protection; and

(d) health and safety.

### **Competition and market regulation**

297. No licensee or any other person having the ability to influence the terms and conditions on which licensed activities are performed and the price at which petroleum products are supplied shall:

(a) make it a condition for the provision or supply of a product or service that any person acquiring such a product or service shall be required to acquire or not to acquire any other product or service either from the licensee or from any other licensee, person or entity;

(b) enter into any contract, arrangement collaboration or understanding, whether legally enforceable or not, which provides for or permits the fixing of tariffs, prices or charges for the purpose of, or in such a manner as to, manipulate market prices or the price of any product or service;

- (c) engage in or conduct its activities, directly or indirectly, for purpose of market sharing;
- (d) permit, allow, influence, direct or indirect exclusion of, or the imposition of any embargoes or boycotts on, another licensee, operator or supplier of equipment or apparatus; or
- (e) engage in any other conduct that the Authority deems anti-competitive.

**Power of the Authority to determine abuse of market power**

298. (1) The Regulatory Institution shall have the responsibility to prevent and take action against anti-competitive behaviour with respect to midstream petroleum operations and downstream petroleum operations, and for this purpose may:

- (a) initiate an action in the Federal High Court for the determination of the question whether any conduct by a licensee or any other person operating or intending to operate in the downstream gas sector:
  - (i) has the purpose or effect of substantially reducing competition in any segment of the downstream gas sector; or
  - (ii) would likely result in anti-competitive or discriminatory conduct, including but not limited to an unlawful exercise of market power that may prevent customers from obtaining the benefits of a competitive downstream gas market; and
- (b) consider in its decisions and determinations matters including but not limited to
  - (i) license applications,
  - (ii) the grant of commercial licences, commercial licence terms and conditions,
  - (iii) the regulation of prices in respect of services in competitive markets; and
  - (iv) how best to prevent or mitigate abuses of market power.

(2) Where, in the opinion of the Authority there is, or may be an anti-competitive behaviour and in particular an abuse of market power, the Regulatory Institution may, in addition to such measures provided for in subsection (3) of section 278 of this Act:

- (a) issue cease and desist orders as may be required;
- (b) require and compel the disclosure of information from such licensees;
- (c) undertake inquiries and investigations; and
- (d) levy fines which shall be set out in regulations issued pursuant to this Act from time to time, provided that such fines shall not exceed 10% of the annual turnover of the affected person or company for the preceding year.

(3) Notwithstanding the provisions of this section, where there is an application by a licensee or other person with the ability to influence the price of gas in the downstream gas sector, and where the Regulatory Institution considers that it would be in the national interest or that it would be necessary to preserve or promote the benefits of a competitive downstream gas market, the Regulatory Institution:

(a) may give written approval for a specific activity upon such terms and conditions as the Regulatory Institution shall deem appropriate;

(b) in issuing the approval, may impose such requirements as it deems fit and require such undertakings as it deems appropriate from the applicant as a condition precedent to the issuance of the said approval;

(c) may withdraw an approval of a specific activity that it has granted subject to such terms and conditions as it may, in its absolute discretion, designate; and

(d) issue directions to prevent or mitigate any conduct that shall or is likely to lead to unlawful exercise of market power that will prevent customers from obtaining the benefits of a competitive downstream gas market.

(4) Nothing in subsections (1) (2) and (3) of this section shall be construed to preclude or restrict the right of the Regulatory Institution or any person to seek an injunction against any conduct prohibited in this Part V.

(5) Any person who wishes to proceed to court or to arbitration for the enforcement of any of the provisions of this Part V-B shall first notify the Regulatory Institution.

(6) The Regulatory Institution shall, until such time as a Federal agency having the power to pronounce upon, administer, monitor and enforce compliance with anti-competition laws is established and functional, have the exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance with the provisions of this Act relating to anti-competition and with any competition laws and regulations that govern or relate to the downstream gas sector whether or not they are of a general or specific nature.

(7) In the exercise of its powers under subsection (6) of this section, the Regulatory Institution may consider:

(a) the relevant economic market;

(b) global trends in the relevant economic market;

(c) the effect on the number of competitors in the market and their respective market shares;

(d) the effect on barriers to entry into the market;

- (e) the effect on the range of services in the market;
- (f) the effect of the conduct on the cost and profit structures in the market;
- (g) the ability of any independent licensee or operator to make price or tariff regulating decisions; and
- (h) any other matters which the Regulatory Institution deems relevant.

### **Competition and market monitoring**

299. (1) The Regulatory Institution shall have responsibility to monitor the state of the gas market so as:

- (a) to determine whether the downstream gas sector is ready for an increased level of competition in retail and supply services in order that it may make recommendations to the Minister to issue regulations which allow for the said increased level of competition in retail and supply services;
- (b) to determine whether there is a need for an organised market for wholesale gas in order that it may take the relevant steps pursuant to this Act to develop a wholesale market arrangement;
- (c) to assess whether the downstream gas sector is operating properly or whether the existing market arrangements may constitute barriers to entry into the market for new players;
- (d) to determine whether there is any anti-competitive activity being carried on, in which case the Regulatory Institution would be required to exercise its powers under this Act to prevent the continuance of such activity; and
- (e) to determine any pre-conditions and any transitional arrangements required for any services to be offered competitively.

(2) To enable the Regulatory Institution to discharge its responsibilities under subsection (1) of this section and in particular, to determine whether there is, or may be, an abuse of market power, the Regulatory Institution shall have power to:

- (a) require and compel the disclosure of information from licensees; and
- (b) undertake inquiries and investigations.

(3) If, in the opinion of the Regulatory Institution there has been an abuse or a threatened abuse of market power, the Regulatory Institution may serve a notice on such company or person specifying the abuse or threatened abuse, and of its intention to issue a cease and desist order.

(4) The Regulatory Institution shall publish a notice:

- (a) specifying the actual or threatened contravention;

(b) directing the company or person to whom the notice is issued to, or not to do, such things as it may specify;

(c) specifying the remedy and the timescale for compliance; and

(d) notifying the company or person to whom the notice is issued of its intention to issue a cease and desist order or to levy a fine not exceeding US \$ 300,000, which fine shall subject to the adjustment factor of section 331 of this Act provided that such fine shall not exceed 10% of the annual turnover of the company or person for the preceding year.

(5) The Regulatory Institution shall publish the notice in the form and manner specified in the prescribed regulations and shall invite the company or person to whom the notice is issued and any other interested parties to make representations against or in support of the notice by a specified date.

(6) If the company or person to whom the notice is issued fails to comply with a notice served pursuant to subsection (3) of this section, the Regulatory Institution may issue a cease and desist order.

(7) Failure to comply with an order issued under subsection (6) of this section shall be an offence punishable by a fine not exceeding US \$ 40,000, which fine shall subject to the adjustment factor of section 331 of this Act or the revocation of the relevant commercial licence where that company is a licensee.

(8) A cease and desist order may not be issued nor a fine imposed if:

(a) the company or person to whom the notice is issued is able to demonstrate to the satisfaction of the Regulatory Institution that it has not abused or is not threatening to abuse its market power; or

(b) the company or person to whom the notice is issued has ceased to abuse or has ceased from the threat to abuse its market power.

(9) Where a person has ceased to abuse or has ceased from the threat to abuse its market power, if it is found that the said threat or threat of abuse was deliberate, the Regulatory Institution may impose an appropriate penalty which shall be prescribed in the regulations issued pursuant to this Act.

### **Offences and penalties**

300. (1) No person shall:

(a) cause damage to any infrastructure, plant or equipment belonging to a downstream products or gas licensee, including but not limited to fittings, meters, apparatus or equipment;

(b) alter the operation of any meter, equipment or apparatus including but not limited to those used for measuring the quantity or quality of petroleum products or gas supplied;

(c) prevent any such meter, equipment or apparatus including but not limited to all such items used for measuring or registering the quantity of petroleum products or gas supplied from functioning accurately or properly such as or registering the quantity of petroleum products or gas supplied; or

(d) otherwise destroy, interfere with or remove the meters, equipment or apparatus of a licensee without the permission of the licensee.

(2) Any person convicted for intentionally committing any offence listed in subsection (1) of this section shall be liable to:

(a) pay a penalty not exceeding US \$ 100,000, which penalty shall be subject to the adjustment factor of section 331 of this Act; and

(b) reimburse the licensee for any petroleum products or gas illegally taken and for any damage to the licensee's equipment; provided that:

(i) where such person is unable to pay the penalty or to reimburse the licensee, he or she or, in the case of a company, every officer responsible for the management of the company shall be liable to imprisonment for a period of not less than two years and not more than five years unless, the officer proves to the strictest standard that he or she had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence, and

(ii) the Regulatory Institution may, as necessary, adjust the amount of the penalty stipulated in subsection (a) of this section by regulations issued pursuant to this Act, in order to reflect current rates of inflation.

(3) Any person convicted for negligently committing any offence listed in subsection (2) of this section shall be liable to:

(a) pay a penalty not exceeding US \$ 20,000, which penalty shall be subject to the adjustment factor of section 331 of this Act; and

(b) reimburse the licensee for any gas illegally taken and for any damage to the licensee's equipment, provided that:

(i) where such person is unable to pay the penalty or to reimburse the licensee, he or she or, in the case of a company, every officer responsible for the management of the company, shall be liable to imprisonment for a period of not less than six months and not more than two years unless, having regard to the nature of his or her functions in that capacity and to all circumstances, the officer proves that he or she had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence, and

- (ii) the Regulatory Institution may, from time to time adjust the amount of the penalty stipulated in subsection (a) of this section by regulations issued pursuant to this Act, in order to reflect current rates of inflation.

(4) Where an offence has been committed under subsection (1) of this section, the supplier may, discontinue the supply of gas until any damage, alteration, malfunction or loss has been rectified and all safety issues have been resolved.

#### **Prohibition on the wrongful use of equipment**

301. No licensee shall use or permit its pipeline, equipment or other facilities to be used in, for, or in relation to, the commission of any criminal or civil offence, and each licensee shall:

(a) upon a written request from the Regulatory Institution or any other lawful or duly empowered authority, assist the Authority or such lawful authority, in preventing the commission or attempted commission of any criminal offence under this Act or any other statute in force in the Federal Republic of Nigeria, including but not limited to those affecting the public revenue and the preservation of national security; and

(b) not be liable for any act or for any omission done in good faith, in respect of any act or omission arising from the performance of a duty or obligation imposed by the Regulatory Institution or other lawful authority.

#### **Penalty not prescribed**

302. (1) Where no specific penalty is prescribed in respect of any offence under this part, any person who contravenes any of the provisions of this part or any regulations issued in respect of this Part and is guilty of an offence shall be liable:

(a) as a first offender, to

(i) a fine not exceeding US \$ 20,000, which fine shall be subject to the adjustment factor of section 331 of this Act; or to such other amount as may be prescribed in regulations issued pursuant to this Part,

(ii) imprisonment for a period not exceeding two years, or

(iii) both fine and imprisonment; and

(b) for subsequent convictions, to:

(i) a fine not exceeding US \$ 100,000, which fine shall be subject to the adjustment factor of section 331 of this Act or such other amount as may be prescribed in regulations issued pursuant to this part,

(ii) imprisonment for a period not exceeding five years, or

(iii) both fine and imprisonment.

(2) The Regulatory Institution may, as necessary, adjust the amount of the penalty stipulated in subsection (1) of this section through prescribed regulations.

#### **Penalty for refusal to furnish return or supply information**

303. (1) Any person who:

(a) fails or refuses to furnish a return or to supply information to the Regulatory Institution or any other duly empowered lawful authority at the time and in the manner prescribed;

(b) furnishes a false or incomplete return;

(c) supplies false or incomplete information;

(d) wilfully delays or obstructs officers of Regulatory Institutions, an inspector or police officer in the exercise of the powers or duties conferred or imposed on the Regulatory Institution under this Act; or

(e) conceals, fails or refuses, without reasonable cause, to supply information required by the Authority or any duly empowered lawful authority at the time and in the manner prescribed or when required to do so;

shall be guilty of an offence and shall be liable to a fine not exceeding US \$ 100,000, which fine shall be subject to the adjustment factor of section 331 of this Act or to imprisonment for a period not exceeding one year or to both fine and imprisonment.

(2) The Regulatory Institution may, as necessary, adjust the amount of the penalty stipulated in this section by prescribed regulations, in order to reflect current rates of inflation.

## **C – Domestic Gas Supply Obligation**

### **Domestic gas market management**

304. (1) The Agency shall regulate the midstream gas sector, in accordance with a national master plan for gas (“national gas master plan”) and this Act.

(2) The national gas master plan pursuant to subsection (1) of this section shall be the plan updated by the Government from time to time for the sustainable development and utilization of the natural gas resources of Nigeria.

(3) The Agency shall at the beginning of each calendar year:

(a) announce the update of the gas demand requirement (“domestic gas demand requirement”) which shall be the aggregate of the quantity of gas required to meet the gas demand for the strategic sectors, as determined by the Minister each year for a specific period of time, not exceeding 20 years; and

(b) request the Inspectorate to allocate the domestic gas supply obligation to all lessees;

(4) The Agency shall arbitrate all issues of conflict between purchasers, suppliers and the domestic gas aggregator.

(5) Upon the commencement of this Act the maximum gas prices shall be based on the one year rolling average of the monthly Henry Hub gas price (“Henry Hub price”). Where the Henry Hub gas price is equal to or less than US \$ 3.00 per MMBtu, the gas price shall be a floor price of US

\$ 1.50 per MMBtu. Where the Henry Hub price is in excess of US \$ 3.00 per MMBtu, the gas prices shall be the floor price plus a percentage of the difference between the Henry Hub gas price and US \$ 3.00, as follows:

(a) for the power sector: 30%, provided that for the years 2011 and 2012 the maximum gas price shall be US \$ 1.50 and for the year 2013 the maximum gas price shall be US \$ 2.00 per MMBtu;

(b) for the gas conversion sector: 40%, and

(c) for the commercial sector: 50%

Notwithstanding the foregoing provisions in this section, the Minister may, on the recommendation of the Agency, determine maximum gas prices or gas pricing formulas for determination of the maximum gas price of gas supplied under the domestic gas supply obligation for each strategic sector in Nigeria for certain periods of time in the context of the approved national gas pricing framework. Such gas prices shall only apply to marketable gas and shall be applicable at each marketable gas delivery point.

(6) The maximum gas price delivered to the inlet flange of each wholesale customer shall be the price determined pursuant to the applicable paragraphs (a), (b) or (c) of subsection (5) of this section plus transportation costs from the marketable gas delivery point to the wholesale customer. Where such transportation is by a gas pipeline, the transportation costs shall be the tariff determined pursuant to section 275 of this Act. Where the transportation costs is based on compressed natural gas transportation, the transportation costs shall be freely negotiated by the wholesale customer with the company providing compressed natural gas transport services.

(7) The domestic gas demand requirement shall not include any gas demand related to section 293(1) and 310 of this Act.

(8) Each lessee which has been dedicated a volume to be supplied under the domestic gas supply obligation pursuant to subsection (3) of section 182 of this Act shall have the obligation to take all such measures as are required to supply the respective volumes of marketable gas to the inlet flange of the respective wholesale customers of the strategic sectors, including but not limited to:

(a) applying for a commercial licence to supply gas to wholesale customers pursuant to section 233 of this Act;

(b) responding positively to the respective invitations of commercial licensees of midstream gas transport pipelines or gas transportation networks, or both, to make commitments for pipeline transportation agreements based on the tariffs established pursuant to section 275 of this Act or to contract for existing available capacity;

(c) executing the respective long term firm pipeline transportation agreements;

(d) responding positively to the respective invitations of commercial licensees of gas processing plants to make commitments for gas processing agreements based on the tariffs established pursuant to section 275 of this Act or to contract for existing available capacity;

(e) executing the respective long term firm gas processing agreements;

(f) supplying the specific volumes of gas to a gas purchasers pursuant to paragraph (b) of subsection (1) of section 306 of this Act; and

(g) executing the master gas purchase and sale agreements pursuant to paragraph (c) of subsection (1) of section 306 of this Act.

(9) The obligations of a lessee under subsection (8) of this section, may be executed by any upstream gas producer which has a working interest or shareholding interest in the lease, pursuant to paragraph (b) of subsection (2) of section 233 of this Act, provided such upstream gas producer assumes jointly the full responsibility of the lessee and the lessee remains fully responsible for fulfilling the domestic gas supply obligations.

### **Domestic gas aggregator**

305. (1) (a). The Agency shall appoint an aggregator which may be an independent entity or a company limited by guarantee which objects shall be to provide services under this Part V-C (“domestic gas aggregator”);

(b) the domestic gas aggregator shall at all times act independently of both suppliers and purchasers in executing the functions hereunder pursuant to a commercial gas aggregator license granted by the Agency in accordance with section 241 of this Act; and

(c) the commercial licence shall be revoked where the licensee is contravening the provisions of this subsection or where the Agency determines that the domestic gas aggregator is an anti-competitive entity regardless of the nature of its activities.

(2) The domestic gas aggregator shall in consultation with suppliers and purchasers, pursuant to subsection (4) of section 233 of this Act:

(a) implement a gas management model, through which the demand and supply of gas for utilization within Nigeria shall be monitored;

(b) ensure transparency between gas suppliers and purchasers with respect to the volumes of gas being marketed under its supervision and control;

(c) act as intermediary, by matching requests for gas supplies from purchasers in the strategic sectors to gas suppliers; and

(d) determines monthly an aggregate price for gas (“aggregate gas price”) for the domestic gas supply obligation, which shall be based on the receipts in escrow account divided by the volume to which such receipts apply, based on the gas purchase and sales contracts, of the previous months on the basis of the aggregation rules determined by the domestic gas aggregator.

(3) The gas management model pursuant to paragraph (a) of subsection (2) of this section shall be a supply and demand model to analyze gas availability from the petroleum mining leases and to compare the volume with the demand of gas by the strategic sectors and other domestic projects, as determined by the Government.

(4) The domestic gas aggregator shall have the power to:

- (a) open and manage an escrow account with an escrow agent, approved by the Agency;
- (b) require purchasers of gas to make payment for gas supply into the escrow account, in accordance with payment schedules agreed by the suppliers, purchasers and the domestic gas aggregator;
- (c) make payment to suppliers in accordance with the aggregate gas price;
- (d) prepare and provide annually, a detailed non-confidential audit report of the escrow account to be published on the website of the domestic gas aggregator; and
- (e) undertake such other things as are necessary for or incidental to carrying out of the functions and duties under this Act.

### **Domestic gas demand requirement**

306. When required, the lessee of a petroleum mining lease shall, in addition to such obligations as may apply under Section 182 of this Act:

- (a) submit a gas production and supply plan to the Inspectorate and the Agency, consistent with its domestic gas supply obligation provided that a supply plan shall not include supplies from any PML containing solely non-associated dry gas based on such criteria as may be set by the Inspectorate;
- (b) supply a specific volume of gas to a purchaser, in accordance with a gas purchase order (“gas purchase order”), issued by the domestic gas aggregator; and
- (c) where the gas purchase order has been issued, the supplier, purchaser and the domestic gas aggregator shall promptly execute the master gas purchase and sales agreement attached to the gas purchase order based on the gas prices determined pursuant to subsection (5) of section 304 of this Act.

### **Penalties for non-compliance with the domestic gas supply obligation**

307. (1) Any supplier who does not comply with a gas purchase order, the volume of which is part of his domestic gas supply obligation as specified by the Agency, shall pay a penalty to the Agency equal to the aggregate sales price or where such price has not yet been determined US \$ 1.50 per MMBtu, for gas not supplied, reduced by any amount payable under the gas purchase and sales agreement pursuant to section paragraph (c) of subsection (1) of section 306 of this Act and the supplier shall not supply gas to any export project pursuant to subsection (5) of section 182 of this Act.

(2) The penalties pursuant to subsection (1) of this section may be reviewed and adjusted by the Agency, in a manner that such adjustment shall be applicable to all suppliers and shall be based on an order made by the Minister and shall be gazetted.

(3) Where the supplier continues to fail to comply with the domestic gas supply obligations for a period in excess of three months, the gas export permit of such supplier may be revoked.

### **Procedure for gas supply**

308. (1). The sale and supply of gas under the provisions of this Part V-C shall commence with an application by the purchaser to the domestic gas aggregator for a gas purchase order.

(2) Upon the receipt of the application, the domestic gas aggregator shall conduct due diligence on the purchaser, with a view to determine its ability to engage in wholesale purchase of gas.

(3) Upon a satisfactory due diligence the domestic gas aggregator shall issue a gas purchase order to the purchaser.

(4) The gas purchase order shall specify the gas supplier expected to supply the required gas, the quantity of the gas to be supplied to the purchaser, the price or price formula in respect of the gas to be supplied, the delivery schedule, revenue due to the gas supplier and other details as may be determined by the domestic gas aggregator.

(5) The issuance of a gas purchase order by the domestic gas aggregator shall be sufficient evidence that a quantity of gas has been allocated for supply to a purchaser in accordance with the domestic gas demand requirement.

(6) The domestic gas aggregator shall attach to the gas purchase order, a master gas sales and purchase agreement, which shall contain the operational and commercial issues relevant to the transaction.

#### **Gas exports**

309. (1) Any export of gas shall require a gas export permit issued by the Agency for a certain volume of natural gas for a specified period of time. Such permit can only be issued to licensee of a commercial licence to supply gas to wholesale customers.

(2) Any company intending to export gas, shall submit an application for a gas export license pursuant to such guidelines as the Agency may determine from time to time.

(3) Export permits may be refused by the Agency, where the Agency has ascertained that the export of gas from Nigeria is not in the national interest due to insufficiency of available proved gas reserves to supply to domestic market.

(4) Where the domestic gas market in Nigeria reach a level of maturity that is reflective of fully competitive conditions, the Agency shall decide that the domestic gas aggregator shall no longer issue new gas purchase orders. In this case the domestic gas aggregator shall continue to manage the existing gas purchase and sales agreements under its supervision and upon the termination of the last gas purchase and sales agreement, the domestic gas aggregator shall wind up and at such time this Part V-C shall then stand repealed.

#### **General gas market provisions**

310. (1) Nothing in this part V-C shall limit any purchaser or supplier to enter into any gas sales and purchase agreement pursuant to section 293 of this Act.

(2) There shall be no discrimination with respect to access to midstream gas pipelines for volumes under the supervision of the domestic gas aggregator and any volumes of gas to be transported based on agreements pursuant to subsection (1) of this section.

## **PART VI - INDIGENOUS OIL COMPANIES AND NIGERIAN CONTENT**

### **A - Indigenous oil companies**

#### **General terms**

311. (1) Participation by the Federal Government in accordance with the provisions of this Act or any law in force shall not be applicable to petroleum operations carried out by indigenous oil companies whose aggregate production from petroleum operations is not more than ten thousand barrels per day of crude oil or its natural gas equivalent.

(2). An indigenous oil company whose aggregate production of crude oil is not more than ten thousand barrels per day or its natural gas equivalent shall be allowed to produce up to the technical allowable output set for the PML, by the Inspectorate.

#### **Indigenous participation**

312. (1) The Minister in consultation with the Inspectorate, shall issue regulations prescribing clearly defined targets and programmes for continuously increasing the level of indigenous participation in the Nigerian petroleum industry and to generally give effect to the provisions of this Act which regulations shall include:

- (a) targets for indigenous oil and gas reserves; and
- (b) production personnel content and measurable parameters for determining the level of indigenous participation.

(2). With reference to subsection (1) of this section, the Minister shall not later than three months after the commencement of this Act and thereafter at intervals of two years, undertake a general review of the set targets, parameters and programmes for continuous increase in the level of indigenous participation in the Nigerian petroleum industry and set such new targets, parameters and programmes as shall be necessary to give full effect to the provisions of this Act.

(3). The programs and parameters for increasing indigenous participation shall not consist of any modifications to the fiscal terms provided for in Part VIII, and shall not conflict or interfere with any other provisions under this Act.

### **B - Nigerian Content and Local Social Responsibility**

#### **Nigerian content plan**

313 (1) A development plan pursuant to section 178 of this Act or a project approval certificate pursuant to sections 205 and 206 of this Act, shall not be approved without an

approved Nigerian content plan, where such plan relates to a proposed project involving an investment of US \$ 10 million or higher based on the assessment of the Inspectorate, Agency or Authority as the case may be.

(2) The Nigerian content plan pursuant to subsection (1) of this section shall contain commitments as defined in sections 315 through 319 of this Act with respect to:

(a) purchase of Nigerian goods and services;

(b) procurement guidelines;

(c) employment of Nigerian citizens;

(d) training and education;

(e) research and development; and

(f) regular reporting on and verification of the Nigerian content plan to the responsible Regulatory Institution and the Nigeria Content Development and Monitoring Board.

(3) The Nigerian content plan shall be submitted on the basis of guidelines established pursuant to applicable legislation and regulations.

(4) The proponent of a Nigerian content plan shall ensure that the provisions contained in this section shall also apply to any contractors or subcontractors of the proponent.

(5) References in this Part VI-B to Employment and Training Plan, Research and Development Plan, Legal Services Plan, Financial Services Plan, Labour Clause and Nigeria Content Development and Monitoring Board refer to such plans, clause and Board under the Nigerian Oil and Gas Industry Content Development Act, 2010.

### **Host community dividends**

314. (1) Any licensee, lessee or commercial licensee shall contribute dividends to local communities based on the following principles:

(a) Dividends shall be based the values determined in subsection (3) of this section;

(b) Dividends shall provide a fair rate of return on the impact values as determined in subsection (4) of this section;

(c) For onshore petroleum operations the dividends shall be paid to the impacted local community as follows:

(i) with respect to any well and facility, an equal share to all communities of which the centre is located within a radius of ten (10) kilometer from such well or facility,

(ii) with respect to any gathering lines or pipelines, an equal share to all communities of which the centre is located within a corridor as provided for under subsection (2) of this section,

(iii) with respect to a parcel of acreage of petroleum prospecting licences and petroleum mining leases, an equal share to all communities of which the centre is located within a radius of ten (10) kilometer from the midpoint of such parcel, and

(iv) any community for which environmental and social impact studies pursuant to Part VII of this Act, clearly and unambiguously identify serious and direct environmental impact(s);

(d) With respect to offshore petroleum operations on the continental shelf, the dividends shall be paid in equal amounts to all impacted communities located within the relevant coastal State which is closest to the petroleum operations, determined as follows:

- (i) with respect to any well and facility, the proximity of such wells and facilities to the salt water shoreline of the coastal State,
- (ii) with respect to any gathering lines or pipelines, the lines shall be divided in parts that are closest to the salt water shoreline of the various coastal States,
- (iii) with respect to parcels of petroleum prospecting licences or petroleum mining leases, the proximity of the midpoint of the parcel to the salt water shoreline of the coastal State, and
- (iv) any community for which environmental and social impact studies pursuant to Part VII of this Act, clearly and unambiguously identify serious and direct environmental impact(s);

(e) The area of local communities shall include any lakes or rivers effectively used by the community;

(f) The centre of the local community shall be the traditional centre as generally recognized in the community on the commencement of this Act and where no such point exists the centre shall be determined based on applicable regulations;

(g) A reference to a facility in this section shall mean a facility pursuant to paragraphs (h), (i), (j) and (k) of subsection (3) of this section;

(h) The radius of ten (10) kilometer pursuant to subparagraph (i) of paragraph (c) of subsection (1) of this section shall be determined:

- (i) in case of a well from the location of the well head
- (ii) in case of a facility from the midpoint of the facility as determined by applicable regulations;

(i) Local communities shall be communities existing at the commencement of this Act;

(j) The salt water shoreline shall be based on the high water mark;

(k) Any reference to offshore in this section shall refer to the continental shelf, which for the purposes of this section shall extend to the 200 meter water depth line;

(l) Commercial licensee in this section shall be a holder of a commercial licence for a midstream petroleum operation or for a petroleum product pipeline;

(m) In case of any dispute as to the location of the centre of a local community, the salt water shore line or the limits of the continental shelf, the Inspectorate shall resolve such dispute;

(n) In case of any dispute as to the location of acreage, wells, gathering lines or facilities used for upstream petroleum operations, the Inspectorate shall resolve such dispute;

(o) In case of any dispute as to the location of pipelines or facilities used for midstream petroleum operations, the Agency shall resolve such dispute;

(p) In case of any dispute related to petroleum product pipelines the Authority shall resolve such dispute; and

(q) “**Dividends**” under this section means compensation payments for impact of petroleum operations on the local communities and their members and are therefore not related to any ownership of shares.

(2) Dividend payments related to onshore gathering lines and pipelines pursuant to paragraphs (e), (f) and (g) of subsection (3) of this section shall be allocated equally to each community for which the local community centre is located within a corridor along the gathering lines and pipelines as follows:

(i) a 2 kilometer corridor on either side of the gathering lines and pipelines pursuant to paragraph (e) of subsection (3) of this section,

(ii) a 5 kilometer corridor on either side of the pipelines pursuant to paragraph (f) of subsection (3) of this section, and

(iii) a 10 kilometer corridor on either side of the pipelines pursuant to paragraph (g) of subsection (3) of this section.

(3) The dividends to the local community shall be based on the following values:

(a) US \$ 20 per hectare for a parcel included in a petroleum prospecting license, and prior to the conversion pursuant to section 191 of this Act included in an oil prospecting licence;

(b) US \$ 400 per hectare for a parcel included in a petroleum mining lease, and prior to the conversion pursuant to section 191 of this Act based on the parcels covering the reasonable surface extension of the oil or gas fields in production or development;

(c) US \$ 20,000 for each producing onshore well, including wells that are injecting, but excluding wells which have been suspended or are abandoned;

(d) US \$ 100,000 for each producing offshore well, including wells that are injecting, but excluding wells which have been suspended or are abandoned;

(e) US \$ 4 per meter of each flowing gathering line or flowing small diameter pipeline for petroleum or petroleum products up to and including a diameter of 15 cm (6 inch);

(f) US \$ 10 per meter of each flowing pipeline over 15 cm (6 inch) diameter up to and including a diameter of 30 cm (12 inch);

(g) US \$ 40 per meter for each flowing pipeline for petroleum and petroleum products over 30 centimeter (12 inch) diameter;

(h) US \$ 1 per square meter area occupied by any tank farm, loading facility, staging area, ware house or similar facilities;

(i) US \$ 10 per barrel equivalent total facility name plate capacity, based on 6000 cubic feet of gas per barrel of oil, for every:

- (i) operating field production facility, FPSO, or other upstream facilities that handle or process petroleum, and
    - (ii) operating refineries or other midstream facilities that handle crude oil or condensates or both,  
located onshore or on floating or fixed offshore platforms or subsea facilities, other than facilities pursuant to paragraph (j) and (k) of this subsection;
  - (j) US \$ 1 per Mcf name plate capacity for every operating gas conditioning plant, gas processing plant, natural liquids extraction plant, LNG plant, GTL plant or other midstream facilities that handle natural gas; and
  - (k) US \$ 10 per barrel based on the reasonable maximum daily loading capacity in barrels for operating onshore export terminals or offshore export terminals loading buoys.
- (4) The amounts pursuant to subsection (3) of this section shall be adjusted:
- (a) with the adjustment factor of section 331 of this Act; and
  - (b) occasionally pursuant to the applicable regulations with a view of ensuring that the impact values reasonably reflect the impacts on local communities and their members, taking into consideration:
    - (i) the replacement value of the assets,
    - (ii) typical levels of pollution caused by the assets,
    - (iii) typical levels interference caused by the assets or related to the acreage,
    - (iv) the strategic value of the assets to Nigerians in terms of establishing a secure supply of petroleum products for markets in Nigeria, of natural gas for power generation and for industrial use and of crude oil and condensates for refining operations.
- (5) (a) Where in any year an act of vandalism, sabotage or other civil unrest occurs that causes damage to wells or facilities allocated to a local community, such impacted community will forfeit the community dividends for such year; and
- (b) Where any gathering lines or pipelines are inoperative due to acts of vandalism, sabotage or civil unrest, any communities along the gathering line or pipeline shall forfeit their respective community dividends with respect to such gathering line or pipeline during any year in which such lines were inoperative for any amount of time due to such vandalism, sabotage or civil unrest.
- (6) (a) Payments of dividends can only be made to the bank account of the community cooperatives established for this purpose by the local communities pursuant to applicable regulations; and
- (b) Such regulations shall set out among other issues:
- (i) the membership of the community cooperatives, which shall include as a minimum all Nigerian citizens of 18 years and older residing in such communities subject to such residency requirements as may be provided for,
  - (ii) the election and responsibilities of the boards and appointment of the treasurer of the community cooperatives,
  - (iii) auditing and control procedures of dividends received and distributed by the community cooperatives, and

- (d) the possibility for community cooperatives to create jointly regional cooperatives to which a percentage of the dividends can be transferred for joint planning and implementation of community projects.
- (7) Payments of dividends to the community cooperatives shall be subject to the following provisions:
- (a) The first dividend payment to the community cooperatives for the year 2010 shall be paid on the first Monday following fifteen weeks after effective date and shall be based on the acreage, wells, facilities and pipelines existing on the last day of the month in which the effective date occurs;
  - (b) for the year 2011 and following calendar years:
    - (i) licensees, lessees and commercial licensees shall inform the treasurer of the community cooperatives on the amount of their dividends on the first Monday of February each year and shall pay the respective amounts on the first Monday of March each year;
    - (ii) the amount shall be calculated on the basis of acreage, wells, facilities and pipelines in existence on December 31 of the previous year;
  - (c) Where a local community has not yet created a community cooperative, or has not yet appointed the treasurer or established the bank account, the payment shall be made to a bank account of the Directorate established for the purpose of holding such payments in trust for such community cooperatives;
  - (d) Any dispute between the community cooperatives and the licensees, lessees or commercial licensees regarding the amount of dividends shall be resolved by:
    - (i) the Inspectorate with respect to acreage, gathering lines, wells and facilities used for upstream petroleum operations,
    - (ii) the Agency with respect to pipelines and facilities used for midstream petroleum operations, and
    - (iii) the Authority with respect to product pipelines;
  - (e) where parcels of acreage have been relinquished prior to December 31 of any year a licensee or lessee shall not be responsible for payment of dividends for such parcels, nor shall the Government have any responsibility for payments on relinquished acreage;
  - (f) The detailed calculations of all dividend payments shall be reported prior to the payment dates referred to in paragraphs (a) and (b) of this subsection to the Inspectorate, Agency, Authority and the Directorate and the Directorate shall publish such information on a website specifically created for this purpose;
  - (g) The Regulatory Institutions shall regularly and occasionally audit the dividend payments as follows:
    - (i) the Inspectorate with respect to acreage, gathering lines, wells and facilities used for upstream petroleum operations
    - (ii) the Agency with respect to pipelines and facilities used for midstream petroleum operations, and
    - (iii) the Authority with respect to product pipelines; and

(h) Failure to make dividend payments or making payments that are less than the required amounts, shall be a ground for revocation of the licence, lease or commercial licence.

(8) The manner in which distribution of dividends shall be used or distributed shall be decided by the boards of the community cooperatives or regional cooperatives, based on the following options:

(a) the dividends may be distributed equally to all members; or

(b) the dividends may be distributed in part equally to all members and for remainder it may be used for:

(i) investments in shares or financial securities,

(ii) creation of community corporations for purposes determined by the board, or

(ii) such other activities that benefit the members of the community cooperatives or regional cooperatives.

(9) (a) Any dividends received by the community shall not affect regular funding from Federal, State or other sources.

(b) Any current programs by companies with respect to scholarships, education, training, community development or similar social programs shall not be affected by the provisions of this Section.

(10) Any dividends paid by companies pursuant to this section shall be deductible by the companies for Companies Income Tax and Nigerian Hydrocarbon Tax as an expense and any dividends received by community cooperatives shall not constitute taxable income for the purpose of Companies Income Tax for such community cooperatives or regional cooperatives.

(11) The dividends to be paid related to facilities for midstream petroleum operations and petroleum product pipelines may be included in tariff calculations where applicable.

(12) The payments of dividends to a community cooperative or distribution of such dividends to any member of a community cooperative shall not preclude any community cooperative or member of a community cooperative to take any legal action in order to seek compensation for damage to properties, environment, health or any other damage caused as a result of the petroleum operations.

(13) The details of the provisions of this section shall be established in applicable regulations.

### **Nigerian goods and services and procurement**

315. (1) With respect to paragraph (a) of subsection (2) of section 313 of this Act, the Nigerian content plan shall contain with respect to the proposed project description of the classes of capital and operating costs and the percentage of Nigerian content pursuant to applicable legislation and regulations.

(2) The Nigerian content plan shall describe the measures the proponent has undertaken to maximize the purchase of Nigerian goods and services and the future measures that the proponent intends to apply in order to increase purchase of Nigerian goods and services, including the submissions of the Legal Services Plan and the Financial Services Plan.

(3) With respect to procurement the following shall apply:

(a) With the submission of the Nigerian content plan the proponent shall submit his procurement procedures with respect to the proposed project; and

(b) Such procurement procedures shall be designed in such a manner that the proponent complies with all provisions of applicable legislation and regulations;

### **Employment and personnel**

316 (1) The proponent shall submit with his Nigerian content plan an Employment and Training Plan.

(2) The proponent of an employment plan shall commit to cross-posting of Nigerian citizens to its foreign operations, where expatriates are used to fill positions in Nigeria.

(3). Projects in excess of US \$ 100 million shall include a Labour Clause.

(4). A licensee, lessee and commercial licensee shall at all times comply with the employment provisions of applicable legislation and regulations.

### **Training**

317. (1) The Employment and Training Plan pursuant to section 316 of this Act, shall include a provisions that the proponent at its own expense provide a reasonable number of personnel of the Institutions and the Service with on-the-job training , including on-the-job training in its main office or in other international locations and on the job training shall involve the trainees working with experienced expatriate professionals or managers of operator in order to gain hands-on knowledge and experience in the handling of actual situations as they occur in a particular speciality, as well as to gain a better understanding of management styles and the needs and constraints of such petroleum company.

### **Research and development**

318. The proponent shall prepare and submit as part of the Nigerian content plan a Research and Development Plan.

### **Reporting and monitoring of the Nigerian content plan**

319. Where the proponent is subject to a contract under section 172 of this Act, the proponent shall include in its annual work program and budget the required information regarding all aspects of the Nigerian content plan.

### **Implementation provisions**

320. (1) Compliance with the provisions of Nigerian content development obligations under this Act shall be a major criterion for the approval of projects and the threshold for the size of the project shall be determined by the Regulatory Institution based on the nature and characteristics of the projects.

(2) Where local content capacity or inability to import certain items would create a potential delay or reduction of petroleum production, the Minister may authorize the continued importation of required items for such time period as specified in such authorization.

### **Penalties**

321. (1) Any proponent, lessee, licensee, commercial licensee or their contractors and subcontractors that do not implement all or part of the approved Nigerian content plan or section 320 of this Act, shall be fined US \$ 100,000 per day adjusted with the adjustment factor pursuant to section 331 of this Act.

(2) Where the non-compliance (by a lessee pursuant to Part III of this Act or licensee pursuant to Part IV of this Act, or contractor or subcontractor of the lessee or licensee) with the Nigerian content plan continues beyond a period of six (6) months, the respective lease or license may be revoked pursuant to the provisions under this Act.

## **PART VI I- HEALTH, SAFETY AND ENVIRONMENT**

### **Responsibility over the environment**

322. (1) Without prejudice to the overall responsibility of the Federal Ministry of Environment, the Regulatory Institutions shall have responsibility over all aspects of health, safety and environmental matters in respect of the petroleum industry.

(2) The Regulatory Institutions shall at all times ensure that any regulation or directive in respect of the petroleum industry, made in pursuance of subsection (1) of this section, shall not conflict with any regulation or directive issued by the Federal Ministry of the Environment.

(3) For the avoidance of doubt the Regulatory Institutions shall, in consultation with the Ministry of Environment, make regulations and issue directives specifically relating to environmental aspects of the petroleum industry.

### **Compliance with health regulation**

323. Every company engaged in any activities with respect to petroleum operations, shall comply with all environmental, health and safety laws, regulations, guidelines or directives as may be issued by the Ministry of Environment, the Minister, or the Regulatory Institutions, as the case may be.

### **Conduct of operations**

324. Every company engaged in any activities requiring a licence, lease, commercial licence, technical licence or permit in petroleum operations shall conduct its operations in accordance with internationally accepted principles of sustainable development which includes the necessity to ensure that the constitutional rights of present and future generations to a healthy environment are protected.

### **Obligations of licensees, lessees and contractors**

325. Every company engaged in petroleum operations shall comply with the provisions of the Nigerian Labour Act, including but not limited to the requirement to:

- (a) uphold the freedom of association and effective recognition of the right of collective bargaining of its employees;
- (b) not utilise on its own behalf or encourage the utilisation of all forms of forced and compulsory labour by any of its contractors;
- (c) not employ or engage the services of any person below the age of eighteen years old;
- (d) ensure that decisions in respect of employment and occupation are not discriminatory against gender or ethnicity;
- (e) support a precautionary approach to environmental challenges; and
- (f) encourage the development and use of environmentally friendly technologies for petroleum operations.

### **Duty to restore**

326. (1) Any person engaged in activities requiring a license or lease in petroleum operations shall:

- (a) manage all environmental impacts in accordance with the licensee or lessee's environmental management plan pursuant to section 199 of this Act;
- (b) rehabilitate the environment affected by the petroleum operations, whenever environmental impacts occur as a result of licensees and lessees operations:
  - (i) to its natural or pre-existing state before the operations or activities as a result of which the environmental impact occurred, or
  - (ii) to a state that is in conformity with generally accepted principles of sustainable development; and
- (c) be responsible for any environmental damage, pollution or ecological degradation occurring within the license or lease area as the result of exploration and production activities in the case of upstream operations and as a result of any licensed activity in the case of downstream activities.

(2) Where there is a dispute as to the cause of an act that has resulted in harm to the environment, the affected person or persons may refer the matter to the respective Regulatory Institution for a determination and the determination of the Regulatory Institutions shall be final.

### **Development programmes**

327. (1) From the commencement of this Act, the Regulatory Institutions shall undertake an annual comprehensive review of the impact of development programmes and practices by petroleum companies in all sectors of the industry in order to identify potential areas of conflict or areas that may lead to possible unrest in the areas of operation.

(2) Every licensee and lessee engaged in petroleum operations in the upstream petroleum industry shall utilise good oil field practices in the course of its operations within the country.

### **Compensation**

328. (1) The holder of a lease or a license under Part III and technical licence under Part IV of this Act, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or any other rights to any person who owns or is in lawful occupation of the licensed or leased lands, in accordance with written guidelines as shall be issued by the Regulatory Institutions.

(2) The rates of compensation contained in the guidelines referred to in subsection (1) of this section shall be arrived at through a consultative process and the Regulatory Institutions shall update the said guidelines annually so as to reflect rates of inflation and any other salient factors.

### **Publications**

329. Every year, holder of a lease or license under Part III and commercial licence under Part IV of this Act, shall publish the criteria used for community development projects and other social investment initiatives within their respective areas of operation.

## **Part VIII – FISCAL PROVISIONS**

### **A – GENERAL MATTERS**

#### **Oversight function of the Service**

330. (1) All payments under this Part VIII and other fees and levies pursuant to this Act are subject to the oversight function of the Service.

(2) The Service shall be entitled to carry out such verifications and inspections as the Service deems necessary with respect to government revenue sources under Part VIII-C and Part VIII-E and other fees and levies pursuant to this Act in order to ensure the proper collection of revenues. The Inspectorate and National Oil Company shall provide such assistance as the Service may require during such verifications and inspections.

(3) The Service shall have the obligation to challenge any official sales prices for crude oil and condensates and values for natural gas, where such prices or values are determined in a manner that is less than required under Section 334.

(4) The Inspectorate and the National Oil Company shall provide such information and documents to the Service as may be required in the exercise of its oversight function.

**Adjustment factors**

331. (1) Certain amounts expressed in US\$ in this Act, where such adjustment is indicated, shall be adjusted on April 1 of each calendar year by the Inspectorate with an adjustment factor as follows:

$$\text{Adjustment Factor} = \frac{\text{CPI (y-1)}}{\text{CPI (2009)}}$$

In which:

“**CPI (y-1)**” means the average United States Consumer Price Index (Annual) for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, unadjusted for seasonal variation, as announced by the United States Department of Labor Bureau of Labor Statistics, for the calendar year prior to the April 1 date under consideration; and

“**CPI (2009)**” means the average United States Consumer Price Index (Annual) for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, unadjusted for seasonal variation, as announced by the United States Department of Labor Bureau of Labor Statistics, for the calendar year 2009.

(2) Where the statistical information for the CPI (y-1) is no longer available the Minister may by regulation replace this index with another published similar index used by the United States.

## B – COMPANIES INCOME TAX

### General requirement to pay Companies Income Tax

332. (1) The Companies Income Tax Act shall be amended by inserting a new section 39A as follows:

“39A. Companies Income Tax applicable to operations related to petroleum

(1) All companies, concessionaires, licensees, lessees, contractors and subcontractors involved in petroleum operations under the Petroleum Industry Act shall be subject to tax pursuant under this Companies Income Tax Act.

(2) Notwithstanding section 27 of the Companies Income Tax Act, all companies engaged in upstream petroleum operations, midstream petroleum operations and downstream petroleum operations shall determine the Companies Income Tax separately for:

(a) upstream petroleum operations under the Petroleum Industry Act (“Upstream Petroleum”), and

(b) midstream petroleum operations and downstream petroleum operations under the Petroleum Industry Act.

(3) In determining the Companies Income Tax, the Nigerian Hydrocarbon Tax under the Petroleum Industry Act shall not be deductible.

(4) All companies engaged in midstream domestic gas operations, downstream gas distribution and utilization operations and midstream crude oil operations under the Petroleum Industry Act shall be entitled to benefit from the incentives provided under Section 39 of the Companies Income Tax Act.

(5) All companies engaged in midstream export gas operations with respect to LNG under the Petroleum Industry Act, shall be entitled to benefit from the incentives under Section 39 of this Act provided they make firm guaranteed commitments for investments in new LNG facilities prior to December 31, 2011 and companies with plants, projects or expansions of LNG facilities after this date shall not benefit from the incentives under Section 39 of the Companies Income Tax Act.

(6) Section 39 (1) of the Companies Income Tax Act shall be amended by replacing the words “gas utilization (downstream)” with “operations pursuant to Section 39A(4) of the Companies Income Tax Act.”

(7) Section 39(3) of the Companies Income Tax Act shall be amended by deleting the definition of “gas utilization”.

(8) The Second Schedule of the Companies Income Tax Act shall be amended by inserting below the word “Mining” in Table I and II with respect to Initial and Annual Allowance the word “Upstream Petroleum Operations”, with an initial allowance of “Nil” and annual allowances of 20%. There shall be a retention of 1% in the last year until the asset is disposed.

(9) The Second Schedule of the Companies Income Tax Act shall be amended by inserting a paragraph 7(3) stating the following “Where a licensee or lessee has entered into a contract pursuant to section 172 of the Petroleum Industry Act, 2009, and such contract provides for the transfer of assets to such licensee or lessee by the contractor, such transfer shall be valued as equal to the value of cost oil, cost gas or cost condensates paid for such assets (“the deemed income”) and the company being licensee or lessee can claim the respective capital cost allowances. The contractor parties shall be entitled to deduct the expenditures for the creation of assets to be owned by a licensee of a petroleum prospecting license or lessee of a petroleum mining lease.”

(10) Section 105 of the Companies Income Tax Act shall be amended by adding the definition of Upstream Petroleum as follows:

“Upstream Petroleum” means upstream petroleum operations as defined in the Petroleum Industry Act.

(11) Section 20 shall be amended by re-numbering (j) into (k) and by inserting a new paragraph (j) as follows:

“(j) any rents and royalties payable on upstream petroleum operations”

(12) Any companies pursuant to paragraph (a) of subsection (2) of this section shall use Nigerian Hydrocarbon Tax accounting periods on an actual year basis for the Companies Income Tax and shall apply the procedures for determining and paying tax estimates under the Nigerian Hydrocarbon Tax to Companies Income Tax.

(13) Any companies pursuant to paragraph (a) of subsection 2 of this section shall pay estimates of the Companies Income Tax Act on a monthly basis in anticipation of the full tax due at the end of the accounting period.

## C – RENTS AND ROYALTIES

### **Rents for licenses and leases**

333. (1) Every Petroleum Exploration License (“PEL”) shall be subject to a rent of US \$ 10 per annum per square kilometer included in the PEL due and payable upon the grant of the PEL and any anniversary thereof.

(2) Every Petroleum Prospecting License (“PPL”) shall be subject to a rent of US \$ 300 per annum per square kilometer due and payable upon the grant of the PPL and any anniversary thereof. During any significant gas discovery retention period pursuant to subsection (10) of section 177 of this Act the rent shall be US \$ 10,000 per annum per square kilometer per annum and shall be paid on the declaration of a significant gas discovery and any anniversary thereof.

(3) Every Petroleum Mining License (“PML”) shall be subject to a rent of US \$ 10,000 per annum per square kilometer due and payable upon the grant of the PML and any anniversary thereof

(4) A PEL, PPL or PML shall not be granted without prior payment of the applicable rent imposed under this section for the first year.

(5) Failure to pay the rent upon any anniversary of the PEL, PPL or PML shall result in the application of an interest rate of LIBOR plus 2% to the outstanding payment in US \$ and where the payment of the applicable rent is not made within three months, termination of such license pursuant to paragraph (d) of subsection (1) of section 193 of this Act shall be initiated.

(6) The rents imposed under this section shall be adjusted pursuant to section 331 of this Act.

(7) Any rents imposed under this section shall be verified by the Inspectorate and be paid to the Federation Account.

### **All petroleum production subject to royalties**

334. (1) All production of petroleum, including production tests in Petroleum Prospecting Licences, shall be subject to royalties on a non-discriminatory basis with respect to all licensees and lessees.

(2) The production and value of the petroleum for the purpose of determining the royalties shall be determined at the measurement point(s) in the Petroleum Mining Lease ("PML") as defined in subsection (3) of this section and shall be determined monthly on the basis of the average daily production and value of petroleum as provided for in this Part VIII-C.

(3) The measurement point(s) referred to in subsection (2) of this section shall be determined by the Inspectorate pursuant to subsection (10) of this section and where there is production from production tests under a Petroleum Prospecting Licence, the Inspectorate shall determine measurement point for such production.

(4) The production shall be measured at standard temperatures and pressures as defined from time to time by regulation and production shall not include:

- (a) any volumes burned, flared or vented with the approval of the Inspectorate;
- (b) any volumes re-injected by the lessee into reservoirs for the purpose of improving or enhancing production of crude oil or for conservation of natural gas;
- (c) any volumes used in the upstream crude oil operations or upstream gas operations for the production of electricity or heat for exclusive use in the operations of the PML; and
- (d) any water or sediments.

(5) The value for the purpose of royalty calculation for bitumen, crude oil and condensates, or various grades thereof, shall be determined by the Inspectorate and based on the official selling price at the export terminals and shall be adjusted taking into consideration:

- (a) any quality differentials; and
- (b) any transportation costs that apply within Nigeria as determined by the Agency.

(6) The average official selling price applicable to any calendar month for bitumen, crude oil and condensates produced from any PML shall be determined by the Inspectorate on the basis of information from non-confidential independent publications making such adjustments for quality and transport costs as appropriate to prices of comparable bitumen, crude oils and condensates sold in the international market, as determined by the Inspectorate, for which appropriate information is available and with the objective to approximate as reasonably as possible the average fair market value of the crude oil and condensates for such month.

(7) The value for the purpose of royalty calculation for natural gas applicable to any calendar month shall be determined by the Inspectorate and shall be based on the netback value at the measurement point as follows:

- (a) based on the composition of the natural gas at the measurement point, based on a reasonable estimate of the content of marketable gas, ethane, propane, butanes, natural gas liquids and plant condensates as will be typically derived by processing of the natural gas;
- (b) for export markets, the value of the marketable gas at the marketable gas delivery point(s) shall be determined:

- (i) with respect to gas exported as LNG, as the international LNG market price, less the LNG shipping and marketing allowance and the gas liquefaction allowance and any applicable transportation tariffs between the inlet of the liquefaction plant and the marketable gas delivery point(s) and this procedure shall be subject to the provisions of paragraph (b) of subsection (8) of this section. The international LNG market price and the LNG shipping and marketing allowance shall be determined by regulation under this Act, and such regulation shall have as an objective a reasonable approximation of the average international fair market value of natural gas for such month,
  - (ii) with respect to gas exported by pipeline, as the gas export price pursuant to the respective international agreement to which Nigeria is a party, less any applicable transportation tariffs between the valuation point of the gas export price and the marketable gas delivery point;
- (c) for domestic markets, the value of the marketable gas at the marketable gas delivery points shall be determined:
- (i) for gas supplied under wholesale gas contracts pursuant to subsection (3) of section 293 of this Act for the contracted prices, provided such prices reflect fair market value under this Act, less any applicable transport costs between the point of sale and the marketable gas delivery point, where the point of sale is not the marketable gas delivery point. Where a lessee provides gas under more than one wholesale gas contract, the price shall be the weighted average price of such contracts,
  - (ii) for gas supplied under the domestic gas supply obligation, the aggregate gas price pursuant to paragraph (d) of subsection (2) of section 305 of this Act as adjusted by the applicable regulations, and
  - (iii) where the Agency determines that competitive markets exist in Nigeria, the price determinations pursuant to paragraphs (i) and (ii) of this paragraph shall be replaced by a reference price at the appropriate gas market location, determined by the Agency; and
- (d) The net back value of the natural gas at the measurement point shall be:
- (i) the value determined pursuant to subparagraph (i) of paragraph (b) of this subsection multiplied by the respective gas sales volumes, plus
  - (ii) the value determined pursuant to subparagraph (ii) of paragraph (b) of this subsection multiplied by the respective gas sales volumes, plus
  - (iii) the value determined pursuant to subparagraph (i) of paragraph (c) of this subsection multiplied by the respective sales gas volumes, plus
  - (iv) the value determined pursuant to subparagraph (ii) of paragraph (c) of this subsection multiplied by the respective sales gas volumes, plus
  - (v) the total values of the production of any ethane, propane, butane, pentanes, pentanes plus, natural gas liquids and plant condensates that can be allocated to the measurement point based on the composition identified in paragraph (a) of this section, less
  - (vi) any gas processing allowances and gas transportation costs, based on the tariffs determined pursuant to Section 275 of this Act, between the measurement point(s) and the marketable gas delivery point(s), that can be reasonably allocated to and attributed to the production and values referred to in subparagraphs (i) through (v) of this paragraph.

(8) The value of natural gas at the measurement point shall be determined taking into consideration the following:

(a) The value of the natural gas per MMBtu at the measurement point for purposes of royalty valuation for sections 337 and 338 of this Act shall be the total value obtained under subparagraph (vi) of paragraph (d) of subsection (7) of this section divided by the total gas heating value at the measurement point(s) in the respective lease area;

(b) The Agency shall adjust the values generated with respect to subparagraph (i) of paragraph (b) of subsection (7) of this section, pursuant to applicable regulations, for the marketable gas at the marketable gas delivery point, into an adjusted value based on an S-curve formula in such a manner that:

(i) the long term floor price shall be at least US \$ 1.50 per MMBtu, as adjusted pursuant to section 331 of this Act, and

(ii) under high international prices discounts shall be provided which reflect the risked value that the Government obtains as a result of the establishment of a floor price;

(c) Gas delivered at the measurement point for which royalty values shall be determined may be:

(i) raw gas and the values pursuant to subparagraph (vi) of paragraph (d) of subsection (7) of this section shall apply, or

(ii) marketable gas, in which case subparagraphs (v) and (vi) of paragraph (d) of subsection (7) of this section shall not apply;

(d) Gas processing allowances pursuant to sub-paragraph (vi) of paragraph (d) of subsection (7) of this section shall be applicable to any facilities which are conditioning or processing raw gas downstream of the measurement point, including but not limited to, plants removing sulphur, nitrogen or CO<sub>2</sub> from the gas, gas conditioning plants, natural gas liquids extraction plants and gas processing plants with the purpose of producing marketable gas, propane, butane, natural gas liquids and where applicable plant condensates. The allowance shall be based on the methodology established pursuant to section 275 of this Act as determined from time to time by the Agency pursuant to applicable regulations;

(e) The gas liquefaction allowance pursuant to sub-paragraph (i) of paragraph (b) of subsection (7) of this section shall be applicable to the gas liquefaction plant and the related LNG storage tanks and export terminal. The allowance shall be based on the same procedure as provided for the gas processing allowance in paragraph (e) of this subsection;

(f) The international LNG market price pursuant to subparagraph (i) of paragraph (b) of subsection (7) of this section in a particular month means the weighted average of the gas prices, for the previous month, for markets where Nigerian LNG is exported to as determined by regulations under this Act. The weighting shall be based on volumes of Nigerian LNG exported to such markets. The following international market prices shall be used:

(i) for North America, the Caribbean and Mexico: the Henry Hub spot price average for the previous month,

(ii) for Northern Europe: The UK National Balancing Point price average for the previous month,

(iii) for Southern Europe: An assessment of the gas prices based on crude oil or oil product related gas price formulas for the previous month,

(iv) for East Asia: An assessment of the gas prices based on the Japan Crude Cocktail related gas price formulas for the previous months or such other formulas as may be applicable, and

(v) for other areas: An assessment of the gas prices as is representative for such markets.

The above market price indicators may be changed by regulation where ample evidence exist that such price indicators are no longer relevant for such markets. Upon the commencement of this Act, the international LNG market price shall consist of 50% pursuant to subparagraph (i) of this paragraph and 50% pursuant to subparagraph (ii) of this paragraph;

(g) The LNG shipping and marketing allowance pursuant to subparagraph (i) of paragraph (b) of subsection (7) of this section shall reflect the following components with respect to costs and positive or negative differentials between the international LNG market price and the price of LNG FOB Nigeria:

(a) the positive or negative differential due to the geography of the LNG unloading location relative to the gas price in each of the markets,

(b) a reasonable buyers discount or premium based on competitive international gas market conditions,

(c) the re-gassification and terminaling costs, and

(d) the LNG shipping costs from Nigeria directly to the market.

Upon the commencement of this Act, this allowance shall be US \$ 1.60 per MMBtu.

(9) The detailed procedures for determining the production, official selling price the value of natural gas pursuant to this section shall be established in applicable regulations.

(10) (a) Bitumen, crude oil, condensates and natural gas production shall be measured at the point(s) where the Inspectorate determines that petroleum leaves the petroleum mining lease area prior to transportation. Where no measurement takes place at these point(s) the Inspectorate on its own initiative or at the request of the Service shall require the lessee to install the necessary measurement equipment at such point(s). In exceptional cases the Inspectorate, with the consent of the Service, may permit the measurement at another location, provided that production volumes and values pursuant to this section shall be calculated back to the point(s) that the Inspectorate determines to be the point(s) where the petroleum leaves the petroleum mining lease area; and

(b) Where on the commencement of this Act, petroleum is measured downstream from where the measurement point should be located pursuant to this Act and where installing measurement equipment to measure production at the measurement point would be too costly in the opinion of the Governing Board of the Inspectorate, based on a comprehensive report by the lessee, the current measurement practices may continue provided the adjustments are made as required in exceptional cases under this subsection, otherwise a program shall be submitted for the

installation of equipment at the measurement point within 5 years from the commencement of this Act.

### **Royalties in kind or cash**

335. (1) At the option of the Government, the Inspectorate shall inform the lessee whether the Government elects to take the royalty in kind or in cash, provided that with respect to any lessee which is not subject to a contract under Subsection (1) of Section 172 of this the Act with the National Oil Company, the royalties shall only be paid in cash.

(2) With respect to crude oil and condensates, the Inspectorate shall inform the lessee with a three months notice whether the Government takes the royalty in kind or in cash. Such option may be exercised at multiple times and where no such notice is provided, the lessee shall pay the royalty in cash.

(3) With respect to bitumen and natural gas the Inspectorate shall inform the lessee prior to the granting of the lease whether the Government takes the royalty in kind or in cash. Such option may be exercised once and where no such notice is provided, the lessee shall pay the royalty in cash.

(4) Where the royalty is paid in cash, the amount of royalty shall be based on the values established pursuant to Section 334 of this Act.

(5) Where royalty is paid in cash, it shall be paid in the month following the month during which the petroleum was measured at the measurement point or such other point pursuant to subsection (10) of section 334 of this Act. Where such royalty is not paid when due an interest of LIBOR plus 2% shall be applied to the outstanding payment, and where a royalty payment is not made within three months after the month in which the royalty is due, revocation of such lease pursuant to paragraph (d) of subsection (1) of section 193 of this Act shall be initiated.

(6) (a) Where the royalty is to be taken in kind by Government, the Inspectorate shall agree with the lessee on a lifting schedule that is consistent with a monthly payment of royalties in cash; and

(b) Where the royalty is to be taken in kind by Government under a contract with the National Oil Company, the National Oil Company shall market such royalty petroleum and the National Oil Company and the contractor shall agree on a lifting schedule that is consistent with a monthly payment of royalties in cash.

(7) Any royalties shall be determined by the Inspectorate and be paid to the designated account of the Federation Account.

### **Total royalty rates**

336. The total royalty rate for each PML shall be the royalty rate based on average monthly daily production pursuant to section 337 of this Act plus the royalty rate based on the average monthly value pursuant to section 338 of this Act.

### **Royalty rates based on daily production.**

337. (1) Subject to the provisions of subsection (6) of this section, the average monthly daily production shall be based on the total production for the month from each PML divided by the number of days in the month and shall be determined separately for:

(a) for the volume of crude oil plus the volume of condensates spiked into the crude oil prior to the measurement point or the point where crude oil is measured pursuant to subsection (10) of section 334 of this Act. In this case condensates shall be dealt with as crude oil for the purposes of this Act;

(b) for the volume of condensates where condensates are separately measured at the measurement point; and

(c) for the volume of natural gas.

(2) Subject to the provisions of subparagraph (ii) of paragraph (a) of subsection (2) of section 189 of this Act, the royalty rates for crude oil shall be based on the geographical area:

(a) for onshore areas, 5% of the production up to and including 2000 barrels per day, 12.5% of the production over 2000 barrels per day up to and including 5,000 barrels per day and 25% of the production over 5,000 barrels per day;

(b) for shallow water areas, 5% of the production up to and including 5,000 barrels per day, 12.5% of the production over 5,000 barrels per day up to and including 20,000 barrels per day and 25% of the production over 20,000 barrels per day; and

(c) for deep water areas, 5% of the production up to and including 50,000 barrels per day, 12.5% of the production over 50,000 barrels per day up to and including 100,000 barrels per day, and 25% of the production over 100,000 barrels per day.

(3) Subject to the provisions of subparagraph (ii) of paragraph (a) of subsection (2) of section 189 of this Act, the royalty rates for natural gas shall be based on the geographical area:

(a) for onshore areas, 5% of the production up to and including 100 million cubic feet per day, 12.5% of the production over 100 million cubic feet per day;

(b) for shallow water areas, 5% of the production up to and including 200 million cubic feet per day, 12.5% of the production over 200 million cubic feet per day; and

(c) for deep water areas, 5% of the production up to and including 500 million cubic feet per day, 12.5% of the production over 500 million cubic feet per day.

(4) Subject to the provisions of subparagraph (ii) of paragraph (a) of subsection (2) of section 189 of this Act, the royalty rates for condensates pursuant to paragraph (b) of subsection (1) of this section shall be based on the geographical area:

(a) for onshore areas, 5% of the production up to and including 2000 barrels per day, 12.5% of the production over 2000 barrels per day;

(b) for shallow water areas, 5% of the production up to and including 5,000 barrels per day, 12.5% of the production over 5,000 barrels per day; and

(c) for deep water areas, 5% of the production up to and including 50,000 barrels per day, 12.5% of the production over 50,000 barrels per day.

(5) where a PML produces crude oil, condensates or natural gas partly from onshore and partly from offshore, or partly from shallow water areas and partly from deep water areas, the weighted average royalty shall be calculated in the following manner:

(a) by determining the total production of the PML from both geographical areas; and

(b) by determining the production on either side of the geographical boundary based on the location of the well intersections with the producing reservoirs, as determined by the Inspectorate based on applicable regulations; and

(c) by determining two royalty rates:

(i) on the assumption that all petroleum is on one side of the boundary applying the respective sliding scale, and

(ii) on the assumption that all petroleum is on the other side of the boundary applying the respective sliding scale;

(d) the weighted average royalty rate will be based on the production determined under paragraph (b) of this subsection and the royalty rates determined under paragraph (c) of this subsection, in relation to the total production determined under (a) of this subsection.

(6) for bitumen deposits and frontier acreage the royalty rate based on daily production shall be 5% for bitumen, crude oil, condensates and natural gas irrespective of the level of average monthly daily production.

(7) (a) With respect to all oil mining leases that on the commencement of this Act were in production, or have been in production, and are not subject to contracts with the National Oil Company, the production and royalty levels under subsection (2) of this section with respect to crude oil and condensates that were measured as crude oil on the commencement of this Act shall be based on the sum of the production on a company basis and royalties shall be capped at 20% for onshore areas and at 18.5% for shallow water areas, and such royalty determination procedures shall continue after granting of the corresponding petroleum mining leases pursuant to section 191 of this Act.

(b) OML's commencing petroleum production subsequent to the commencement of this Act shall be subject to the royalties pursuant to subsections (1), (2), (3) and (4) of this section, based on sliding scales per field and such royalty determination procedures shall continue after granting of the corresponding petroleum mining leases for each field pursuant to section 191 of this Act.

(8) Any PML's granted to marginal field operators pursuant to subsection (6) of section 191 of this Act shall be subject to the royalties as defined in subsections (1), (2), (3) and (4) of this section.

(9) Where a field is covered by two or more PMLs, the royalty rates based on daily production pursuant to this section shall be determined based on the total production from such PMLs.

### **Royalty rates based on value.**

338. (1) The royalty rates based on value shall be identical for the various geographical regions, including frontier acreage and for bitumen deposits, and shall be based on the average value for the month from each PML for the petroleum production as determined pursuant to section 334 of this Act and shall be determined separately for:

- (a) crude oil plus condensates;
- (b) bitumen; and
- (c) natural gas.

(2) the royalty rates for bitumen and for crude oil plus condensates shall be based on value as follows:

- (a) 0% from US \$ 0 per barrel and up to and including US \$ 70 per barrel;
- (b) over US \$ 70 per barrel and up to and including US \$ 100 per barrel the royalty rate shall increase by 0.4% royalty percentage for every US \$ 1 increase in value over US \$ 70 per barrel;
- (c) over US \$ 100 and up to and including US \$ 140 per barrel the royalty rate shall be 12% plus 0.2% royalty percentage for every US \$ 1 increase in value over US \$ 100 per barrel;
- (d) over US \$ 140 and up to and including US \$ 190 per barrel the royalty rate shall be 20% plus 0.1% royalty percentage for every US \$ 1 increase in value over US \$ 140 per barrel; and
- (e) over US \$ 190 per barrel the rate shall be 25%.

(3) the royalty rates for natural gas shall be based on value as follows:

- (a) 0% from US \$ 0 per million Btu up to and including US \$ 2 per million Btu;
- (b) over US \$ 2 per million Btu and up to and including US \$ 7 per million Btu the royalty rate shall increase by 0.2% royalty percentage for every US \$ 0.10 per million Btu increase in value over US \$ 2 per million Btu;
- (c) over US \$ 7 per million Btu and up to and including US \$ 13 per million Btu the royalty rate shall be 10% plus 0.15% royalty percentage increase for every US \$ 0.10 per million Btu increase in value over US \$ 7 per million Btu;
- (d) over US \$ 13 per million Btu and up to and including US \$ 19 per million Btu the royalty rate shall be 19% plus 0.1% royalty percentage increase for every US \$ 0.10 per million Btu increase in value over US \$ 13 per million Btu; and
- (e) over US \$ 19 per million Btu the rate shall be 25%.

(4) The bitumen, crude oil and condensate price levels and the US \$ 1 in subsection (2) of this section and the gas price levels and the US \$ 0.10 in subsection (3) of this section shall be adjusted pursuant to section 331 of this Act.

## **D – NIGERIAN HYDROCARBON TAX**

### **Requirement to pay Nigerian Hydrocarbon Tax**

339. Companies engaged in upstream petroleum operations, with the exception of operations under a petroleum exploration licence, shall be subject to the Nigerian Hydrocarbon Tax (“NHT”) on a non-discriminatory and equal basis as provided for under Section 343, such companies shall include:

- (a) incorporated joint venture companies;
- (b) the National Oil Company;
- (c) holders of interests in petroleum prospecting licenses;
- (d) holders of interests in petroleum mining leases, including interests in overriding royalties, profit oil, profit gas and profit condensate shares and similar interests;
- (e) existing marginal field operators;
- (f) indigenous oil companies; and
- (g) Contractors pursuant to subsection (2) of section 172 of this Act of any one of the companies under paragraphs (a) through (f) of this section.

### **Powers and duties**

340. (1) The due administration of this Part VIII-D shall be under the care and management of the Service who may do all such acts as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Minister.

(2) Whenever the Service shall consider it necessary with respect to tax due, the Service may acquire, hold and dispose of any property taken as security for or in satisfaction of any tax or of any judgment debt due in respect of any tax, and shall account for any such property and the proceeds of sale thereof in a manner to be prescribed as aforesaid.

(3) The Service may sue and be sued in its official name and, subject to any express provision under any subsidiary legislation or otherwise, the Service may authorise any person to accept service of any document to be sent, served upon or delivered to the Service and to represent the Service in any proceedings.

(4) Subject to such conditions as the Service may specify, the Service may by notice in the Federal Gazette direct that any information, return or documents required to be supplied, forwarded or given to the Service may be supplied to such other person whether within or without Nigeria as the Service may direct.

(5) The Service may by notice in the Federal Gazette or in writing authorise any person within or without Nigeria to:

(a) perform or exercise, on behalf of the Service, any power or duty conferred upon the Service other than the powers or duties specified in this Act; and

(b) receive any notice or other document to be given, delivered or served upon the Service under or in consequence of this Act or any subsidiary legislation made thereunder.

(6) In the exercise of the powers and duties conferred upon the Service, the Service shall be subject to the authority, direction, and control of the Minister and any written direction, order or instruction given by the Minister after consultation with the Executive Chairman of the Service shall be carried out by the Service.

(7) The Minister shall not give any direction, order or instruction in respect of any particular company which would have the effect of requiring the Service to;

- (a) raise an additional assessment upon such company; or
- (b) increase or decrease any assessment made or to be made or any penalty imposed or to be imposed upon or any relief given or to be given; or
- (c) defer the collection of any tax, penalty or judgment debt due by such company; or
- (d) do anything which would have the effect of altering the normal course of any proceedings, whether civil or criminal, relating either to the recovery of any tax or penalty or to any offence relating to tax.

(8) Every claim, objection, appeal, representation or the like made by any person under any provision with respect to the Nigerian Hydrocarbon Tax or of any subsidiary legislation made thereunder shall be made in accordance with the provisions of this Part VIII-D and any subsidiary legislation to this Act.

(9) In any claim or matter or upon any objection or appeal under this Part VIII-D, any act, matter, or thing done by or with the authority of the Service, in pursuance of any provisions of this Part VIII-D shall not be subject to challenge on the ground that such act, matter, or thing was not or was not proved to be in accordance with any direction, order or instruction given by the Minister.

### **Signature and execution of powers and duties**

341. (1) Anything required to be done by the Service, in relation to the powers or duties specified in the Ninth Schedule of this Act, may be signified under the hand of the Executive Chairman of the Service, or of an officer of the Service who has been authorised by the Service to signify from time to time, anything done or to be done by the Service in respect of such powers or duties.

(2) Any authorisation given by the Service under or by virtue of this Part VIII-D shall be signified under the hand of the Executive Chairman of the Service unless such authority is notified in the Federal Gazette.

(3) Subject to subsection (1) of this section, any notice or other document to be given under this Act shall be valid if:

- (a) it is signed by the Executive Chairman of the Service or by any person authorised by the Executive Chairman; or
- (b) such notice or document is printed and the official name of the Service is duly printed or stamped thereon.

(4) Every notice, authorisation or other document purporting to be a notice, authorisation or other document duly given and signified, notified or bearing the official name of the Service, in accordance with the provisions of this section, shall be deemed to be so given and signified, notified or otherwise without further proof, until the contrary is shown.

### **Service and signature of notices**

342. (1) Where a notice is sent by registered post it shall be deemed to have been served on the next day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course of events that such registered letter is awaiting him or her at a post office, if such notice is addressed in accordance with the provisions of

subsection (3) of this section:

(2) Notice shall not be deemed to have been served under this subsection if the addressee proves that no notification, informing him or her of the fact that the registered letter was awaiting him at a post office, was left at the address given on such registered letter.

(3) A notice to be served in accordance with subsection (1) of this section shall be addressed:

(a) in the case of a company incorporated in Nigeria, to the registered office of the company; and

Cap C20 LFN, 2004 (b) in the case of a company incorporated outside Nigeria, either

(i) to the individual authorised to accept service of process under the Companies and Allied Matters Act, at the address filed with the Registrar-General, or

(ii) to the registered office of the company wherever it may be situated.

(4) Any notice to be given, sent or posted under this Part VIII-D may be served by being left at the appropriate office or address determined under subsection (3) of this section, unless such address is a registered post office box number.

### **Charge of tax**

343. (1) There shall be charged a Nigerian Hydrocarbon Tax, which shall be a percentage pursuant to subsection (1) of section 354 of this Act from its total profits from each and every source during each accounting period of any company engaged in upstream petroleum operations on the basis of all petroleum prospecting licenses and petroleum mining leases on a consolidated basis, subject to subsection (2) of section 354 of this Act, assessed and payable in accordance with the provisions of this Part VIII-D.

(2) With respect to contract areas pursuant to subsection (2) of this section, the Service shall have the option to request payment of the Nigerian Hydrocarbon Tax in cash or in kind, and such payment in cash or kind shall be subject to the same notice periods and procedures as provided for royalties in section 335 of this Act.

(3) A licensee or lessee, whether the National Oil Company or any other company, who enters into one or more contracts pursuant to subsection (1) of section 172 of this Act or has entered into such contracts prior to the effective date, shall create a separate company for the sole purpose of earning and administering petroleum revenues derived from such contracts and such company shall be separately taxable.

### **Ascertainment of profits**

344. (1) In relation to any accounting period, the income from upstream petroleum operations of that period of a company shall be taken to be the aggregate of:

(a) the value of all bitumen, crude oil and condensates shall be official selling price multiplied by the bitumen, crude oil and condensate production attributable to the company at the measurement point as adjusted pursuant to section 334 of this Act;

- (b) the value of all natural gas shall be the value of the natural gas multiplied by the natural gas production attributable to the company at the measurement point pursuant to section 334 of this Act;
- (c) any income pursuant to subsection (2) of section 395 of this Act; and
- (d) all income of the company from that accounting period incidental to and arising from one or more of its upstream petroleum operations.

(2) The adjusted profit of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 345 of this Act.

(3) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed under section 348 of this Act.

(4) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by sections 352 and 353 of this Act.

### **Deductions allowed**

345. (1) In computing the adjusted profit of any company of any accounting period from its upstream petroleum operations, there shall be deducted all outgoings and expenses wholly, exclusively and necessarily incurred by that company during that period for the purpose of those operations, provided such outgoings and expenses are only deductible to the extent they are reasonable given operational and market conditions at the time incurred and are verified and approved by the Service in accordance with procedures established by the Service, including but without otherwise expanding or limiting the generality of the foregoing:

- (a) rents incurred by the company for that period in respect of land or buildings occupied under a petroleum prospecting license or a petroleum mining lease for disturbance of surface rights or any other like disturbances;
- (b) all rents and royalties pursuant to Sections 333 and 334 of this Act incurred by the company;
- (c) all sums the liability for which was incurred by the company to the Federal Government of Nigeria during that period by way of customs or excise duty or other like charges levied in respect of machineries, equipment and goods used in the company's upstream petroleum operations, but shall exclude customs or duties for which exemption was granted;
- (d) any expense incurred for repair of premises, plant, machinery, or fixtures employed for the purpose of carrying on upstream petroleum operations, or for the renewal, repair or alteration of any implement, utensils or articles so employed;
- (e) Any qualifying drilling expenditures and other expenditures required for work under petroleum prospecting licenses;
- (f) Any contribution to a pension, provident or other society, scheme or fund which may be approved, with or without retrospective effect, by the National Pension Commission in consonance with the Pension Reform Act, 2004.

Provided that any sum received by or the value of any benefit obtained by such company, from any approved pension, provident or other society, scheme, or fund, in any accounting period of that company shall, for the purposes of this part VIII-D, be treated as income of that company of that accounting period;

(g) all sums donated to a Nigerian university or other Nigerian tertiary or research institution:

(i) for research or any other developmental purpose, or

(ii) as an endowment out of the profits of the accounting period of the company;

notwithstanding that the donation is of a capital or revenue nature, provided that the said donation shall not exceed an amount which is equal to 2 per cent of chargeable profit pursuant to Section 352 of this Act;

(h) All sums, the liability of which was incurred by the company during that period to the Federal Government, or to any State or Local Government Council in Nigeria by way of duty, customs and excise duties, stamp duties, or any other rate, fee or other like charges (other than Companies Income Tax, Education Tax, Capital Gains Tax and the Nigerian Hydrocarbon Tax under this Part VIII-D);

(i) Any costs incurred by contractors for the creation of assets to be owned by a licensee of a petroleum prospecting license or lessee of a petroleum mining lease; and

(j) Such other deductions as may be prescribed by any regulation made under this Act.

(2) Where a deduction has been allowed to a company under this section in respect of any liability of the company and such liability or any part thereof is waived or released the amount of the deduction or the part thereof corresponding to such part of the liability shall, for the purposes of paragraph (d) of subsection (1) of section 344 of this Act, be treated as income of the company of its accounting period in which such waiver or release was made or given.

### **Deductions not allowed**

346. Subject to the of paragraph (i) of subsection (1) of section 345 of this Act, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its petroleum operations or upstream gas operations, no deduction shall be allowed in respect of:

(a) any disbursement or expenses not being wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred, for the purpose of those operations;

(b) any capital withdrawn or any sum employed or intended to be employed as capital with the exception of any capital that may be employed with respect to an petroleum prospecting licence;

(c) any capital employed in improvement as distinct from repairs;

(d) any sum recoverable under any insurance or contract of indemnity;

(e) rent or cost of repair to any premises or part of any premises not incurred for the purpose of those operations;

(f) any amount incurred in respect of any income tax, profit tax, or similar tax whether charged within Nigeria or elsewhere;

(g) the depreciation of any premises, buildings, structures, work of a permanent nature, plant, machinery or fixtures;

(h) any payment to any provident, savings, widows, orphans or other society, scheme or fund;

(i) any customs duty on goods (including articles or any other thing) imported by the company:

(i) for resale or for personal consumption of employees of the company, or

- (ii) where goods of the same quality to those so imported are produced in Nigeria and are available, at the time the imported goods were ordered by the company for sale to the public at prices less or equivalent to the cost to the company of the imported goods;
- (j) any expenditures incurred with respect to petroleum exploration licences, except for the purchase of information from licensees of a petroleum exploration licences;
- (k) any expenditure for the purpose of paying a penalty, including gas flaring fees or penalty or penalties with respect to domestic supply obligations;
- (l) any demurrage and surcharges incurred at the ports or fines and penalties paid with respect to commercial transactions between Parties;
- (m) all workover expenditures;
- (n) any signature bonuses, production bonuses, or other bonuses or fees due on the grant or renewal of a lease;
- (o) any sums for interest, financing charges or other charges related to money borrowed or equity raised including the explicit or implied interest component of any leasing agreements;
- (p) all general, administrative and overhead expenses incurred outside Nigeria;
- (q) twenty percent (20%) of any expenses, other than pursuant to paragraph (p) incurred outside Nigeria;
- (r) any costs attributable to midstream petroleum operations or downstream petroleum operations;
- (s) any legal and arbitration costs related to cases against the Service or the Government of Nigeria, unless specifically awarded to the company during the legal or arbitration process;
- (t) costs for which records do not exist or are, not correct in any material respect;
- (u) costs of goods and services in excess of the fair market value, to the extent of such excess;
- (v) costs incurred prior to the establishment of the company in Nigeria;
- (w) costs incurred related to activities downstream of the measurement points;
- (x) any cost resulting from any arrangement or event that arises from fraud or willful misconduct or negligence on the part of the company;
- (y) costs incurred in organizing or managing any partnership, joint operating agreement, incorporated joint venture or other arrangement between or among companies or any assignments, mergers or acquisitions as well as the related fee pursuant to subsection (5) of section 192 of this Act;
- (z) insurance costs where such costs are earned by the company or an affiliate of the company; and
- (aa) joint costs that are related to the upstream petroleum operations and to other activities of the licensee or lessee, with respect to the portion of such costs that is related to the activities other than the upstream petroleum operations and are therefore sole costs of the licensee or lessee.

**Artificial transaction, etc.**

347. (1) Where the Service is of opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Service may disregard any such disposition or direct that such adjustments shall be made as liability to tax as the Service considers appropriate so as to counteract the reduction of

liability to tax effected, or to counteract the reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessable accordingly and in this subsection, the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.

(2) For the purpose of this section, transactions deemed to be artificial or fictitious, include;

- a) transactions between persons one of whom has control over the other; or
- b) transactions between persons both of whom are controlled by some other person which, in the opinion of the Service, have not been made on the terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm's length; or
- c) Any transaction pursuant to this subsection shall be fully disclosed by the company to the Service in the tax return.

(3) Nothing in this section shall prevent the decision of the Service in the exercise of any discretion given to the Service by this section from being questioned in an appeal against an assessment in accordance with the provisions of section 375 this Act and on the hearing of the Federal High Court may confirm or vary any such decision including any directions made under this section.

#### **Assessable profits and losses.**

348. (1) The assessable profits of any company for any accounting period shall be the amount of the adjusted profit of that period after the deduction of:

- (a) the amount of any loss incurred by that company during any previous accounting period; and
- (b) in a case to which section 350 of this Act applies, the amount of any loss which under that section is deemed to be a loss incurred by that company in its trade or business during its first accounting period.

(2) A deduction under subsection (1) of this section shall be made so far as possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss, was incurred, and, so far as it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on.

(3) Within five months after the end of any accounting period of a company, or within such further time as the Service may permit in writing in any instance, the company may elect in writing that a deduction or any part thereof to be made under this section shall be deferred to and be made in the succeeding accounting period, and may so elect from time to time in any succeeding accounting period.

#### **Trade or business sold or transferred to Nigerian company**

349. (1) Without prejudice to section 359 of this Act, where a trade or business of upstream petroleum operations carried on in Nigeria by a company incorporated under any law in force in Nigeria is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in that trade or business is so sold or transferred, then, if the Service is satisfied that one of those companies has control over the other or that both companies are controlled by some other person or are members of a recognised group of companies, the provisions set out in

subsection (2) of this section shall have effect.

(2) The Service may:

(a) direct that the respective petroleum production shall be attributable to the company from the date the sale or transfer takes place and that the respective accounting period shall commence pursuant to subparagraph (ii) of the definition of accounting period pursuant to section 426 of this Act;

*Ninth Schedule*(b) direct that for the purposes of the Ninth Schedule to this Act, the asset sold or transferred to the Nigerian company by the company selling or transferring the trade or business shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure on the asset on the day following the day on which the sale or transfer thereof occurred; and

*Ninth Schedule*(c) direct that the Nigerian company, acquiring the asset so sold or, transferred shall be deemed to have received all allowances given to the company selling or transferring the trade or business in respect of the asset under the Ninth Schedule and any allowances deemed to have been received by that company under the provisions of this paragraph.

(3) With reference to subsection (1) of this section the Service may:

(i) require the company selling or transferring the trade or business, or the Nigerian company acquiring that trade or business, to guarantee or give security, to the satisfaction of the Service, for payment in full of all tax due or to become due from the company selling or transferring the trade or business, and

(ii) impose such conditions as it sees fit on either of the companies aforesaid or on both of them, and in the event of failure by that company or, as the case may be, those companies to carry out or fulfil the guarantee or conditions, the Service may revoke the direction and may make all such additional assessments or repayment of tax as may be necessary to give effect to the revocation.

### **Trade or business transferred under the Companies Act**

Cap C20 LFN, 2004 350. Where in pursuance of the provisions of Part A of the Companies and Allied Matters Act, a company ("the reconstituted company") is incorporated under that Act to carry on any trade or business of upstream petroleum operations previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the reconstituted company, then, if the Service is satisfied that the trade or business carried on by the reconstituted company immediately after the incorporation of that company under that Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the provisions of this section shall have effect, notwithstanding anything stated to the contrary in this Part VIII-D:

(a) the first accounting period of the reconstituted company shall commence pursuant to paragraph (ii) of the definition of accounting period pursuant to Section 426 of this Act;

*Ninth Schedule*(b) for the purposes of the Ninth Schedule to this Act, the assets so vested in the reconstituted company shall be deemed to have been sold to it on the day of its incorporation, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on, in Nigeria by the foreign company ceased;

(c) the reconstituted company shall be deemed to have received any allowances deemed to have been received by the foreign company under the provisions of this paragraph or

Section 349 of this Act; and

(d) the amount of any loss incurred during any accounting period by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits of any accounting period of that foreign company, shall be deemed to be a loss incurred by the reconstituted company in its trade or business during its first accounting period; and the amount of that loss shall, in accordance with the provisions of section 348 of this Act, be deducted from the adjusted profits of the reconstituted company.

### **Call for returns and information relating to certain assets**

351. For the purpose of sections 349 and 350 of this Act the Service may by notice require any person, (including a company to which any assets are sold or transferred, or in which any assets have vested in pursuance of Part A of the Companies And Allied Matters Act), to complete and deliver to the Service any returns specified in the notice or any such information as the Service may require about the assets; and it shall be the duty of that person to comply with the requirements of any such notice within the period specified in the notice, which shall be a period of not less than twenty-one days from the service thereof.

### **Chargeable profits and capital allowances.**

352. (1) The chargeable profits of any company of any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section and section 353 of this Act.

<sup>Ninth Schedule</sup>(2) There shall be computed the aggregate amount of all allowances due to the company under the relevant provisions of the Ninth Schedule to this Act and pursuant to section 353 of this Act for the accounting period.

(3) Where the total amount of the allowances computed under subsection (2) of this section cannot be deducted under subsection (1) of this section owing to there being an insufficiency of or no assessable profits of the accounting period such total amount or the part thereof which has not been so deducted, shall be added to the aggregate amount to be computed under subsection (2) of this section for the following accounting period of the company, and thereafter shall be deemed to be an allowance due to the company, under the relevant provisions of the Ninth Schedule to this Act and section 353 of this Act for that following accounting period. The adjustment provisions of subsection (10) of section 353 shall not apply to any carry forwards under this subsection.

(4) Cost categories under paragraphs (q), (r), (t), (u), (v), (w), (x), (z), and (aa) section 346 of this Act which are not deductible shall also not qualify for capital allowances.

### **Other allowances**

353. (1) There shall be a production allowance for bitumen and crude oil production from all fields as follows:

(a) for onshore – the lower of US \$ 30 per barrel or 30% of the official selling price, up to a cumulative maximum of 10 million barrels per PML and the lower of US \$ 12 per barrel

or 30% of the official selling price, for volumes exceeding 10 million barrels up to a cumulative maximum of 75 million barrels per PML;

(b) for shallow water areas –the lower of US \$ 30 per barrel or 30% of the official selling price, up to a cumulative maximum of 20 million barrels per PML and the the lower of US \$ 12 per barrel or 30% of the official selling price, for volumes exceeding 20 million barrels up to a cumulative maximum of 150 million barrels per PML; and

(c) for bitumen deposits, frontier acreage and deep water areas –the lower of US \$ 7 per barrel or 30% of the official selling price, for any volume.

(2) There shall be a production allowance for the development and production of new natural gas fields, equal to lower of:

(a) 30% of the value of the natural gas production pursuant to section 434 of this Act; and

(b) US \$ 1 per million Btu; and

(c) such allowance shall be capped at a level of cumulative production per PML of:

(i) 1000 billion cubic feet for the onshore,

(ii) 2000 billion cubic feet for shallow water, and

(iii) 3000 billion cubic feet for frontier acreage and deep water.

(3) There shall be a production allowance in order to encourage the condensate production from new small gas fields of \$ 20 per barrel or 30% of the official selling price, whichever value is lower:

(a) for onshore –up to a cumulative maximum of 100 million barrels per PML;

(b) for shallow water areas –up to a cumulative maximum of 200 million barrels per PML; and

(c) for frontier acreage and deep water areas –up to a cumulative maximum of 300 million barrels per PML.

(4 ) (a) Where a lessee is producing crude oil with associated gas at the commencement of this Act and is flaring substantial volumes of gas, and proposes a development program to the Inspectorate in order to eliminate routine flaring in the PML in a significant manner, and such development plan is approved by the Inspectorate, the lessee shall be able to claim the allowances under subsections (2) and (3) of this section, with respect to the incremental natural gas and condensate production over the base line established in the development plan; and

(b) Where a new gas field is being developed with respect to new production from formations that are deeper than any production from reservoirs at the commencement of this Act, based on an approved development plan and new gas field determination by the Inspectorate, the lessee shall be able to claim the allowances under subsections (2) and (3) of this section, with respect to the incremental natural gas and condensate production attributable to such new gas field.

(5) The right to claim the allowances provided in this section shall be based on the ownership of the beneficial interest in the relevant cumulative production in the PML.

(6) Where a PML produces any combination of crude oil, natural gas and condensates, the allowances under subsection (1),(2) and (3) of this section can be taken separately, provided, however, where condensates are spiked into crude oil prior to the measurement points, the condensate allowance shall not apply.

(7) The gas allowance pursuant to subsection (2) of this section, shall only apply to any gas production which is subject to royalties and where a purchaser of natural gas involved in upstream crude oil operations or upstream gas operations is purchasing gas for the purpose of reinjection of such gas in reservoirs produced by such purchaser, the purchaser shall pay a gas allowance refund fee equal to the lower of:

- (a) 30% of the purchase price of the natural gas; and
- (b) US \$ 1 per million Btu; and
- (c) such allowance shall be capped at a level of cumulative production per PML depending on the geographical area of the PML of the purchaser of:
  - (i) 1000 billion cubic feet for the onshore,
  - (ii) 2000 billion cubic feet for shallow water, and
  - (iii) 3000 billion cubic feet for frontier acreage and deep water

(8) Subject to the provisions of subsection (9) of this section, any production from petroleum mining leases that on the commencement of this Act are in production or have been in production shall not be eligible for the allowances under subsections (1), (2) and (3) this section.

(9) All production from onshore and shallow water shall be eligible for a general allowance of US \$ 3 per barrel of crude oil, bitumen and condensate for any volume of production.

(10) Any companies with interests in petroleum mining leases granted pursuant to subsection (6) of section 191 of this Act to marginal field operators shall be able to apply the allowances under subsection (1), (2) and (3) of this section for the full cumulative amounts provided for in these subsections, from the date such new leases are granted.

(11) The bitumen, oil, gas and condensate allowances in subsections (1), (2) and (3) of this section and payments pursuant to (7) of this section shall be adjusted pursuant to section 331 of this Act.

(12) Where a field is covered by two or more PMLs, the production allowances pursuant to this section shall be determined based on the total production from such PML's.

**Assessable tax.**

354. (1) The assessable tax for any accounting period of a company engaged in upstream petroleum operations shall be a percentage of the chargeable profit of that period as follows and which shall be separately consolidated for:

- (a) onshore and shallow water areas: 50%; and
  - (b) bitumen deposits, frontier acreage and deep water areas: 30%.
- (2) Where companies carry on operations in both geographical zones indicated under (a) and (b) of subsection (1) of this section, they shall submit separate tax returns for each zone and are only permitted to consolidate returns for each zone. In this case:
- (a) production shall be allocated in a similar manner as applicable to royalties under subsection paragraph (b) of subsection (4) of section 337 of this Act; and
  - (b) applicable deductions and capital allowances for PML's for which the production is entirely within a particular zone shall be allocated to such zone; and
  - (c) applicable deductions and capital allowances for PML's for which the productions takes place from two zones shall be allocated pro-rata to the production.

### **Partnership, etc.**

355. (1) Any person (other than company) who engages in upstream crude oil operations or upstream gas operations either on his own account or jointly with any other person or in partnership with any other person with a view of sharing profits arising from those operations shall be guilty of an offence. Where such person has benefitted from any profits on upstream crude oil operations, such person shall be subject to the tax under this Part VIII-D on such profits and shall pay a penalty as provided for under section 384 of this Part VIII-D.

(2) Where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint operating agreement or in concert under any scheme or arrangement the Minister may make rules for the ascertainment of the tax to be charged and assessed upon each company so engaged, which may necessarily:

- a) provide for the apportionment of any profits, outgoing, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company;
- b) provide for the computation of any tax as if the partnership, joint operating agreement, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned;
- c) accept some other basis of ascertaining the tax chargeable upon each of the companies which may be put forward by those companies; or
- d) contain provisions which have regard to any circumstances whereby such operations are partly carried on for any companies by an operating company whose expenses are reimbursed by those companies.

(3) The rules referred to in subsection (2) of this section:

- a) shall be expressed to be of general application; and
- b) may be amended or replaced from time to time as may be necessary.

(4) Rules made under this section shall not impose a greater burden of tax upon any company so engaged in any partnership, joint venture, scheme or arrangement than would have been imposed upon that company under this Act if all things enjoyed, done or suffered by such partnership, joint operating agreement, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint operating agreement, scheme or arrangement.

### **Each company responsible**

356. Notwithstanding the provisions of subsection (4) of section 355 of this Act, each company shall be responsible for reporting its own upstream petroleum operations profits, outgoings, expenses, qualifying expenditure and the tax chargeable on its upstream petroleum operations.

### **Manager of companies to be answerable**

357. The manager or any principal officer in Nigeria of every company which is or has been engaged in upstream petroleum operations shall be answerable for doing all such acts as are required to be done by virtue of this Part VIII-D for the assessment and charge to tax of such company and for payment of such tax.

### **Company wound up, etc.**

358. (1) Where,

a) a company is being wound up; or

b) where in respect of a company a receiver has been appointed by any Court, by the holders of any debentures issued by the company or otherwise,

the company may be assessed and charged to tax in the name of the liquidator of the company or the receiver or any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver.

(2) Any such liquidator, receiver or agent shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.

(3) Such liquidator or receiver under this section shall not distribute any assets of the company to the shareholders or debenture holders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company or by such liquidator, receiver or agent on behalf of the company.

### **Avoidance by transfer**

359. Where a company which is or was engaged in upstream petroleum operations transfers a substantial part of its assets to any person without having paid any tax, assessed or chargeable upon the company, for any accounting period ending prior to such transfer and in the opinion of the Service one reason for such transfer by the company is to avoid payment of such tax, then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 381 of this Part VIII-D, subject to any necessary modification of the amount pursuant to that section.

### **Indemnification of representative**

360. Every person answerable under this Act for the payment of tax on behalf of a company may retain out of any money in or coming to his hands or within his de facto control on behalf of such company so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in accordance with the provisions of this Act.

### **Preparation and delivery of accounts and particulars**

361. (1) Every company which is or has been engaged in upstream petroleum operations shall for each accounting period of the company, make up accounts of its profits or losses, arising from those operations, of that period and shall prepare the following Particulars:

(a) computations of its adjusted profit or loss and of its assessable profits of that period;

Ninth Schedule (b) in connection with the Ninth Schedule to this Act, a schedule showing:

(i) the residues at the end of that period in respect of its assets,

(ii) all qualifying petroleum expenditure incurred by it in that period,

(iii) the values of any of its assets disposed of in that period, and

(iv) the allowances due to it under the said schedule for that period;

(c) a computation of its chargeable profits of that period;

(d) a statement of other sums, deductible under the liabilities for which were incurred during that period;

(e) a statement of all amounts repaid, refunded, waived or released to it, during that period;

(f) a computation of its estimated tax for that period;

(g) self assessment of actual tax due; and

(h) the evidence of remittance of the last instalment

(2) Every company which is or has been engaged in upstream petroleum operations shall, with respect to any accounting period of the company, within five months after the expiration of that period or within five months after the date of publication of this Act in the Federal Gazette upon enactment (whichever is later) deliver to the Service a copy of its accounts (bearing an auditor's certificate) of that period, made up in accordance with the provisions of subsection (1) of this section, and copies of the particulars referred to in that subsection relating to that period; and such copies of those accounts and each copy of those particulars (not being estimates) shall contain a declaration which shall be signed by a duly authorised officer of the company or by its liquidator, receiver or the agent of such liquidator or receiver, that the same is true and complete and where such copies are estimates each copy shall contain a declaration, similarly signed, that such estimate was made to the best of the ability of the person signing the same.

### **Roles of Agency, National Oil Company and Inspectorate**

362. (1) The Agency, the Authority, the National Oil Company, and the Inspectorate shall provide information to the Service and the Inspectorate on:

(a) the approved budgets of incorporated joint ventures and for production sharing contracts and information on project cost benchmarking and cost monitoring;

(b) production, lifting or exported crude and Natural Gas, LNG, CNG, NGLs, realisable prices, American Petroleum Institute gravity of various crude oil blends, schedule of shipping agents or companies involved in lifting crude oil, Natural Gas, LNG, CNG, NGLs stating names, addresses, quantity and value of crude oil lifted;

(c) names and addresses of licensed companies in the oil and gas industry, schedule and approved cost of all exploration and appraisal wells, schedule of licenses or leases granted categorised as to petroleum prospecting licences and petroleum mining leases and payments made thereon, production and lifting of crude oil specifying the affected terminals by the Inspectorate; and

(d) any other information that the Service may, by regulations, require, from time to time.

- (2) The information specified in paragraph (a) of subsection (1) of this section shall be delivered to the Service not later than 30 days after the approval;
- (3) The information specified in paragraph (b) of subsection of this section shall be delivered to the Service on or before the 30<sup>th</sup> day of the month following that in which the production or lifting took place.
- (4) The information specified in paragraph (c) subsection (1) of this section shall be delivered to the Service as follows:
- (a) names and addresses of such shall be delivered not later than 15 days after the issuance of licences or leases to such companies;
  - (b) schedules and approved costs of all exploration and appraisals wells shall be delivered not later than 30 days after the approval; and
  - (c) schedules of licenses/concessions granted shall be delivered on or before the 30<sup>th</sup> day of the month following the granting of licenses/concession.

### **Service may call for further information**

363. The Service may give notice in writing to any company which is or has been engaged in upstream petroleum operations when and as often the Service may require, requesting it to furnish within such reasonable time as may be specified by such notice fuller or further information as to any of the matters either referred to section 361 of this Act, or as to any other matters which the Service may consider necessary for the purposes of this Act.

### **Power to call for returns, books, etc.**

364. (1) For the purpose of obtaining full information in respect of any company's upstream petroleum operations the Service may give notice to such company requiring it within the time limited by such notice, which time shall not be less than twenty-one days from the date of service of such notice, to complete and deliver to the Service any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such liquidator or receiver, to attend before the Service or its authorised representative on such date or dates as may be specified in such notice and to produce for examination any books, documents, accounts and Particulars which the Service may deem necessary.

(2) If a company assessable to tax under the provisions of this Act fails or refuses to keep books or accounts which, in the opinion of the Service are adequate for the purpose of ascertaining the tax, the Service may by notice in writing require it to keep such records, books and accounts as the Service considers to be adequate in such form and in such language as the Service may in the said notice direct and, subject to the provisions of subsections (3) and (4) of this section, the company shall keep records, books and accounts as directed.

(3) An appeal shall lie from any direction of the Service made under this section to a judge of the High Court.

(4) On hearing such appeal the judge may confirm or modify such direction and any such decision shall be final.

**Returns of estimated tax**

365. (1) Not later than two months after the commencement of each accounting period of any company engaged in upstream petroleum operations, the company shall submit to the Service a return, the form of which the Service may prescribe, of its estimated tax for such accounting period.

(2) If, at any time during any such accounting period the company having made a return as provided for in subsection (1) of this section is aware that the estimate in such return requires revision then it shall submit a further return containing its revised estimated tax for such period.

(3) Where the further returns provided for under subsection (2) of this section is not made, the Service shall impose interest at the prevailing LIBOR plus two percentage points for the differential of actual tax over estimated tax paid by the company.

(4) Every return made by an oil and gas producing company in fulfilment of the provisions of this Section shall be subject to review and validation by the Service.

(5) Where a company does not provide the estimates pursuant to subsection (1) of this section the Service shall have the right to determine such estimates on the best of judgement basis and impose same on the company.

**Power of Service to review and reject estimated tax**

366. The Service may reject any estimated tax pursuant to Section 365 of this Act, if the estimates, in the opinion of the Service, are not reflective of current circumstances and may replace the estimates by an assessment of the Service.

**Extension of periods for making returns.**

367. Where it is shown by any company to the satisfaction of the Service that for some good reason the company is not able to comply with the provisions of section 361 of this Act, within the time limited by that section or any notice given to it under sections 363 or 364 of this Act, and within the time limited by any such notice, the Service may grant in writing such extension of that time as the Service may consider necessary.

**Service to make assessments**

368. (1) The Service shall proceed to assess every company with the tax for any accounting period of the company as soon as may be after the expiration of the time allowed to such company for the delivery of the accounts and Particulars provided for with respect this Part VIII-D.

(2) Where a company has delivered accounts and Particulars for any accounting period of the company, the Service may:

(a) accept the same; or

(b) refuse to accept the same and proceed as provided in subsection (3) of this section upon any failure as therein mentioned and the like consequences shall ensue.

(3) Where, for any accounting period of a company, the company has failed to deliver accounts and Particulars provided for in section 361 of this Act within the time limited by that section or has failed to comply with any notice given to it under the provisions of sections 363 or 364 of this Act within the time specified in such notice or within any extended time provided for within this Act, and the Service is of the opinion that such company is liable to pay tax, the Service may estimate the amount of the tax to be paid by such company for that accounting period and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver such accounts and Particulars or to comply with such notices; and nothing in this subsection shall affect the right of the Service to make any additional assessment under the provisions of section 370 of this Act.

### **Powers to distrain**

369. (1) Without prejudice to any other power conferred on the Service for the enforcement of payment of tax due from a company that has been properly served with an assessment which has become final and conclusive and a demand notice has been served upon the company in accordance with the provisions of this Part VIII-D, or has been served on the company or upon the person in whose name the company is chargeable, then, if payment of tax is not made within the time specified by the demand notice, the Service may in the prescribed form, for the purpose of enforcing payment of the tax due:

(a) distrain the taxpayer by his goods, other chattels, bond or other securities; or

(b) distrain upon any land, premises or places in respect of which the taxpayer is the owner and, subject to the provisions of this Section, recover the amount of tax due by sale of anything so distrained.

(2) The power to distrain under this section shall be in the form contained in the Fourth Schedule to the Federal Inland Revenue Service (Establishment) Act 2007, and such authority shall be sufficient warrant and authority to levy by distraint the amount of tax due.

(3) For the purpose of levying any distraint under this section, an officer duly authorised by the Executive Chairman may apply to a Judge of the Federal High Court sitting in Chambers under oath for the issue of a warrant under this section.

(4) The Judge of the Federal High Court may on application made ex-parte authorise such officer, referred to in subsection (3) of this section, in writing to execute any warrant of distraint and, if necessary, break open any building or place in the daytime for the purpose of levying such distraint and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distraint and in levying the distraint.

(5) Things distrained under this section may, at the cost of the owner thereof, be kept for 14 days, at the end of which time, if the amount due in respect of tax and the cost and charges incidental to

the distraint are not paid, they may, subject to subsection (8) of this section, be sold at any time thereafter.

(6) There shall be paid out of the proceeds of sale, in the first instance, the cost or charges incidental to the sale and keeping of the distraint, and the residue, if any, after the recovery of the tax liability, shall be payable to the owner of the things distrained upon demand being made within one year of the sale or shall thereafter be forfeited.

(7) In exercise of the powers of distraint conferred by this section, the person to whom the authority is granted under subsection (4) of this section may distraint upon all goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.

(8) Nothing in this section shall be construed as authorising the sale of any immovable property without an order of a Court of competent jurisdiction.

#### **Additional assessments.**

370. (1) If the Service discovers or is of the opinion at any time that, with respect to any company liable to tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at a less amount than that which ought to have been charged and assessed for any accounting period of the company, the Service may within six years after the expiration of that accounting period and as often as may be necessary, assess such company with tax for that accounting period at such amount or additional amount as in the opinion of the Service ought to have been charged and assessed, and may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company.

(2) Where a revision under subsection (1) of this section results in a greater amount of tax to be charged than has been charged or would otherwise be charged an additional assessment, or an assessment for any such subsequent accounting period shall be made accordingly, and the provisions of this Act as to notice of assessment, objection, appeal and other proceedings under this Act shall apply to any such Assessment or additional assessment and to the tax charged thereunder.

(3). For the purpose of computing under subsection (1) of this section the amount or the additional amount of tax for any accounting period of a company which ought to have been charged, all relevant facts consistent with subsection (3) of section 376 of this Act shall be taken into account even though not known when any previous assessment or additional assessment on the company for that accounting period was being made or could have been made.

(4) Notwithstanding the other provisions of this section, where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act, the Service may, at any time and as often as may be necessary, for the purpose of recovering any loss of tax attributable to the fraud, wilful default or neglect.

(5) With respect to the collection of any additional tax under this section, subsection (3) of section 365 of this Act shall apply.

**Making of assessments, etc.**

371. (1) Assessment of tax shall be made in such form and in such manner as the Service shall authorise and shall contain the names and addresses of the companies assessed to tax or of the persons in whose names any companies (with the names of such companies) have been assessed to tax, and in the case of each company for each of its accounting periods, the Particular accounting period and the amount of the chargeable profits of and assessable tax and chargeable tax for that period.

(2) When any assessment requires to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) of this section but showing the amended or revised amount of the chargeable profits; assessable tax and chargeable tax.

(3) A copy of each assessment, and of each amended or revised assessment shall be filed in a list which shall constitute the Assessment List for the purpose of this Act.

**Notices of assessment, etc.**

372. (1) The Service shall cause to be served personally on or sent by registered post to each person whose name appears on an assessment in the Assessment List, a notice of assessment stating its accounting period and the amount of its chargeable profits, assessable tax and chargeable tax charged and assessed upon the company, the place at which payment of the tax should be made, and informing such company of its rights under subsection (2) of this section.

(2) If any person in whose name an assessment was made in accordance with the provisions of this Act disputes the assessment, that person may apply to the Service, by notice of objection in writing, to review and revise the assessment so made on him; and such application shall be made within twenty-one days from the date of service of the notice of such assessment and shall state the amount of chargeable profits of the company of the accounting period in respect of which the assessment is made and the amount of the assessable tax and the tax which such person claims should be stated on the notice of assessment.

(3) The Service, upon being satisfied that owing to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of twenty-one days shall, extend the period as may be reasonable in the circumstances.

(4) After receipt of a notice of objection referred to in subsection (2) of this section the Service may within such time and at such place as the Service shall specify, require the person giving the notice of objection to furnish such Particulars as the Service may deem necessary, and may by notice within such time and at such place as the Service shall specify, require any person to give evidence orally or in writing resisting any matters necessary for the ascertainment of the tax payable, and the Service may require such evidence if given orally to be given on oath or if given in writing to be given by affidavit.

(5) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Service as to the amount of tax liable to the assessed, the assessment shall be

amended accordingly, and notice of the tax payable shall be served upon such person.

(6) If an applicant for revision under the provisions of subsection (2) of this section fails to agree with the Service the amount of the tax, the Service shall give such applicant notice of refusal to amend the assessment as desired by such applicant, and may revise the assessment to such amount as the Service may determine and give such applicant notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this subsection.

### **Errors and defects in assessment and notice**

373.(1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or any Act amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

2) An assessment shall not be impeachable or affected:

(a) by reason of a mistake therein as to-

(i) the name of a company liable or of a person in whose name a company is assessed; or

(ii) the amount of the tax;

(b) by reason of any variance between the assessment and the notice thereof, if in cases of assessment, the notice thereof be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the Particulars on which the assessment is made.

### **Nigerian Hydrocarbon Tax computation**

374. Tax computations made under this Part VIII-D, including any assessments made under section 368 of this Part VIII-D, shall be made in US \$.

### **Appeals to Federal High Court against assessments.**

375. (1) Subject to Section 59 of the FIRS Act and the 5<sup>th</sup> Schedule thereto, every company appealing shall appoint an authorised representative who shall attend before the court in person on the day and at the time fixed for the hearing of its appeal, but if it be proved to the satisfaction of the judge that owing to absence from Nigeria, sickness or other reasonable cause any duly appointed representative is prevented from attending in person at the hearing of the company's appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal, for such reasonable time as he thinks necessary for the attendance of the appellant's representative, or he may admit the appeal to be made by any other agent, clerk or servant of the appellant, on its behalf or by way of written statement.

(2) Twenty-one clear days' notice shall, unless rules made hereunder otherwise provide, be given

to the Service of the date fixed for the hearing of the appeal.

(3) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(4) The judge may confirm, reduce, increase or annul the assessment or make such order thereon as to him may deem fit.

(5) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by a duly authorised representative of the Service either personally on or by registered post to, the appellant.

(6) Notwithstanding anything contained in this Act, if in any Particular case, the judge from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, he may on application being made by or on behalf of the Service require the appellant to furnish within such time as may be specified security for payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.

(7) All appeals shall be heard in camera, unless the judge shall, on the application of the appellant, otherwise direct.

(8) The costs of the appeal shall be in the discretion of the judge hearing the appeal and the judge shall fix a sum.

(9) The Chief Judge of the Federal High Court may make rules providing for the method of tendering evidence before a judge on appeal, the conduct of such appeals and the procedure to be followed by a judge upon stating a case for the opinion of the Court of Appeal.

(10) Pending the making of any rules under this subsection, the rules applicable in civil appeal cases from Magistrates Court to the High Court of Lagos State shall apply to any appeal or to any such procedure for the purposes of this section and Act with any necessary modifications.

(11) An appeal against the decision of the judge shall lie to the Court of Appeal:

(a) at the instance of the appellant where the decision of the judge is to the effect that the correct assessment of tax is in the sum of US \$ 1000 or upwards; and

(b) at the instance of the Service where the decision of the judge is in respect of a matter in which the Service claimed that the correct assessment of tax was in the sum of US \$ 1000 or upwards.

### **Assessment to be final and conclusive**

376. (1) Where:

(a) no valid objection or appeal has been lodged within the time limited by either section 372 or 375 of this Act, as the case may be, against an assessment as regards the amount of the tax assessed thereby; or

(b) where the amount of the tax has been agreed to under subsection (5) of section 372 of this Act; or

(c) the amount of the tax has been determined on objection or revision under subsection (6) of section 372 of this Act; or

(d) on appeal, the assessment its made, agreed to, revised or determined on appeal, as the case may be,

the said assessment shall be final and conclusive for all purposes of this Act as regards the

amount of such tax, and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 379 of this Act shall apply and any late payment of tax shall be subject to an interest rate of LIBOR plus 2%.

- (2) Where an assessment has become final and conclusive, any tax overpaid shall be refunded pursuant to the FIRS Act 2007.
- (3) Nothing in Section 372 of this Act shall prevent the Service from making any assessment or additional assessment to tax for any accounting period which does not involve re-opening any issue on the same facts which has been determined for that accounting period under subsection (5) or (6) of section 372 of this Act, by agreement or otherwise or on appeal.

**Procedure in cases where objection or appeal is pending.**

377. Collection of tax shall in cases where notice of an objection or an appeal has been given remain in abeyance, any pending proceedings for any instalment thereof being stayed until such objection or appeal is determined but the Service may in any such case enforce payment of that portion of the tax (if any) which is not dispute.

**Time within which payment is to be made.**

378. (1) Subject to the provisions of section 370 of this Act, tax for any accounting period for upstream petroleum operations shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4) of this section.

(2) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or, where the accounting period is less than a year, in an amount equal to monthly proportion, of the amount of tax estimated to be chargeable for such accounting period in accordance with the section 365 of this Act.

(3) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) of this section shall be due and, payable not later than the last day of the month in question and shall be in an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with subsection (2) of section 365 of this Act, less so much as has already been paid for such accounting period divided by the number of such of the monthly payments remaining to be made in respect of such accounting period.

(4) A final instalment of tax shall be due and payable not later than the time required to file self assessment returns of tax in accordance with subsection (2) of section 361 of this Act for such accounting period, and shall be the amount of the tax assessed for that accounting period less so much thereof as has already been paid under subsection (2) and (3) of this section or is the subject of proceedings.

(5) Any instalments on account of tax estimated to be chargeable shall be treated as tax charged and assessed for the purposes of section 379 and 381 of this Act.

(6) The Service shall impose interest at a rate of LIBOR plus 2%.

Ninth Schedule(7) For the purposes of subsection (1) of this section, the conversion of the timing of payments of tax to provide for the making of monthly payments shall be given effect to as set out in the Ninth Schedule of this Act.

### **Penalty for non-payment of tax and enforcement of payment**

379. (1) If any tax is not paid within the period stipulated in section 378 of this Act:

(a) a penalty equal to 10 per cent per annum of the amount of tax payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection of such sum;

(b) the tax due shall incur interest at LIBOR plus 2% from the date when the tax becomes payable until it is paid and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;

(c) the Service shall serve a demand note upon the company or person in whose name the company is chargeable, and if the payment is not made within one month from the date of service of such demand note, the Service may proceed to enforce payment as provided in this Section;

(d) the penalty and interest imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.

(2) Any company which without lawful justification or excuse fails to pay the tax within the period of one month prescribed in paragraph (b) of subsection (1) of this section, commits an offence under this Act, and the burden of proof of such justification or excuse shall be on the company.

### **Collection of tax after determination of objection or appeal**

380. Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal as the case may be shall be payable forthwith as to any part thereof in proceedings stayed pending such determination and as to the balance thereof within one month from the date of service on the, company assessed, or on the person in whose name the company is assessed, of the notification of the tax payable, and if such balance is not paid within such period the provisions of section 379 of this Act shall apply.

### **Suit for tax by the Service**

381. (1) Tax may be sued for and recovered in a court of competent jurisdiction at the place at which payment should be made, by the Service in its official name with full costs of suit from the company assessed to such tax or from the person in whose name the company is assessed to such tax as a debt due to the Government of the Federation.

(2) For the purposes of this section, a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, if the amount claimed in any suit does not exceed the amount of the jurisdiction of the magistrate concerned with respect to personal suits.

(3) In any suit under subsection (1) of this section the production of a certificate signed by any person duly authorised by the Service giving the name and address of the defendant and the amount of tax due by the defendant shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

### **Relief in respect of error**

382. (1) If any person who has paid tax for any accounting period alleges that any assessment made upon him or in name for that period was excessive by reason of some error or mistake in the accounts, Particulars or other written information supplied by him to the Service for the purpose of the assessment, such person may at any time, not later than six years after the end of the accounting period in respect of which the assessment was made, make an application in writing to the Service for relief.

(2) On receiving any such application the Service shall inquire into the matter and subject to the provisions of this section shall by way of repayment of tax give such relief in respect of the error or mistake as appears to the Service to be reasonable and just.

(3) No relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where such accounts, Particulars or information was in fact made or given on the basis or in accordance with the practice of the Service generally prevailing at the time when such accounts, Particular or information was made or given.

(4) In determining any application under this section the Service shall have regard to all the relevant circumstances of the case, and in Particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the chargeable profits of the applicant, and for this purpose the Service may take into consideration the liability of the applicant and assessments made upon him in respect of other years.

(5) No appeal shall lie from a determination of the Service under this section, which determination shall be final and conclusive.

### **Repayment of tax**

383. (1) Save as otherwise expressly provided in this Act, no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates and if the Service disputes any such claim it shall give to the claimant notice of refusal to admit the claim and the provisions of the relevant sections of this Part VIII-D shall apply with any necessary modifications.

(2) The Service shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and upon the receipt of the certificate, the Accountant-General of the Federation shall cause repayment to be made in conformity therewith.

### **Penalty for offences**

384. (1) Any person guilty of an offence against this Act or of any rule made there under for which no other penalty is specifically provided, shall be liable to a fine of US \$ 10,000, and where such offence is one under subsection (1) of section 355 of this Act, or is a failure to submit a return under 365 of this Act, or is a failure, arising from the provisions of sections 361 through 367 of this Act to deliver accounts, particulars or information or to keep records required, a further sum of US \$ 2000 for each and every day during which such offence or failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

(2) Any person who:

- (a) fails to comply with the requirements of a notice served on him under this Act; or
- (b) having a duty so to do, fails to comply with the provisions of section 361 of this Part VIII-D; or
- (c) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him; or
- (d) fails to submit any return required to be submitted by the relevant sections of this Part VIII-D shall be guilty of an offence.

(3) Any offence in respect of which a penalty is provided by subsection (1) of this section shall be deemed to occur in Abuja.

### **False statements and returns.**

385. (1) Any person who:

- (a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Service or any officer of the Service, any declaration, notice, certificate or other document whatsoever; or
- (b) makes any statement in answer to any question or enquiry put to him by an officer which he is required to answer by or under this Act or any other enactment or law, being a document or statement produced or made for any purpose of tax, which is untrue in any material particular, commits an offence under this section.

(2) Where by reason of any such document or statement required to be produced under subsection (1) of this section the full amount of any tax payable is not paid or any overpayments made in respect of any repayment of tax, the amount of tax unpaid or the overpayment shall be recoverable as a debt due to the Service.

(3) Any person who commits an offence under this section shall be liable on conviction to a fine of US \$ 1,000,000 and 100 per cent of the amount of tax unpaid or overpayment made in respect of any repayment or to imprisonment for a term of 3 years or to both such fine and imprisonment.

### **Penalties for offences by authorised and unauthorised persons**

386. Any person who is appointed for the due administration of this Act or employed in connection with the assessment and collection of a tax who:

- (a) demands from any company an amount in excess of the authorised assessment of the tax; or
- (b) withholds for his own use or otherwise any portion of the amount of tax collected; or
- (c) renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or
- (d) defrauds any person, embezzles any money, or otherwise uses his position to deal wrongfully with the Service; or
- (e) steals or misuses Service documents; or
- (f) compromises on the assessment or collection of any taxes, commits an offence and shall be liable on conviction to a fine equivalent to 200 per cent of the sum in question or to imprisonment for a term of 3 years or to both such fine and imprisonment.

### **Deduction of Nigerian Hydrocarbon Tax at source.**

387. (1) Tax assessable on any company, whether or not an assessment has been made, shall, if the Service so directs, be recoverable from any payment made or to be made by any person to such company.

(2) Any such directive referred to in subsection (1) of this section may apply to any person or class of persons specified in such directive, either with respect to all companies or a company or class of companies, liable to payment of income tax.

(3) Any directive under subsection (1) of this section shall be in writing addressed to the person or published in the Federal Gazette.

(4) In determining the rate of tax to be applied to any payments made to a company, the Service may take into account:

(a) any assessable profits of that company for the year arising from any other source on which income tax is chargeable under this Part VIII-D; and

(b) any income tax or arrears of tax payable by that company for any of the six preceding years of assessment.

(5) Income tax recovered pursuant to this by deduction from payments made to a company shall be set-off for the purpose of collection against tax charged on such company by an assessment.

(6) For the purposes of this, the frequency at which tax is to be deducted and the nature of activities and the services for which a company making the payment is to deduct tax and the date when the payment is made or credited which ever first occurs shall be in accordance with the regulations to be issued by the Minister responsible for finance acting on the advice of the Service.

### **Tax assessable on any company**

388. (1) Tax assessable on any company, partnership or person (whether or not resident in Nigeria) who provides services related to upstream petroleum operations and related activities to a company carrying on upstream petroleum operations in Nigeria, whether or not an assessment has been made, shall be recoverable from any payment (whether or not made in Nigeria) made by any person to such company, partnership or person.

(2) For the purpose of this section, the rate at which tax is to be deducted and the nature of the activities and services for which a company making the payment is to deduct tax and the date when the payment is made or credited, whichever first occurs, shall be specified in Government notice No. 450, official *Gazette* No 34, Volume 72 of 27<sup>th</sup> June, 1985 or any Government Notice replacing it.

(3) A company which has deducted tax under this section shall forward to the Service the amount of tax deducted and shall also forward a statement showing the name and address of the person who suffered the tax deduction and the nature of activities or services in respect of which the payment was made.

(4) Tax recovered under the provisions of this section by deduction from payments made to a company, partnership or person shall be set-off for the purposes of collection against tax charged on such company, partnership or persons by an assessment: Provided that the total of such deductions does not exceed the amount of the assessment.

#### **Tax to be payable notwithstanding any proceedings for penalties.**

389. The institution of proceedings for or the imposition of, a penalty, fine or term of imprisonment under this Part VIII-D shall not relieve any person from liability to payment of any tax for which he is or may become liable.

#### **Prosecution to be with the sanction of the Service**

390. No prosecution in respect of an offence under sections 386 of this Act may be commenced, except at the instance of or with the sanction of the Service.

#### **Saving for criminal proceedings**

391. The provisions of this Part VIII-D shall not affect any criminal proceedings under any other Act or law.

#### **Double taxation**

392. Any matter related to double taxation that may arise as a consequence of this Nigerian Hydrocarbon Tax shall be dealt with in accordance with the provisions of the Companies Income Tax Act.

#### **Regulations**

393. The Minister has the power to make regulations for the implementation of Part VIII-D of this Act.

## **E – PRODUCTION SHARING CONTRACTS AND OTHER CONTRACTS OF THE NATIONAL OIL COMPANY**

### **Minimum provisions of contracts**

394. (1) The National Oil Company may enter into production sharing contracts or enter into other contracts pursuant to section 172 of this Act.

(2) Any contract of the National Oil Company as concessionaire shall contain as a minimum the provisions of this Part VIII-E.

(3) Each contract shall include the provision that the licensee, lessee and the contractor shall be subject to the provisions of this Act.

### **Rents, royalties and taxes**

395. (1) All contracts shall be subject to the rents, royalties and tax provisions contained in this Act, as clarified in the further subsections of this section.

(2) All contractor parties shall pay Companies Income Tax and Nigerian Hydrocarbon Tax on their share of cost oil, cost gas, cost condensates, profit oil, profit gas and profit condensates and any other shares of crude oil, condensates and natural gas and on any remuneration under contracts pursuant to section 172 of this Act, and any cost oil and profit oil from production sharing contracts in existence prior to the commencement of this Act, as well as incidental income that the companies may have obtained as a result of the operations under the contract.

(3) The National Oil Company shall pay the rents under this Part to the Inspectorate.

(4) The Inspectorate shall determine the royalties to be paid in cash by the National Oil Company pursuant to the provisions of this Act. The National Oil Company shall exercise the option under subsection (1) of section 335 of this Act and pursuant to the provisions of the contract.

### **Bonuses**

396. (1) Contracts may contain the bonuses, which shall be lump sum amounts in cash or in production as follows:

(a) a signature bonus in cash;

(b) crude oil production bonuses, based on daily or cumulative production, to be paid in cash or in crude oil; and

(c) Gas production bonuses, based on daily or cumulative production, to be paid in cash or in natural gas.

(2) Signature bonuses and the production bonuses shall not be recoverable as cost oil, cost gas or cost condensates for purposes of a production sharing contracts.

(3) The National Oil Company shall deposit any signature bonuses in the account established for that purpose by the Inspectorate and such signature bonuses shall be paid to the designated account of the Federation Account and any production bonuses shall be retained by the National Oil Company.

### **Available crude oil, gas and condensates in production sharing contracts.**

397. (1) In case of production sharing contracts each contract area shall be ring fenced for the purposes of determining cost oil and profit oil, and where applicable cost gas and profit gas and cost condensates and profit condensates.

(2) The production shares for crude oil shall be determined based on the available oil, which shall be the total amount of crude oil produced each month as determined pursuant to section 334 of this Act, less the royalty pursuant to subsection (4) of section 395 of this Act.

(3) The production shares for natural gas shall be determined based on the available gas, which shall be the total amount of natural gas produced each month as determined pursuant to section 334 of this Act, less the royalty pursuant to subsection (4) of section 395 of this Act.

(4) The production shares for condensates shall be determined based on the available condensates, which shall be the total amount of condensates produced each month as determined pursuant to section 334 of this Act, less the royalty pursuant to subsection (4) of section 395 of this Act.

### **Valuation**

398. Where a contract requires the valuation of crude oil, gas and condensates, such valuation shall be based on the same values as are applicable to royalties under section 334 of this Act.

### **Funding of costs under production sharing contracts.**

399. (1) The contractor under a production sharing contract shall be responsible for all costs for upstream petroleum operations.

(2) The contractor shall incur these costs at its own risk and where no production is established, the contractor shall not recover its costs under the production sharing contract.

### **Cost oil, cost gas and cost condensate limits under production sharing contracts**

400. (1) The recovery of costs under the production sharing contracts, shall:

(a) be limited to 80% of available oil, available gas and available condensates or such lesser amount determined by the National Oil Company, and

(b) such percentage may be subject to a sliding scale based on volume, price or other variables as established in the model contract.

(2) Where costs under subsection (1) of this section are not recovered in any month such costs can be recovered in subsequent months and where costs are not recovered on the last day of the contract as cost oil or cost gas, such costs shall be non recoverable.

(3) All costs under subsection (1) of this section shall be recovered in accordance with the accounting procedure annexed to the production sharing contract, where such costs are recoverable pursuant to this Part VIII-E.

(4) The contract shall determine the treatment of recoverable costs, including whether costs shall be expensed or depreciated, the method of depreciation and the treatment of pre-production costs.

### **Non recoverable costs**

401. Under the accounting procedure of a production sharing contract the following costs shall be non-recoverable:

- (a) interest, financing charges or other charges related to borrowing of money or raising of equity including the explicit or implied interest component of any leasing agreements;
- (b) costs for which records do not exist or are, not correct in any material respect;
- (c) costs incurred before the effective date of the contract or after the termination date of the contract;
- (d) costs that were not incurred within the relevant work programme and budget, or that are of a category not permitted by the contract or the accounting procedure;
- (e) costs of equipment, goods and services in excess of the fair market value, to the extent of such excess;
- (f) charges for equipment, goods and services which are not in accordance with the relevant agreement with the sub-contractor or supplier;
- (g) charges for goods in excess of the amount set out in the accounting procedure with respect to valuation of materials;
- (h) any costs not included in an approved work programme and budget (unless resulting from an emergency);
- (i) costs incurred beyond the measurement point;
- (j) income and revenue taxes, incurred within or outside Nigeria;
- (k) any signature bonuses, production bonuses, or other bonuses or fees due on the grant or renewal of a lease;
- (l) costs of expert determination or arbitration, unless the arbitral award permits the recovery of the costs;
- (m) fines and penalties imposed by any authority;
- (n) donations or contributions;
- (o) overhead and general administrative expenditures incurred outside Nigeria;
- (p) cost of finance leases to the extent such lease payments can be considered an interest expense;
- (q) costs of licensing or purchasing technology from an affiliate, unless specifically approved by the National Oil Company;
- (r) any cost resulting from any arrangement or event that (i) arises from fraud or wilful misconduct or negligence on the part of the contractor and contractor's subcontractors, agents or representatives in the performance of their services under the contract, or (ii) constitutes a breach of the contract or any applicable law or regulations, including any related legal costs for defence;
- (s) costs incurred in organizing or managing any partnership, joint venture or other arrangement between or among the contractor parties;
- (t) insurance costs where such costs are earned by any entity comprising the contractor or their affiliates;
- (u) costs for any loss that was insurable or for failure to claim insurance;
- (v) joint costs that are related to the upstream petroleum operations under the contract and to other activities of the contractor or contractor parties, with respect to the portion of such costs that is related to the activities other than the upstream petroleum operations under the contract;
- (w) Such other costs as the accounting procedure establishes as non recoverable.

### **Cost allocation**

402. Where a production sharing contract contemplates the sharing of natural gas and the sharing of condensates in addition to the sharing of crude oil the accounting procedure shall set out the allocation procedures in order to identify costs attributable to cost oil, cost gas and cost condensates.

### **Revenues to be credited against recoverable costs**

403. Under the accounting procedure of a production sharing contract the following revenues earned under the contract shall be credited against recoverable costs in order to reduce such recoverable costs:

- (a) the proceeds of any insurance or claim in connection with the upstream petroleum operations or any assets charged to the accounts;
- (b) any legal costs claimed and subsequently recovered;
- (c) revenues earned from third parties for the use of property or assets, for the delivery of any services by the contractor or for any information or data;
- (d) any discounts or adjustments earned by the contractor from the suppliers/manufacturers or their agents in connection with goods purchased or defective equipment or materials, the costs of which were previously charged to the accounts;
- (e) rentals, refunds or other credits earned by the contractor, which apply to any charge which has been made to the accounts;
- (f) earnings from the disposal of assets, applying the valuation criteria for materials established in the accounting procedure annexed to the contract;
- (g) in case contractor sells, exports or transfers any material, equipment or supplies to affiliates or other entities or persons, the value of such transfer shall be credited to the costs of which were previously charged to the accounts; and
- (h) such other revenues as may be identified in the accounting procedure to be credited against recoverable costs.

### **Profit oil, profit gas and profit condensates**

404. (1) The available oil less the cost oil shall be profit oil, the available gas less the cost gas shall be profit gas, and the available condensates less the cost condensates shall be profit condensates.

(2) The share of profit oil, profit gas and profit condensates to the National Oil Company shall be stipulated in the model contract and the model contract shall set out sliding scales resulting in a higher percentage for the National Oil Company based on volume, price or such other variables as the National Oil Company may consider, provided that sliding scales based on the internal rate of return shall not be used.

(3) With respect to production sharing contracts in deep water existing on the effective date, contract areas that are converted pursuant to subsection (5) of section 411 of this Act, shall do so on the basis of the following with respect to crude oil, gas and condensates:

- (a) the cost oil and profit oil share shall be ringfenced for each PML, with allocation of exploration costs, and be based on the following sliding scale per PML for profit oil to the National Oil Company:

Up to a cumulative volume of 750,000,000 barrels – 20%  
From 750,000,001 up to 1,000,000,000 - 30%  
From 1,000,000,001 to 2 billion barrels - 40%  
Over 2 billion barrels the profit oil split shall be negotiated.

- (b) a flat profit gas share of 10% of available gas for any volume of production from the effective date;
- (c) a flat profit condensate share of 10% of available condensates for any volume of production from the effective date;
- (d) an 80% cost limit calculated on the basis of available oil, available gas and available condensates; and
- (e) the conversion of such existing production sharing contracts shall not result in the extension of the contract beyond the stipulated production term in such contracts.

### **Audit procedures**

405. (1) The National Oil Company shall carry out such audits as required for a period of five years, for any contract pursuant to section 172 of the Act following the year in which the transactions occurred.

(2) The details of the audit process shall be established in the contract and shall not relate to the audits that are required under any of the payments under section 395 of this Act, which have their own audit processes as provided for under this Part or decided by the Inspectorate.

(3) There shall be no time limit on any audits related to alleged fraud or wilful misconduct, and the National Oil Company shall have the right to re-examine reports and statements that otherwise were considered final.

(4) The impact of any exceptions that have been identified shall be calculated back to the month to which such exception applies and the amounts of adjustment shall be applied as a correction to the production sharing calculations for the month following the final determination of such exception. Where the share of the production to the contractor or the National Oil Company is insufficient in order to accommodate the exception, the correction shall be applied to successive months until fully absorbed and where the exception is of an amount that cannot be accommodated for the remainder of the contract or after the termination of the contract, the correction shall be due in cash.

(5) The contractor shall be required to include in the contracts with affiliates and subcontractors audit and record retention provisions which allow the National Oil Company to carry out such audits as required.

(6) If any entity comprising the contractor conducts an audit of the books and records of operator or any other contractor parties pertaining to the contract, it shall provide free of any charges to the National Oil Company a copy of the audit results, a report setting out the audit exceptions, claims and queries and the manner in which these exceptions, claims and queries were finally allowed or denied by operator or other entity.

(7) Subject to the delivery of books, records and documents to the National Oil Company in accordance with the contract upon termination of the contract, all books, records and documents

must be maintained by the contractor, the affiliates of contractor parties and subcontractors and made available for inspection until the later of:

- (a) the period established under subsection (1) of this section;
- (b) if any cost or amount is under dispute, the time at which that dispute has been resolved;  
and
- (c) such longer period as may be legally required.

**Model contract**

406. Any contract can only be entered into by the National Oil Company on the basis of a model approved pursuant to subsection (2) of section 172 of this Act.

## **F– MISCELLANEOUS PROVISIONS**

### **Other taxes, duties and levies**

407. (1) All companies, lessees, licensees, concessionaires, IJV's, contractors and other entities involved in petroleum operations shall be subject to such other taxes, duties and levies of general application as may apply to them from time to time, including, without restricting the generality of the forgoing Capital Gains Tax, Education Tax, withholding taxes, stamp duties, any other taxes and levies under the Taxes and Levies (approved List for Collection) Act approved for collection by the Federal Government, any State Government and any Local Government, with the exception of any tax or levy from which the companies are specifically exempted.

(2) The payment of any tax or levy shall not reduce the obligation of a company to pay the amounts stipulated under Section 28 of this Act.

(3) Any fees, rents and royalties shall be payable on the dates such payments are due under this Act. Where the amounts due are unpaid for a period of one month after the dates such payments are due, the remedies under this Act, including the provisions of section 193 of this Act, shall apply.

(4) Section 1 subsection 3 of the The Education Tax Act is hereby amended by deleting the following words: “or the Petroleum Profits Tax Act as the case may be”.

(5) Where there is reference in Part VIII or anywhere else in this Act to a penalty defined in US \$, such penalty can be paid in Naira based on the official exchange rate determined by the Central Bank of Nigeria.

### **Electronic management information system**

408. (1) All companies involved in upstream petroleum operations shall establish an electronic management information system which includes a modern oil and gas accounting system; The accounting system hardware and software shall accommodate current technology and evolving functional requirements and the accounting system shall be based on the applicable regulations under this Act and the sub-systems thereof shall be designed and structured in a manner that facilitates comparative analysis and data retrieval , including without limitation:

- (a) year-by-year comparisons;
- (b) actual-to-budget comparisons;
- (c) effective and flexible report writing capability;
- (d) effective roll-up by cost category;
- (e) categorization of expenditures by location, project or authorization for expenditure grouping, in particular permitting the identification of local expenditures in Nigeria;
- (f) currency conversion, exchange gains and losses, and revaluation of liabilities;
- (g) multiple data entry categories, including accounts payable invoices, cash disbursement, accounts receivable invoices, cash receipts, journal entries, material transfers, invoice offsets, check cancellation, standard entries, adjusting entries, various system processes including accruals, and overhead allocation;
- (h) cash management capabilities and aging analysis;
- (j) time writing capabilities;
- (k) accounts payable management capabilities;

- (1) identification of production and revenues from various grades of crude oil, condensates and natural gas and the determination of their value under this Act for purposes of royalty, Nigerian Hydrocarbon Tax and contractor administration.
- (1) effective transactional audit trails, including the ability to access all of the charges that are used as the basis for an allocation of costs, in particular:
- (i) deductible and non-deductible costs for purposes of the Nigerian Hydrocarbon Tax,
  - (ii) recoverable and non-recoverable costs for any contract pursuant to section 172 of this Act,
  - (iii) cost classification for the Companies Income Tax; and
  - (iv) any netback calculations for royalty purposes of Section 334 and 335 of this Act.

(2) The management information system, shall be primarily designed to capture revenue and cost information, as well as the production and valuation of production of crude oil, condensates and natural gas, and shall also have the capability to record other non-financial, quantitative information, where this is required for the proper administration under this Act.

(3) The management information system shall be accessible on a real time basis with a security code system for authorized persons that have the authority to inspect and audit upstream petroleum operations under this Act, and in the case of contracts, by persons authorized by the National Oil Company. Persons having access to the security code access system shall be decided by the Directorate, the Ministry of Finance and the Presidency. Automatic data transfer procedures to management information systems of the Inspectorate and the Service, and where applicable the National Oil Company are hereby mandated.

(4) The management information systems pursuant to this section shall be fully operational within one year after the commencement of this Act, and where such systems are not operational and accessible to authorized persons pursuant to subsection (3) of this section, a company in default shall pay a penalty of US \$ 10,000 for every day such system is not operational after the date required to the Service and shall be dealt with under the provisions of subsection (1) of section 384 of this Act.

#### **Restriction of powers**

409. (1) Any person involved in the administration of this Act is prohibited from making decisions, rules or regulations that shall reduce the payments related to rents, royalties, taxes or levies required under this Act.

(2) Any person making a decision, rule or regulation pursuant to subsection (1) of this section shall be guilty of an offense.

### **PART IX: Repeals, Transitional and Savings Provisions**

## **Repeals**

410. (1) From the commencement of this Act the following enactments and regulations are hereby repealed-

- (a) Associated Gas Reinjection Act CAP A25 Laws of the Federation 2004
- (b) Deep Offshore and Inland Basin Production Sharing Contracts Act CAP D3 Laws of the Federation of Nigeria 2004, except for section 16 (1) and (2).
- (c) Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 Laws of the Federation of Nigeria 2004
- (d) Motor Spirits (Returns) Act CAP M20 Laws of the Federation of Nigeria 2004
- (e) Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, CAP N124 Laws of the Federation of Nigeria 2004
- (f) Nigerian National Petroleum Corporation (Amendment) Act 2007
- (g) Oil Pipelines Act CAP 07 Laws of the Federation of Nigeria 2004, except for the provisions retained pursuant to section 510(3) of this Act.
- (h) Petroleum Act 1969, CAP 350 Laws of the Federation 1990
- (i) Petroleum (Amendment) Decree No. 23 of 1996
- (j) Petroleum (Amendment) Decree No. 22 of 1998
- (k) Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003
- (l) Petroleum Equalisation Fund (Management Board e.t.c.) Act No. 9 of 1975, CAP P11 Laws of the Federation of Nigeria 2004
- (m) Petroleum (Special) Trust Fund Act Cap P14 Laws of the Federation of Nigerian 2004
- (n) Petroleum Technology Development Fund Act, CAP P15 Laws of the Federation of Nigeria 2004

(2) Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, CAP N124 Laws of the Federation of Nigeria 2004 stands repealed upon the incorporation of the National Oil Company and the Petroleum Profits Tax Act Cap. P13 Laws of the Federation 1990 stand repealed on July 1, 2010.

(3) Oil Pipelines Act 2004 and any subsidiary legislation repealed as a result of the repeal of any of the enactments in subsections (1) and (2) of this section shall, in so far, as it is not inconsistent with this Act, remain in operation until it is revoked or replaced by subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act.

## **Savings provisions**

411. (1) Any oil prospecting license or oil mining lease granted under the Mineral Oils Act 1958 or the Petroleum Act 1969 shall continue but shall be subject to all the provisions under this Act except that:

- (a) such oil prospecting licenses shall not, at the commencement of this Act be subject to the provisions of section 176, subsections (1) through (8) of section 177 and subsections (1) and (2) of section 185 of this Act, and for such oil prospecting licenses, the terms with respect to duration of the oil prospecting licence, work commitments and relinquishments shall continue unaltered for a period up to the tenth anniversary of the granting of such oil prospecting licence; and

- (b) (i) with respect to the application of Parts VIII-B and VIII-D, the new provisions shall be effective from July 1, 2010 and any requirement on the part of the National Oil Company to pay tax oil under production sharing contracts shall terminate,
- (ii) capital allowances applicable to investments, incurred prior to July 1, 2010, and not yet claimed, shall be applied for the purposes of the Nigerian Hydrocarbon Tax and Companies Income Tax to the owners of such assets. With respect to any existing production sharing contracts, the contractor parties which have incurred costs for the creation of assets to be owned by a licensee of a petroleum prospecting license or lessee of a petroleum mining lease prior to July 1, 2010 and have not yet claimed such costs against tax oil under such contracts, shall be entitled to expense such costs for Companies Income Tax and Nigerian Hydrocarbon Tax pursuant to sections 332 and 345 of this Act,
  - (iii) carry forward losses existing as of June 30, 2010, shall be applied to the calculation of the Nigerian Hydrocarbon Tax and Companies Income Tax. With respect to any existing production sharing contracts, the lessee and the contractor parties shall share the loss carry forwards on the basis of the profit oil split existing as of June 30, 2010,
  - (iv) (deleted)
  - (v) Profit oil shares of deep water production sharing contracts shall be reviewed by the National Oil Company in line with section 16(1) and (2) of the Deep Offshore and Inland Basin Production Sharing Contract Act 1999, in order to facilitate the payment of Companies Income Tax and Nigerian Hydrocarbon Tax and by taking into consideration the new royalties applicable, provided, however, that all production sharing contracts shall adhere to the provisions of Part VIII-E of this Act and the review shall ensure that the contracts shall be economically beneficial to the Government,
  - (vi) Profit oil shares of onshore and shallow water production sharing contract shall be reviewed by the National Oil Company, in order to facilitate the payment of Companies Income Tax and Nigerian Hydrocarbon Tax and by taking into consideration the new royalties applicable, provided, however, that all production sharing contracts shall adhere to the provisions of Part VIII-E of this Act and the review shall ensure that the contracts shall be economically beneficial to the Government,
  - (vii) Reviewed terms shall provide for a one time adjustment of profit oil reflecting the newly reviewed terms, and
  - (viii) Any profit oil shares to contractors under existing production sharing contracts shall continue until the signing of the respective amendment to the production sharing contracts. Such amendments shall not result in an extension of the Production term specified in the existing contract.

(2). Any license, permit or other right granted in respect of commercial activities pertaining to midstream petroleum operations or downstream petroleum operations, including refineries, pipelines, storage, transportation, distribution and retail, under any laws in force at the time in Nigeria, shall, in accordance with the terms of subsection (10) of section 209 and subsection (2) of section 227 of this Act apply to the Regulatory Institutions for the issuance of the appropriate commercial or technical licence, and pending the issuance of the said appropriate technical or commercial licence, the said existing technical or commercial licence, permit, or right shall continue in force as if it had been issued under the provisions of this Act.

(3) Any other permit or other right in respect of any sector of the petroleum industry in Nigeria to which subsection (1) and (2) of this section does not apply, and that has been granted by the Department of Petroleum Resources or the Petroleum Products Pricing and Regulatory Authority, as the case may be, and which is still in existence on the effective date, shall continue in force for the remainder of its duration as if it had been issued under the provisions of this Act.

(4) Any tariff, price, levy, or surcharge, which was payable to the Department of Petroleum Resources or the Petroleum Products Pricing and Regulatory Authority prior to the effective date shall continue in force until the expiration of the term of the said tariff, price, levy, or surcharge, or until alternative provisions are made pursuant to the provisions of this Act or any regulations made under it, whichever is earlier, provided, however, that any payments under Part VIII of this Act shall be applicable.

(5) Companies shall be entitled to convert all deep water production sharing contracts based on the terms provided for in subsection (3) of section 404 of this Act where such companies, together with their contractor parties, on a voluntary basis provide for an accelerated implementation of this Act, through:

(a) voluntary compliance with a relinquishment date for all the OPLs and OMLs in which they hold an interest of six months rather than two years from the effective date pursuant to paragraph (a) of subsection (3) of section 191 of this Act;

(b) voluntary compliance with a conversion of all technical licenses in which they hold an interest pursuant to subsection (10) of section 209 of this Act within six months from the effective date;

(c) voluntary compliance with a conversion of all commercial licenses in which they hold an interest pursuant to subsection (2) of section 227 of this Act within six months from the effective date; and

(d) voluntary execution of all their production sharing contracts in deep water in which they hold an interest, based on a model contract pursuant to paragraph (b) of subsection (2) of section 171 of this Act.

(6). Within three months from the date of commencement of this Act the Minister on the advice of the Directorate or the Regulatory Institutions, as the case may be, may make any further transitional and savings provisions that are considered necessary or desirable, provided that these provisions are consistent with the transitional and savings provisions in this Act.

### **The Directorate**

412. On the effective date all civil servants of the former Ministry of Petroleum Resources shall be transferred to the Head of Civil Service of the Federation. The Directorate shall hire such personnel as required to fulfil its functions pursuant to this Act.

### **Application of all contracts**

413. (1) The provisions of this section shall apply to all contracts or other instruments subsisting immediately before the effective date and entered into by the Ministry of Petroleum Resources.

(2) By virtue of this Act there is vested in the Federal Government and managed and controlled by the Directorate as from the effective date and without further assurance all assets, funds, resources and other moveable or immovable property which immediately before the effective date were vested and held by the Ministry of Petroleum Resources on its own behalf.

(3) As from the effective date:

- (a) the rights, interest, obligations and liabilities of the Ministry of Petroleum Resources existing immediately before the effective date under any aforementioned contract or instrument at law or in equity which shall have been held on its own behalf, or have accrued to or have been incurred on its own behalf, or for its own benefit or use shall by virtue of this Act be assigned to and vested in the Directorate;
- (b) any such contract or instrument as is mentioned in paragraph (a) of this subsection, shall be of the same force and effect against or in favour of the Directorate and shall be enforceable as fully and effectively as if instead of the Ministry of Petroleum Resources, the Directorate had been named therein or had been a party thereto; and
- (c) any proceeding or cause of action pending or existing or which could have been taken by or against the Ministry of Petroleum Resources immediately before the effective date in respect of any such rights, interest, obligation or liability of the Ministry of Petroleum Resources may be commenced, continued or enforced or taken by or against the Directorate as if this Act had not been made.

### **The Inspectorate**

414. (1) All staff of the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation employed in the Department of Petroleum Resources and the Department of Petroleum Resources in the Ministry of Petroleum Resources on the effective date shall be regarded as having transferred their services to the Inspectorate, with the exception of any staff that will be transferred to the Authority and the Agency with effect from that date on terms and conditions no less favourable than those obtained immediately before the effective date and such services will be regarded as continuous for the purpose of pensions and gratuities.

(2) All staff of the National Petroleum Investment Management Services and of the Crude Oil Marketing Division of the Nigerian National Petroleum Corporation shall be transferred, pursuant to subsection (2) of section 425 of this Act, to the Inspectorate, with the exception of any staff that will be transferred to the Authority and the Agency or will be retained by the National Oil Company, on terms and conditions no less favourable than those immediately before their transfer and such services will be regarded as continuous for the purpose of pensions and gratuities.

(3) Any staff of the former Petroleum Products Pricing Regulatory Authority which has been transferred to the Inspectorate pursuant to subsection (1) of section 418 of this Act, shall be regarded as having transferred their services to the Inspectorate with effect from the effective date on terms and conditions no less favourable than those obtained immediately before the effective date and such services will be regarded as continuous for the purpose of pensions and gratuities.

### **Cessation of employment.**

415. Every person whose service has been transferred to the Inspectorate from the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation, National Petroleum Investment Management Services or the Department of Petroleum Resources in the former Ministry of Petroleum Resources under this Act shall cease to be in the employment of the Nigerian National Petroleum Corporation or the Ministry of Petroleum Resources on the day

preceding the effective date and shall be deemed to be employed by the Inspectorate with effect from the effective date.

**Exemption from liability.**

416. No liability shall attach to the Inspectorate or to any employee or agent of the Inspectorate or to a member for any loss or damage sustained by any person as a result of the lawful exercise or performance of any function which in terms of this Act is conferred or imposed upon the Inspectorate or the members.

**Application of subsisting contracts**

417. (1) The provisions of this section shall apply to all contracts or other instruments subsisting immediately before the effective date and entered into by the former Nigerian National Petroleum Corporation or the former Ministry of Petroleum Resources for or on behalf of the former Petroleum Inspectorate or the former Department of Petroleum Resources.

(2) By virtue of this Act there is vested in the Inspectorate as from the effective date and without further assurance all assets, funds, resources and other moveable or immovable property which immediately before the effective date were vested and held by the Nigerian National Petroleum Corporation or the Ministry of Petroleum Resources for and on behalf of, or for the use of the former Petroleum Inspectorate or the Department of Petroleum Resources to the extent that such assets, funds, resources and other moveable or immovable property relates to upstream petroleum operations as determined by the Directorate.

(3) As from the effective date:

(a) the rights, interests, obligations and liabilities of the Ministry of Petroleum Resources existing immediately before the effective date under any aforementioned contract or instrument at law or in equity, which shall have been held on behalf of, or have accrued to, or have been incurred on behalf of, or for the benefit of, or for the use of the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation or the Department of Petroleum Resources of the Ministry of Petroleum Resources, shall by virtue of this Act be assigned to and vested in the Inspectorate; to the extent that such rights, interests, obligations and liabilities relate to upstream petroleum operations as determined by the Directorate;

(b) any such contract or instrument as is mentioned in paragraph (a) of this subsection, shall be of the same force and effect against or in favour of the Inspectorate and shall be enforceable as fully and effectively as if instead of the Petroleum Inspectorate of the Nigerian National Petroleum Corporation or the Department of Petroleum Resources of the Ministry of Petroleum Resources, the Inspectorate had been named therein or had been a party thereto; and

(c) any proceeding or cause of action pending or existing or which could have been taken by or against the Petroleum Inspectorate of the Nigerian National Petroleum Corporation or the Department of Petroleum Resources of the Ministry of Petroleum Resources immediately before the effective date in respect of any such right, interest, obligation or liability of the Petroleum Inspectorate or the Department of Petroleum Resources may be commenced, continued or enforced or taken by or against the Inspectorate as if this Act had not been made.

**The Authority**

418. (1) From the date of commencement of this Act the staff of the former Petroleum Products Pricing Regulatory Authority with the exception of any staff that will be transferred to the Inspectorate or the Agency, shall be regarded as having transferred their services to the Authority

with effect from that date on terms and conditions no less favourable than those obtained immediately before the effective date and such services will be regarded as continuous for the purpose of pensions and gratuities.

(2) Staff of the National Petroleum Investment Management Services and of the Crude Oil Marketing Division of the Nigerian National Petroleum Corporation transferred to the Authority pursuant to subsection (2) of section 414 of this Act shall be transferred pursuant to subsection (2) of section 425 of this Act on terms and conditions no less favourable than those immediately before their transfer and such services will be regarded as continuous for the purpose of pensions and gratuities.

(3) Any staff of the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation employed in the Department of Petroleum Resources and the Department of Petroleum Resources in the Ministry of Petroleum Resources which has been transferred to the Authority pursuant to subsection (1) of section 414 of this Act, shall be regarded as having transferred their services to the Authority with effect from the effective date on terms and conditions no less favourable than those obtained immediately before the effective date and such services will be regarded as continuous for the purpose of pensions and gratuities.

#### **Exemption from liability by a member etc.**

419. No liability shall attach to the Authority or to any member or employee or agent of the Authority for any loss or damage sustained by any person as a result of the lawful exercise or performance of any function which by or in terms of this Act is conferred or imposed on the Authority.

#### **Subsistence of contract.**

420. (1) The provisions of this section shall apply to all contracts or other instruments subsisting immediately before the effective date and entered into by the former Petroleum Products Pricing Regulatory Authority.

(2) By virtue of this Act there is vested in the Authority as from the effective date and without further assurance all assets, funds, resources and other moveable or immovable property which immediately before the effective date were vested and held by the Petroleum Products Pricing and Regulatory Authority and applicable to downstream petroleum operations in the Petroleum Inspectorate, in the Nigerian National Petroleum Corporation or the Department of Petroleum Resources in the Ministry of Petroleum Resources as determined by the Directorate .

(3) As from the effective date:

(a) the rights, interest, obligations and liabilities of the Petroleum Products Pricing and Regulatory Authority and applicable to downstream petroleum operations in the Petroleum Inspectorate in the Nigerian National Petroleum Corporation or the Department of Petroleum Resources in the Ministry of Petroleum Resources existing immediately before the effective date under any aforementioned contract or instrument at law or in equity which shall have been held on behalf of or have accrued to or have been incurred for its own benefit or use, shall by virtue of this Act be assigned to and vested in the Authority;

(b) any such contract or instrument as is mentioned in paragraph (a) of this subsection, shall be of the same force and effect against or in favour of the Authority and shall be enforceable as fully and effectively as if instead of the Petroleum Products Pricing and Regulatory Authority, the Authority had been named therein or had been a party thereto; and

- (c) any proceeding or cause of action pending or existing or which could have been taken by or against the Petroleum Products Pricing and Regulatory Authority immediately before the effective date in respect of any such rights, interest, obligation or liability of the Petroleum Products Pricing and Regulatory Authority, may be commenced, continued or enforced or taken by or against the Authority as if this Act had not been made.

### **The Agency**

421. (1) Any staff of the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation employed in the Department of Petroleum Resources and the Department of Petroleum Resources in the Ministry of Petroleum Resources which has been transferred to the Agency pursuant to subsection (1) of section 414 of this Act, shall be regarded as having transferred their services to the Agency with effect from the effective date on terms and conditions no less favourable than those obtained immediately before the effective date and such services will be regarded as continuous for the purpose of pensions and gratuities.

(2) Staff of the National Petroleum Investment Management Services and of the Crude Oil Marketing Division of the Nigerian National Petroleum Corporation transferred to the Agency pursuant to subsection (2) of section 414 of this Act shall be transferred pursuant to subsection (2) of section 425 of this Act on terms and conditions no less favourable than those immediately before their transfer and such services will be regarded as continuous for the purpose of pensions and gratuities.

(3) Any staff of the former Petroleum Products Pricing Regulatory Authority which has been transferred to the Agency pursuant to subsection (1) of section 418 of this Act, shall be regarded as having transferred their services to the Agency with effect from the effective date on terms and conditions no less favourable than those obtained immediately before the effective date and such services will be regarded as continuous for the purpose of pensions and gratuities.

### **Contract relating to the agency.**

422. Any contracts entered into by the Corporation, for the benefit of, or with respect to the functions of the National Petroleum Investment Management Services of the Nigerian National Petroleum Corporation, as the case may be, and which are in respect of matters pertaining to the functions of the Agency, shall be enforceable as fully and effectively as if instead of the Corporation, the Agency had been named therein or had been a party thereto.

### **The Centre**

423. From the effective date of this Act, any staff of the Research and Development Division of the former Nigerian National Petroleum Corporation that are employed by the Centre shall be regarded as having transferred their services to the Centre with effect from that date, on terms and conditions no less favourable than those obtaining immediately before the effective date, unless they indicate otherwise before the expiration of three months next following the effective date, and such services will be regarded as continuous for the purpose of pensions and gratuities.

### **Contracts relating to the Centre.**

424. Any contracts entered into by the Corporation, for the benefit of, or with respect to the functions of, the Research and Development Division and which are in respect of matters pertaining to the functions of the Centre, shall be enforceable as fully and effectively as if instead of the Corporation, the Centre had been named therein or had been a party thereto.

## **Staff of the Institutions and transition process**

425. (1) From the effective date of this Act any staff of the former
- (a) Ministry of Petroleum Resources;
  - (b) Department of Petroleum Resources;
  - (c) Petroleum Products Pricing and Regulatory Authority;
  - (d) Nigerian National Petroleum Corporation; and
  - (e) of the Petroleum Equalisation Fund, and the Petroleum Technology Development Fund, and who is employed by the National Oil Company or any of the Institutions of this Act.

shall be regarded as having transferred his or her services to the said National Oil Company or any of the said Institutions with effect from that date, on terms and conditions no less favourable than those obtaining immediately before the effective date, and such services will be regarded as continuous for the purpose of pensions and gratuities.

(2) The Directorate and the National Oil Company shall determine such transition measures as may be required to implement the provisions of sections 412 through subsection (1) of section 425 of this Act in consultation with the Head of the Civil Service of the Federation and the individuals concerned. The transition measures shall be based on a competitive and non-discriminatory process and shall be concluded within 24 months from the effective date.

(3) Any staff from the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation employed in the Department of Petroleum Resources, the Department of Petroleum Resources in the Ministry of Petroleum Resources and the former Petroleum Products Pricing Regulatory Authority, which has been transferred pursuant to sections 414, 418 and 421 of the Act to any Regulatory Institution may request re-assignment to another Regulatory Institution pursuant to subsection (2) of this section.

## **PART X- INTERPRETATION, CITATION AND REGULATIONS**

### **Interpretation**

426. In this Act unless it is specifically stated otherwise:

**“acreage”** means a surface area and the subsoil vertically below such surface area, but does not include any ownership of petroleum resources or other mineral resources or any rights to the surface with respect to any licensee or lessee;

**“Act”** means this Petroleum Industry Act and all Schedules thereto;

**"accounting period"**, in relation to a company required to pay Nigerian Hydrocarbon Tax, pursuant to Part VIII-D of this Act, means:

- (i) a period of one year commencing on 1st January and ending on 31st December of the same year; or
- (ii) any shorter period commencing on the day the first petroleum is produced that is attributable to the company in the opinion of the Service and ending on 31st December of

the same year; or

(iii) any period of less than a year being a period commencing on 1st January of any year and ending on the date in the same year when the company ceases to be engaged in upstream petroleum operations;

**"adjusted profit"** means adjusted profit as stated in Part VIII-D of this Act;

**"assessable profits"** means assessable profits as stated in Part VIII-D of this Act;

**"assessable tax"** means assessable tax as stated in Part VIII-D of this Act;

**"associated gas"** means:

- a) natural gas, commonly known as gas-cap gas, which overlies and is in contact with crude oil in a reservoir; and
- b) solution gas dissolved in crude oil in a reservoir;

**"benchmark prices"** means:

- (a) a price set by the Authority as a basis for comparison; or
- (b) a price set by the Authority to be used as a reference point for petroleum products;

**"bitumen"** means a viscous mixture of hydrocarbons, and all substances contained therein, as exist in natural state in strata, and in this state will not flow to a well;

**"chargeable profits"** means chargeable profits as stated in Part VIII-D of this Act;

**"chargeable tax"** means chargeable tax as stated in Part VIII-D of this Act and imposed under this Act;

**"commercial discovery"** means a discovery of crude oil, heavy oils, extra heavy oils, natural gas or condensates within a petroleum prospecting licence which can be economically developed in the opinion of the licensee, after consideration of all relevant economic factors normally applied for the evaluation of crude oil natural gas or condensate evaluation and development;

**"commercial licence"** means a commercial licence issued pursuant to Part IV-C of this Act;

**"commercial regulation"** means the regulation of commercial issues pertaining to the petroleum industry including commercial matters pertaining to exploration, development, production, processing, trading, distribution and pricing of petroleum;

**"company"** means any body corporate incorporated under any law in force in Nigeria or elsewhere;

**"contract area"** means the geographical area identified in a contract pursuant to Section 172, as reduced from time to time pursuant to the provisions of this Act, and where relinquishment

provisions result in the creation of separate areas within the original contract area, such separate areas shall jointly be considered the contract area;

**“contractor parties”** are the companies that have jointly entered into a contract pursuant to section 172 of this Act other than the National Oil Company;

**“condensate”** refers to a portion of natural gas of such composition that are in the gaseous phase at temperature and pressure of the reservoirs, but that, when produced, are in the liquid phase at surface pressure and temperature;

**“crude oil”** means a mixture of hydrocarbons, and all substances contained therein, as exist in natural state in strata and are in a liquid state upon production from a reservoir and in this state will flow to a well;

**“decommissioning”** or **“abandonment”** refers to the approved process of cessation of petroleum operations, including oil and gas wells, installations and structures, including shutting down installation’s operation and production, total or partial removal of installations and structures where applicable, chemicals, radioactive and all such other materials handling, removal and disposal of debris and removed items, environmental monitoring of the area after removal of installations and structures;

**“deep water”** means areas offshore Nigeria with a water depth in excess of 200 meters;

**“domestic gas supply obligation”** means the obligations of every lessee to dedicate a specific volume of gas towards the domestic gas demand requirement as stipulated in Part V-C and section 182 of this Act;

**“downstream product sector”** means the sector of the Nigerian economy that consist of downstream product operations;

**“downstream gas sector”** comprises the sector of the Nigerian economy that consist of downstream gas distribution operations;

**“downstream gas distribution and utilization operations”** means, with respect to Part VIII-B of this Act, downstream gas distribution operations as well as construction and operations of facilities using natural gas, including but not limited to power plants and plants for the production of fertilizers, ammonia, aluminum, iron ore reduction, methanol, and petrochemicals and other construction and activities incidental thereto and related administration and overhead;

**“downstream gas distribution operations”** comprises the activities of purchase, distribution and supply of marketable gas to small customers, construction and operation of city-gate reception terminals for natural gas and gas or ethane distribution pipelines, and the sale, marketing and delivery of gas to small customers;

**“downstream petroleum operations”** means downstream product operations and downstream gas distribution operations;

**“downstream product operations”** means construction and operation in Nigeria of facilities, product pipelines, tank farms and stations for the distribution, marketing and retailing of petroleum products, and other construction and activities incidental thereto and related administration and overhead, purchase of petroleum products and sale of petroleum products on a retail basis;

**“effective date”** means the date on which this Act comes into force;

**“enforcement order”** means an order issued by the Inspectorate, the Authority or the Agency;

**“Exclusive Economic Zone”** shall have the same meaning as defined in the Exclusive Economic Zone Act Cap. 350, Laws of the Federation of Nigeria;

**“fair market value”** means the price at which bitumen, crude oil, condensates, natural gas, petroleum products, commodities, assets, materials or services of similar quality could be supplied on similar terms at similar times by unrelated and independent parties under no compulsion to buy or sell and trading on a basis where none of the parties is in a position to exert significant influence on any of the other parties having regard to all relevant factors;

**“field”** means a group of underground formations including a single reservoir or multiple reservoirs all grouped on, or related to, the same geological, structural or stratigraphic condition, as well as the vertical projection of these formations to the surface area;

**“foreign company”** means a company incorporated outside Nigeria and having an established place of business in Nigeria;

**“frontier acreage”** means any or all licenses or leases located in the Anambra, Benue Trough, Bida, Chad, Dahomey, and Sokoto Basins of Nigeria;

**“gas”** or **“natural gas”** means all gaseous hydrocarbons, and all substances contained therein, as exist in natural state in strata, associated or not with crude oil, and are in a gaseous state upon production from a reservoir and excludes condensates;

**“gas liquefaction allowance”** means an allowance for the purpose of determining the value of natural gas determined pursuant to paragraph (f) of subsection (8) of section 334 of this Act;

**“gas processing allowance”** means an allowance for the purpose of determining the value of natural gas determined pursuant to paragraph (e) of subsection (8) of section 334 of this Act;

**“Gazette”** means the Gazette of the Federal Government of Nigeria;

**“Government”** means the government of the Federal Republic of Nigeria;

**“Henry Hub gas price”** means the monthly average Henry Hub spot price in the United States as specified by regulations under this Act;

**“indigenous oil company”** means a company:

- (a) engaged in the exploration for and production of crude oil and natural gas of which fifty five (55) per cent or more of its shares are beneficially owned directly or indirectly by Nigerian citizens or associations of Nigerian citizens;
- (b) which meets the requirements of any guidelines or regulations that may be issued by the Inspectorate; and
- (c) which is accredited as an indigenous oil company by the Inspectorate;

**“Institutions” or “Institution”** refers to the National Petroleum Directorate, the Nigerian Petroleum Inspectorate, the Petroleum Products Regulatory Authority, the National Midstream Regulatory Agency, the Nigerian Petroleum Research Centre, the National Frontier Exploration Service, the Petroleum Equalisation Fund, and the Petroleum Technology Development Fund, either jointly, any two or more of the said Institutions, or singly, as the case may be, established pursuant to Part II of this Act;

**“international LNG market price”** means the price established pursuant to sub-paragraph (g) of subsection (8) of section 334 of this Act;

**“lease”** means petroleum mining lease;

**“lessee”** means the holder of a petroleum mining lease;

**“LIBOR”** means, as of any date of determination, the per annum rate of interest, based on a three hundred sixty (360) day year, rounded downwards, if necessary, to the nearest whole multiple of one-sixteenth of one percent (1/16th%), determined as the simple average of the offered quotations appearing on the display referred to as the "LIBOR Page" (or any display substituted therefore) of Reuters Monitor Money Rates Service or, if such "LIBOR Page" shall not be available, the simple average of the offered quotations appearing on page 3750 of the AP/Dow Jones Telerate Systems Monitor (or any page substituted therefore) for deposits in U.S. Dollars for a three month period, at or about 11:00 a.m. (London, England time) on the first London Banking Day of the calendar quarter in which the date of determination occurs (or, if the first day of such calendar quarter in which the date of determination occurs is not a London Banking Day, the immediately preceding London Banking Day). If neither such "LIBOR Page" nor such page 3750 or any successor page is available, or if for any reason a rate of interest cannot be determined as aforesaid, then the Parties shall designate an alternative mechanism consistent with Eurodollar market practices for determining such rate. For purposes of this definition, a "London Banking Day" is a day on which dealings in deposits in Dollars are transacted on the London interbank market;

**“licence”** means petroleum prospecting licence issued pursuant to Part III of this Act;

**“licensee”** means a holder of a licence, petroleum exploration licence, commercial licence or technical licence as the context requires;

**“liquefied natural gas”** or **“LNG”** means natural gas that has been converted to a liquid state by reduction of temperature;

**“LNG shipping and marketing allowance”** means the allowance determined pursuant to subparagraph (g) of subsection (8) of section 334 of this Act;

**“local distribution zone”** means an authorized area as specified in regulations issued under this Act, within which one distributor of downstream natural gas operations may operate;

**“marginal field”** means a field that is operated by a marginal field operator at the commencement of this Act;

**“marketable gas”** means a mixture mainly of methane and other hydrocarbons, if necessary through the processing of the raw gas for the removal or partial removal of some of its constituents, and which meets specifications determined by the Agency for distribution to wholesale and small customers:

(c) for use as a domestic, commercial and industrial fuel; and

(d) as feedstock or industrial raw material;

;

**“marketable gas delivery point”** means a point where marketable gas is made available to customers, at the exit of a central gas processing facility, gas processing plant or gas conditioning plant or at a measurement point, or such other location immediately downstream of a facility in which such gas has been produced, processed, conditioned or treated in order to produce marketable gas;

**“measurement point”** means a point at which petroleum is first measured pursuant to subsection (2) of section 334 of this Act and as determined pursuant to subsections (3) and (10) of section 334 of this Act;

**“midstream crude oil operations”** means activities downstream of the measurement point(s) of petroleum mining leases or unrelated to petroleum mining leases with respect to the construction and operation of upgrading facilities for heavy oil or bitumen; construction and operation of crude oil transport pipelines, including the related pumping stations; acquisition, operation, leasing, rental or chartering of barges, coastal or ocean going tankers, rail cars and trucks for the transport of crude oil; construction, leasing and operation of crude oil tank farms and other storage facilities; construction and operation of refineries; other construction and activities incidental thereto and related administration and overhead; purchase and sale, trading, bartering and marketing of crude oil; purchase and sale, trading, bartering and marketing of petroleum products on a wholesale basis.

**“midstream domestic gas operations”** means the same operations as midstream export gas operations, but where 60% or more than 60% of the BTU content of the gas being transported,

stored, processed, extracted, converted or liquefied is dedicated to domestic use in Nigeria as determined from time to time by the Agency, subject to the domestic gas supply obligations that may be imposed by the Minister;

**“midstream export gas operations”** means activities downstream of the measurement points of petroleum mining leases or unrelated to petroleum mining leases with respect to the construction and operation of natural gas transport or transmission pipelines, including the related compressor stations; construction and operations of facilities to compress, transport and deliver compressed natural gas (“CNG”), construction and operations of gas processing facilities and central processing facilities, producing ethane, propane, butane and natural gas liquids and marketable natural gas; construction and operation of underground or above ground facilities for the storage of natural gas; ethane extraction plants; construction and operation of gas to liquids (“GTL”) plants; construction and operation of liquified natural gas (“LNG”) plants, and related LNG terminals; acquisition, operation or chartering of LNG tankers for coastal and marine transportation; other construction and activities incidental thereto and related administration and overhead and where more than 40% of the BTU content of the gas being transported, stored, processed, extracted, converted or liquefied is dedicated to exports from Nigeria as determined from time to time by the Agency, subject to the domestic gas supply obligations that may be imposed by the Minister; purchase and sale, trading, bartering, aggregating and marketing of natural gas transported by pipelines, compressed natural gas, liquified natural gas, methane, ethane, propane, butane, natural gas liquids and liquids from GTL plants with respect to wholesale customers;

**“midstream petroleum operations”** means midstream crude oil operations and midstream domestic and export gas operations;

**“Minister”** means the Minister in charge of petroleum resources and overseeing the Petroleum industry in Nigeria, provided, however, that for the interpretation of Part VIII-B and Part VIII-D of this Act Minister means the Minister of Finance;

**“MMcf”** means one million cubic feet;

**“Natural gas liquids”** means hydrocarbons at the surface in separators, field facilities or in gas processing plants consisting of propane, butanes, pentanes and pentanes plus, or a combination of them, obtained from the processing of raw gas or condensates;

**“Natural Gasoline”** means a mixture of hydrocarbons extracted from natural gas, which meet vapour pressures end point and other specifications for natural gasoline, as adopted by the GPSA with 69, 83, 97, 138, and 179 kPa(abs) being common specifications;

**“Network Code”** means the code developed by the transportation network operators in respect of midstream natural gas;

**“Nigerian company”** means any company incorporated pursuant to subsection (5) of section 171 of this Act and the control and management of whose activities are exercised in Nigeria and references to a trade or business shall include references to any part thereof;

**“Nigerian content plan”** means the Nigerian Content Plan under the Nigerian Oil and Gas Industry Content Development Act, 2010.

**“Non-associated gas”** means a natural gas accumulation which does not occur with crude oil and which is not associated gas;

**“official selling price”** means the price for bitumen, crude oil or condensates determined pursuant to subsection (6) of section 334 of this Act;

**“operator”** means a commercial licensee as defined in subsection (3) of section 227 of this Act;

**“PEL”** means petroleum exploration licence;

**“person”** means any individual, company or other juristic person;

**“petroleum”** means hydrocarbons and associated substances as exist in its natural state in strata, and includes crude oil, natural gas, condensate, bitumen and mixtures of any of them, but does not include coal;

**“petroleum exploration operations”** means any geological, geophysical, geochemical and other surveys and any interpretation of data relating thereto, and the drilling of such shot holes, core holes, stratigraphic tests, exploration wells for the discovery of petroleum, appraisal of discoveries and other related operations;

**“petroleum mining lease”** means a lease pursuant to Section 180 of this Act;

**“petroleum operations”** means upstream petroleum operations, midstream petroleum operations and downstream petroleum operations;

**“petroleum prospecting license”** means a licence pursuant to Section 175 of this Act;

**“Petroleum products”** include motor spirit, gas oil, black oil, diesel oil, automotive gas oil, fuel oil, aviation oil, kerosene, natural gas liquids, liquefied petroleum gases and any lubrication oil or grease or other lubricant;

**“PML”** means petroleum mining lease;

**“PPL”** means petroleum prospecting license;

**“production allowance”** means an allowance provided for under section 353;

**“qualifying drilling expenditure”** means all equipment purchased and used for drilling, completion and production of wells such as conductor pipes, casings, tubing, gauges and valves and all expenditure for labour, fuel, repairs, maintenance, hauling and supplies of materials

which are for or incidental to drilling, cleaning, deepening or completing wells or the preparation thereof incurred in respect of:

- (a) determination of well location, geological studies and topographical surveys preparatory to drilling;
- (b) cleaning, draining and leveling land, access to well location and laying of foundation;
- (c) erection of rigs and tankage assembly and installation of pipeline and other plant and equipment required in the preparation or drilling of wells producing petroleum;
- (d) drilling, logging, shooting/perforation, testing, cleaning and all ancillary services; and
- (e) expenses related to dry holes and well abandonment within a PPL or a PML;

**“real project rate of return”** means the rate of return derived from a real net cash flow after tax of a project, by ignoring in the net cash flow any debt and debt servicing;

**“refining company”** means a company having been licensed by the Agency to either take over an existing refinery or refineries at the inception of this Act, or to establish new refineries in Nigeria;

**“regulation”** means a regulation promulgated by the Minister pursuant to section 11 or section 393 of this Act;

**“regulatory institutions”** or **“regulatory institution”** means the:

- (a) Nigerian Petroleum Inspectorate (“Inspectorate”) with respect to upstream petroleum operations;
- (b) the National Midstream Regulatory Agency (“Agency”) with respect to midstream petroleum operations; and
- (c) the Petroleum Products Regulatory Authority (Authority) with respect to downstream petroleum operations, or two of these institutions or all three institutions, as the case may be;

**“resident in Nigeria”**, in relation to a company, means a company the control and management of the business of which are exercised in Nigeria;

**“royalties”** means royalties as defined in section 334 of this Act;

**“Service”** means the Federal Inland Revenue Service;

**“shallow water”** means areas in the offshore of Nigeria up to and including a water depth of 200 meters;

**“significant gas discovery”** means a discovery of natural gas that is substantial in terms of reserves and is potentially commercial, but cannot be declared commercial for one or more of the following reasons:

- (a) no markets for natural gas within Nigeria;
- (b) export markets need to be identified and developed;
- (c) no pipeline, processing or liquefaction capacity is available in existing systems where commercial conditions indicate that the best option for development is based on the future

expansion of such systems or the use of such systems when capacity will become available in the future; or

(d) where the natural gas discovery would only be commercial when jointly developed with other existing natural gas discoveries or potential future natural gas discoveries;

**“small customer”** means a residential, commercial or small industrial customer purchasing gas and who is not a wholesale customer;

**“standards”** means limits made binding through laws, regulations or guidelines which must be observed within the appropriate regulatory framework in all cases where they are applicable;

**“State”** means the sovereign state of the Federal Republic of Nigeria, except where the context so admits or where it is specifically stated to mean a state of the Federation;

**“strategic sectors”** means in relation to gas purchases by wholesale customers of the following sectors:

(d) the power sector,

(e) the gas conversion sector, consisting of industries using gas as a feed stock or industrial raw material but not including GTL and other industries that may be excluded by the Agency, and

(f) the commercial sector, consisting of industries, as may be determined by the Agency, which use gas as an energy source;

**“technical regulation”** means the technical oversight of all activities relating to the exploration, development, production, processing, distribution and disposal of hydrocarbons through standards and best practices as may be prescribed from time to time in laws, regulations or guidelines;

**“technical licence”** means a technical licence issued pursuant to Part IV-B of this Act;

**“upstream crude oil operations”** means activities upstream of the measurement points of a petroleum mining lease, related to the winning of crude oil and associated gas through wells or mining from petroleum reservoirs; drilling, completing and operation of wells producing crude oil and associated gas; construction and operation of gathering lines and manifolds for crude oil, associated gas and water; construction and operation of high and low pressure separators, separating crude oil, associated natural gas and water; construction and operation of facilities to treat or condition crude oil, associated natural gas and water; flaring of natural gas; compression and reinjection of associated natural gas in reservoirs of the petroleum mining lease; construction and operation of facilities for the production of electricity or heat from associated natural gas or other fuels as energy source for the winning of crude oil; injection or re-injection of water into the reservoirs of the petroleum mining lease; construction and operation of fixed or floating platforms or other vessels required for the winning of crude oil from the petroleum mining lease; construction and operation of fixed or floating storage facilities of crude oil in the lease area; transportation to and from the petroleum mining lease of personnel, goods and equipment; metering of well stream fluids; metering of crude oil at the measurement point prior to transportation from the petroleum mining lease; other construction and activities incidental thereto and related administration and overhead; sale and marketing of crude oil and associated gas at the measurement point(s);

**“upstream gas operations”** means activities upstream of the measurement points of a petroleum mining lease, related to the winning of non-associated gas and condensates through wells from petroleum reservoirs; drilling, completing and operation of wells, producing natural gas and condensates; construction and operation of gathering lines and manifolds for natural gas, condensates and water; construction and operation of separators or condensers, separating natural gas, condensates and water; construction and operation of facilities to treat or condition natural gas, condensates and water; construction and operation of facilities for the production of electricity or heat from natural gas or other fuels exclusively for the purpose of serving as energy source for the winning of natural gas; injection or re-injection of water into the reservoirs of the petroleum mining lease incidental to the winning of natural gas; construction and operation of fixed or floating platforms or other vessels required for the winning of natural gas from the petroleum mining lease; transportation to and from the petroleum mining lease of personnel, goods and equipment incidental to the winning of natural gas; metering of well stream fluids; metering of natural gas and condensates at the measurement point prior to transportation from the petroleum mining lease; other construction and activities incidental thereto and related administration and overhead; sale and marketing of non-associated gas and condensates at the measurement point(s);

**“upstream gas producer”** means a lessee of a petroleum mining lease which is producing associated or non associated gas;

**“upstream petroleum operations”** means upstream crude oil operations, upstream gas operations and petroleum exploration operations;

**“wholesale customer”** means a wholesale customer pursuant to Section 285 of this Act;

#### **Citation and regulations**

427. (1) This Act may be as the Petroleum Industry Act 2010.

(2) Subject to the continued power of the Minister to promulgate regulations under section 11 and section 393 of this Act, all initial regulations under this Act, as determined by the Minister, shall be promulgated within one year from the effective date.

## **FIRST SCHEDULE**

### **Section 14 (3)**

#### **Supplementary provisions relating to the Management Committee of the Directorate Proceeding of the Management Committee**

1. Subject to this Act and section 27 of the Interpretation Act, the Management Committee shall have the power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Management Committee may, from time to time, determine.
2. (1) there shall be at least one ordinary meeting of the Management Committee in every quarter of the year and subject thereto, the Management Committee shall meet whenever it is summoned by the chairman.  
(2) Every meeting of the Management Committee shall be presided over by the chairman and if the chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their numbers to preside at the meeting.
3. The quorum at the meeting of the Management Committee shall consist of the majority of the members and shall include the chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule).
4. The Management Committee shall meet for the conduct of its business at such places and on such days as the chairman may appoint.
5. A question put before the Management Committee at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.
6. The chairman shall, in the case of an equality of votes, have the casting vote in addition to his deliberative vote.
7. Where the Management Committee desires to seek the advice of any person on a particular matter, the Management Committee may co-opt a person as a member for such period it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Management Committee and shall not count towards the quorum.

#### **Committees**

8. The Management Committee may appoint one or more committees to carry out on behalf of the Management Committee such of its functions as the Management Committee may determine and report on any matter with which the Management Committee or Directorate is concerned.
9. A committee appointed under this Schedule shall be presided over by a member of the Management Committee and consist of such number of persons (not necessarily all members of the Management Committee) as may be determined by the Management Committee, and a person other than a member of the Management Committee shall hold office on the committee in accordance with the terms of his appointment.
10. A decision of a committee of the Management Committee shall be of no effect until it is confirmed by the Management Committee.

#### **Miscellaneous**

11. The fixing of the seal of the Directorate shall be authenticated by the signature of the Secretary or some other person authorized generally by the Management Committee to act for that purpose.

12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of Directorate by the Director General or any person generally or specially authorized to act for that purpose by the Management Committee.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Directorate shall be received in evidence and, unless the contrary is proved, be presumed without further proof to have been signed and sealed.

14. The validity of any proceedings of the Management Committee or its committees shall not be affected by-

- (a) any vacancy in the membership of the Management Committee or its committees; or
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

15. Any member of the Management Committee and any person holding office on a committee of the Management Committee, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Management Committee or a committee thereof-

- (a) shall forthwith disclose his interest to the Management Committee or committee, as the case may be; and
- (b) shall not vote on any question relating to the contract or arrangement.

## **SECOND SCHEDULE**

### **Section 41 (4)**

#### **Supplementary provisions relating to the Governing Board of the Inspectorate Proceeding of the Governing Board**

1. Subject to this Act and section 27 of the Interpretation Act, the Governing Board shall have the power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Governing Board may, from time to time, determine.

2. (1) There shall be at least one ordinary meeting of the Governing Board in every quarter of the year and subject thereto, the Governing Board shall meet whenever it is summoned by the chairman and if the chairman is requested to do so by notice given to him by not less than three other members, he shall summon a meeting of the Governing Board to be held within fourteen days from the date on which the notice is given.

(2) Every meeting of the Governing Board shall be presided over by the chairman and if the chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their numbers to preside at the meeting.

3. The quorum at the meeting of the Governing Board shall consist of the chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and the majority of the other members at least two of whom shall be members appointed pursuant to section 41 (1) (e) of this Act.

4. The Governing Board shall meet for the conduct of its business at such places and on such days as the chairman may appoint.

5. A question put before the Governing Board at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.

6. The chairman shall, in the case of an equality of votes, have the casting vote in addition to his deliberative vote.

7. Where the Governing Board desires to seek the advice of any person on a particular matter, the Governing Board may co-opt a person as a member for such period it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Governing Board and shall not count towards the quorum.

#### **Committees**

8. The Governing Board may appoint one or more committees to carry out on behalf of the Governing Board such of its functions as the Governing Board may determine and report on any matter with which the Governing Board or Inspectorate is concerned.

9. A committee appointed under this Schedule shall be presided over by a member of the Governing Board and consist of such number of persons (not necessarily all members of the Governing Board) as may be determined by the Governing Board, and a person other than a member of the Governing Board shall hold office on the committee in accordance with the terms of his appointment.

10. A decision of a committee of the Governing Board shall be of no effect until it is confirmed by the Governing Board.

#### **Miscellaneous**

11. The fixing of the seal of the Inspectorate shall be authenticated by the signature of the Secretary or some other person authorized generally by the Governing Board to act for that purpose.

12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of Inspectorate by the Director General or any person generally or specially authorized to act for that purpose by the Governing Board.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Inspectorate shall be received in evidence and, unless the contrary is proved, be presumed without further proof to have been signed and sealed.

14. The validity of any proceedings of the Governing Board or its committees shall not be affected by-

- (a) any vacancy in the membership of the Governing Board or its committees; or
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

15. Any member of the Governing Board and any person holding office on a committee of the Governing Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Governing Board or a committee thereof-

- (a) shall forthwith disclose his interest to the Governing Board or committee, as the case may be; and
- (b) shall not vote on any question relating to the contract or arrangement.

### **THIRD SCHEDULE**

#### **Section 58 (4)**

**Supplementary provisions relating to the Governing Board of the Authority**  
**Proceeding of the Governing Board**

1. Subject to this Act and section 27 of the Interpretation Act, the Governing Board shall have the power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Governing Board may, from time to time, determine.
2. (1) There shall be at least one ordinary meeting of the Governing Board in every quarter of the year and subject thereto, the Governing Board shall meet whenever it is summoned by the chairman and if the chairman is requested to do so by notice given to him by not less than three other members, he shall summon a meeting of the Governing Board to be held within fourteen days from the date on which the notice is given.  
(2) Every meeting of the Governing Board shall be presided over by the chairman and if the chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their numbers to preside at the meeting.
3. The quorum at the meeting of the Governing Board shall consist of the chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and the majority of the members at least two of whom shall be members appointed pursuant to section 79 (1) (e) of this Act.
4. The Governing Board shall meet for the conduct of its business at such places and on such days as the chairman may appoint.
5. A question put before the Governing Board at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.
6. The chairman shall, in the case of an equality of votes, have the casting vote in addition to his deliberative vote.
7. Where the Governing Board desires to seek the advice of any person on a particular matter, the Governing Board may co-opt a person as a member for such period it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Governing Board and shall not count towards the quorum.

**Committees**

8. The Governing Board may appoint one or more committees to carry out on behalf of the Governing Board such of its functions as the Governing Board may determine and report on any matter with which the Governing Board or Authority is concerned.
9. A committee appointed under this Schedule shall be presided over by a member of the Governing Board and consist of such number of persons (not necessarily all members of the Governing Board) as may be determined by the Governing Board, and a person other than a member of the Governing Board shall hold office on the committee in accordance with the terms of his appointment.
10. A decision of a committee of the Governing Board shall be of no effect until it is confirmed by the Governing Board.

**Miscellaneous**

11. The fixing of the seal of the Authority shall be authenticated by the signature of the Secretary or some other person authorized generally by the Governing Board to act for that purpose.

12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of Authority by the Director General or any person generally or specially authorized to act for that purpose by the Governing Board.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Authority shall be received in evidence and, unless the contrary is proved, be presumed without further proof to have been signed and sealed.

14. The validity of any proceedings of the Governing Board or its committees shall not be affected by-

- (a) any vacancy in the membership of the Governing Board or its committees; or
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

15. Any member of the Governing Board and any person holding office on a committee of the Governing Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Governing Board or a committee thereof-

- (a) shall forthwith disclose his interest to the Governing Board or committee, as the case may be; and
- (b) shall not vote on any question relating to the contract or arrangement.

#### **FOURTH SCHEDULE**

##### **Section 70 (4)**

##### **Supplementary provisions relating to the Governing Board of the Agency**

###### **Proceeding of the Governing Board**

1. Subject to this Act and section 27 of the Interpretation Act, the Governing Board shall have the power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Governing Board may, from time to time, determine.

2. (1) There shall be at least one ordinary meeting of the Governing Board in every quarter of the year and subject thereto, the Governing Board shall meet whenever it is summoned by the chairman and if the chairman is requested to do so by notice given to him by not less than three other members, he shall summon a meeting of the Governing Board to be held within fourteen days from the date on which the notice is given.

(2) Every meeting of the Governing Board shall be presided over by the chairman and if the chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their numbers to preside at the meeting.

3. The quorum at the meeting of the Governing Board shall consist of the chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and the majority of the members at least two of whom shall be members appointed pursuant to section 117 (1) (e) of this Act.

4. The Governing Board shall meet for the conduct of its business at such places and on such days as the chairman may appoint.

5. A question put before the Governing Board at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.

6. The chairman shall, in the case of an equality of votes, have the casting vote in addition to his deliberative vote.

7. Where the Governing Board desires to seek the advice of any person on a particular matter, the Governing Board may co-opt a person as a member for such period it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Governing Board and shall not count towards the quorum.

#### **Committees**

8. The Governing Board may appoint one or more committees to carry out on behalf of the Governing Board such of its functions as the Governing Board may determine and report on any matter with which the Governing Board or Agency is concerned.

9. A committee appointed under this Schedule shall be presided over by a member of the Governing Board and consist of such number of persons (not necessarily all members of the Governing Board) as may be determined by the Governing Board, and a person other than a member of the Governing Board shall hold office on the committee in accordance with the terms of his appointment.

10. A decision of a committee of the Governing Board shall be of no effect until it is confirmed by the Governing Board.

#### **Miscellaneous**

11. The fixing of the seal of the Agency shall be authenticated by the signature of the Secretary or some other person authorized generally by the Governing Board to act for that purpose.

12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of Agency by the Director General or any person generally or specially authorized to act for that purpose by the Governing Board.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Agency shall be received in evidence and, unless the contrary is proved, be presumed without further proof to have been signed and sealed.

14. The validity of any proceedings of the Governing Board or its committees shall not be affected by-

- (a) any vacancy in the membership of the Governing Board or its committees; or
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

15. Any member of the Governing Board and any person holding office on a committee of the Governing Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Governing Board or a committee thereof-

- (a) shall forthwith disclose his interest to the Governing Board or committee, as the case may be; and
- (b) shall not vote on any question relating to the contract or arrangement.

### **FIFTH SCHEDULE**

#### **Section 93 (5)**

#### **Supplementary provisions relating to the Supervisory Council of the Centre Proceeding of the Supervisory Council**

1. Subject to this Act and section 27 of the Interpretation Act, the Supervisory Council shall have the power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Supervisory Council may, from time to time, determine.
2. (1) There shall be at least one ordinary meeting of the Supervisory Council in every quarter of the year and subject thereto, the Supervisory Council shall meet whenever it is summoned by the chairman and if the chairman is requested to do so by notice given to him by not less than three other members, he shall summon a meeting of the Supervisory Council to be held within fourteen days from the date on which the notice is given.  
(2) Every meeting of the Supervisory Council shall be presided over by the chairman and if the chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their numbers to preside at the meeting.
3. The quorum at the meeting of the Supervisory Council shall consist of the chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and the majority of the members at least three of whom shall be members appointed pursuant to section 165 (1) (g) and (h) of this Act.
4. The Supervisory Council shall meet for the conduct of its business at such places and on such days as the chairman may appoint.
5. A question put before the Supervisory Council at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.
6. The chairman shall, in the case of an equality of votes, have the casting vote in addition to his deliberative vote.
7. Where the Supervisory Council desires to seek the advice of any person on a particular matter, the Supervisory Council may co-opt a person as a member for such period it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Supervisory Council and shall not count towards the quorum.

#### **Committees**

8. The Supervisory Council may appoint one or more committees to carry out on behalf of the Supervisory Council such of its functions as the Supervisory Council may determine and report on any matter with which the Supervisory Council or Supervisory Council is concerned.
9. A committee appointed under this Schedule shall be presided over by a member of the Supervisory Council and consist of such number of persons (not necessarily all members of the Supervisory Council) as may be determined by the Supervisory Council, and a person other than a member of the Supervisory Council shall hold office on the committee in accordance with the terms of his appointment.
10. A decision of a committee of the Supervisory Council shall be of no effect until it is confirmed by the Supervisory Council.

#### **Miscellaneous**

11. The fixing of the seal of the Supervisory Council shall be authenticated by the signature of the Secretary or some other person authorized generally by the Supervisory Council to act for that purpose.
12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of

Supervisory Council by the Director General or any person generally or specially authorized to act for that purpose by the Supervisory Council.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Supervisory Council shall be received in evidence and, unless the contrary is proved, be presumed without further proof to have been signed and sealed.

14. The validity of any proceedings of the Supervisory Council or its committees shall not be affected by-

- (a) any vacancy in the membership of the Supervisory Council or its committees; or
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

15. Any member of the Supervisory Council and any person holding office on a committee of the Supervisory Council, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Supervisory Council or a committee thereof-

(a) shall forthwith disclose his interest to the Supervisory Council or committee, as the case may be; and

(b) shall not vote on any question relating to the contract or arrangement.

## **SIXTH SCHEDULE**

### **Section 102 (2)**

#### **Supplementary provisions relating to the Governing Board of the Frontier Service**

##### **Proceeding of the Governing Board**

1. Subject to this Act and section 27 of the Interpretation Act, the Governing Board shall have the power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Governing Board may, from time to time, determine.

2. (1) There shall be at least one ordinary meetings of the Governing Board in every quarter of the year and subject thereto, the Governing Board shall meet whenever it is summoned by the chairman and if the chairman is requested to do so by notice given to him by not less than three other members, he shall summon a meeting of the Governing Board to be held within fourteen days from the date on which the notice is given.

(2) Every meeting of the Governing Board shall be presided over by the chairman and if the chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their numbers to preside at the meeting.

3. The quorum at the meeting of the Governing Board shall consist of the chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and the majority of the members.

4. The Governing Board shall meet for the conduct of its business at such places and on such days as the chairman may appoint.

5. A question put before the Governing Board at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.

6. The chairman shall, in the case of an equality of votes, have the casting vote in addition to his deliberative vote.
7. Where the Governing Board desires to seek the advice of any person on a particular matter, Governing Board may co-opt a person as a member for such period it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of Governing Board and shall not count towards the quorum.

### **Committees**

8. The Governing Board may appoint one or more committees to carry out on behalf of Governing Board such of its functions as the Governing Board may determine and report on any matter with which the Governing Board or Frontier Service is concerned.
9. A committee appointed under this Schedule shall be presided over by a member of the Governing Board and consist of such number of persons (not necessarily all members of the Governing Board) as may be determined by the Governing Board, and a person other than a member of the Governing Board shall hold office on the committee in accordance with the terms of his appointment.
10. A decision of a committee of the Governing Board shall be of no effect until it is confirmed by the Governing Board.

### **Miscellaneous**

11. The fixing of the seal of the Governing Board shall be authenticated by the signature of the Secretary or some other person authorized generally by the Governing Board to act for that purpose.
12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of Governing Board by the Director General or any person generally or specially authorized to act for that purpose by Governing Board.
13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Governing Board shall be received in evidence and, unless the contrary is proved, be presumed without further proof to have been signed and sealed.
14. The validity of any proceedings of the Governing Board or its committees shall not be affected by-
  - (a) any vacancy in the membership of the Governing Board or its committees; or
  - (b) reason that a person not entitled to do so took part in the proceedings; or
  - (c) any defect in the appointment of a member.
15. Any member of Governing Board and any person holding office on a committee of the Governing Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by Governing Board or a committee thereof-
  - (a) shall forthwith disclose his interest to the Governing Board or committee, as the case may be; and
  - (b) shall not vote on any question relating to the contract or arrangement.

## **SEVENTH SCHEDULE**

### **Section 106 (5)**

**Supplementary provisions relating to the Management Board of the Equalization Fund**  
**Proceeding of the Management Board**

1. Subject to this Act and section 27 of the Interpretation Act, the Management Board shall have the power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Management Board may, from time to time, determine.
2. (1) There shall be at least one ordinary meetings of the Management Board in every quarter of the year and subject thereto, the Management Board shall meet whenever it is summoned by the chairman and if the chairman is requested to do so by notice given to him by not less than three other members, he shall summon a meeting of the Management Board to be held within fourteen days from the date on which the notice is given.  
(2) Every meeting of the Management Board shall be presided over by the chairman and if the chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their numbers to preside at the meeting.
3. The quorum at the meeting of the Management Board shall consist of the chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and the majority of the members at least two of whom shall be appointed in accordance with section 214 (2) (h) of this Act.
4. The Management Board shall meet for the conduct of its business at such places and on such days as the chairman may appoint.
5. A question put before the Management Board at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.
6. The chairman shall, in the case of an equality of votes, have the casting vote in addition to his deliberative vote.
7. Where the Management Board desires to seek the advice of any person on a particular matter, Management Board may co-opt a person as a member for such period it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of Management Board and shall not count towards the quorum.

**Committees**

8. The Management Board may appoint one or more committees to carry out on behalf of Management Board such of its functions as the Management Board may determine and report on any matter with which the Management Board or Frontier Service is concerned.
9. A committee appointed under this Schedule shall be presided over by a member of the Management Board and consist of such number of persons (not necessarily all members of the Management Board) as may be determined by the Management Board, and a person other than a member of the Management Board shall hold office on the committee in accordance with the terms of his appointment.
10. A decision of a committee of the Management Board shall be of no effect until it is confirmed by Management Board.

**Miscellaneous**

11. The fixing of the seal of the Management Board shall be authenticated by the signature of the Secretary or some other person authorized generally by the Management Board to act for that purpose.

12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the Management Board by the Executive Secretary or any person generally or specially authorized to act for that purpose by the Management Board.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Management Board shall be received in evidence and, unless the contrary is proved, be presumed without further proof to have been signed and sealed.

14. The validity of any proceedings of the Management Board or its committees shall not be affected by-

- (a) any vacancy in the membership of the Management Board or its committees; or
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

15. Any member of Management Board and any person holding office on a committee of the Management Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by Management Board or a committee thereof-

- (a) shall forthwith disclose his interest to the Management Board or committee, as the case may be; and
- (b) shall not vote on any question relating to the contract or arrangement.

## **EIGHTH SCHEDULE**

### **Section 125 (4)**

#### **Supplementary provisions relating to the Board of the Development Fund Proceeding of the Board**

1. Subject to this Act and section 27 of the Interpretation Act, the Board shall have the power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Board may, from time to time, determine.

2. (1) There shall be at least one ordinary meetings of the Board in every quarter year and subject thereto, the Board shall meet whenever it is summoned by the chairman.

(2) Every meeting of the Board shall be presided over by the chairman and if the chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their numbers to preside at the meeting.

3. The quorum at the meeting of the Board shall consist of the chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and a majority of the members at least two of whom shall be appointed in accordance with section 241 (1) (e) and (f) of this Act.

4. The Board shall meet for the conduct of its business at such places and on such days as the chairman may appoint.

5. A question put before the Board at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.

6. The chairman shall, in the case of an equality of votes, have the casting vote in addition to his deliberative vote.

7. Where the Board desires to seek the advice of any person on a particular matter, Board may co-opt a person as a member for such period it thinks fit, but a person who is a member by virtue of

this paragraph shall not be entitled to vote at any meeting of Board and shall not count towards the quorum.

### **Committees**

8. The Board may appoint one or more committees to carry out on behalf of Board such of its functions as the Board may determine and report on any matter with which the Board or Development Fund is concerned.

9. A committee appointed under this Schedule shall be presided over by a member of the Board and consist of such number of persons (not necessarily all members of the Board) as may be determined by the Board, and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

10. A decision of a committee of the Board shall be of no effect until it is confirmed by Board.

### **Miscellaneous**

11. The fixing of the seal of the Board shall be authenticated by the signature of the Secretary or some other person authorized generally by the Board to act for that purpose.

12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of Board by the Executive Secretary or any person generally or specially authorized to act for that purpose by the Board.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Board shall be received in evidence and, unless the contrary is proved, be presumed without further proof to have been signed and sealed.

14. The validity of any proceedings of the Board or its committees shall not be affected by-

- (a) any vacancy in the membership of the Board or its committees; or
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

15. Any member of the Board and any person holding office on a committee of the Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or a committee thereof-

- (a) shall forthwith disclose his interest to the Board or committee, as the case may be; and
- (b) shall not vote on any question relating to the contract or arrangement.

## **NINTH SCHEDULE**

### **SECTION 345, 352, 353 and 361**

#### **Capital Allowances**

##### **1. Interpretation.**

(1) For the purposes of this schedule, unless the context otherwise requires –

“CONCESSION” includes a petroleum prospecting licence (PPL), a petroleum mining lease (PML), any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

“LEASE” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a

mortgage and all cognate expression including "LEASEHOLD INTEREST" shall be construed accordingly and

(a) where, with the consent of the lessor, a lessee of any assets remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this schedule to continue so long as he remains in possession as aforesaid; and

(b) where, on the termination of a lease of any assets, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of the first lease; 1973 No. 15

"QUALIFYING EXPENDITURE" means, subject to the express provisions of this schedule, expenditure incurred in an accounting period, which is –

(a) Capital expenditure (hereinafter called "qualifying plant expenditure") incurred on plant, machinery or fixtures;

(b) Capital expenditure (hereinafter called "qualifying pipeline and storage expenditure") incurred on pipelines and storage tanks;

(c) Capital expenditure (hereinafter called "qualifying building expenditure"), other than expenditure which is included in paragraphs (a), (b) or (d) of this paragraph, incurred on the construction of buildings, or works of a permanent nature; or

(d) Capital expenditure (hereinafter called "qualifying drilling expenditure") other than expenditure which is included in paragraph (a) or (b) of this paragraph, incurred in connection with, *Upstream Petroleum Operations* in view of –

(i) the acquisition of, or of rights in or over, petroleum deposits, *excluding* any signature bonuses, production bonuses, or other bonuses or fees due on the grant or renewal of a lease, *which shall not be deductible against tax*

(ii) searching for or discovering and testing petroleum deposits, or winning access thereto, or

(iii) the construction of any works or buildings which are likely to be of little or no value when the *Upstream Petroleum Operations* for which they were constructed cease to be carried on: Provided that for the purposes of this definition qualifying expenditure shall not include any sum which may be deducted under the provisions of Section 345 of this Act and provided only eighty percent of qualifying expenditure incurred outside Nigeria shall be allowed for deduction under Section 352 of this Act and no capital expenditure incurred in an accounting period under midstream or downstream petroleum operations shall qualify as "Qualifying Expenditure" under *Upstream Petroleum Operations*.

(2) For the purposes of this interpretation of qualifying expenditure, where expenditure is incurred by a company before its first accounting period and such expenditure would have fallen to be treated as qualifying expenditure (ascertained without the qualification contained in the foregoing proviso) if it had been incurred by the company on the first day of its first accounting period, and (a) *that* expenditure is incurred in respect of an asset owned by the company then such expenditure shall be deemed to be qualifying expenditure incurred by it on that day; or

(b) that expenditure is incurred in respect of an asset which has been disposed of by the company before the beginning of its first accounting period then any loss suffered by the company on the disposal of such asset shall be deemed to be qualifying petroleum expenditure incurred by the company on that day and be deemed to have brought into existence an asset owned by the company in use for the purposes of *Upstream Petroleum Operations* carried on by the company

any profit realised by the company on such disposal shall be treated as income of the company of its first accounting period for the purposes of subsection (1)(a) of section 344 of this Act.

## **2. Provisions Relating to Qualifying Petroleum Expenditure 1973. No. 15**

(1) For the purposes of this Schedule where-

(a) expenditure has been incurred before its first accounting period and such expenditure would have been treated as such qualifying petroleum expenditure (ascertained without the qualification contained in the proviso in the interpretation of qualifying expenditure) if it had been incurred in that first accounting period; and

(b) such expenditure (ascertained in the case of sub-paragraph (1) (a) of this paragraph without such qualification) shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purposes of such *Upstream Petroleum Operations*.

(2) For the purposes of this Schedule, an asset in respect of which qualifying drilling expenditure has been incurred by any company for the purposes of *Upstream Petroleum Operations* carried on by it during any accounting period of the company, and which has not been disposed of, shall be deemed not to cease to be used for the purposes of such operations so long as such company continues to carry on such operations.

(3) So much of any qualifying petroleum expenditure incurred on the acquisition of rights in or over petroleum deposits and on the purchase of information relating to the existence and extent of such deposits shall not be eligible as qualifying petroleum expenditure.

## **3. Owner and Meaning of Relevant Interest**

(1) For the purposes of this Schedule, where an asset consists of a building structure or works, the owner thereof shall be taken to be the owner of the relevant interest in such building, structure or works.

(2) Subject to the provisions of this paragraph, in this Schedule, the expressions "the relevant interest" means, in relation to any expenditure incurred on the construction of a building, structure or works to which the company which incurred such expenditure was entitled when it incurred the expenditure.

(3) Where, when a company incurs qualifying building expenditure or qualifying expenditure on the construction of a building, structure or works, the company is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

## **(4) Sale of Buildings, Etc., 1979 No. 24.**

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest company which buys that interest shall be deemed, for all the purposes of this Schedule, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction, whichever is the less:

Provided that -

- (a) Where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sale and the original cost of construction shall be taken to be the amount of the purchase price on such sale;
- (b) Where, any such relevant interest is sold more than once before the building, structure or works is used, the provisions of sub- paragraph (a) shall have effect only in relation to the last of those sales.

**(5) Annual Allowance. 1979 No 95**

(1) Subject to the provisions of this Schedule where in any accounting period a company owning any assets has incurred in respect thereof qualifying expenditure, benchmarked by the Regulatory Institution and *verified and approved*, exclusively for the purposes of *Upstream Petroleum Operations* carried on by it, there shall be due to that company as from the accounting period in which such expenditure was incurred an allowance (in this Act referred to as “an annual allowance” ) at the appropriate rate per centum specified in Table I of this Schedule except that in the case of PSCs annual allowances shall be restricted to each contract area and that for purposes of monthly estimates the annual allowance shall be allocated monthly.

(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, there shall be retained in the books, in respect of each asset 1 percent of the initial cost of the asset which may only be written off in accordance with sub-paragraph (3) of this paragraph.

(3) Any asset or part thereof in respect of which capital allowances have been granted may only be disposed of on the authority of a Certificate of Disposal issued by the Minister or any person authorised by him.

(4) “Where a licensee or lessee has entered into a contract pursuant to section 172 of the Petroleum Industry Act, 2009, and such contract provides for the transfer of assets to such licensee or lessee by the contractor, such transfer shall be valued as equal to the value of cost oil, cost gas or cost condensates paid for such assets (“the deemed income”) and the company being licensee or lessee can claim the respective capital cost allowances, and where the contractor has incurred the expenditures for the creation of such asset pursuant to subsection 345(1)(i) of the Act, such asset shall not result in annual allowances to the contractor, licensee or lessee.

**(6) Annual allowances when qualifying capital expenditure incurred.**

An annual allowance in respect of qualifying expenditure incurred on any asset shall be due to a company for any accounting period if at the end of such accounting period it was the owner of that asset and the expenditure of such asset have been incurred during such accounting period for the purposes of the *Upstream Petroleum Operations* carried on by it.

**(7) Balancing Allowances**

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and

exclusively for the purposes of *Upstream Petroleum Operations* carried on by it, disposes of that asset an allowance (hereinafter called "a balancing allowance") shall be due to that company for that accounting period the loss incurred as a result of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be due in respect of such asset if immediately prior to its disposal it was in use by such company for the purposes of the *Upstream Petroleum Operations* for which such qualifying expenditure was incurred.

#### **(8) Balancing Charges.**

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of *Upstream Petroleum Operations* carried on by it, disposes of that asset, the excess (hereinafter called "a balancing charge") of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date shall, for the purposes of subsection (1)(a) of section 344 of this Act, be treated as income of the company of that accounting period;

Provided that a balancing charge in respect of such asset shall only be so treated if immediately prior to the disposal of that asset it was in use by such company for the purposes of the *Upstream Petroleum Operations* for which such qualifying expenditure was incurred and shall not exceed the total of any allowances due under the provisions of this Schedule, in respect of such asset.

#### **(9) Residue**

The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of any annual allowances due to such owner, in respect of that asset, before that date.

#### **(10) Meaning of "Disposed of"**

Subject to any express provision to the contrary, for the purposes of this Schedule-

(a) a building, structure or works of a permanent nature is disposed of if any of the following events occur-

(i) the relevant interest is sold, or

(ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession, or

(iii) that interest, being a leasehold interest, comes to an end otherwise than on the company entitled thereto acquiring the interest which is reversionary thereon, or

(iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of *Upstream Petroleum Operations* carried on by the owner thereof;

(b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of *Upstream Petroleum Operations* carried on by the owner thereof.

#### **(11) Value of an Asset**

(1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or, if it was disposed of without being sold, the amount which, in the opinion of the Service, such asset or the relevant interest therein, as the case may be, would

have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.

(2) For the purpose of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

### **(12) Apportionment**

(1) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of, or the price paid for, that asset, as the case may be. For the purposes of this sub-paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

(2) The provisions of sub-paragraph (1) of this paragraph shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in any other asset.

### **(13) Part of an Asset.**

Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Service, be just and reasonable.

### **(14) Exclusion of Certain Expenditure**

Subject to the express provisions of this Schedule, where any company has incurred expenditure which is allowed to be deducted under any provision (other than a provision of this Schedule) of this Part VIII-D, such expenditure shall not be treated as qualifying expenditure.

### **(15) Asset Used or Expenditure Incurred Partly for the Purpose of Petroleum Operation.**

(1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset-

- (a) The owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of *Upstream Petroleum Operations* carried on by him and partly for other purposes;
- (b) The asset in respect of which the owner has incurred qualifying expenditure thereof is used partly for the purposes of *Upstream Petroleum Operations* carried on by such owner and partly for other purposes.

(2) Any allowances which would be due or any balancing charges which would be treated as income if both such expenditure were incurred wholly and exclusively for the purposes of such

*Upstream Petroleum Operations* such asset were used wholly and exclusively for the purposes of such operations shall be computed in accordance with the provisions of this Schedule.

(3) So much of the allowances and charges computed in accordance with provisions of subparagraph (2) of this paragraph shall be due or shall be so treated, as the case may be, as in the opinion of the Service is just reasonable having regard to all the circumstances and to the provisions of this Schedule

#### **(16) Disposal without Change of Ownership**

Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of that asset after the date of such disposal -

(a) Qualifying expenditure incurred by such owner in respect of such owner in respect of such asset prior to the date of such disposal shall be left out of account; but

(b) Such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal -

#### **TABLE I**

#### **PARAGRAPH 6**

#### **For Upstream Petroleum Operations**

<b>Annual Allowance</b>	<b>Rate Per Centum</b>
First year	20
2 <sup>nd</sup> year	20
3 <sup>rd</sup> year	20
4 <sup>th</sup> year	20
5 <sup>th</sup> year	19

#### **OTHER ALLOWANCES**

**Other allowances are provided for in section 353 of this Act**

### **TENTH SCHEDULE**

#### **Section 160 (2)**

**Supplementary provisions relating to the Incorporation of existing joint operating Agreements between the Nigerian National Petroleum Corporation and its Joint Venture Partners**

- 1. The six Joint Operating Agreements (JOAs) between the Nigeria National Petroleum Corporation and its Joint Venture Partners that are subject to conversion in accordance with section 160 (2) of this Act are as listed below:**
  - (a) The Shell Petroleum Development Company Limited (SPDC)-Total Nigeria Limited (TONL)-Nigeria Agip Oil Company Limited (NAOC)-Nigerian National Petroleum Corporation (NNPC) Joint Operating Agreement**
  - (b) The Nigeria Agip Oil Company Limited (NAOC)-ConocoPhillips Nigeria Limited (CNL)-Nigerian National Petroleum Corporation (NNPC) Joint Operating Agreement**
  - (c) The Total Nigeria Limited (TONL)-Nigerian National Petroleum Corporation (NNPC) Joint Operating Agreement**
  - (d) The Mobil Producing Nigeria Unlimited (MPNU)-Nigerian National Petroleum Corporation (NNPC) Joint Operating Agreement**
  - (e) The Chevron Nigeria Limited(CNL)- Nigeria National Petroleum Corporation(NNPC) Joint Operating Agreement**
  - (f) The Pan Ocean Oil Corporation Limited (POOC)- Nigeria National Petroleum Corporation (NNPC) Joint Venture Agreement**

## **PETROLEUM INDUSTRY BILL 2009**

### **EXPLANATORY MEMORANDUM**

**This Bill seeks to establish the legal and regulatory framework, Institutions and Regulatory authorities for the Nigerian Petroleum Industry, establish guidelines for the operation of the Upstream, Midstream and Downstream sectors.**