[HB. 15.12.336]

A BILL

AND

MEMORANDUM ON LEGAL AND REGULATORY FRAMEWORK, INSTITUTIONS AND REGULATORY AUTHORITIES FOR THE NIGERIAN PETROLEUM INDUSTRY, TO ESTABLISH GUIDELINES FOR THE OPERATIONS OF THE UPSTREAM AND DOWNSTREAM SECTORS, AND FOR THE PURPOSES CONNECTED WITH THE SAME

Sponsors:

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/ / Commencement.

PART I — FUNDAMENTAL OBJECTIVES

1. The objectives of this Bill are to — Objectives.

(*a*) create a conducive business environment for petroleum operations;

(*b*) enhance exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people;

(*c*) optimize domestic gas supplies, particularly for power generation and industrial development.

(*d*) establish a progressive fiscal framework that encourages further investment in the petroleum industry while optimising revenues accruing to the Government;

(*e*) establish commercially oriented and profit driven oil and gas entities;

(*f*) deregulate and liberalise the downstream petroleum sector;

(*g*) create efficient and effective regulatory agencies;

(*h*) promote transparency and openness in the administration of the petroleum resources of Nigeria;

(*i*) promote the development of Nigerian content in the petroleum industry;

(*j*) protect health, safety and the environment in the course of petroleum operations; and

(*k*) attain such other incidental objectives to promote a viable and sustainable petroleum industry in Nigeria.

Ownership of Petroleum resources.

2. Ownership of Petroleum Resources shall vest as prescribed in the Constitution.

Management of Petroleum Resources.

3. 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 by providing for —

(*a*) an orderly, fair and competitive system;

(*b*) clear and effective legal and institutional frameworks for organising petroleum operations; and

(*c*) a fiscal regime that offers fair returns on investments while optimising benefits to the Nigerian people.

PART II — INSTITUTIONS

A. THE MINISTER

Transparency and good governance.

4. In performing their functions and achieving their objectives under this Bill, the agencies and companies established pursuant to this Bill shall be bound by the Nigerian Extractive Industries Transparency Initiative Act.

Role of the Minister.

5. The Minister of Petroleum Resources shall be responsible for the co-ordination of the activities of the petroleum industry and shall exercise general supervision over all operations and all institutions in the industry.

Functions and powers of the Minister.

6.—(1) The Minister shall —

(*a*) be responsible for the formulation, determination and monitoring of Government policy for the petroleum industry in Nigeria;

(*b*) exercise general supervisory functions over the affairs and operations of the petroleum industry;

(*c*) report developments in the petroleum industry to the Federal Executive Council;

(*d*) advise the Government on all matters pertaining to the petroleum industry;

(*e*) represent Nigeria at meetings of international organisations that are primarily concerned with the petroleum industry;

(*f*) subject to the provision of the Constitution, negotiate and execute international petroleum treaties and agreements with other sovereign countries, international organizations and other similar bodies on behalf of the Government of Nigeria;

(*g*) upon the advice of the Inspectorate, grant, amend, renew, extend or revoke upstream petroleum licences and leases pursuant to the provisions of this Act;

(*h*) upon the advice of the Agency, grant, amend, renew, extend or revoke downstream petroleum licences for gas transportation pipeline, gas distribution networks, refineries, LNG and GTL plants, petrochemical plants and gas exports;

(*i*) advise the President on the appointments of the chief executives of the Upstream Petroleum Inspectorate, Downstream Petroleum Regulatory Agency, the National Oil Company, the Asset Management Corporation and any other Government agency or corporate entity established or to be established pursuant to this Bill;

(*j*) have access at all times to areas or rights of way covered by existing licences, leases, permits and authorisations or any related offices or buildings, and all installations to which this Bill applies, for the purpose of inspecting operations conducted and accessing information available therein, and enforcing the provisions of this Bill and any regulations made under this Bill; and

(*k*) do all such other things as are incidental and necessary to the performance of the functions of the Minister under this Bill.

(2) Except for the provisions of paragraph (*f*) of Clause 121 of this Bill, the Minister may in writing delegate to any other person or institution any power or function conferred on him by or under this Bill the power to make orders, subject to his approval.

Right of preemption.

7.—(1) In the event of a state of national emergency, the Minister, subject to the approval of the President, shall have the right of preemption of all petroleum and petroleum products obtained, marketed or otherwise dealt with under any license or lease granted under this Bill.

(2) The provisions of the First Schedule to this Bill shall have effect in relation to the right referred to in subsection (1) of this section.

(3) Any person, who without lawful cause fails to comply with a requisition made by or on behalf of the Minister under paragraphs 1, 2 or 7 of the First Schedule to this Bill, or fails to conform or to obey a direction issued by the Minister under paragraph 8 of the First Schedule to this Bill, commits an offence and is liable on conviction to a fine not exceeding ₦2,500,000.00.

(4) Any person who obstructs or interferes with the Minister, his servants or agents in the exercise of the powers conferred on the Minister under paragraph 8 of the First Schedule to this Bill commits an offence and is liable on conviction to a fine not exceeding ₦5,000,000 or to imprisonment for a period not exceeding two years, or to both.

(5) The Minister may, for the purpose of subsection (1) of this section, advise the President to declare a state of emergency if the Minister is satisfied that, as a result of low level of availability of petroleum and petroleum products:

(*a*) there is an actual breakdown of public order and public safety in the Federation or any part thereof; or

(*b*) there is a clear and present danger of actual breakdown of public order or public safety in the Federation or any part thereof.

Regulations.

8.—(1) The Minister may, or on the advice of any of the agencies established under this Bill and subject to the provisions of subsections (2) and (3) of this section and paragraph (*f*) of section (2) and (3) of this Bill, make regulations necessary to give proper effect to the provisions of this Bill.

(2) The Minister shall, prior to making regulations under this Bill, conduct a public inquiry in the manner specified in subsection (4) of this section on the subject matter of the proposed regulations.

(3) The Minister shall, in making any regulation take into consideration the findings of the inquiry under subsection (2) of this section.

(4) Subject to subsection (2) of this section, when the Minister decides to hold a public inquiry, he shall publish in at least two national newspapers, notice of —

(*a*) the fact that he is holding the inquiry;

(*b*) invitation to members of the public to participate in the public inquiry;

(*c*) the venue and period during which the inquiry is to be held;

(*d*) the nature of the matter to which the inquiry relates;

(*e*) the matters that the Minister would like the submissions to deal with;

(*f*) the form in which members of the public are to make submissions to the Minister on the subject matter of the inquiry;

(*g*) the period of public notice for the commencement of the public inquiry which shall not be less than twenty-one days; and

(*h*) the address or addresses to which the submissions may be sent.

(5) Notwithstanding the provision of subsection (2) of this section, the Minister may, due to the exigency of the circumstances, make any regulation without conducting a public hearing, where he deems it necessary.

(6) Any regulation made pursuant to sub-section (5) of this section shall be valid for no longer than ninety days with effect from its commencement date, unless it is confirmed after a public hearing.

B. PETROLEUM TECHNICAL BUREAU

Establishment of the Petroleum Technical Bureau.

9.—(1) There is established under this Act, the Petroleum Technical Bureau (in this Act referred to as "the Bureau") as a special unit in the office of the Minister.

(2) The Bureau shall consist of professionals with expertise in the upstream and downstream sectors of the petroleum industry as the Minister may from time to time deem appropriate for the effective discharge of the functions of the Bureau.

(3) The Bureau shall in addition to its other duties, carry out the functions of the former Frontier Exploration Services of NNPC.

Functions of the Bureau.

10. The functions of the Bureau shall be, working in conjunction with other departments of the Ministry to

(*a*) provide technical and professional support to the Minister on matters relating to the petroleum industry;

(*b*) assist the Minister in the formulation and development of strategies to implement Government policy on the petroleum industry;

(*c*) assist the Minister in monitoring the implementation of Government policy on the petroleum industry; and

(*d*) perform such other functions as the Minister may from time to time direct, in accordance with the provisions of this Bill.

Staff of the Bureau, etc.

11.—(1) The staff of the Bureau shall be selected for appointment through a transparent recruitment process.

(2) The remuneration and conditions of service of the staff of the Bureau shall be at a level sufficient to attract qualified professionals within the petroleum industry and shall take into account:

(*a*) the specialised nature of work to be performed by such staff;

(*b*) the need to ensure financial sufficiency of the Bureau; and

(*c*) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Pensions.

12.—(1) Employment in the Bureau shall be subject to the provisions of the Pensions Reform Act and officers and employees of the Bureau shall be entitled to pension and other retirement benefits as prescribed under the Pensions Reform Act.

(2) Subsection (1) of this section shall not prohibit the Bureau 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.

C. UPSTREAM PETROLEUM INSPECTORATE

Establishment of the Upstream Petroleum Inspectorate.

13.—(1) There is established under this Bill the Upstream Petroleum Inspectorate ("the Inspectorate") as a body corporate with perpetual succession and a common seal, which may sue or be sued in its corporate name.

Power of the inspectorate.

(2) The Inspectorate shall have power to —

(*a*) enter into contracts and incur obligations;

(*b*) acquire, hold, mortgage, purchase and deal with property, whether movable or immovable, real or personal; and

(*c*) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Bill.

(3) The Inspectorate shall be vested with the assets and liabilities relating to the upstream petroleum sector functions hitherto vested in the Department of Petroleum Resources of the Ministry.

(4) The Inspectorate shall be structured into departments as its Board, may from time to time deem appropriate for the effective discharge of its functions under this Bill.

Objectives of the Inspectorate.

14. The Inspectorate shall —

(*a*) promote the efficient, safe, effective and sustainable infrastructural development of the upstream sector of the petroleum industry;

(*b*) promote the healthy, safe and efficient conduct of al upstream petroleum operations;

(*c*) regulate all technical aspects of the upstream petroleum sector;

(*d*) regulate commercial activities within the upstream petroleum sector as may be designated by the Minister;

(*e*) determine and ensure the implementation and maintenance of technical standards and specifications applicable to the upstream petroleum sector:

(*f*) execute Government policies for the upstream petroleum sector assigned to it by the Minister;

(*g*) facilitate an enabling environment for investments in the upstream petroleum sector; and

(*h*) Implement such other objectives consistent with the objectives of this Bill as may be determined from time to time by the Minister.

Functions of the inspectorate.

15. The Inspectorate shall in collaboration with other relevant government agencies, where applicable —

(*a*) administer and enforce policies, laws and regulations relating to all aspects of upstream petroleum operations which are assigned to it under any law;

(*b*) ensure and enforce compliance with the terms and conditions of all leases, licenses, permits and authorizations issued or in respect of upstream petroleum operations;

(*c*) set and enforce approved standards for design, procurement, construction, operation and maintenance for all plant, installations and facilities pertaining to upstream petroleum operations;

(*d*) ensure adherence to national and applicable international environmental and other technical standards by all persons involved in upstream petroleum operations;

(*e*) establish, monitor, regulate and enforce health and safety measures relating to all aspects of upstream petroleum operations;

(*f*) keep registers of all leases, licences, permits, and other authorisations issued by the Inspectorate or granted by the Minister for upstream petroleum operations, and any renewals, amendments, extensions, suspensions and revocations thereof;

(*g*) carry out enquiries, tests, audits or investigations and take such steps as may be necessary to monitor the activities of the holders of leases, licences, permits and other authorisations to secure and enforce compliance with the terms and conditions thereof;

(*h*) publish reports and statistics on the upstream petroleum sector;

(*i*) develop and publish tariffs and prices relating to third party access to upstream petroleum facilities from time to time;

(*j*) validate and certify the evaluation of national hydrocarbon reserves;

(*k*) maintain a petroleum industry data bank comprising all data acquired by or required to be given to the Inspectorate in the exercise of its statutory functions;

(*l*) ensure accurate calibration and certification of equipment used for fiscal measures for upstream petroleum operations;

(*m*) issue permits and any other authorisations necessary for all activities connected with, but not limited to the following:

(*i*) seismic,

(*ii*) drilling,

(*iii*) design and construction of all facilities for upstream petroleum operations, and

(*iv*) for purely scientific research;

(*n*) manage and administer all upstream petroleum data for all unallocated acreage;

(*o*) with the prior approval the Minister, conduct bid rounds for the award of petroleum prospecting licences and petroleum mining leases pursuant to the provisions of this Bill ;

(*p*) approve the concept of the overall design for all field development programmes in the upstream petroleum sector including infrastructure optimisation;

(*q*) with the approval of the Minister, allocate petroleum production quotas;

(*r*) develop cost benchmarks for upstream petroleum operations performance;

(*s*) compute, assess and ensure payment of royalties, rentals, fees, and other charges for upstream petroleum operations as stipulated in this Bill and regulations made pursuant to this Bill;

(*t*) advise any government appointed agency on matters relating to the disposal of available royalty in kind on behalf of the Government; and

(*u*) liaise with the Service on gross revenue and cost deductions relating to the taxation of upstream petroleum operations undertaken by companies.

Powers of the Inspectorate.

16. In carrying out its functions under this Bill, the Inspectorate shall have power to —

(*a*) modify, extend, renew, suspend and revoke any licence or permit issued by it pursuant to the provisions of this Bill;

(*b*) advise the Minister on the issuance, amendment or repeal of any regulations relevant to the upstream petroleum sector and the functions of the Inspectorate under this Bill;

(*c*) designate facilities in the upstream petroleum sector as open access facilities, determine tariff methodology and pricing applicable to same, monitor and enforce the application of such tariff and pricing framework and mediate disputes in respect of open access as may be determined by regulations;

(*d*) request and obtain any information or any document concerning licensed activities in the upstream petroleum sector from any licensee, lessee or permit holder whether or not it contains business secrets;

(*e*) subject to section 222 of this Bill, where it considers it to be in the public interest —

(*i*) publish information relating to upstream petroleum operations provided by llicensees, lessees and permit holders, and (*ii*) require llicensees, lessees and permit holders to publish certain information relating to upstream petroleum operations;

(*f*) enforce relevant licence, lease or permit conditions and the specific requirements of this Bill;

(*g*) institute legal proceedings against any licensee, lessee or permit holder for failure to comply with licence, lease or permit conditions or other requirements of this Bill;

(*h*) enforce the provisions of any enactments or regulations applicable to upstream petroleum operations made prior to the commencement of this Bill;

(*i*) enforce the provisions of any regulations referring to or formerly administered by the Department of Petroleum Resources of the Ministry in the upstream petroleum sector; and

(*j*) make and enforce guidelines and prescribe fees not inconsistent with this Bill and regulations made pursuant to it.

17.—(1) There shall be for the Inspectorate a Board (in this Chapter referred to as "the Board"), responsible for the administration of the affairs and business of the Inspectorate. Board of the Inspectorate.

(2) The Board shall consist of the following members who shall be appointed by the President:

(*a*) a Chairman, who shall be a person of high integrity and substantial professional experience;

(*b*) the Director-General of the Inspectorate;

(*c*) one representative of the Ministry each not lower than the rank of a director;

(*d*) a representative of the Federal Ministry of Finance, not lower than the rank of a director;

(*e*) a representative of the National Union of Petroleum and Natural Gas Workers (NUPENG);

(*f*) a representative of the Petroleum and Natural Gas Senior Staff Association (PENGASSAN); and (*g*) one other person who shall be of high integrity and substantial professional experience.

(3) The persons appointed in paragraph (*a*) and (*h*) of subsection (2) of this section shall hold office for a term of four years in the first instance which term may be renewed for another term of four years only, on such terms and conditions as may be specified in the letter of appointment.

(4) Appointments to the Board in respect of persons appointed pursuant to paragraphs (*a*), (*f*), and (*g*) and (*h*) of subsection (2) of this section shall be on part- time basis.

(5) The proceedings of the Board and other ancillary matters shall be in accordance with the provisions of the Second Schedule to this Bill.

(6) Subject to subsection (5) of this section, the Board shall have the power to make standing orders for the regulation of its proceedings and meetings and acts of the Board shall be deemed to be acts of the Inspectorate.

(7) The conflict of interest provisions contained in the Second Schedule to this Bill shall apply to all members of the Board.

Functions of the Board.

18. The Board shall ensure that the Inspectorate performs its statutory functions under this Bill by —

(*a*) providing general guidelines for the carrying out of the functions of the Inspectorate;

(*b*) reviewing and approving the strategic plans of the Inspectorate;

(*c*) determining the terms and conditions of service of employees of the Inspectorate;

(*d*) subject to the approval of the Minister, structuring the Inspectorate into such number of departments as it deems fit for the effective discharge of the functions of the Inspectorate; and

(*e*) carrying out such other acts or things which in the opinion of the Board are necessary to ensure the efficient performance of the functions of the Inspectorate under this Bill or as may be delegated to the Inspectorate by the Minister.

Remuneration of members of the Board.

19. Members of the Board shall be paid from the Fund of the Inspectorate such remuneration and allowances, in accordance with the guidelines as may be specified by Government from time to time.

Removal of member of the Board.

20. A member of the Board may be suspended, or removed from office by the President if the member —

(*a*) is found to have been unqualified for appointment as a member of the Board pursuant to section 17 (2) (*a*) and (*h*) of this Bill or is in breach of section 25 of this Bill after his appointment;

(*b*) has demonstrated inability to effectively perform the duties of the office;

(*c*) has been absent from five consecutive meetings of the Board without the consent of the Chairman or when the Chairman is involved without the consent of the Minister except good reason is shown for such absence;

(*d*) is guilty of serious misconduct ;

(*e*) in the case of a person possessed of professional qualifications, is disqualified or suspended from practising his profession in any part of the world by an order of a competent authority; or

(*f*) is in a breach of the conflict of interest provision set out in the Second Schedule to this Bill.

Resignation of a member of the Board.

21. A member of the Board may resign his appointment by giving three months written notice addressed to the President through the Minister.

Vacancy on the Board.

22.—(1) A vacancy on the Board shall occur if a member of the Board —

(*a*) dies;

(*b*) is removed from office in accordance with section 20 of this Bill;

(*c*) resigns from office; or

(*d*) completes his tenure of office.

(2) A vacancy on the Board shall be filled by the appointment of

another person to the vacant office by the President in accordance with section 17 (2) of this Bill, as soon as is reasonably practicable after the occurrence of such vacancy.

The Director-General and Directors.

23.—(1) There shall be for the Inspectorate —

(*i*) a Director-General to be appointed by the President;

(*ii*) and such other Directors appointed by the board.

(2) The persons to be appointed Director-General and the Directors shall have extensive technical or professional knowledge of the petroleum industry with a minimum of ten years' experience at management level and shall be selected through a transparent merit-based recruitment process.

(3) The Director-General shall be the chief executive and accounting officer of the Inspectorate responsible for the day-to-day running of the affairs of the Inspectorate with the support of the Directors.

(4) The Director-General and the Directors shall perform such other functions as the Board may determine from time to time.

Tenure, remuneration and conditions of service of the Director-General and the Directors.

24.—(1) The Director-General shall serve for a term of four years from the date of his appointment at the expiration of which the President may renew his appointment for another term of four years and no more and on such terms and conditions as may be specified in the letter of appointment.

(2) The remuneration of Director-General and the Directors shall be commensurate with conditions of service within the petroleum industry.

Disqualification.

25. A person shall not be appointed as Director-General or Director of the Inspectorate unless the person —

(*a*) is a Nigerian citizen;

(*b*) has not, 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 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 or suspended from practising his profession by the order of a competent authority made in respect of him personally.

Removal of the Director General and Directors from office.

26. The President may remove the Director-General or a Director from office if —

(*a*) he commits an act of gross misconduct;

(*b*) he has demonstrated inability to effectively perform the duties of the office;

(*c*) the President is satisfied that it is not in the interest of the Inspectorate or the public that the Director General or a Director should continue in office.

Secretary of the Inspectorate.

27.—(1) The Board shall appoint a Secretary for the Inspectorate.

(2) The Secretary shall report to the Director-General of the Inspectorate and shall be responsible for:

(*a*) making arrangements for Board meetings and preparing the agenda and minutes of such meetings;

(*b*) communicating the decisions of the Board to the Board members;

(*c*) keeping corporate records of the Board;

(*d*) arranging for payment of fees and allowances of meetings and all other matters affecting members of the Board; and

(*e*) any other duties affecting the Inspectorate assigned to him, by the Chairman or the Director-General of the Inspectorate.

(3) The Secretary shall be a legal practitioner with a minimum of ten years post qualification experience.

Other Staff.

28.—(1) The Board may employ for the Inspectorate such number of persons as employees of the Inspectorate as it may deem necessary.

(2) The employment of the Inspectorate's staff, including the Secretary, shall be subject to such terms and conditions as may from time to time be stipulated by the Board and contained in the respective employment contracts.

(3) The Board shall determine and review from time to time, the remuneration and allowances, payable to the Inspectorate's staff.

(4) The Board shall make staff regulations generally relating to the conditions of service of its employees, and in particular, but without prejudice to the generality of the foregoing, such regulations may provide for —

(*a*) the appointment, promotion, dismissal and discipline of employees;

(*b*) appeals by the employees against dismissal or other disciplinary measures; and

(*c*) the grant of pensions, gratuities and other retirement allowances to the employees;

(5) Staff of the Inspectorate shall be public officers as defined in the Constitution of the Federal Republic of Nigeria, 1999.

(6) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

Specific provisions on conditions of service.

29. The conditions of service of staff of the Inspectorate shall be commensurate with conditions of service 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 prudence of the Inspectorate; and

(*c*) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Pensions.

30 —(1) Employment in the Inspectorate shall be subject to the provisions of the Pensions Reform Act and officers and employees of the Inspectorate shall be entitled to pension and other retirement benefits as prescribed under the Pensions Reform Act.

(2) Nothing in Subsection (1) of this section shall prohibit the Inspectorate 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) 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 Department of Petroleum Resources of the Ministry was obliged in respect of its employees overseeing upstream petroleum operations, prior to the transfer of assets and liabilities to the Inspectorate.

Financial Provisions.

31.—(1) The Inspectorate shall not later than 30th September or such other date to be determined by the Ministry of Finance in each financial year, prepare and present through the Ministry for appropriation, a statement of estimated income and expenditure for the following financial year.

(2) Notwithstanding the provisions of subsection (1) of this section, the Inspectorate may also, in any financial year, submit supplementary or adjusted statements of estimated income and expenditure for appropriation.

(3) The financial year of the Inspectorate shall be a period of twelve calendar months commencing on the 1st of January in each year.

Funding.

32.—(1) The Inspectorate shall establish and maintain a fund ('the Fund') from which all expenditures incurred by the Inspectorate shall be defrayed subject to appropriation by the National Assembly.

(2) The Fund shall comprise monies derived from the following sources:

(*a*) such moneys as may be appropriated to the Inspectorate from time to time by the National Assembly;

(*b*) fees paid for permits or other authorisations;

(*c*) income derived from publications produced by the Inspectorate and other related activities;

(*d*) fees for services rendered to non-petroleum producing companies and service companies and for other services performed generally;

(*e*) gifts, loans, grants in aids; and

(*f*) fees charged for sale of data acquired by the Inspectorate and for access to the national data repository.

(3) The Inspectorate shall apply the proceeds of the Fund established pursuant to subsection (1) of this section:

(*a*) to meet the administrative and operating costs of the Inspectorate;

(*b*) to provide for the payment of salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to staff or employees of the Inspectorate;

(*c*) for the maintenance of property acquired by, or vested in the Inspectorate;

(*d*) for purposes of investment, as prescribed by the Trustee Investments Act, or any other relevant legislation subject to the approval of the Minister; and

(*e*) generally in connection with the carrying out of any of its functions under this Bill.

(4) The Inspectorate shall ensure that all royalty, lease renewal fees, assignment fees and concession rentals charged under this Bill or regulations made pursuant to this Bill are paid into the Federation Account in line with the Fiscal Responsibility Act.

(5) For any particular year, if monies accruing to the Fund from appropriation established pursuant to subsection (2) of this section has not been fully applied for the purposes pursuant to subsection (3) of this section, such monies shall be paid into the Consolidated Revenue Fund.

(6) Notwithstanding provision of subsection 4 above Five percents of the revenue collected shall be deducted and retained by the inspectorate as cost of collection.

Power to accept gifts.

33.—(1) The Inspectorate may accept gifts of money or other property upon such terms and conditions 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 Inspectorate under this Bill.

(2) Nothing in subsection (1) of this section or in this Bill shall be construed to allow any member of the Board or staff of the Inspectorate to accept gifts for their personal use.

Accounts and audit.

34. The Inspectorate shall keep proper accounts of its income and expenditure in respect of each financial year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed by the Inspectorate from a list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

Mid-year and annual reports.

35.—(1) The Inspectorate shall submit to the Minister, a mid-year report of its operations and finances not later than 31st August of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st May of the following year.

(2) A summary of the annual report and audited financial report of the Inspectorate shall be published on the website of the Inspectorate for public notice not later than 31st of July of each year.

Exemption from income tax.

36.—(1) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Inspectorate.

(2) Where contributions to the Fund of the Inspectorate 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.

Limitation of Suits against the Inspectorate, etc.

37.—(1) Subject to the provisions of this Bill, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Inspectorate, Director General, an officer or employee of the Inspectorate.

(2) No suit shall lie against the Inspectorate, the Director General or any other officer or employee of the Inspectorate for any act done in pursuance or execution of this Bill or any other law or enactment,

or of any public duty or authority in respect of any alleged neglect or default in the execution of this Bill or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced —

(*a*) within three months next after the act, neglect or default complained of; or

(*b*) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.

(3) No suit shall be commenced against the Inspectorate, the Director General or any official or employee of the Inspectorate before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Inspectorate by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.

Service of court processes on the Inspectorate.

38. A notice, summons or other document required or authorized to be served on the Inspectorate under the provisions of this Bill or any other law or enactment may be served by delivering it to the office of the Director General of the Inspectorate or any of its Directors.

Restriction on execution against the Inspectorate's property.

39.—(1) In any action or suit against the Inspectorate, no execution or attachment of its physical property shall be issued. Any judgment against the Inspectorate may be enforced through garnishee proceedings provided that not less than three months' notice of the intention to commence the garnishee proceedings shall have been given to the Inspectorate.

(2) Any sum of money which may by the judgment of any court be awarded against the Inspectorate shall, subject to any direction given by the court where no notice of appeal against the judgment has been given, be paid from the Fund of the Inspectorate.

Special powers.

40. The Inspectorate shall have power to investigate any person or organisation in relation to any of its functions or powers under this

Bill and in order to ascertain any violation of the provisions of this Bill.

Establishment of a Special Investigation Unit.

41.—(1) For the effective conduct of its functions, the Inspectorate shall have a Special Investigation Unit.

Powers and Duties of the Special Investigation Unit.

(2) The Special Investigation Unit or an officer authorised on its behalf shall have powers, with respect to matters under the authority of the Inspectorate in this Bill, to:

(*a*) investigate acts which may constitute offences under this Bill;

(*b*) collaborate with other government agencies and persons in relation to the detection or prosecution of offences under this Bill;

(*c*) keep surveillance on oil and gas installations, premises and vessels where it has reason to believe that illegal petroleum operations are going on;

(*d*) enter and search any premises or carrier including vehicles or any other instrumentalities whatsoever which is reasonably believed to be connected with the commission of an offence;

(*e*) seize any item or substance which is reasonably believed to have been used in the commission of an offence under this Bill.

(*f*) arrest without warrant any person who is found committing any offence under this Bill or any regulations made under this Bill and hand over any person so arrested to the police or "other" law enforcement agency immediately; and

(*g*) in conjunction with the Nigerian Police and other relevant law enforcement agencies arrest with a warrant obtained from a judicial officer, any person reasonably believed to have committed an offence under this Bill.

Indemnity of Board and Employees.

42.—(1) Every member of the Board and every employee of the Inspectorate shall be indemnified out of the assets of the Inspectorate against any liability incurred in defending any proceeding against the Inspectorate, whether civil or criminal, if such proceedings are brought against the person in the person's capacity as a member of the Board or employee.

(2) Notwithstanding the provisions of subsection (1) of this section, the Inspectorate shall not indemnify any member of the Board or employee of the Inspectorate for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be, or conduct or acts which such person knew or ought to have known to be unlawful.

D. DOWNSTREAM PETROLEUM REGULATORY AGENCY

Establishment of the Downstream Petroleum Regulatory Agency.

43.—(1) There is established under this Bill the Downstream Petroleum Regulatory Agency ("the Agency") a body corporate with perpetual succession, a common seal and which may sue or be sued in its corporate name.

(2) The Agency shall have power to —

(*a*) enter into contracts and incur obligations;

(*b*) acquire, hold, mortgage, purchase and deal with property, whether movable or immovable, real or personal; and

(*c*) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Bill.

(3) The assets and liabilities relating to the downstream petroleum sector functions hither to perform by the Department of Petroleum Resources of the Ministry and the Petroleum Products Pricing and Regulatory Agency shall be vested in the Agency.

(4) The Agency shall be structured into departments as its Board may from time to time deem appropriate for the effective discharge of its functions.

Objectives of the Agency.

44. The functions of the Agency:

(*a*) administer and enforce policies, laws and regulations relating to all aspects of downstream petroleum operations as may be assigned to it by law;

(*b*) ensure and enforce compliance with the terms and conditions of all licences, permits and authorisations issued in respect of downstream petroleum operations;

(*c*) set and enforce approved standards for design, procurement, construction, operation and maintenance for all plant, installations and facilities pertaining to downstream petroleum operations;

(*d*) ensure adherence to national and international environmental standards by all persons involved in downstream petroleum operations;

(*e*) establish, monitor and regulate health and safety measures relating to all aspects of downstream petroleum operations;

(*f*) keep registers of all licences granted by the Minister and of all permits, and other authorisations issued by the Agency for downstream petroleum operations, and any renewals, amendments, suspensions and revocations thereof;

(*g*) carry out enquiries, tests, audits or investigations and take such steps as may be necessary to monitor the activities of the holders of licences, permits and other authorisations and to secure and enforce compliance with the terms and conditions thereof;

(*h*) publish reports and statistics on the downstream petroleum sector;

(*i*) issue, and renew licences, permits or other authorisations, and modify, amend, extend, suspend, review, cancel and reissue, revoke or terminate such licences, permits or other authorisations;

(*j*) regulate the activities of the downstream petroleum sector in Nigeria in a non-discriminatory and transparent manner;

(*k*) set cost benchmarks for downstream petroleum operations;

(*l*) regulate bulk storage, transportation and transmission and set rules for the common carrier systemsfor crude oil, gas and petroleum products in downstream petroleum sector;

(*m*) promote sustainable infrastructural development in the downstream petroleum sector;

(*n*) promote competition and private sector participation in the downstream petroleum sectors;

(*o*) facilitate the satisfaction of all economic and strategic demands for downstream gas;

(*p*) monitor and enforce the actual application of tariff and pricing framework as specified by regulation;

(*q*) monitor market behaviour including the development and maintenance of competitive markets in addition to the regulation of tariffs in the downstream petroleum sectors;

(*r*) arrest situations of abuse of dominant power and restrictive business practices in the downstream petroleum sector;

(*s*) establish and implement appropriate dispute settlement mechanisms relating to parties engaged in downstream petroleum operations as may be prescribed by regulations;

(*t*) inspect measurement equipment and any other facilities for downstream petroleum operations and ensure compliance with safety standards as prescribed by regulation ;

(*u*) 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;

(*v*) facilitate the supply of gas to the strategic sectors, in accordance with the approved national gas pricing framework;

(*w*) issue, and renew permits or authorisations related to downstream petroleum operations as provided under this Bill and modify, amend, extend, suspend, review, cancel and reissue, revoke or terminate such permits

(*x*) establish the methodology for calculating the fair market value of petroleum products as may be prescribed by regulations;

(*y*) regulate bulk storage and distribution and implement rules for petroleum products, petroleum product pipelines and regional storage depots as may be prescribed by regulations;

(*z*) promote security of fuel supply in the downstream petroleum sector;

(*aa*) subject to the approval of the Minister, develop and implement market rules for trading in wholesale gas supplies to downstream gas distributors;

(*ab*) implement consumer protection measures in accordance with the provisions of this Bill;

(*ac*) undertake consultation with customers, licensees and industry participants where necessary;

(*ad*) promote and protect the interests of consumers;

(*ae*) promote the principles of sustainable resource and infrastructural development through the efficient supply and use of downstream gas and other petroleum products;

(*af*) regulate and ensure the supply, distribution, marketing and retail of petroleum products as may be prescribed by regulations;

(*ag*) administer and monitor the national operating and strategic stocks of petroleum products as set by the Minister;

(*ah*) monitor and ensure the quality and process of conversion or blending of whatever material by whatever method to fuels, bio-fuels or derivatives for automotive use in Nigeria; as may be prescribed by regulations;

(*ai*) regulate the importation, handling, storage and distribution of petroleum products;

(*aj*) define dangerous petroleum and dangerous petroleum products, and prescribing procedures and conditions for loading, unloading, transport and shipping;

(*ak*) provide for the examination and testing of petroleum and petroleum products, and prescribing the test to be applied and the method of applying such tests;

(*al*) monitor and enforce regulations related to abandonment and decommissioning of any facilities or installations used for downstream petroleum operations;and

(*am*) do such other things as are necessary and expedient for the effective and full discharge of any of its functions under this Bill.

(*an*) where applicable carry out its functions in collaboration with other relevant Government institutions.

Functions of the Agency.

45.—(1) There shall be for the Agency, a Board (in this Bill referred to as "the Board"), responsible for the administration of the affairs and business of the Agency.

(2) The Board shall consist of the following members appointed by the President:

(*a*) the Chairman, who shall be a person of high integrity and substantial professional experience;

(*b*) the Director-General of the Agency;

(*c*) two Directors of the Agency;

(*d*) two representatives from the Ministry of Petroleum Resources not below the rank of a director;

(*e*) a representative of the Federal Ministry of Finance, not below the rank of a director; and

(*f*) a representative of the National Union of Petroleum and Natural Gas Workers (NUPENG);

(*g*) a representative of the Petroleum and Natural Gas Senior Staff Association (PENGASSAN); and

(*h*) three other persons who shall be of high integrity and substantial professional experience.

(3) The persons appointed in paragraph (*a*) and (*h*) of subsection (2) of this section shall hold office for a term of four years in the first instance which term may be renewed for another term of four years only, on such terms and conditions as may be specified in the letter of appointment.

(4) Appointments to the Board in respect of persons appointed pursuant to paragraphs (*a*), (*f*), and (*g*) and (*h*) of subsection (2) of this section shall be on part- time basis.

(5) The proceedings of the Board of the Agency and other ancillary matters shall be in accordance with the provisions of the Second Schedule to this Bill.

(6) Subject to subsection (5) of this section, the Board shall have the

power to make standing orders for the regulation of its proceedings and meetings and acts of the Board shall be deemed to be acts of the Agency.

(7) The conflict of interest provisions contained in the Second Schedule to this Bill shall apply to all members of the Board.

Powers of the Agency.

46. In carrying out its functions under this Bill, the Agency shall have power to —

(*a*) modify, extend, renew, suspend and revoke any permit issued by it pursuant to the provisions of this Bill;

(*b*) monitor and enforce the application of its tariff and pricing framework for third party access to facilities in the downstream petroleum sector in accordance with the provisions of this Bill;

(*c*) subject to section 174 of this Bill request and obtain any information or any document concerning licensed activities in the downstream petroleum sector from any licensee or permit holder whether or not it contains business secrets;

(*d*) where it considers it to be in the public interest:

(*i*) publish information relating to downstream petroleum operations provided by llicensees and permit holders;

(*ii*) require llicensees and permit holders to publish certain information relating to downstream petroleum operations;

(*e*) impose and enforce relevant licence or permit conditions and enforce the specific requirements of this Bill;

(*f*) institute legal proceedings against any licensee, lessee or permit holder for failure to comply with licence or permit conditions or other requirements of this Bill;

(*g*) enforce the provisions of any enactments or regulations applicable to downstream petroleum operations made prior to the commencement of this Bill; and

(*h*) to enforce the provisions of any regulations hitherto administered by the Department of Petroleum Resources of the Ministry in the downstream sector;

(*i*) make and enforce guidelines and prescribe fees consistent with this Bill and regulations made pursuant to it.

Board of the Agency.

47.—(1) There shall be for the Agency, a Board (in this Bill referred to as "the Board"), responsible for the administration of the affairs and business of the Agency.

(2) The Board shall consist of the following members appointed by the President —

(*a*) the Chairman, who shall be a person of high integrity and , substantial professional experience;

(*b*) the Director-General of the Agency;

(*c*) two Directors of the Agency;

(*d*) two representatives from the Ministry of Petroleum Resources not below the rank of a director;

(*e*) a representative of the Federal Ministry of Finance, not below the rank of a director; and

(*f*) a representative of the National Union of Petroleum and Natural Gas Workers (NUPENG);

(*g*) a representative of the Petroleum and Natural Gas Senior Staff Association (PENGASSAN); and

(*h*) three other persons who shall be of high integrity and substantial professional experience.

(3) The persons appointed in paragraph (*a*) and (*h*) of subsection (2) of this section shall hold office for a term of four years in the first instance which term may be renewed for another term of four years only, on such terms and conditions as may be specified in the letter of appointment.

(4) Appointments to the Board in respect of persons appointed pursuant to paragraphs (*a*), (*f*), and (*g*) and (*h*) of subsection (2) of this section shall be on part- time basis.

(5) The proceedings of the Board of the Agency and other ancillary matters shall be in accordance with the provisions of the Second Schedule to this Bill.

(6) Subject to subsection (5) of this section, the Board shall have the power to make standing orders for the regulation of its proceedings and meetings and acts of the Board shall be deemed to be acts of the Agency.

(7) The conflict of interest provisions contained in the Second Schedule to this Bill shall apply to all members of the Board.

Functions of the Board.

48. The Board shall ensure that the Agency performs its statutory functions under this Bill by —

(*a*) providing general guidelines related to the functions of the Agency;

(*b*) reviewing and approving the strategic plans of the Agency;

(*c*) determining the terms and conditions of service of employees of the Agency;

(*d*) structuring the Agency into such number of departments as it deems fit for the effective discharge of the functions of the Agency; and

(*e*) carrying out such other acts or things which in the opinion of the Directors are necessary to ensure the efficient performance of the Agency under this Bill or as may be delegated to the Agency by the Minister.

Remuneration of Members of the Board.

49. Members of the Board shall be paid from the Fund of the Agency such remuneration and allowances as may be specified by the Government from time to time by guidelines issued by the Government.

Removal of a Member of the Board.

50. A member of the Board may be suspended, or removed from office by the President if the member —

(*a*) is found to have been unqualified for appointment as a member of the Board pursuant to paragraphs (*a*) and (*h*) of section 47 (2) of this Bill or is in breach of section 56 of this Bill after his appointment;

(*b*) has demonstrated inability to effectively perform the duties of his office;

(*c*) has been absent from five consecutive meetings of the Board without the consent of the Chairman and where the Chairman is involved without the consent of the Minister except for good reason is shown for such absence;

(*d*) is guilty of serious misconduct ;

(*e*) in the case of a person possessed of professional qualifications, he is disqualified or suspended from practising his profession in any part of the world by an order of a competent authority; or

(*f*) is in breach of the conflict of interest rules set out in the Second Schedule to this Bill.

Resignation of a Member of the Board.

51. A member of the Board may resign his appointment by giving notice in writing addressed to the President through the Minister.

Vacancy on the Board.

52.—(1) A vacancy on the Board shall occur if a member of the Board —

(*a*) dies;

(*b*) is removed from office in accordance with Clauses 50 and 51 of this Bill;

(*c*) resigns from office; or

(*d*) completes his tenure of office.

(2) A vacancy on the Board shall be filled by the appointment of another person to the vacant office by the President in accordance with section 48 of this Bill, as soon as is reasonably practicable after the occurrence of such vacancy.

(3) Where a vacancy is filled in accordance with Clause 52 of this Bill, such a person shall occupy the office only for the remaining period of the tenure.

The Director-General and Directors.

53.—(1) There shall be for the Agency:

(*a*) a Director-General appointed by the President; and

(*b*) such other Directors appointed by the Board.

(2) A vacancy on the Board shall be filled by the appointment of another person to the vacant office by the President in accordance with section 47 (2) of this Bill, as soon as is reasonably practicable after the occurrence of such vacancy.

(3) The Director-General shall be the chief executive and accounting officer of the Agency responsible for the day-to-day running of the affairs of the Agency with the support of the Directors.

(4) The Director-General and the Directors shall perform such other functions as the Board may determine from time to time.

Tenure, Remuneration and conditions of service of the Director-General and Directors.

54.—(1) The Director-General shall serve for a term of four years from the date of his appointment at the expiration of which the President may renew his term for further term of four years and no more on such terms and conditions as may be specified in his letter of appointment.

(2) The remuneration of Director-General and Directors shall be commensurate with conditions of service within the Petroleum Industry.

(3) The conflict of interest provisions contained in the Second Schedule to this Bill shall apply to all members of the Board.

Disqualification.

55. A person shall not be appointed as Director-General or Director of the Agency unless the person —

(*a*) is a Nigerian citizen;

(*b*) has not, 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 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 or suspended from practising his profession in any part of the world by the order of a competent authority made in respect of him personally.

Removal of a member of the board, the Director General and Directors from office.

56. The President may remove the Director-General or a Director from office if —

(*a*) he commits an act of gross misconduct;

(*b*) he has demonstrated inability to effectively perform the duties of the office:

(*c*) if the President is satisfied that it is not in the interest of the Agency or the public that the member Director General or Director should continue in office.

Secretary of the Agency.

57.—(1) The Board shall appoint a Secretary for the Agency.

(2) The Secretary shall report to the Director-General of the Agency and shall be responsible for —

(*a*) making arrangements for Board meetings and preparing the agenda and minutes of such meetings;

(*b*) communicating the decisions of the Board to the Board members;

(*c*) keeping corporate records of the Board;

(*d*) arranging for payment of fees and allowances of meetings and all other matters affecting members of the Board; and

(*e*) any other duties affecting the Agency as may be assigned to the Secretary, by the Chairman or the Director-General of the Agency.

(2) The Secretary shall be a lawyer with a minimum of ten years post qualification experience.

(3) The Secretary shall be a Legal Practitioner with a minimum of ten years post qualification experience.

Other Staff, etc.

58.—(1) The Board may appoint for the Agency such other persons as employees as it may deem necessary for the effective performance of the functions of the Agency.

(2) The employment of the Agency's staff, including the Secretary, shall be subject to such terms and conditions as may from time to time be stipulated by the Board and contained in the respective employment contracts.

(3) The Board shall determine and review from time to time, the remuneration and allowances, payable to the Agency's staff.

(4) The Board shall make staff regulations generally relating to the conditions of service of its employees, and in particular, but without prejudice to the generality of the foregoing, such regulations may

provide for —

(*a*) the appointment, promotion, dismissal and discipline of employees;

(*b*) appeals by the employees against dismissal or other disciplinary measures; and

(*c*) the grant of pensions, gratuities and other retirement allowances to the employees.

(5) Staff of the Agency shall be public officers as defined in the Constitution of the Federal Republic of Nigeria, 1999.

(6) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

Specific provisions on conditions of service.

59. The conditions of service of staff of the Agency shall be commensurate with conditions of service 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 prudence of the Agency; and

(*c*) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Pension Provisions.

60.—(1) Employment in the Agency shall be subject to the provisions of the Pensions Reform Act and officers and employees of the Agency shall be entitled to pension and other retirement benefits as prescribed under the Pensions Reform Act.

(2) Nothing in subsection (1) of this section shall prohibit the Agency 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) Subject to the Pensions Reform Act, and notwithstanding the provisions of this section, the Agency shall continue to fulfil all obligations in respect of pensions schemes to which the Department of Petroleum Resources of the Ministry and the Petroleum Products Pricing and Regulatory Agency prior to the transfer of assets and liabilities to the Agency.

Financial provisions.

61.—(1) The Agency shall not later than 30th September or such other date to be determined by the Ministry of Finance in each financial year, prepare and present through the Minister for appropriation, a statement of estimated income and expenditure for the following financial year.

(2) Notwithstanding the provisions of subsection (1) of this section, the Agency may also, in any financial year, submit supplementary or adjusted statements of estimated income and expenditure through the Minister for appropriation.

(3) The financial year of the Agency shall be a period of twelve calendar months commencing on the 1st of January in each year.

Funding.

62.—(1) The Agency shall establish and maintain a fund ('the Fund') from which all expenditures incurred by the Agency shall be defrayed subject to the approval of the National Assembly.

(2) The Fund shall comprise monies derived from the following sources:

(*a*) such monies as may be appropriated to the Agency from time to time by the National Assembly;

(*b*) fees paid for permits and other authorisations;

(*c*) fees charged in respect of services performed by the Agency;

(*d*) income received from publications produced by the Agency;

(*e*) fees for services rendered to non-petroleum marketing companies and service companies and for other services performed generally;

(*f*) gifts, loans, grants and aid; and

(*g*) such money as may be received by the Agency either in the course of its operations, in relation to the exercise of its powers and functions under this Bill or in respect of any property vested in the Agency.

(3) The Agency shall apply the proceeds of the Fund established pursuant to subsection (1) of this section:

(*a*) to meet the administrative and operating costs of the Agency;

(*b*) to provide for the payment of salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to staff or employees of the Agency;

(*c*) for the maintenance of property acquired by, or vested in the Agency;

(*d*) for purposes of investment, as prescribed by the Trustee Investments Act or any other relevant statute subject to the approval of the Minister; and

(*e*) in connection with the carrying out of its functions under this Bill.

(4) For any particular year, if monies accruing to the Fund from appropriation established pursuant to subsection (2) of this section has not been fully applied for the purposes pursuant to subsection (3) of this section, such monies shall be paid into the Consolidated Revenue Fund.

Power to accept gifts.

63.—(1) The Agency may accept gifts of money or other property upon such terms and conditions 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 Agency under this Bill.

(2) Nothing in subsection (1) of this section or in this Bill shall be construed to allow any member of the Board or staff of the Agency to accept gifts for their personal use.

Accounts and audit.

64. The Agency shall keep proper accounts of its income and expenditure in respect of each financial year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed by the Agency from a list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

Mid year and annual reports.

65.—(1) The Agency shall submit to the President through the Minister a mid-year report of its operations and finances not later than 31st August of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st May of the following year.

(2) A summary of the annual report and audited financial report of the Agency for the previous year shall be published on the website of the Agency for public notice not later than 31st of July of each year.

Exemption from tax.

66.—(1) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Agency.

(2) Where contributions to the Fund of the Agency 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.

Limitation of suits against the Agency, etc.

67.—(1) Subject to the provisions of this Bill, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Agency, the Director General, an officer or employee of the Agency.

(2) No suit shall lie against the Agency, the Director General or any other officer or employee of the Agency for any act done in pursuance or execution of this Bill or any other law or enactment, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Bill or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced —

(*a*) within three months next after the act, neglect or default complained of ; or

(*b*) in the case of a continuation of damage or injury, within six months next after the ceasing thereof.

(3) No suit shall be commenced against the Agency, the Director General or any officer or employee of the Agency before the expiration of a period of one month after notice in writing of the intention to commence the suit shall have been served on the Agency by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the

claim, the name and address of the intending plaintiff and the relief which he claims.

Service of Court Processes on the Agency.

68. A notice, summons or other document required or authorised to be served on the Agency under the provisions of this Bill or any other law or enactment may be served by delivering it to the office of the Director General of the Agency or any of its Directors.

Restriction of execution against the Agency's property.

69.—(1) In any action or suit against the Agency, no execution or attachment of its physical property shall be issued and any judgment against the Agency may be enforced through garnishee proceedings provided that not less than three months' notice of the intention to commence the garnishee proceedings shall have been given to the Agency.

(2) Any sum of money which may by the judgment of any court be awarded against the Agency shall, subject to any direction given by the court where no notice of appeal against the judgment has been given, be paid from the Fund of the Agency.

Special Powers.

70. The Agency shall have power to investigate any person or organisation in relation to any of its functions or powers under this Bill to ascertain any violation of the provisions of this Bill.

Special Investigation Unit.

71.—(1) For the effective conduct of its functions, the Agency shall have a Special Investigation Unit.

(2) The Special Investigation Unit or an officer authorised on its behalf shall have powers, with respect to matters under the authority of the Agency in this Bill, to:

(*a*) investigate acts which may constitute offences under this Bill;

(*b*) collaborate with other government agencies and persons in relation to the detection or prosecution of offences under this Bill;

(*c*) maintain surveillance on oil and gas installations, premises and vessels where it has reasons to believe that illegal petroleum operations are going on;

(*d*) enter and search any premises or carrier, including vehicles or any other instrumentalities whatsoever which is reasonably believed to be connected with the commission of an offence;

(*e*) seize any item or substance which is reasonably believed to have been used in the commission of an offence under this Bill;

(*f*) arrest without warrant any person who is found committing any offence under this Bill or any regulations made under this Bill, and shall hand over any person so arrested to a police officer or other law enforcement agency immediately; and

(*g*) in conjunction with the Nigerian Police force and other relevant law enforcement agencies arrest with a warrant obtained from a judicial officer any person whom he reasonably believes to have committed an offence under this Bill.

Indemnity Provisions.

72.—(1) Every member of the Board and every employee of the Agency shall be indemnified out of the assets of the Agency against any liability incurred in defending any proceeding against the Agency, whether civil or criminal, if such proceedings are brought against the member of the Board or employee in their official capacity.

(2) Notwithstanding the provisions of subsection (1) of this section, the Agency shall not indemnify any member of the Board or employee of the Agency for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be, or conduct or acts which such person knew or ought to have known to be unlawful.

Establishment of the Petroleum Technology Development Fund.

73.—(1) There shall be a Petroleum Technology Development Fund ("the Development Fund") a body corporate with perpetual succession and a common seal.

(2) The development Fund may sue and be sued in its corporate name.

(3) The Development Fund shall have power to-

(*a*) enter into contracts and incur obligations;

(*b*) acquire, hold, mortgage, purchase and deal with property, whether movable or immovable, real or personal; and

(*c*) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Bill.

74. There shall be paid into the Development Fund, monies, comprising: Sources of the development fund.

(*a*) the balance of monetary assets outstanding as at the Effective date in the accounts of the Petroleum Technology Development Fund established by the Petroleum Technology Development Act, 2004;

(*b*) funds and grants accruing from multilateral agencies, bilateral institutions and related sources dedicated partly or wholly to the development of technology, capacities and capabilities in the Nigerian petroleum industry;

(*c*) any other sum, which may from time to time be 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;

(*d*) monies in the accounts of the Development Fund together with interest payable in respect of such monies;

(*e*) all further sums payable to or received by the Minister charged with the responsibilities for matters relating to petroleum development in terms of any agreement made by the Government and any company in relation to petroleum oil prospecting or mining concessions; and

(*f*) in any proceeding year where there is no sufficient funding accruing to the Fund through sources listed in (*a*) - (*e*) above, the fund shall draw its fund through National Budgetary appropriation.

75.—(1) The Inspectorate or any other bodies responsible for the collection of the monies listed under Clause 74 of this Bill shall pay all such sums directly into the Development fund's Reserve Account with the Central Bank of Nigeria not later than thirty days after such sums have been received which shall be under the control of the Board of the Development Fund but shall be expended subject to the approval of the National Assembly. Reserve Account.

(2) The Board of the Development Fund shall not later than 30th September in each financial year, approve the Development Fund's Programme of Action with its cost implications and a statement of estimated income and expenditure for the following financial year.

(3) The monies in the Development Fund's Reserve Account which are not disbursed to the Development Fund in accordance with subsection (3) of this section shall be held or invested in such manner as may be determined by the Board subject to the Minister's approval.

(4) The Development Fund shall maintain operational accounts with any bank as may from time to time be approved by the Board.

(5) The annual audited account of the Reserve Account with the Central Bank of Nigeria shall be prepared by the Board in consultation with the Accountant General of the Federation and submitted to the Auditor General of the Federation within six months of the end of the financial year to which they relate.

(6) The certified annual accounts of the Reserve Account and the audit report thereon, together with a report on the operations of the Development Fund, shall be submitted to the National Assembly through the Minister.

Purpose of Development fund.

76. 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 and in particular, and without prejudice to the generality of the foregoing, the funds shall be utilised to —

(*a*) provide scholarships and bursaries, wholly or partially in universities, institutions and in petroleum undertakings in Nigeria or abroad;

(*b*) maintain, supplement, or subsidise such training or education as specified in this subsection;

(*c*) make suitable endowments to faculties in Nigerian universities, colleges, or institutions as may be approved by the Board;

(*d*) initiate, design and implement effective indigenous research and capacity development for Nigeria's petroleum industry;

(*e*) liaise with research centres in Nigeria and abroad on the adaptation of technology and innovations appropriate for the needs of the Nigerian petroleum industry;

(*f*) use existing human resources development facilities in Nigeria for purposes of expanding manpower development programme in the petroleum industry;

(*g*) where applicable, support skill acquisition programmes aimed at enhancing employment in the petroleum industry in Nigeria;

(*h*) periodically compute, evaluate and update the basic needs of Nigeria's petroleum industry in terms of skills, expertise and know-how;

(*i*) enhance and develop infrastructure in tertiary institutions that provide courses of study relevant to the petroleum industry;

(*j*) make available suitable books and training equipment in the Nigerian tertiary institutions;

(*k*) sponsor visits to oilfields, refineries and petrochemical plants for the purpose of training;

(*l*) arrange attachments of trainees and other personnel to establishments connected with the development of the petroleum industry;

(*m*) sponsor or finance participation of Nigerians in petroleum related seminars, workshops and conferences within or outside Nigeria; and

(*n*) engage in any other activity incidental to the Development Fund's mandate as may be approved from time to time by the Board.

77.—(1) There is established for the Development Fund, the Petroleum Technology Development Fund Board (in this Bill referred to as "the Board"). Establishment of the Board.

(2) The Board shall consist of—

(a) the Chairman shall be appointed by the President;

(b) one representative of the Federal Ministry of Finance not below the rank of a director;

(c) one representative of the Inspectorate not below the rank of a director;

(d) one representative from the Nigerian Content Development and Monitoring Board;

(e) the Executive Secretary of the Development Fund;

(f) the Vice Chancellor, University of Petroleum Resources, Effurun-Warri;

(g) a representative of the Society of Petroleum Engineers;

(h) a representative of the Nigerian Society of Engineers; and

(i) six persons to be appointed by the President from the six geopolitical zones on the recommendation of the Minister who shall possess a minimum of fifteen years professional experience in the Nigerian petroleum industry five years of which shall be at senior management level.

(3) The persons appointed pursuant to subsection (2) (i) of this section shall hold office for a term of four years in the first instance which may be renewed for another term of four years only, on such terms and conditions as may be specified in the letter of appointment.

(4) Members of the Board referred to in subsection (2) (i) of this section shall be on part-time basis.

(5) The proceedings of the Board of the Development Fund and other ancillary matters shall be in accordance with provisions of Second Schedule to this Bill.

(6) The conflict of interest provisions contained in the Second Schedule to this ill shall apply to all members of the Board.

Functions of the Board.

78. The Board shall:

(a) provide general guidelines relating to the functions of the

Development Fund;

(*b*) approve the annual programme of action for the Development Fund;

(*c*) approve the annual budget of the Development Fund;

(*d*) approve the appointment, promotion and discipline of staff of the Development Fund;

(*e*) provide annual reports on its activities and progress to the Minister for presentation to the President;

(*f*) do such other things as are necessary, expedient, and in conformity with the provisions of this Bill for the efficient performance of and in connection with all or any of the functions of the Board under this Bill.

Remuneration.

79. Members of the Board shall be paid from the funds of the Development Fund such remuneration and allowances as the Board may determine, in accordance with the guidelines issued from time to time by the Government.

Disqualification.

80. A person shall not be appointed as a member of the Board unless the person —

(*a*) is a Nigerian citizen;

(*b*) has not, in terms of the laws in force in any country:

(*i*) been adjudged or declared bankrupt or insolvent; or

(*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 professional capacity.

Removal of a member of the Board.

81. A Member of the Board may be suspended or removed from office by the President if the member —

(*a*) is found to have been unqualified for appointment as a member of the Board after his appointment;

(*b*) has demonstrated inability to effectively perform the duties of his office;

(*c*) has been absent from five consecutive meetings of the Board without the consent of the Chairman except for good reason shown for such absence;

(*d*) commits an act of serious misconduct:

(*e*) in the case of a person possessed of professional qualifications, is disqualified or suspended from practicing his profession in any part of the world by an order of a competent authority; or

(*f*) is in a breach of the conflict of interest rules set out in the Fourth Schedule to this Bill.

Resignation of a member of the Board.

82. A member of the Board may resign his office by giving three months written notice addressed to the President through the Minister.

Vacancy on the Board.

83.—(1) A vacancy on the Board shall occur if a member of the Board —

(*a*) dies;

(*b*) is removed from office in accordance with section 81 of this Bill; or

(*c*) resigns from office; or

(*d*) completes his tenure of office.

(2) A vacancy on the Board shall be filled by the appointment of another person to the vacant office by the President in accordance with section 77 of this Bill, as soon as is reasonably practicable after the occurrence of such vacancy.

The Executive Secretary.

84.—(1) There shall be for the Development Fund an Executive Secretary appointed by the President on the recommendation of the Minister.

(2) The Executive Secretary shall be a person with vast knowledge and cognate professional experience in management and selected

through a transparent merit-based recruitment process.

(3) The Executive Secretary shall be the chief executive and accounting officer of the Development Fund and shall be responsible for the day-to-day administration of the affairs of the Development Fund subject to the direction of the Board.

Tenure, remuneration and conditions of service of the Executive Secretary.

85.—(1) The Executive Secretary shall serve for a term of four years from the date of his appointment at the expiration of which the President may renew his term for a further term of four years and no more and on such terms and conditions as may be specified in the letter of appointment.

(2) The remuneration and conditions of service of the Executive Secretary shall be at a level sufficient to attract qualified professionals within the petroleum industry.

Disqualification.

86. A person shall not be appointed as Executive Secretary of the Development Fund unless the person —

(*a*) is a Nigerian citizen;

(*b*) has not been adjudged or declared bankrupt or insolvent;

(*c*) has not made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside;

(*d*) has not been declared to be of unsound mind;

(*e*) has not been convicted of an offence involving fraud or dishonesty;

(*f*) has not been disqualified by a competent authority from carrying out any assignment, responsibility or function in his professional capacity in any part of the world.

Removal of Executive Secretary from office.

87. The President may remove the Executive Secretary from office if —

(*a*) he commit an act serious misconduct in relation to his duties as Executive Secretary;

(*b*) he has demonstrated inability to effectively perform the duties of the office; or

(c) the President is satisfied that it is not in the interest of the Development Fund or the public that the Executive Secretary should continue in office.

Other staff.

88.—(1) The Board may appoint such other persons as employees of the Development Fund as it deems necessary.

(2) The employment of staff of the Development Fund shall be subject to such terms and conditions as may from time to time be stipulated by the Board and contained in the respective staff's employment contracts.

(3) The Board of the Development Fund shall make staff regulations generally relating to the conditions of service of its employees, and in particular but without prejudice to the generality of the foregoing, such regulations may provide for —

(a) the appointment, promotion, dismissal and discipline of employees; and

(b) appeals by the employees against dismissal or other disciplinary measures; and

(c) the grant of pensions, gratuities and other retirement allowances to the employees;

(4) Staff of the Development Fund shall be public officers as defined in the Constitution.

(5) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

Remuneration.

89.—(1) The Board of the Development Fund shall develop and implement appropriate conditions of service for its staff with particular regard to the issues of remuneration, pensions scheme and other service benefits, sufficient for the Development Fund to attract and retain highly qualified manpower.

(2) The Board shall determine and review from time to time, the remuneration and allowances, payable to the staff of the Development Fund in accordance with guidelines prescribed by Government from

time to time.

90.—(1) Employment in the Development Fund shall be subject to the provisions of the Pensions Reform Act and officers and employees of the Development Fund shall be entitled to pension and other retirement benefits as prescribed under the Pension Reform Act. Pensions.

(2) Subsection (1) of this section shall not prohibit the Development Fund 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.

91.—(1) The Development Fund shall not later than 30th September or such other date to be determined by the Minister in each financial year, prepare and present to the National Assembly for appropriation, a statement of estimated income and expenditure for the following financial year. Financial Provisions.

(2) Notwithstanding the provisions of subsection (1) of this section, the Development Fund may also, in any financial year, submit supplementary or adjusted statements of estimated income and expenditure to the National Assembly for appropriation.

(3) The financial year of the Development Fund shall be a period of twelve calendar months commencing on the 1st of January in each year.

92.—(1) The Development Fund may accept gifts of money or other property upon such terms and conditions 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 Development Fund under this Bill. Power to accept gifts.

(2) Nothing in subsection (1) of this section or in this Bill shall be construed so as to allow any member of the Board or staff of the Development Fund to accept gifts for their personal use.

93. The Development Fund shall keep proper accounts of its income and expenditure in respect of each financial year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed by the Development Fund from a list and in Accounts and audit.

accordance with the guidelines supplied by the Auditor-General for the Federation.

Mid-year and annual reports.

94.—(1) The Board shall submit to the Minister a mid-year report of its operations and finances not later than 31st August of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st May of the following year.

(2) A summary of the annual report and audited financial report of the Development Fund for the previous year shall be published on the website of the Development Fund for public notice not later than 31st of July of each year.

Exemption from income tax.

95.—(1) All income derived by the Development Fund from the sources specified in section 74 of this Bill shall be exempt from income tax and all contributions to the Development Fund made by persons subject to the payment of tax shall be tax deductible.

(2) The Development Fund may, subject to the approval of the Board 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 subject to the approval of the Minister, or in such other securities as the Minister may approve.

Legal proceedings.

96.—(1) Subject to the provisions of this Bill, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Development Fund, the Executive Secretary, and a member of the Board, an officer or employee of the Development Fund.

(2) No suit shall lie against the Development Fund, a member of the Board, the Executive Secretary or any other officer or employee of the Development Fund for any act done in pursuance or execution of this Bill or any other law or enactment, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Bill or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced —

(*a*) within three months next after the act, neglect or default complained of ; or

(*b*) in the case of a continuation of damage or injury, within six months next after the ceasing of the act complained of.

(3) No suit shall be commenced against the Development Fund, a member of the Board, the Executive Secretary or any officer or employee of the Development Fund before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Development Fund by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.

Service of court processes on the Development Fund.

97. A notice, summons or other document required or authorised to be served on the Development Fund under the provisions of this Bill or any other law or enactment may be served by delivering it to the office of the Executive Secretary of the Development Fund or any of its Directors.

Restriction on execution against the Development Fund's property.

98.—(1) In any action or suit against the Development Fund, no execution or attachment of its physical property shall be issued and any judgment against the Development Fund may be enforced through garnishee proceedings provided that not less than three months' notice of the intention to commence the garnishee proceedings shall have been given to the Development Fund.

(2) Any sum of money which may by the judgment of any court be awarded against the Development Fund shall, subject to any direction given by the court where no notice of appeal against the judgment has been given, be paid from the Development Fund.

Indemnity.

99.—(1) Every member of the Board and every employee of the Development Fund shall be indemnified out of the assets of the Development Fund against any liability incurred in defending any proceeding against the Development Fund, whether civil or criminal, if such proceedings are brought against the member of the Board or employee in their official capacity.

(2) Notwithstanding the provisions of subsection (1) of this section, the Development Fund shall not indemnify any member of the Board or employee of the Development Fund for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be, or conduct or acts which such person knew or should have known to be unlawful.

Establishment of the Petroleum Equalization Fund.

100.—(1) There shall be 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 Bill; and

(*b*) such sums as may be provided for purpose of the Equalisation Fund by the Federal Government.

(2) The Equalisation Fund is a body corporate with perpetual succession, a common seal and which may sue and be sued in its corporate name.

(3) The Equalisation Fund shall have power to acquire, hold and dispose of property and subject to this Bill perform all acts that corporate bodies may perform by law.

(4) 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 ceases to exist and its assets and liabilities transferred to the Government to be controlled and managed by the Ministry and at such time the provisions of the sections of this Bill relating to the Equalisation Fund shall stand repealed.

(5) The Minister shall within six months of the commencement of this Bill, publish the programme for the deregulation of the downstream petroleum sector, provided that the period of deregulation shall not exceed 36 months.

(6) Upon the completion of deregulation, the Minister shall take

the required actions to ensure that the Equalisation Fund ceases to exist and its assets and liabilities transferred to the Government to be controlled and managed by the Ministry and at such time the provisions of the sections of this Bill relating to the Equalisation Fund shall stand repealed.

Establishment of the Petroleum Equalisation Fund Management Board.

101.—(1) There shall be for the Equalisation Fund a Board to be known as the Petroleum Equalisation Fund Management Board (in this Bill referred to as "the Board") which shall manage the Equalisation Fund.

(2) The Board shall consist of the following members appointed by the President;

(*a*) a Chairman.

(*b*) a representative of the Ministry of Petroleum Resources;

(*c*) a representative of the Federal Ministry of Finance;

(*d*) a representative of the Agency;

(*e*) a representative of National Association of Road Transport Owners;

(*f*) a representative of the Major Marketers Association of Nigeria;

(*g*) a representative of the Independent Petroleum Marketers Association of Nigeria;

(*h*) a representative each of the Nigerian Labour Congress and the Trade Union Congress of Nigeria;

(*i*) three other persons who shall be of high integrity and substantial professional experience appointed by the President; and

(*j*) the Executive Secretary of the Equalisation Fund.

(3) Membership of the Board shall be on part-time basis.

(4) The provisions of the Second Schedule to this Bill shall have effect with respect to the proceeding of the Board and other matters contained therein.

Powers of the Board.

102. The Board shall have power to —

(*a*) determine the method by which net surplus revenue shall be collected from petroleum products marketing companies;

(*b*) recover the net surplus revenues from the sale of petroleum products from petroleum products marketing companies, as may be prescribed by the Agency; and

(*c*) inspect and inquire about any activity relating to the movement or storage of petroleum products and to that extent, inspect books and facilities, take measurements, and inquire into the correctness of information provided in support of claims for reimbursement.

(*d*) carry out all other activities incidental to and or connected therewith.

Functions of the Board.

103. The Board shall —

(*a*) receive any net surplus revenue recovered from petroleum products marketing companies in accordance with the provision of section 102 of this Bill;

(*b*) receive any such sums as may be provided for the purpose of the Equalisation Fund by the Government;

(*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 Agency pursuant to this Bill;

(*d*) make payment of all disbursements of the Equalisation Fund authorised under or by virtue of this Bill;

(*e*) account for all money collected. paid or otherwise expended in relation to the Equalisation Fund and pursuant to the provisions of this Part;

(*f*) keep proper public accounts and records of transactions on the Equalisation Fund;

(*g*) publish in respect of each financial year a statement of accounts;

(*h*) ensure the proper administration of the Equalisation Fund in accordance with the provisions of this Part;

(*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 Bill for the efficient performance of and in connection with all or any of the functions of the Board as specified under this Part.

Utilization of the Fund.

104. The Equalisation Fund shall be utilized for:

(*a*) the proper administration of the Equalisation Fund and the management of the Board; and

(*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 Agency.

Executive Secretary.

105.—(1) There shall be for the Equalisation Fund an Executive Secretary, appointed by the President

(2) (*a*) The Executive Secretary shall be a person with vast knowledge and cognate professional experience in management and selected through a transparent merit-based recruitment process.

(*b*) The Executive Secretary shall be the chief executive and accounting officer of the Board and shall be responsible for running the day-to-day administration of the Equalisation Fund under the direction of the Board.

Duties of the Executive Secretary.

106. The Executive Secretary shall —

(*a*) determine the net surplus revenue recoverable from any petroleum products marketing company and accruing to such company from the sale by the company of petroleum products at such prices, as may be sold in accordance with the methodology established by the Agency;

(*b*) determine the amount of reimbursement due to any petroleum products marketing company which has suffered loss as a result of the operation of any enactment or law;

(*c*) ensure the disbursements of all authorized payments under of this Bill;

(*d*) account for all monies collected, paid or otherwise expended under this Bill and publish same; and

(*e*) carry out such other functions as may, from time to time, be specified by the Board.

Other officers of the Board.

107. The Board may, on the advice of the Executive Secretary, appoint as employees of the Equalisation Fund 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 perform such duties as the Executive Secretary may direct.

Collection of net surplus revenue.

108.—(1) 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,

(2) The Equalisation Fund shall have no obligation to issue a demand notice in respect of the outstanding net surplus revenue and the failure to issue a demand notice shall not constitute a defence for non-payment of outstanding sums.

Bridging and Equalisation allowances.

109. Nothing in section 103 of this Bill shall derogate from the right of any petroleum products marketing company 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 by petroleum products marketing companies.

110.—(1) Petroleum products marketing companies may, as necessary, bring claims for the recovery of losses sustained under paragraph (*b*) of section 106 of this Bill 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 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 decision.

(6) Where a claim is successful and the Board fails to pay the claim to the company in accordance with the terms and conditions of this section, the Board shall pay a penalty to such claimant as prescribed by the Minister in regulations.

Calculation of surplus revenue recoverable.

111. The net surplus revenue recoverable from a petroleum products marketing company under this Bill 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.

112.—(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 twenty-one 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.

113. 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.

114.—(1) All petroleum product importers, including the National Oil Company, and petroleum products marketing companies shall, prior to but not later than twenty-one days following each importation, report details of all petroleum products imported into Nigeria to the Equalisation Fund, and the reports shall 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, dates and times of loading and discharge to the Board.

(4) The Executive Secretary may, with the approval of the Board —

(*a*) require any petroleum products marketing company to furnish returns and keep records or any other relevant information as may be determined to be necessary for the proper administration of the provisions of this Bill; and

(*b*) produce the records for examination by the Executive Secretary or any authorized officer of the Board necessary for the proper administration of the provisions of this Part.

Dispute Resolution.

115.—(1) Disputes between a company and the Equalisation Fund in respect of any matter under this Part shall be referred to the Agency and shall be subject to the dispute resolution mechanism referred to in subsection (2) of this section.

(2) Where the Equalisation Fund is a party to a dispute under this Part, the relevant provisions of the Arbitration and Conciliation Act, shall apply.

G. PETROLEUM HOST COMMUNITY FUND

Establishment of the Petroleum Host Community Fund.

116.—(1) There shall be a Petroleum Host Community Fund ("the PHC Fund') as a body corporate with perpetual succession and a common seal.

(2) The PHC Fund may sue and be sued in its corporate name.

(3) The PHC Fund shall have power to —

(*a*) enter into contracts and incur obligations;

(*b*) acquire, hold, mortgage, purchase and deal with property, whether movable or immovable, real or personal; and

(*c*) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Bill.

Purpose of the PHC Fund.

117.—(*a*) The PHC Fund shall be utilized for the development of the economic and social infrastructure of the communities hosting petroleum operations.

(*b*) The PHC Fund shall transfer funds directly to incorporated Trustees representing the communities, for the benefit of their communities located in petroleum prospecting licenses, petroleum mining leases, pipeline corridors and other impact areas of onshore petroleum facilities and impact areas of shallow water petroleum wells, pipelines and facilities, based on allocation procedures and for purposes established in regulations pursuant to paragraph (*f*) of section 121 of this Bill.

(*c*) Any payments to the Fund shall commence not later than three months from the commencement of this Bill and disbursement from the Fund shall commence not later than twelve months after the commencement of this Bill.

Beneficial entitlements of the communities.

118.—(1) (*a*) Every company involved in upstream or downstream petroleum operations, or both, shall remit on a monthly basis impact funding amounts to the PHC Fund based on the regulations pursuant to paragraph (*f*) of section 121 of this Bill.

(*b*) The impact funding amounts pursuant to paragraph (*a*) of this subsection shall be determined as follows:

(*i*) US S 24 per hectare included in a petroleum prospecting license or oil prospecting license per annum;

(*ii*) USS96 per hectare included in a petroleum mining lease or oil mining lease per annum;

(*iii*) US S24,000 for each producing onshore well per annum, including wells that are injecting, but excluding non-producing wells;

(*iv*) US S120,000 for each producing offshore well per annum, including wells that are injecting, but excluding non-producing well;

(*v*) USS1.20c per inch diameter per meter length of each flowing gathering line, gas pipe line or oil product pipeline per annum as pro-rated;

(*vi*) USS2.40c per inch diameter per meter length of each flowing crude oil pipeline per annum as pro-rated

(*vii*) USS2.40c per square meter area occupied by any operational tank farm, filling station or similar facilities per annum as prorated;and

(*viii*) USS12 per barrel equivalent total facility name plate capacity or reasonable maximum loading capacity per annum as pro-rated, based on 6000 cubic feet of gas per barrel of oil, for every operating:

(*A*) field production facility, FPSO, or other upstream facilities that handle or process petroleum, and

(*B*) refineries or other midstream facilities that handle crude oil or condensates or both,

(*C*) gas conditioning plant, gas processing plant, natural liquids extraction plant, LNG plant, GTL plant or other midstream facilities that handle natural gas,and

(*D*) onshore export terminals or offshore export terminals loading buoys.

(*c*) The Minister may determine the amounts for other assets pursuant to paragraph (*f*) of section 121 of this Bill based on the nature and value of the assets, the likely environmental impacts of such assets, acreage held as well as acreage occupied.

(*d*) The amounts of paragraph (*b*) shall be adjusted pursuant to section 0 of this Bill.

(*e*) Any impact funding shall not relieve a company from paying any specific damage done to property or health of any party as a result of the upstream and downstream petroleum operations.

(2) In addition to the beneficial entitlements of communities payable under subsection (1) above, there shall be paid into the PHC Fund, monies, comprising:

(*a*) funds and grants accruing from multilateral agencies, bilateral institutions and related sources dedicated partly or wholly to the development of host communities and community relations in the Nigerian petroleum industry;

(*b*) any other sum, which may from time to time be freely donated or accruing to the PHC Fund by any person; and

(*c*) monies in the accounts of the PHC Fund together with interest payable in respect of such monies.

(3) (*a*) The remittances made pursuant to subsection (1) of this section shall be deductible for the purposes of Nigerian Hydrocarbon Tax, Companies Income Tax and Education Tax.

(*b*) Any payments received by community entities from the PHC Fund shall not constitute taxable income for the purpose of Companies Income Tax for such community entities.

(4) Where there is any stoppage of upstream or downstream petroleum operations in respect of a petroleum asset or facility within a host community arising out of no fault of the operator, such community shall not be entitled to its portion of the PHC Fund accruing from such asset or facility for the period in which the asset or facility was not in use as a result of such stoppage.

(5) (*a*) In case of any dispute as to the salt water shore line, the limits of the continental shelf and the location of acreage, wells, gathering lines or facilities used for upstream petroleum operations in relation to the imposition of the impact payments, recourse may be made to Inspectorate to resolve such dispute;

(*b*) In case of any dispute as to the location of pipelines, filling stations or other facilities used for downstream petroleum operations, the Agency may resolve such dispute

(*c*) Disputes relating to geographical boundaries of communities may be resolved by the National Boundary Commission.

Reserve fund.

119.—(1) The Board of the PHC Fund shall establish a Reserve Account with the Central Bank of Nigeria not later than sixty days from the commencement of this Bill.

(2) All companies responsible for the payment of the beneficial entitlements listed under subsection (1) of section 118 of this Bill shall pay all such sums directly into the PHC Fund's Reserve Account with the Central Bank of Nigeria not later than fifteen days after the end of each month for which such sums are due.

(3) All monies paid into the PHC Fund's Reserve Account in accordance with subsection ([illegible]) of this section shall be under the control of the Board of the PHC Fund.

(4) The Board of the PHC Fund shall not later than 30th September in each financial year, approve the PHC Fund's Programme of Action with its cost implications and a statement of estimated income and expenditure for the following financial year, provided that the Board shall not in any Programme of Action other than its initial Programme of Action incur more than two per cent of its actual income in the previous financial year on salaries and administrative overheads.

(5) The PHC Fund shall maintain operational accounts with any bank as may from time to time be approved by the Accountant General of the Federation.

(6) The annual audited account of the Reserve Account with the Central Bank of Nigeria shall be prepared by the Board in accordance with the provisions of 1999 Constitution as amended.

Establishment of the Board.

120.—(1) There shall be for the PHC Fund a Board (in this Chapter referred to as "the Board").

(2) The Board shall consist of the following members appointed by the President—

(*a*) a chairman who shall be a person of high integrity and professional experience;

(*b*) the Executive Secretary;

(*c*) six persons, each of whom shall possess a minimum of fifteen years of professional experience to be appointed by the President from the six geopolitical zones on the recommendation of the Minister;

(*d*) six persons, each of whom shall be a community leader from the six geopolitical zones

(*e*) one representative each of upstream and downstream companies, and

(*f*) the Directors-General of the Inspectorate and the Agency.

(3) The person appointed pursuant to subsection (2) (*a*) of this section shall hold office for a single term of five years, on such terms and conditions as may be specified in the letter of appointment.

(4) Members of the Board referred to in subsection (2) (*b*) and (*c*) of this section shall be on full-time basis, provided that the persons appointed pursuant to subsection (2) (*c*) shall hold office for a term of four years, which may be renewed for another four years on such terms and conditions as may be specified in the letter of appointment.

(5) The proceedings of the Board of the PHC Fund and other ancillary matters shall be in accordance with provisions of the Second Schedule to this Bill.

(6) The conflict of interest provisions contained in the Second Schedule to this Bill shall apply to all members of the Board.

Functions of the Board.

121. The Board shall:

(*a*) provide general guidelines relating to the functions of the PHC Fund;

(*b*) approve the annual programme of action for the PHC Fund;

(*c*) approve the annual budget of the PHC Fund;

(*d*) approve the appointment, promotion and discipline of staff of the PHC Fund;

(*e*) provide annual reports on its activities and progress to the Minister for presentation to the President;

(*f*) in accordance with the process for making regulations provided in section 8 of this Bill, make regulations on entitlement, disbursement and other matters relating to impact funds; and

(*g*) do such other things as are necessary, expedient, and in conformity with the provisions of this Bill for the efficient performance of and in connection with all or any of the functions of the board under this Bill.

Remuneration of members of the Board.

122. Members of the Board shall be paid from the funds of the PHC Fund such remuneration and allowances as the Board may determine, in accordance with the guidelines issued from time to time by the Government.

Disqualification.

123. A person shall not be appointed as a member of the Board unless the person —

(*a*) is a Nigerian citizen;

(*b*) has not, in terms of the laws in force in any country:

(*i*) been adjudged or declared bankrupt or insolvent; or

(*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 professional capacity.

Removal of a member of the Board.

124. A member of the Board may be suspended or removed from office by the President if the member —

(*a*) is found to have been unqualified for appointment as a member of the Board after his appointment;

(*b*) has demonstrated inability to effectively perform the duties of his office;

(*c*) has been absent from five consecutive meetings of the Board without the consent of the Chairman except for good reason shown for such absence;

(*d*) commits an act of serious misconduct;

(*e*) in the case of a person possessed of professional qualifications, is disqualified or suspended from practicing his profession in any part of the world by an order of a competent authority; or

(*f*) is in a breach of the conflict of interest rules set out in the Second Schedule to this Bill.

Resignation of a member of the Board.

125. A member of the Board may resign his office by giving a notice in writing addressed to the President through the Minister.

Vacancy on the Board.

126.—(1) A vacancy on the Board shall occur if a member of the Board —

(*a*) dies;

(*b*) is removed from office in accordance with section 124 of this Bill; or

(*c*) resigns from office; or

(*d*) completes his tenure of office.

(2) A vacancy on the Board shall be filled by the appointment of another person to the vacant office by the President in accordance with sub section 2 of section 120 of this Bill, as soon as is reasonably practicable after the occurrence of such vacancy.

Executive Secretary.

127.—(1) There shall be for the PHC Fund an Executive Secretary appointed by the President on the recommendation of the Minister.

(2) The Executive Secretary shall be a person with vast knowledge and cognate professional experience in management and selected through a transparent merit-based recruitment process.

(3) The Executive Secretary shall be the chief executive and accounting officer of the PHC Fund and shall be responsible for the day-to-day administration of the affairs of the PHC Fund subject to the direction of the Board.

Tenure, remuneration and conditions of service of the Executive Secretary.

128.—(1) The Executive Secretary shall serve for a term of five years from the date of his appointment at the expiration of which the President may renew his tenure of five years and no more and on such terms and conditions as may be specified in the letter of appointment.

(2) The remuneration and conditions of service of the Executive Secretary shall be at a level sufficient to attract highly qualified professionals.

Disqualification.

129. A person shall not be appointed as Executive Secretary of the PHC Fund unless the person

(*a*) is a Nigerian citizen;

(*b*) has not been adjudged or declared bankrupt or insolvent;

(c) has not made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside;

(d) has not been declared to be of unsound mind;

(e) has not been convicted of an offence involving fraud or dishonesty;

(f) has not been disqualified by a competent authority from carrying out any assignment, responsibility or function in his professional capacity in any part of the world.

130. The President may remove the Executive Secretary from office if — Removal of the Executive Secretary from office.

(a) he commits an act of serious misconduct in relation to his duties as Executive Secretary;

(b) he has demonstrated inability to effectively perform the duties of the office; or

(c) the President is satisfied that it is not in the interest of the PHC Fund or the public that the Executive Secretary should continue in office.

131.—(1) The Board may appoint such other persons as employees of the PHC Fund as it deems necessary. Other staff.

(2) The employment of staff of the PHC Fund shall be subject to such terms and conditions as may from time to time be stipulated by the Board and contained in the respective staff"s employment contracts.

(3) The Board of the PHC Fund shall make staff regulations generally relating to the conditions of service of its employees, and in particular, but without prejudice to the generality of the foregoing, such regulations may provide for —

(a) the appointment, promotion, dismissal and discipline of employees;

(b) appeals by the employees against dismissal or other disciplinary measures; and

(c) the grant of pensions, gratuities and other retirement allowances to the employees;

(4) Staff of the PHC Fund shall be public officers as defined in the Constitution.

(5) For the purpose of this section, appointment shall include secondment, transfer and contract appointment.

Remuneration.

132.—(1) The Board of the PHC Fund shall develop and implement appropriate conditions of service for its staff with particular regard to the issues of remuneration, pension scheme and other service benefits, sufficient for the Development Fund to attract and retain highly qualified manpower.

(2) The Board shall determine and review the remuneration and allowances, payable to the staff of the PHC Fund in accordance with guidelines prescribed by Government from time to time.

Pensions.

133.—(1) Employment in the PHC Fund shall be subject to the provisions of the Pensions Reform Act and officers and employees of the PHC Fund shall be entitled to pension and other retirement benefits as prescribed under the Pension Reform Act.

(2) Subsection (1) of this section shall not prohibit the PHC Fund 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.

Financial Year.

134.—(1) The PHC Fund shall not later than 30th September or such other date to be determined by the Minister in each financial year, prepare and present to the National Assembly for appropriation, a statement of estimated income and expenditure for the following financial year.

(2) Notwithstanding the provision of subsection (1) of this section, the PHC Fund may also, in any financial year, submit supplementary or adjusted statements of estimated income and expenditure to the National Assembly for appropriation.

(3) The financial year of the PHC Fund shall be a period of twelve calendar months commencing on the 1st of January in each year.

Power to accept gifts.

135.—(1) The PHC Fund may accept gifts of money or other property upon such terms and conditions 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 PHC Fund under this Bill.

(2) Nothing in subsection (1) of this section or in this Bill shall be construed so as to allow any member of the Board or staff of the PHC Fund to accept gifts for their personal use.

Accounts and audit.

136. The Petroleum Host Community Fund shall keep proper accounts of its income and expenditure in respect of each financial year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed by the PHC Fund from a list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

Mid-year and annual reports.

137.—(1) The Board shall submit to the President a mid-year report of its operations and finances not later than 31st August of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st May of the following year.

(2) A summary of the annual report and audited financial report of the PHC Fund for the previous year shall be published on the website of the PHC Fund for public notice not later than 31st of July of each year.

Exemption from income tax.

138. All income derived by the PHC Fund from the sources specified in section 118 of this Bill shall be exempted from income tax.

Legal proceedings.

139.—(1) Subject to the provisions of this Bill, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the PHC Fund, the Executive Secretary, a member of the Board, an officer or employee of the PHC Fund.

(2) No suit shall lie against the PHC Fund, a member of the Board, the Executive Secretary or any other officer or employee of the PHC Fund for any act done in pursuance or execution of this Bill or any other law or enactment, or of any public duty or authority in

respect of any alleged neglect or default in the execution of this Bill or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced

(a) within three months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within six months next after the ceasing of the act complained of.

(3) No suit shall be commenced against the PHC Fund, a member of the Board, the Executive Secretary or any officer or employee of the PHC Fund before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the PHC Fund by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.

Service of court processes on the PHC Fund.

140. A notice, summons or other document required or authorised to be served on the PHC Fund under the provisions of this Bill or any other law or enactment may be served by delivering it to the office of the Executive Secretary of the PHC Fund or any of the members of its Board.

Restriction on execution against the PHC fund.

141.—(1) In any action or suit against the PHC Fund, no execution or attachment of its physical property shall be issued and any judgment against the PHC Fund may be enforced through garnishee proceedings provided that not less than three months' notice of the intention to commence the garnishee proceedings shall have been given to the PHC Fund.

(2) Any sum of money which may by the judgment of any court be awarded against the PHC Fund shall, subject to any direction given by the court where no notice of appeal against the judgment has been given, be paid by the PHC Fund.

Indemnity.

142.—(1) Every member of the Board and every employee of the PHC Fund shall be indemnified out of the assets of the PHC Fund against any liability incurred by it in defending or commencing any proceeding against the PHC Fund, whether civil or criminal, if such proceedings are brought against the member of the Board or employee in their official capacity.

(2) Notwithstanding the provisions of subsection (1) of this section, the PHC Fund shall not indemnify any member of the Board or employee of the PHC Fund for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be, or conduct or acts which such person knew or should have known to be unlawful.

II. NATIONAL PETROLEUM ASSETS MANAGEMENT CORPORATION

Establishment of the National Petroleum Assets Management Corporation.

143.—(1) There is established under this Bill the National Petroleum Assets Management Corporation ("the Corporation") a body corporate with perpetual succession, a common seal and which may sue or be sued in its corporate name.

(2) The Corporation shall be a holding company operating fully on commercial principles.

(3) The Corporation shall have power to —

(*a*) enter into contracts and incur obligations;

(*b*) acquire, hold, mortgage, purchase and deal howsoever with property, whether movable or immovable, real or personal;

(*c*) establish and maintain subsidiaries for the discharge of its functions as the Corporation may determine; and

(*d*) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Bill.

(4) Subject to the provisions of this Bill, the functions of the Corporation are to —

(*a*) acquire and manage the investments of the Government in the Nigerian upstream petroleum industry; and

(*b*) undertake such other activities as are necessary or expedient for giving full effect to the performance of its functions under this Bill.

Funding.

144. The Corporation shall maintain a fund ('the Fund') into which shall be paid —

(*a*) such sums as may be made available by the Government for the purpose of the subsidiaries of the Corporation established pursuant to the provisions of subsection (3) of section 120 of this Bill; and

(*b*) such moneys as may be received by the Corporation in the course of its operations or in the exercise of its functions under this Bill.

Utilization of the fund of the Corporation.

145. The Corporation shall utilize the proceeds of the Fund established under section 144 of this Bill for —

(*a*) funding the first two years work programme of its subsidiary to be established pursuant to this Bill; and

(*b*) defraying all expenses incurred by the Corporation.

Incorporation of National Petroleum Assets Management Company Limited.

146.—(1) The Minister shall not later than three months after the Effective date take such steps as are necessary under the Companies and Allied Matters Act to incorporate a public company limited by shares which may be known as Nigerian Petroleum Assets Management Company ('the Management Company') or such other name as shall be available, and be vested with certain assets and liabilities of the NNPC.

(2) At the time of its incorporation, the initial shares of the Management Company to be established shall be held in the ratio of 99% by the Corporation and 1% by the Federal Ministry of Finance Incorporated.

Exemption from certain existing laws.

147. The Management Company to be established shall not be subject to the provisions of the Fiscal Responsibility Act, 2007 and the Public Procurement Act, 2007.

Transfer of assets and liabilities.

148—(1) Following the incorporation of the Management Company the assets and liabilities comprising exclusively the interests in all the unincorporated joint ventures held by the NNPC on behalf of the Government and excluding any asset that the Government may have vested in the National Oil Company shall be vested in the

Management Company within twelve to twenty four months from the Effective date.

(2) The Government may thereafter vest in the Management Company any upstream asset as the Government may from time to time deem fit.

(3) The transfer of liability or obligation under this section without any further assurance other than this section releases the NNPC from any further liability or obligation in respect of the assets or liabilities.

(4) The Management Company shall without further assurance be entitled to enforce or defend all obligations for or against the NNPC in respect of the portion of interests mentioned in subsection (1) of this section as if the Management Company were the original party to such obligations.

(5) The relevant transferred assets, all bonds, loans, financing agreements, alternative financing agreements, joint operating agreements, sole risk agreements, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements subsisting immediately before the initial transfer date and to which the NNPC was a party shall, on and after the initial date, be as fully effective and enforceable against or in favour of the Management Company as if, instead of the NNPC, the Management Company had been named therein.

(6) Any pending action or proceeding in relation to the transferred assets, brought by or against the NNPC immediately before the initial transfer date may be enforced or continued, as the case may be, on and after that date by or against the Management Company in the same way as if this Bill had not been passed.

(7) Notwithstanding the provision of subsection (3) of this section —

(*a*) no action or other proceeding shall be commenced against the Management Company in respect of any employee, asset, liability, right or obligation if, had there been no transfer, the time for commencing the action or other proceeding would have expired and

(*b*) the transfer of assets and liabilities to the Management Company under subsection (2) of this section shall not be deemed to —

(*i*) constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance:

(*ii*) constitute a breach of any Act, regulation or by-law;

(*iii*) constitute an event of default or force majeure;

(*iv*) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

(*v*) give rise to any right to terminate or repudiate a contract, licence, permit or other right; or

(*vi*) give rise to any estoppel.

(8) Subsection (7) of this section shall not apply to such contracts as may be prescribed by any regulation made for that purpose..

(9) Subject to subsection (8) of this section, nothing in this Bill and nothing done as a result of a transfer under subsection (2) of this section shall create any new cause of action in favour of a —

(*i*) holder of a debt instrument issued by the NNPC before the transfer date; or

(*ii*) party to a contract with the NNPC that was entered into before the transfer date.

(10) Any guarantee or surety which was given or made by the Government or any other person in respect of any debt or obligation of the NNPC, and which was effective immediately before the initial transfer of the principal debt or obligation, shall remain fully effective against the guarantor or surety on and after the initial transfer date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the Management Company to which the principal debt or obligation was transferred.

Exemption from stamp duty.

149.—(1) Stamp duty shall not be chargeable under the Stamp Duties Act in respect of any transfer made or transaction entered into pursuant to this Part on which, except for the exemption granted under this section, stamp duty would have been payable.

(2) Stamp duty shall not be chargeable —

(*a*) during the incorporation of any subsidiary of the Management Company and or any subsequent increase to their authorised share capital of any such subsidiary prior to the transfer of a majority interest there to the public or private investors; or

(*b*) in respect of any other transfer of rights and assets pursuant to this Part.

Transfer of the Employees of NNPC.

150. The transfer of employees of NNPC to the Management Company shall be in accordance with the provisions of section 415 of this Bill.

Directions to NNPC on matters related to transition.

151. Prior to the vesting of assets and liabilities of the NNPC in the Management Company, the Minister may give the Board of Directors of the NNPC directions in writing to ensure the proper transfer of the assets and liabilities of the NNPC to the Management Company, and the Board of Directors shall, without delay, comply with every such direction.

Certain exemption from rates.

152.—(1) Oil pipelines and other installations transferred to the Management Company shall not be regarded as hereditaments or tenements to be valued for rating purposes.

(2) For the purpose of this subsection, the expression "oil pipelines and other installations" include oil rigs, refineries, power generating plants, pumping stations, tank farms and similar installations but shall not include office or residential buildings.

(3) Except as provided in subsection (1) of this section, nothing in this Bill shall be deemed to exempt the Management Company from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local; provided that the Management Company

shall not be liable to pay any such tax, duty, rate, levy or charge unless every company liable to tax under the Part VIII of this Bill is also liable for such payment.

Borrowing powers.

153.—(1) Subject to the provisions of this section, the Corporation may, from time to time, borrow by way of overdraft or by any other means such sums of monies as it may require in the exercise of its functions under this Bill.

(2) The Corporation shall not without the approval of the President, borrow any sum of money whereby the amount in aggregate outstanding on any loan or loans at any time exceeds such amount as is for the time being approved by the President.

(3) Where any sum of money required to be borrowed by the Corporation —

(*a*) is to be in a currency other than Naira; and

(*b*) is to be borrowed by the Corporation other than temporarily,

the Corporation shall not borrow such sum without the approval of the President.

(4) Subsection (4) of this section, shall not apply to any money borrowed by the Corporation from any of its subsidiaries or by a subsidiary of the Corporation from the Corporation or any other subsidiary.

Establishment of the Board.

154.—(1) There is established for the Corporation, a Board of Directors (in this Bill referred to as "the Board").

(2) The Board shall comprise of —

(*a*) chairman, who shall be appointed by the President;

(*b*) the Permanent Secretary, Federal Ministry of Finance;

(*c*) the Managing Director of the Management Company, the subsidiary company to be established by the Corporation pursuant to this Part;

(*d*) two persons to be appointed by the President, who shall be persons of high integrity, substantial corporate experience and professional accomplishment from the private sector.

(3) The persons appointed pursuant to paragraph (*d*) of subsection (2) of this section shall hold office for a term of four years in the first instance which term may be renewed for another term of four years only, on such terms and conditions as may be specified in the letter of appointment.

(4) The proceedings of the Board of the Corporation and other ancillary matters shall be as provided in the Second Schedule to this Bill.

(5) The conflict of interest provisions contained in the Second Schedule to this Bill shall apply to all members of the Board.

Functions and Powers of the Board.

155. The Board shall:

(*a*) provide general guidelines on the functions of the Corporation;

(*b*) approve the annual programme of action and budget for the Corporation;

(*c*) oversee the affairs of its subsidiaries;

(*d*) do such other things as are necessary, expedient, and in conformity with the provisions of this Bill for the efficient performance of and in connection with all or any of the functions of the Board under this Bill.

Remuneration of members of the Board.

156. Members of the Board shall be paid from the funds of the Corporation such remuneration and allowances in accordance with the guidelines of the Government.

Disqualification

157.—(1) No person shall be appointed as a member of the Board unless the person —

(*a*) is a Nigerian citizen;

(*b*) has not, in terms of the laws in force in any country:

(*i*) been adjudged or declared bankrupt or insolvent; or

(*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 professional capacity in any part of the world.

Removal of a member of the Board.

158. A member of the Board may be suspended or removed from office by the President if the member —

(*a*) is found to have been unqualified for appointment as a member of the Board after his appointment;

(*b*) has demonstrated inability to effectively perform the duties of his office;

(*c*) has been absent from five consecutive meetings of the Board without the consent of the Chairman except for good cause shown for such absence;

(*d*) commits an act of serious misconduct;

(*e*) in the case of a person possessed of professional qualifications, he is disqualified or suspended from practicing his profession in any part of the world by an order of a competent authority; or

(*f*) is in a breach of the conflict of interest rules set out in the Second Schedule to this Bill.

Resignation of a member of the Board.

159. A member of the Board may resign his office by giving three months' notice in writing addressed to the President through the Minister.

Vacancy on the Board.

160.—(1) A vacancy on the Board shall occur if a member of the Board —

(*a*) dies;

(*b*) is removed from office in accordance with sub section 2 of section 120 of this Bill; or

(*c*) resigns from office; or

(*d*) completes his tenure of office.

(2) A vacancy on the Board shall be filled by the appointment of

another person to the vacant office by the President in accordance with the provision of section 154 of this Bill, as soon as is reasonably practicable after the occurrence of such vacancy.

Administrative Support by Management Company.

161. The Management Company, to be established as a subsidiary of the Corporation, shall provide full administrative support for the work of the Board of the Corporation.

Power to accept gifts.

162.—(1) The Corporation may accept gifts of money or other property upon such terms and conditions 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 Corporation under this Bill.

(2) Nothing in subsection (1) of this section or in this Bill shall be construed to allow any member of the Board or staff of the Corporation to accept gifts for their personal use.

Accounts and audits.

163. The Corporation shall keep proper accounts of its income and expenditure in respect of each financial year and shall cause its accounts to be audited within six months after the end of each year in accordance with International Financial Reporting Standards consistent with guidelines supplied and auditors approved by the Auditor-General of the Federation.'

Mid-year and annual reports.

164.—(1) The Corporation shall submit to the President through the Minister, a mid-year report of its operations and finances not later than 31st August of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st May of the following year.

(2) A summary of the annual report and audited financial report of the Corporation shall be published on the website of the Corporation for public notice not later than 31st July of each year.

Exemption from income tax.

165.—(1) All income derived by the Corporation from the sources specified in section 144 shall be exempt from income tax and all contributions to the Corporation made by persons subject to the payment of tax shall be tax deductible.

(2) The Corporation may, subject to the approval of the Board 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 as the Board may approve.

Legal proceedings.

166.—(1) Subject to the provisions of this Bill, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Corporation a member of the Board or an officer or employee of the Corporation.

(2) No suit shall lie against the Corporation a member of the Board or any of its officer or employees for any act done in pursuance or execution of this Bill or any other law or enactment, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Bill or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced —

(*a*) within three months after the act, neglect or default complained of; or

(*b*) in the case of a continuation of damage or injury, within six months after the ceasing of the act complained of.

(3) No suit shall be commenced against the Corporation or any officer or employee before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Corporation by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief being claimed.

Service of court processes.

167. A notice, summons or other document required or authorized to be served on the Corporation under the provisions of this Bill or any other law or enactment may be served by delivering it to the office of the Managing Director of the Asset Management.

Restriction on execution against the Corporation's property.

168.—(1) In any action or suit against the Corporation, no execution or attachment of process in any form shall be issued against the Corporation unless not less than three months' notice of the intention to execute or attach has been given to the Corporation.

(2) Any sum of money which may by the judgment of any court be awarded against the Corporation shall, subject to any direction given by the court where no notice of appeal against the judgment has been given, be paid from the Fund of the Corporation.

Indemnity.

169.—(1) Every member of the Board and every employee of the Corporation shall be indemnified out of the assets of the Corporation against any liability incurred in defending any proceeding against the Corporation, whether civil or criminal, if such proceedings are brought against the member of the Board or employee in their official capacity.

(2) Notwithstanding the provisions of subsection (1) of this section, the Corporation shall not indemnify any member of the Board or employee or staff of the Corporation for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be, or conduct or acts which such a person knew or ought to have known to be unlawful.

Protection of land belonging to the Management Company.

170.—(1) Land vested in the Management Company shall not be liable to be acquired compulsorily under any enactment or law; and notwithstanding anything in any other enactment or law, no mining operations shall be carried on, in or under any land vested in the Management Company or any land over which the Management Company is entitled to rights of support for the benefit of lands so vested except with the prior consent in writing of the Minister.

(2) For the purpose of this section, "land" includes any land under water beyond the territorial waters of Nigeria to which Nigeria is for the time being entitled to any exclusive rights.

Incorporation of the National Oil Company.

171.—(1) The Minister shall, not later than three months after the effective date, take such steps as are necessary under the Companies and Allied Matters Act to incorporate the National Oil Company as a public company limited by shares, which shall be vested with certain assets and liabilities of the NNPC.

(2) Upon incorporation and up to the divestment of the Government shares in the National Oil Company, the Board of the National Oil Company shall comprise of a majority of independent directors including persons with significant experience in international private or multi-lateral financial institutions, or having demonstrated ability in the petroleum industry.

Exemption from application of certain existing laws.

172. The National Oil Company shall not be subject to the provisions of the Fiscal Responsibility Act 2007 and the Public Procurement Act 2007.

Shareholding in the National Oil Company.

173. At the time of its incorporation, the initial shares of the National Oil Company shall be held by a nominee of the Bureau of Public Enterprises and Ministry of Finance Incorporated on behalf of the Government.

Divestment of shares of the National Oil Company.

174. Notwithstanding the provisions of section 173 of this Bill, the Government shall at any time within six years from the date of incorporation of the National Oil Company, divest up to thirty percent of the authorised shares of the National Oil Company to the Nigerian public in a transparent manner on the Nigerian Stock Exchange.

Transfer of assets and liabilities.

175.—(1) The transfer of liability or obligation under section releases the NNPC from the liability or obligation with respect to the transferred assets.

(2) The National Oil Company shall without further assurance be entitled to enforce or defend all obligations for or against the NNPC in respect of the portion of interests mentioned above as if the National Oil Company were the original party to such obligations.

(3) In relation to the transferred assets, all bonds, loans, financing agreements, alternative financing agreements, joint operating agreements, production sharing agreements, sole risk agreements,

hypothecations, securities, deeds, contracts, instruments, documents and working arrangements subsisting immediately before the initial transfer date and to which the NNPC was a party shall, on and after the initial date, be as fully effective and enforceable against or in favour of the National Oil Company as if, instead of the NNPC, the National Oil Company had been named therein.

(4) Any pending action or proceeding in relation to the transferred assets, brought by or against NNPC prior to the initial transfer date may be enforced or continued, as the case may be, on and after that date by or against the National Oil Company in the same way as if this Bill had not been passed.

(5) Notwithstanding the provision of subsection (2) of this section:

(*a*) no action or other proceeding shall be commenced against the National Oil Company in respect of any employee, asset, liability, right or obligation if, had there been no transfer, the time for commencing the action or other proceeding would have expired; and

(*b*) the transfer of assets and liabilities to the National Oil Company under subsection (1) of this section shall not be deemed to —

(*i*) constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance;

(*ii*) constitute a breach of any Act, regulation or by-law; or

(*iii*) constitute an event of default or force majeure;

(*iv*) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

(*v*) give rise to any right to terminate or repudiate a contract, licence, permit or other right; and

(*vi*) give rise to any estoppel.

(6) Subsection (6) of this section shall apply to the contracts as may be prescribed by any regulation made for this purpose.

(7) Subject to subsection (7) of this section, nothing in this Bill and nothing done as a result of a transfer under subsection (1) of this

section shall create any new cause of action in favour of:

(*i*) holder of a debt instrument issued by the NNPC before the transfer date; or

(*ii*) party to a contract with the NNPC that was entered into before the transfer date.

(8) Any guarantee or surety which was given or made by the Federal Government of Nigeria or any other person in respect of any debt or obligation of the NNPC, and which was effective prior to the initial transfer of the principal debt or obligation, shall remain fully effective against the guarantor or surety on and after the initial transfer date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the National Oil Company to which the principal debt or obligation was transferred.

(9) The assets of the subsidiaries of the NNPC listed under the Public Enterprises Privatisation and Commercialisation Act shall be de-listed from the Effective date of this Bill and the power of attorney earlier assigned to the Bureau of Public Enterprises shall stand vacated.

Exemption from stamp duty.

176. Stamp duty shall not be chargeable under the Stamp Duties Act in respect of any transfer made or transaction entered into pursuant to this Part on which, except for the exemption granted under this section, stamp duty would have been payable and in particular, and without derogation from the foregoing, no stamp duty shall be chargeable:

(*a*) during the incorporation of the National Oil Company and the successor companies or any subsequent increase to their authorised share capital, prior to the transfer of a majority interest to the public or private investors; or

(*b*) in respect of any other transfer of rights and assets pursuant to this Part.

Transfer of employees to the National Oil Company.

177. The transfer of employees of NNPC to the National Oil Company shall be in accordance with provisions of section 358 of this Act.

Directions to the NNPC on matters related to transition.

178. Bureau of Public Enterprises Prior to the vesting of the assets and liabilities of NNPC in the National Oil Company, the Minister may give to the Board of Directors of NNPC directions in writing to ensure the proper transfer of the assets and liabilities of NNPC to the National Oil Company, and the Board of Directors shall, without delay, comply with every such direction.

Management and governance of the National Oil Company.

179.—(1) Upon incorporation of the National Oil Company in pursuance of section 171 of this Bill, the National Oil Company shall be organized and managed on the basis of the provisions of its Memorandum and Articles of Association.

(2) The National Oil Company shall be subject to the Governance Rules of the Securities and Exchange Commission.

Certain exemption from rates.

180.—(1) Oil pipelines and other installations belonging to the National Oil Company shall not be regarded as hereditaments or tenements to be valued for rating purposes

(2) For the purposes of this subsection, the expression "oil pipelines and other installations" include oil rigs, refineries, power generating plants, pumping stations, tank farms and similar installations but do not include office or residential buildings.

(3) Except as provided in subsection (1) of this section, nothing in this Bill shall be deemed to exempt the National Oil Company from liability for any tax, duty, rate, levy or other charge whatsoever, provided that the National Oil Company shall not be liable to pay any such tax, duty, rate, levy or charge unless every company liable to tax under this Bill is also liable for such payment.

Protection of National Oil Company's operational land.

181.—(1) Land vested in the National Oil Company shall not be liable to be acquired compulsorily under any enactment or law.

(2) Notwithstanding anything in any other enactment or law, no mining operations shall be carried on, in or under any land vested in the National Oil Company or any land over which the National Oil Company is entitled to rights of support for the benefit of lands so

vested except with the prior consent in writing of the Minister.

(3) For the purpose of this section, "land" includes any land under water beyond the territorial waters of Nigeria to which Nigeria is for the time being entitled to any exclusive rights.

J. NATIONAL GAS COMPANY

Incorporation of the National Gas Company.

182.—(1) The Minister shall, not later than three months after the effective date, take such steps as are necessary under the Companies and Allied Matters Act to incorporate the National Gas Company as a public company limited by shares, which shall be deemed to be vested with the assets and liabilities of the NNPC except the interests in the unincorporated joint ventures and Nigerian Oil Company

(2) At incorporation and up to the divestment of the Government shares in the National Gas Company, the Board of the National Gas Company shall comprise of a majority of independent directors including persons with significant experience in international private or multi-lateral financial institutions, or having demonstrated ability in the petroleum industry.

Exemption from certain existing Legislation.

183. The National Gas Company Plc shall not be subject to the provisions of the Fiscal Responsibility Act 2007 and the Public Procurement Act 2007.

Shareholding in the National Gas Company.

184. Upon incorporation, the initial shares of the National Gas Company shall be held by a nominee of the Bureau of Public Enterprises and Ministry of Finance Incorporated on behalf of the Government.

Divestment of shares of the National Gas Company.

185. Notwithstanding the provisions of section 184 of this Bill, the Government shall at any time within six years from the date of incorporation of the National Gas Company Plc., divest up to forty nine percent of the shares of the National Gas Company to the public in a transparent manner on the Nigerian Stock Exchange.

Transfer of assets and liabilities.

186.—(1) The transfer of liability or obligation under this section releases the NNPC from the liability or obligation with respect to the transferred assets.

(2) The National Gas Company shall without further assurance be entitled to enforce or defend all obligations for or against NNPC in respect of the portion of interests mentioned in this section as if the National Gas Company were the original party to such obligations.

(3) In relation to the transferred assets, all bonds, loans, financing agreements, alternative financing agreements, joint operating agreements, sole risk agreements, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements subsisting immediately before the initial transfer date and to which NNPC was a party shall, on and after the initial date, be as fully effective and enforceable against or in favour of the National Gas Company Plc. as if, instead of NNPC, the National Gas Company Plc. had been named therein.

(4) Any pending action or proceeding in relation to the transferred assets, brought by or against NNPC immediately before the initial transfer date may be enforced or continued, as the case may be, on and after that date by or against National Gas Company in the same way as if this Bill had not been passed.

(5) Notwithstanding the provision of subsection (2) of this section:

(*a*) no action or other proceeding shall be commenced against the National Gas Company Plc. in respect of any employee, asset, liability, right or obligation if, had there been no transfer, the time for commencing the action or other proceeding would have expired, and

(*b*) the transfer of assets and liabilities to the National Gas Company Plc. under subsection (1) of section 182 shall not be deemed to —

(*i*) constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance;

(*ii*) constitute a breach of any Act, regulation or by-law; or

(*iii*) constitute an event of default or force majeure;

(*iv*) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

(*v*) give rise to any right to terminate or repudiate a contract, licence, permit or other right; and

(*vi*) give rise to any estoppels.

(6) Subsection (5) of this section does not apply to the contracts as may be prescribed by any regulation made for that purpose.

(7) Subject to subsection (6) of this section, nothing in this Bill and nothing done as a result of a transfer under subsection (1) of section 182 shall create any new cause of action in favour of a —

(*i*) holder of a debt instrument issued by NNPC before the date; or

(*ii*) party to a contract with NNPC that was entered into before the transfer date.

(8) Any guarantee or surety which was given or made by the Government of Nigeria or any other person in respect of any debt or obligation of NNPC, and which was effective immediately before the initial transfer of the principal debt or obligation, shall remain fully effective against the guarantor or surety on and after the initial transfer date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the National Gas Company Plc to which the principal debt or obligation was transferred.

Transfer of employees to the National Gas Company.

187. The transfer of employees of NNPC to the National Gas Company shall be in accordance with provisions of section 358 of this Act.

Directions to NNPC or matters related to transition.

188. Prior to vesting of the assets and liabilities of NNPC in the National Gas Company, the Minister may give to the Board of Directors of NNPC directions in writing in order to ensure the proper transfer of the assets and liabilities of NNPC to the National Gas Company, and the Board of Directors shall, without delay, comply with every such direction.

Directions to the NNPC on matters related to transition.

189. Prior to vesting of the assets and liabilities of NNPC in the National Gas Company, the Minister may give to the Board of Directors of NNPC directions in writing in order to ensure the proper transfer of the assets and liabilities of NNPC to the National Gas Company, and the Board of Directors shall, without delay, comply with every such direction.

Management and governance of the National Gas Company upon incorporation.

190.—(1) Upon incorporation of the National Gas Company in pursuance of section 1 of this Bill, the National Gas Company shall be organized and managed on the basis of the provisions of its Memorandum and Articles of Association.

(2) The National Gas Company shall be subject to the Governance Rules of the Securities and Exchange Commission.

Certain exemption from rates.

191.—(1) Gas pipelines and other installations belonging to the National Gas Company shall not be regarded as hereditaments or tenements to be valued for rating purposes, and for the purposes of this subsection, the expression "Gas pipelines and other installations" include Gas rigs, refineries, power generating plants, pumping stations, tank farms and similar installations but do not include office or residential buildings.

(2) Except as provided in subsection (1) of this section, nothing in this Bill shall be deemed to exempt the National Gas Company from liability for any tax, duty, rate, levy or other charge whatsoever, provided that the National Gas Company shall not be liable to pay any such tax, duty, rate, levy or charge unless every company liable to tax under this Bill is also liable for such payment.

Protection of National Gas Company's land.

192.—(1) Land vested in the National Gas Company shall not be liable to be acquired compulsorily under any enactment or law;

(2) Notwithstanding anything in any other enactment or law, no mining operations shall be carried on, in or under any land vested in the National Gas Company or any land over which the National Gas Company is entitled to rights of support for the benefit of lands so

vested except with the prior consent in writing of the Minister.

(3) For the purpose of this section, "land" includes any land under water beyond the territorial waters of Nigeria to which Nigeria is for the time being entitled to any exclusive rights.

Establishment of the Frontier Exploration Services.

193.—(1) There is established under this Bill the Frontier Exploration Services ("the Frontier Services") as a body corporate with perpetual succession, a common seal and which may sue or be sued in its corporate name.

(2) The Frontier Services shall have power to —

(*a*) enter into contracts and incur obligations;

(*b*) acquire, hold, mortgage, purchase and deal with property, whether movable or immovable, real or personal; and

(*c*) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Bill.

Functions of the Frontier Exploration Services.

194.—(1) The Frontier Services shall in collaboration with other relevant government agencies, where applicable carry out any activities authorised under a Petroleum Exploration License to —

(*a*) identify opportunities and increase information about the petroleum resources base within frontier acreages in Nigeria;

(*b*) develop data acquisition strategies for frontier acreages in Nigeria including carrying out relevant activities for the calibration of acquired data; and

(*c*) undertake studies to analyse and evaluate frontier acreages in Nigeria;

(*d*) identify opportunities and increase information about the petroleum resources base within all frontier acreages in Nigeria;

(*e*) develop exploration strategies and portfolio management for the exploration of unassigned frontier acreages in Nigeria;

(*f*) undertake studies, analyse and evaluate all unassigned frontier acreages in Nigeria; and

(*g*) undertake activities to stimulate the interest of local and international oil and gas companies in exploration of the frontier basins of Nigeria to increase Nigeria's petroleum resources.

(2) The Frontier Services may apply for Petroleum Exploration Licenses and the Minister shall grant such Licences subject to conditions specified under any Petroleum Exploration License so granted and applicable regulations.

(3) The conduct of the exploration and other functions of the frontier services shall be carried out equitably across all frontier acreages in Nigeria.

(4) "Frontier acreages" means any or all licences or leases located in the Abakaliki, Anambra, Niger, Benue Trough, Bida, Chad, Dahomey, and the Sokoto Basins of Nigeria or as may be determined from time to time.

195.—(1) There shall be for the Frontier Services a Board (in this Bill referred to as "the Board"). Establishment of the Board.

(2) The Board shall consist of the following members appointed by the President —

(*a*) a Chairman, who shall be a person of high integrity and professional experience in the fields of geosciences and related studies or any other similar petroleum related profession that is relevant to the functions of the Frontier Services;

(*b*) the Executive Secretary of the Frontier Services;

(*c*) one representative of the Ministry not lower than the rank of a director;

(*d*) a representative of the academia with background in the fields of geosciences and related studies or any other similar petroleum related fields;

(*e*) a representative of the Nigerian Association of Petroleum Explorationists; and

(*f*) a representative of the Nigerian Geological Survey Agency.

(3) The proceedings of the Board of the Frontier Services and other

ancillary matters shall be in accordance with provisions of Second Schedule to this Bill.

(4) The conflict of interest provisions contained in the Second Schedule to this Bill shall apply to all members of the Board.

Functions of the Board.

196. The Board shall:

(*a*) provide general guidelines relating to the functions of the Frontier Services;

(*b*) approve the annual programme of activities for the Frontier Services;

(*c*) approve the annual budget of the Frontier Services;

(*d*) approve the appointment, promotion and discipline of staff of the Frontier Services;

(*e*) provide annual reports on its activities and progress to the Minister for presentation to the President; and

(*f*) do such other things as are necessary, expedient, and in conformity with the provisions of this Bill for the efficient performance of and in connection with all or any of the functions of the Board under this Bill.

Remuneration of members of the Board.

197. Members of the Board shall be paid from the funds of the Frontier Services such remuneration and allowances as the Board may determine, in accordance with the guidelines issued from time to time by the Government.

Disqualification.

198. A person shall not be appointed as a member of the Board unless the person —

(*a*) has not, in terms of the laws in force in any country:

(*i*) been adjudged or declared bankrupt or insolvent; or

(*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 professional capacity.

Removal/Suspension of a member of the Board.

199. A Member of the Board may be suspended or removed from office by the President if the memLer —

(*a*) is found to have been unqualified for appointment as a member of the Board after his appointment;

(*b*) has demonstrated inability to effectively perform the duties of his office;

(*c*) has been absent from five consecutive meetings of the Board without the consent of the Chairman except for good reason shown for such absence;

(*d*) commits an act of serious misconduct;

(*e*) in the case of a person possessed of professional qualifications, is disqualified or suspended from practicing his profession in any part of the world by an order of a competent authority; or

(*f*) is in a breach of the conflict of interest rules set out in the Fourth Schedule to this Bill.

Resignation of a member of the Board.

200. A member of the Board may resign his office by a notice in writing addressed to the President through the Minister.

Vacancy on the Board.

201.—(1) A vacancy on the Board shall occur if a member of the Board —

(*a*) dies;

(*b*) is removed from office in accordance with section 199 of this Bill; or

(*c*) resigns from office; or

(*d*) completes his tenure of office.

(2) A vacancy on the Board shall be filled by the appointment of another person to the vacant office by the President in accordance with sub section 2 of section 195of this Bill, within a reasonable time after the occurrence of such vacancy.

The Executive Secretary.

202.—(1) There shall be for the Frontier Services an Executive Secretary appointed by the President on the recommendation of the

Minister.

(2) The Executive Secretary shall be a person with vast knowledge and experience in the fields of geophysics, geology, petroleum engineering or any other similar profession that is relevant to the functions of the Frontier Services;

(3) The Executive Secretary shall be the chief executive and accounting officer of the Frontier Services and shall be responsible for the day-to-day administration of the affairs of the Frontier Services subject to the direction of the Board.

Tenure, remuneration and conditions of service of the Executive Secretary.

203.—(1) The Executive Secretary shall serve for a term of four years from the date of his appointment at the expiration of which the President may renew his term for a further term of four years and no more and on such terms and conditions as may be specified in the letter of appointment.

(2) The remuneration and conditions of service of the Executive Secretary shall be at a level sufficient to attract qualified professionals within the petroleum industry.

Disqualification.

204. A person shall not be appointed as Executive Secretary of the Frontier Services if the person —

(*a*) has been adjudged or declared bankrupt or insolvent;

(*b*) has made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside;

(*c*) has been declared to be of unsound mind;

(*d*) has been convicted of an offence involving fraud or dishonesty;

(*e*) has been disqualified by a competent authority from carrying out any assignment, responsibility or function in his professional capacity in any part of the world.

Removal of the Executive Secretary from office.

205. The President may remove the Executive Secretary from office if —

(*a*) he commits an act of serious misconduct in relation to his duties as Executive Secretary;

(*b*) he has demonstrated inability to effectively perform the duties of the office: or

(*c*) the President is satisfied that it is not in the interest of the Frontier Services or the public that the Executive Secretary should continue in office.

206.—(1) The Board may appoint such other persons as employees of the Frontier Services as it deems necessary. Other staff.

(2) The employment of staff of the Frontier Services shall be subject to such terms and conditions as may from time to time be stipulated by the Board and contained in the respective staff's employment contracts.

(3) The Board of the Frontier Services shall make staff regulations generally relating to the conditions of service of its employees, and in particular, but without prejudice to the generality of the foregoing, such regulations may provide for —

(*a*) the appointment, promotion, dismissal and discipline of employees; and

(*b*) appeals by the employees against dismissal or other disciplinary measures; and

(*c*) the grant of pensions, gratuities and other retirement allowances to the employees;

(4) Staff of the Frontier Services shall be public officers as defined in the Constitution.

(5) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

207.—(1) The Board of the Frontier Services shall develop and implement appropriate conditions of service for its staff with particular regard to the issues of remuneration, pension scheme and other service benefits, sufficient for the Frontier Services to attract and retain highly qualified manpower. Remuneration.

(2) The Board shall determine and review from time to time, the

remuneration and allowances, payable to the staff of the Frontier Services in accordance with guidelines prescribed by Government from time to time.

Pensions.

208.—(1) Employment in the Frontier Services shall be subject to the provisions of the Pensions Reform Act and officers and employees of the Frontier Services shall be entitled to pension and other retirement benefits as prescribed under the Pension Reform Act.

(2) Subsection (1) of this section shall not prohibit the Frontier Services 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.

Financial provisions.

209.—(1) (*a*) Nothing in this section or any other enactment shall prevent the application of the fund of the frontier service to the exploration and development of other natural resources located in the frontier regions of Nigeria as may be determined from time to time by the President. Provided that such request shall be made to the National Assembly and must be approved by the simple Majority vote of both Chambers.

(*b*) Frontier region means any part of or the entire Nigerian frontier inland Sedimentary Basin which include the Abakaliki, Anambra, Benue through, Bida Dahomey, Chad and Sokoto Basin of Nigeria or as may be determined from time to time

(2) Every lessee of a petroleum mining lease and oil mining lease shall pay on a monthly basis an amount of $1 per barrel of crude oil and condensates and 30 cent per thousand cubic feet (Mcf) of gas, determined at the measurement points, into the Account of which shall be domiciled at the Central Bank of Nigeria, designated for the sole purpose of collecting the said value and to be used solely for frontier exploration activities in accordance with approved budgets of the Frontier Services.

(3) The Frontier Services shall not later than 30th September or such other date to be determined by the Minister in each financial

year, prepare and present to the National Assembly for appropriation, a statement of estimated income and expenditure for the following financial year.

(4) Notwithstanding the provisions of subsection (3) of this section, the Frontier Services may also, in any financial year, submit supplementary or adjusted statements of estimated income and expenditure to the National Assembly for appropriation.

(5) The financial year of the Frontier Services shall be a period of twelve calendar months commencing on the 1st of January in each year.

(6) The amounts pursuant to subsections (2) and (6) shall be adjusted with the adjustment factor of section 347 of this Bill or may be adjusted in accordance with guidelines issued by the Minister.

(7) Payments by companies under subsection (2) of this section shall be deemed part of the operating costs of the companies.

Power to accept gifts.

210.—(1) The Frontier services may accept gifts of money or other property upon such terms and conditions 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 Frontier Services under this Bill.

(2) Nothing in subsection (1) of this section or in this Bill shall be construed so as to allow any member of the Board or staff of the Frontier Services to accept gifts for their personal use.

Accounts and audit.

211. The Frontier Services shall keep proper accounts of its income and expenditure in respect of each financial year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed by the Frontier Services from a list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

Mid year and annual reports.

212.—(1) The Board shall submit to the Minister a mid-year report of its operations and finances not later than 31st August of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st May of the following year.

(2) A summary of the annual report and audited financial report of the Frontier Services for the previous year shall be published on the website of the Frontier Services for public notice not later than 31st July of each year.

Investment of funds.

213. The Frontier Services may, subject to the approval of the Board 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 subject to the approval of the Minister, or in such other securities as the Minister may approve.

Legal proceedings.

214.—(1) Subject to the provisions of this Bill, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Frontier Services, the Executive Secretary, a member of the Board, an officer or employee of the Frontier Services.

(2) No suit shall lie against the Frontier Services, a member of the Board, the Executive Secretary or any other officer or employee of the Frontier Services for any act done in pursuance or execution of this Bill or any other law or enactment, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Bill or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced —

(*a*) within three months next after the act, neglect or default complained of ; or

(*b*) in the case of a continuation of damage or injury, within six months next after the ceasing of the act complained of.

(3) No suit shall be commenced against the Frontier Services, a member of the Board, the Executive Secretary or any officer or employee of the Frontier Services before the expiration of a period of one month after notice in writing of the intention to commence the suit shall have been served on the Frontier Services by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.

Service of court processes on the Frontier Services.

215. A notice, summons or other document required or authorised to be served on the Frontier Services under the provisions of this Bill or any other law or enactment may be served by delivering it to the office of the Executive Secretary of the Frontier Services or any of its Directors.

Enforcement of judgment through Garnishee Proceedings.

216.—(1) Judgement against the Frontier Services, may be enforced through garnishee proceedings provided that not less than three months' notice of the intention to commence the garnishee proceedings shall have been given to the Frontier Services.

(2) Any sum of money which may by the judgment of any court be awarded against the Frontier Services shall, subject to any direction given by the court where no notice of appeal against the judgment has been given, be paid by the Frontier Services.

Indemnity provisions.

217.—(1) Every member of the Board and every employee of the Frontier Services shall be indemnified out of the assets of the Frontier Services against any liability incurred in defending any proceeding against the Frontier Services, whether civil or criminal, if such proceedings are brought against the member of the Board or employee in their official capacity.

(2) Notwithstanding the provisions of subsection (1) of this section, the Frontier Services shall not indemnify any member of the Board or employee of the Frontier Services for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be, or conduct or acts which such person knew or should have known to be unlawful.

PART III — UPSTREAM PETROLEUM

Administration of acreage.

218.—(1) All acreage for exploration, development and production of petroleum in Nigeria shall be administered by the upstream

Inspectorate.

(2) The title to all data related to upstream petroleum operations acquired, is vested in the Government of the Federation, and shall be administered by the Inspectorate, provided that:

(*a*) licensees and lessees providing data to the Inspectorate shall be able to trade such data with the permission of the Inspectorate, and;

(*b*) may only retain a copy of such data in-country and use such data in-country for upstream petroleum operations related to their licences and leases, including data room and associated services.

(3) The Minister shall have power to designate by regulation any area or hydrocarbon formations, including unconventional plays, as frontier area or re-designate same.

(4) Where the Minister re-designates a frontier area, the terms of PPLs and PMLs granted prior to the re-designation will continue to be the terms applicable to such PPLs, PMLs and any PMLs derived from such PPLs; provided that in the case of any renewal of the respective PMLs, the new terms shall be those then applicable to the re-designated area.

(5) ,Carrying out field operations and collection of samples for purely scientific research related to petroleum shall not require licenses or leases pursuant to Error! Reference source not found. of this Bill, but with respect to offshore areas or research involving certain types of equipment such operations may require a permit from the Inspectorate pursuant to applicable regulations.

(6) Subject to subsection (5) of this section a person shall not carry out upstream petroleum operations without a licence or lease granted under this Bill.

(7) Any person who —

(*a*) omits a breach of any of the provisions of this Part;

(*b*) fails to comply with any Regulations, any direction given or any condition of any licence issued pursuant to provisions under this Bill:

(c) fails to permit any inspection authorized under Regulations made pursuant to provisions in this Bill; or

(d) fails to make a return required under Regulations made pursuant to provisions under this Bill, or wilfully furnishes information so required, which is in any respect false or insufficient;

shall be guilty of an offence and be liable on conviction to a fine not exceeding Twenty million Naira (₦20,000,000.00) or to imprisonment for a term not exceeding six months or both and when the offender is the holder of a licence or lease granted pursuant to provisions under this Bill, his licence or lease may be revoked by the Minister.

National grid system.

219.—(1) The Inspectorate shall adopt a national grid system for petroleum acreage management and such grid system shall be based on the Universal Traverse Mercator (U.T.M.) coordinate system; provided that the Minister may direct the adoption of a new national grid system in line with international best practice.

(2) The basic unit shall be a parcel of two by two kilometers, 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 subsection (1) of this section.

(3) The Inspectorate shall define a numbering system for the parcels which shall allow for the subdivision and aggregation of these parcels.

(4) The grid system shall be used for the definition of licence and lease areas, relinquishments, bid procedures, identification of well locations, petroleum conservation measures and such other regulatory and acreage management procedures.

(5) Subject to the provisions of subsection (1) of this section any current boundaries of licences and leases that do not conform with the new grid system shall remain unaltered, and parcels shall be apportioned

accordingly.

Licenses and leases.

220.—(1) Subject to the provisions of this Bill, the Minister may grant:

(*a*) a petroleum exploration licence to carry out petroleum exploration operations on a non-exclusive basis:

(*b*) a petroleum prospecting licence to carry out petroleum prospecting operations for petroleum; and

(*c*) a petroleum mining lease, to search for, win, work, carry away and dispose of petroleum.

(2) Subject to the provisions of this Bill, where the Minister decides to grant a petroleum prospecting licence or lease under this section, it shall be awarded to the winning bidder pursuant to the bid process prescribed in section 0 provided the winning bidder has complied with all requirements specified in the bid process.

(3) Subject to the provisions of this Bill, the Minister may grant a petroleum exploration licence to any qualifying company over any area.

(4) Every petroleum prospecting licence or petroleum mining lease shall be in respect of petroleum.

(5) A licence or lease under this section may be granted only to a company incorporated in Nigeria under the Companies and Allied Matters Act

(6) It shall be a condition under any petroleum exploration licence, petroleum prospecting licence and petroleum mining lease that at all times the operator of the upstream petroleum operations shall be a company that qualifies as an operator.

(7) A holder of an oil prospecting license or oil mining lease may:

(*a*) continue the operations under this Bill; or

(*b*) (*i*) decide to convert pursuant to section 241, such oil prospecting licenses and oil mining leases based on the incentives and all other provisions of this Bill, provided that:

(*ii*) such conversion shall apply to all licenses and leases and all production sharing contracts in which the same ultimate parent company has an interest unless the Minister approves otherwise pursuant to regulations.

(8) Subject to subsections (9) and (10) of this section, where an interest holder, other than the NOC as concessionaire of a production sharing contract, of oil prospecting licenses, oil mining leases or production sharing contracts certifies and proves to the Minister that:

(*a*) the interest holder has decided to convert all its interests in oil prospecting licenses, oil mining leases and production sharing contracts, and

(*b*) as a result of withholding of consent by other interest holders, such interest holder is unable to convert certain licenses, leases or contracts, the Minister may approve, pursuant to applicable regulations, the conversion of all licenses, leases or contracts of such interest holder for which at least the holders of 60% voting interests in such licences, leases or contracts have certified to the Minister their commitment to convert all their respective interests as well as the approval of the NOC where the NOC is an interest holder in such licence or lease; provided the Minister is satisfied that such licenses, leases or contracts provide for a reasonable distribution of government revenues from onshore, shallow water and deep water interests.

(9) (*a*) Where the Minister, on the recommendation of the Inspectorate, is satisfied that at least holders of 50% voting interests in such a licence, lease or contract (other than the NOC) have certified their commitment to convert their interest in such licence, lease or contract, the Minister shall order the conversion of such licence, lease or contract.

(*b*) Where the Minister is satisfied that a majority of interest holders of a lease (other than NOC) have certified their commitment to convert their interest in such lease. the Minister may order the conversion of such lease within a specified time during which the holders shall present their acreage selections pursuant to section 241.

(c) Where the holders of a lease do not comply with paragraph (b) of this subsection, the Minister may direct the Inspectorate to fulfil the requirements under section 241 in a manner which in its opinion is fair and equitable.

(10) Without prejudice to subsection (8) of this section, the NOC shall report to the Minister any OPL and OML for which the NOC has given approval for conversion, within two weeks after providing such approval.

(11) A holder that commits to convert pursuant to the conversion process in section 241 of this Bill may propose to create and assign a petroleum prospecting license out of non-producing portions of his license or lease area prior to conversion, subject to the following conditions:

(i) where the license or lease area proposed for the creation of a new petroleum prospecting license has a discovery, the pending duration of the original parent license or lease and the drilling obligations of subsection (4) shall continue to apply to any subsequent license created therefrom;

(ii) where the license or lease area proposed for the creation of a new petroleum prospecting license has no discovery, the conditions of section 224, 225 and subsections 1 to 17 of section 226 shall apply to any subsequent license created therefrom.

Power to enter into contracts.

221.—(1) Where the Minister grants any licence or lease under subsection (1) of section 220 of this Bill, the licensees or lessees, by such grant and without further assurance, shall be empowered to enter into any contract for the exploration, prospecting, development or production of oil or gas, or both, as the case may be, in respect of any licence or lease held by the licensees or lessees, upon such terms and conditions as the licensees or lessees may determine, and with any company qualified under conditions prescribed by this Bill.

(2) 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 0 of this Bill.

Confidentiality clauses.

222.—(1) Confidentiality clauses or other clauses contained in 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 rents, royalty, fees and bonuses of whatever nature, and taxes, shall be void and of no effect.

(2) Subsections (1) and (4) of this section shall not apply to proprietary industrial property rights owned by any of the parties to a licence, lease, agreement or contract to which the said subsections (1) and (4) apply, and such rights 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 as to whether information or documents are proprietary industrial property rights and within the ambit of subsection (2) of this section shall be decided —

(*i*) by the owner of such information; and

(*ii*) where the Inspectorate disputes such decision, the matter shall be decided by an independent expert appointed by the Inspectorate and the relevant licensee or lessee.

(4) Where the Inspectorate and licensee or lessee are unable to agree on the appointment of an independent expert, either the Inspectorate or the licensee or lessee may refer the appointment to the Chief Judge of the Federal High Court who shall then appoint an independent expert.

(5) Every company involved as licensee, lessee or contractor

shall for each license and each 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 expiration 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.

(6) The Inspectorate 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 Inspectorate together with the revenue information pursuant to subsection (1) of this section.

(7) The text of any subsisting or future licence or lease or contract with any wholly Government owned entity and any amendments or side letters thereto shall not be confidential and may be published on the website of the Inspectorate and the provisions of sub-section (1) of this section shall apply.

(8) The texts pursuant to subsection (6) of this section shall be supplied by the operator within one year after the commencement of this Bill, and where such information is not supplied to the Inspectorate, a company in default shall be liable to a penalty of US $50,000 for every day such information is not available after the date required by the Inspectorate.

(9) All geological, geophysical, geochemical and other technical petroleum data, obtained during upstream petroleum operations as determined by the Inspectorate shall be provided directly to the national petroleum data bank of the Inspectorate electronically within three months of such data being obtained by any licensee or lessee and hard copies within one month thereafter.

(10) Upon provision to the databank, data obtained under a petroleum prospecting licence shall be solely accessible to the Inspectorate and the licensees for a period of one year or until the

acreage is relinquished, whichever is the earlier.

(11) With respect to petroleum exploration licences, the Inspectorate may agree to a period of confidentiality where the licensee obtains the data for the main purpose of selling the data to interested parties.

(12) Subject to subsection (9) of this section, all data in the national petroleum data bank shall be accessible by any interested person under such access agreements as may be determined by the Inspectorate.

Petroleum exploration license.

223.—(1) The holder of a petroleum exploration licence shall have the non-exclusive right to carry out petroleum exploration operations within the area of its licence.

(2) A petroleum exploration licence shall be valid 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.

Petroleum prospecting license and oil prospecting license.

224.—(1) The holder of a petroleum prospecting licence shall have the exclusive right to carry out petroleum prospecting operations within the area of its licence.

(2) Subject to the provisions of Part III of this Bill the holder of an oil prospecting licence shall have the exploration and production rights as were granted under such licence.

Duration and area of Petroleum Prospecting License and oil prospecting license.

225.—(1) A petroleum prospecting licence shall be —

(*a*) subject to subsection (10) of section 241, with respect to onshore and shallow water areas:

(*i*) for a duration 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 (8) of section 226 of this Bill and significant gas discovery periods, pursuant to subsection (12) of section 226 of this Bill and other extensions permitted under this Bill; and

(*ii*) the initial petroleum prospecting licence area shall not be more than five hundred square kilometres and not less than one parcel (four square kilometers):

(*b*) subject to subsection (10) of section 241, with respect to deep water areas and frontier acreage:

(*i*) for a duration 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 (8) of section 226 of this Bill and significant gas discovery periods, pursuant to subsection (12) of section 226 of this Bill and other extensions permitted under this Bill; and

(*ii*) the initial petroleum prospecting licence area shall not be more than one thousand square kilometres and not less than one parcel (four square kilometers).

Work commitment, commercial discovery and significant gas discovery during petroleum prospecting license period.

226.—(1) A petroleum prospecting licence shall contain the requirement for the licensee to commit to a work programme for each stage of the licence unless otherwise authorised by the Inspectorate.

(2) The work-programme referred to under subsection (1) of this section shall oblige the licensee to:

(*a*) explore the relevant area, using geological, geophysical and any other acceptable methods of investigation for the purpose of arriving at the prospects until the area has been adequately explored for that purpose; and

(*b*) carry out the work required under subsection (3) of this section for prospecting crude oil and natural gas and under subsection (20) of this section for unconventional oil and unconventional gas.

(3) During the initial period, the licensee shall drill one well to a specified minimum depth, provided that the licence may require more than one well to a minimum depth.

(4) Where the licensee requests a renewal, the licensee shall, except where the Inspectorate otherwise authorizes, commit to drill

at least one further commitment well to a specified minimum depth, provided that the licence may require more than one well to a minimum depth during such renewal.

(5) The wells in subsections (3) and (4) of this section shall be a well that in the opinion of the Inspectorate is either aimed at discovering petroleum in a separate geological feature or structure in which petroleum has not been previously discovered: or for any other objective as determined by the Inspectorate.

(6) Any well drilled in excess of the minimum work programme specified in the licence during the initial period can be credited to the work obligation under the renewal.

(7) Where the licensee makes a petroleum discovery during the initial period or renewal, it shall inform the Inspectorate within one hundred and twenty days or within such extended time frame as granted by the Inspectorate, after making such discovery whether the licensee considers that the petroleum discovery:

(*a*) merits appraisal of a crude oil or natural gas discovery (other than unconventional gas), or both,

(*b*) permits the making of a declaration of a commercial discovery or significant gas discovery without appraisal or based on the identification of a commercial unconventional oil or commercial unconventional gas project, or

(*c*) is of no interest to the licensee.

(8) Where the licensee considers that a discovery merits appraisal pursuant to paragraph (*a*) of subsection (7) of this section, it shall submit for approval to the Inspectorate:

(*a*) a commitment to an appraisal programme of a duration of not more than three 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 five kilometres surrounding such outer boundary.

(9) Upon the approval of the appraisal programme and appraisal area by the Inspectorate, the licensee shall promptly carry out the committed appraisal programme.

(10) he Inspectorate shall decide on the appraisal programme and appraisal area within sixty days after the submission.

(11) Prior to the expiration of the appraisal period pursuant to paragraph (*a*) of subsection (8) of this section or pursuant to paragraph (*b*) of subsection (7) of this section, the licensee shall:

(*a*) declare a commercial discovery and submit the proposed petroleum mining lease area;

(*b*) declare a significant gas discovery; or

(*c*) inform the Inspectorate that the discovery is of no interest to the licensee.

(12) Subject to subsection (1) of this section, 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 ten years from the date of such declaration.

(13) Any significant gas discovery retention area shall be selected in the same manner as an appraisal area pursuant to paragraph (*b*) of subsection (8) of this section and shall be subject to approval by the Inspectorate.

(14) The petroleum prospecting license shall expire where the licensee fails to make a declaration of a commercial discovery prior to the latest of the expiration dates of:

(*a*) the initial exploration period unless renewed pursuant to this Bill,

(*b*) the renewal period unless extended pursuant to this Bill,

(*c*) any appraisal period unless extended upon the declaration of a significant gas discovery pursuant to this Bill ,or

(*d*) any significant gas discovery retention period.

(15) (*a*) Where the licensee declares a commercial discovery pursuant to paragraph (*a*) of subsection (11) of this section the Inspectorate shall review and decide on the proposed petroleum mining lease area within 120 days, which shall be selected pursuant to the provisions of subsection (5) of section 229 of this Bill; and

(*b*) Where the licensee declares the discovery of no interest for appraisal pursuant to paragraph (*c*) of subsection (7) of this section or is of no interest pursuant to paragraph (*c*) of subsection (11) of this section, the licensee shall relinquish the parcels that cover the extent of the discovery.

(16) The licensee shall comply with extant provisions for Nigerian content in the implementation of its work programme.

(17) Work programmes under this section shall be supported by a bank guarantee or performance bond from a reputable bank and acceptable to the Inspectorate, and shall be for the full amount of the committed work with respect to subsections (1), (2), (3),(4) and paragraph (*a*) of subsection (8) of this section.

(18) (1) The provisions of subsections (1) through (17) shall not apply to an oil prospecting licence:

(2) The following provisions shall apply to an oil prospecting licence:

(*a*) the licensee shall carry out the work obligations committed under the oil prospecting licence, and

(*b*) the licensee shall have the right at any time during the licence to make one or more declarations of a commercial discovery.

(19) With respect to unconventional oil and unconventional gas the following special provisions shall apply:

(*a*) the work programme during the initial exploration period shall be approved by the Inspectorate, (*b*) during any renewal the work programme shall be approved by the Inspectorate,

(*c*) the provisions with respect to appraisal areas may not apply,

(*d*) a commercial discovery shall mean a commercial project and a significant gas discovery shall mean a significant gas project, and

(*e*) the significant gas discovery area and the proposed mining lease area shall be determined by the Inspectorate on the basis of the surface extension of the volume of rock that is proposed by the licensee for development and production.

Commercial discovery and development plan.

227.—(1) Where the licensee declares a commercial discovery pursuant to paragraph (*a*) of subsection (11), of section 226 of this Bill, the licensee shall within two (2) years from such declaration submit:

(*a*) a field development plan for the commercial discovery to the Inspectorate, and

(*b*) 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 development plan and where the development plan meets all requirements established by the Inspectorate, the development plan shall be approved pursuant to subsection (6) of this section.

(3) The Inspectorate shall only approve the development plan where the plan:

(*a*) meets the technical standards that are required for the related works and conforms with best industry practice;

(*b*) results in the maximum recovery of crude oil, natural gas, condensates or unconventional oil or unconventional gas, taking into consideration a reasonable economic framework;

(*c*) meets adequate health, safety and environmental standards;

(*d*) includes an approved Nigerian content plan pursuant to subsisting relevant law on Nigerian content development;

(*e*) includes an approved environmental management plan pursuant to section 200 of this Bill and an acceptable decommissioning and abandonment plan; and

(*f*) provides for the elimination of routine gas flaring.

(4) Where a licensee does not submit a development plan and work commitment pursuant to subsection (1) of this section, the parcels covering the proposed petroleum mining lease area shall be relinquished and the licence may be revoked.

(5) Where the licensee has declared one or more commercial discoveries the licence shall continue to subsist until the process regarding the granting of the respective leases has been completed or the proposed mining lease areas have been relinquished pursuant to subsections (4) and (6) of this section.

(6) The Inspectorate shall within sixty days after the submission of the development plan give its final decision to approve or disapprove a development plan that meets the criteria of subsection (3) of this section and where the development plan is disapproved the Inspectorate shall:

(*a*) require the licensee to relinquish the proposed petroleum mining lease area for which the commercial discovery was declared, or

(*b*) provide the licensee with the opportunity to make amendments to the development plan within a time specified by the Inspectorate.

(7) With respect to an oil prospecting licence where the licensee has declared commercial discovery, the following shall apply without extending the duration of the licence:

(*a*) the licensee shall submit a development plan and a commitment to carry out the work described in the development plan in a manner acceptable to the Inspectorate not later than:

(*i*) two years after the declaration of a commercial discovery, or (*ii*) two years after the effective date of this Bill

(*b*) subsections (2), (3), (4) and (6)of this section shall apply to an oil prospecting licence;

(*c*) where a licensee makes one or more declarations of a commercial discovery and has applied to the Inspectorate prior to the expiration of his licence, the licensee shall have the right at the termination of the licence or any time during the licence to be granted an oil mining lease for all or part of the licence.

(*d*) upon the granting of an oil mining lease, the licensee shall select a production area for each commercial discovery and the remaining area of the oil mining lease shall be considered exploration area.

(*e*) the provisions of subparagraphs (*a*) and (*b*) of subsection (2) of section 226 shall apply to any exploration area under an oil mining lease.

(*f*) with respect to the exploration area under an oil mining lease the lessee shall continue to drill wells to a depth approved by the Inspectorate, as follows:

(*i*) the first well shall be drilled no later than three years after:

(*a*) the granting of the oil mining lease, or

(*b*) the effective date of this Bill.

(*ii*) thereafter the lessee shall drill one well every two years in the exploration area.

(*g*) where a lessee declares further commercial discoveries as a result of the exploration in the oil mining lease, the lessee shall select further production areas for each commercial discovery.

Unitisation.

228.—(1) Where a petroleum discovery in the license or lease area extends beyond the boundaries of the license or lease area, and where at least one licensee or lessee has made a declaration of a commercial discovery, 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) The unitized development may include non-straddling reservoirs so as to optimize the development.

(3) Where the area or any part thereof, 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 190 of this Bill.

(4) Subject to subsection (1) of this section, where the inspectorate decides that unitised development is required, the licensees and lessees of the areas into which such discovery extends shall make a proposal to the Inspectorate for a joint development plan of the discovery within two years and such development plan shall meet all the criteria established in subsection (3) of section 227.

(5) If the proposal is not approved by the Inspectorate or the parties do not present a unitization proposal pursuant to subsection (4) 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 expense 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.

229.—(1) A petroleum mining lease shall be granted for parcels of each commercial discovery of crude oil, natural gas, or both, unconventional oil, unconventional 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 Bill; and

(*b*) received approval for the related development plans from the Inspectorate.

(2) A petroleum mining lease may be granted pursuant to the provisions of this Bill where a prospective lease area contains:

(*a*) a discovery of crude oil or natural gas or both, or condensate, unconventional oil, unconventional 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 and has not been renewed;

(3) Subject to subsection (6) of this section, a licensee may propose that a separate petroleum mining lease be granted for each commercial discovery, with an approved development plan, in the petroleum prospecting licence, prior to the expiration of the petroleum prospecting licence.

(4) Notwithstanding the grant of any petroleum mining lease under subsection (3) of this section, the petroleum prospecting licence shall continue for the remaining licence area subject to the relinquishment provisions of the licence.

(5) Subject to paragraph (*e*) of subsection (19) of section 226, the area of a petroleum mining lease shall contain every parcel within the outer boundary of the field as determined by a certified independent engineering firm, and approved by the Inspectorate, 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 two kilometres of such outer boundary:

Provided however, that the lease shall not contain any parcels that are —

(*a*) outside the original licence area from which the lease is derived;

(*b*) in areas relinquished by the licensee; or

(*c*) part of any parcels that were already granted under another petroleum prospecting licence or petroleum mining lease.

(6) Where during the petroleum prospecting licence 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 and subject to a competitive bid process.

(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 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 unless otherwise decided by the Inspectorate.

(8) A petroleum mining lease shall not consist of an area that is less than one parcel.

Exclusive right to conduct operations.

230.—(1) A lessee shall have the exclusive right to carry out upstream petroleum operations in or under the lease area.

(2) A petroleum mining lease shall also contain the right to continue to explore and prospect deeper formations.

(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, crude oil, gas or condensate 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 field 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 Bill.

Domestic gas supply obligations.

231.—(1) The Inspectorate shall determine in accordance with section 269 of this Bill, the needs of the domestic gas market in accordance with the Domestic Gas Demand requirement and shall on such basis impose Domestic Gas Supply Obligation and ensure that all lessees comply with such Domestic Gas Supply Obligations.

(2) During the 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 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.

Duration and renewal.

232.—(1) A petroleum mining lease shall be granted for a maximum term of twenty years, provided, that where a petroleum mining lease is derived from a petroleum prospecting licence where a commercial discovery has been declared pursuant to paragraph (*a*) of subsection (11) of section 226 of this Bill and a development plan has been approved:

(*a*) the overall period shall run for thirty years, or forty years subject to subsection (12) of section 226 of this Bill where there is significant gas discovery retention period, from the date of the grant of the related petroleum prospecting licence for onshore and shallow water areas; or

(*b*) the overall period shall run for thirty two years or forty years subject to subsection (12) of section 226 of this Bill where there is significant gas discovery retention period, from the date of the grant of the related petroleum prospecting licence for deep water areas and frontier acreage;

(2) 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 (*c*) or (*d*) of this subsection, from the granting of the petroleum mining lease such lease may be revoked at the end of such development period;

(*b*) the acreage revoked pursuant to paragraph (*a*) of this subsection shall be vested in the Federal Government and may be subject to a new grant in accordance with subsection (2) of 238 of this Bill;

(*c*) the development period for petroleum mining leases granted pursuant to subsection (2) of section 229 of this Bill shall be established in such leases; and

(*d*) the development period for petroleum mining leases granted pursuant to subsection (1) of section 229 of this Bill shall be:

(*i*) 7 years for onshore and shallow water leases, and

(*ii*) 10 years for deep water leases and leases in frontier acreage

(3) Where a lease is in commercial production upon the termination of the lease, the lease shall be renewed pursuant to section 0 and other provisions of this Bill, for further terms of not more than ten (10) years each, until all commercial production has ceased and facilities have been abandoned in accordance with the provisions of this Bill.

(4) 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 days other than for reasons of force majeure, repairs, maintenance, upgrading of facilities, new construction of facilities or other causes as presented to and approved by the Inspectorate, the lease may be revoked; provided that the lessee shall be required to fulfil its abandonment obligations.

(5) Where a lessee intends to suspend production for more than one hundred and eighty 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.

(6) An oil mining lease shall be for a period of twenty years and

the provisions of subsections (3), (4) and (5) of this section shall apply to such lease.

Conditions for renewal of lease.

233.—(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 shall be granted if the lessee has paid all fees, rent and royalties under this Bill due in respect of the lease and has performed all its obligations under the lease.

(2) The terms and conditions that shall apply to such renewal shall be the prevailing regulatory conditions for new petroleum mining leases at the time of renewal and the lessee shall pay a renewal bonus of an amount specified in the lease on the date of such renewal.

(3) Subject to the advice of the Inspectorate, the Minister shall make regulation to provide for terms and conditions for the renewal of leases.

(4) The provisions of this section shall apply to oil mining leases, provided, however, that where an oil mining lease is not in regular commercial production prior to the renewal, the lease shall not be renewed.

Relinquishment.

234.—(1) Every petroleum prospecting licence, which initially is larger than ten parcels, shall provide for the obligation to relinquish a number of parcels equal to at least fifty per cent of the original licence area upon the expiration of the initial exploration period; provided, that any acreage included in petroleum mining leases, appraisal and significant gas discovery retention areas may be retained by the licensee and will not require relinquishment.

(2) Upon the expiration of the renewal period for a petroleum prospecting licence, the licensee shall relinquish all parcels which 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 petroleum prospecting licence, all acreage 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.

(*a*) A proposed mining lease area shall be relinquished where the licensee does not provide an acceptable development plan within the periods established under this Bill.

(5) Ten years after the granting of a lease for the purpose of producing crude oil or natural gas, or both, or condensate, or unconventional oil, or unconventional gas, the lessee may retain all parcels that are in commercial production or for which firm commitments have been made to the satisfaction of the Inspectorate and shall relinquish all other parcels.

(6) The licence or lease shall not contain any priority rights, optional rights or negotiation rights for the licensee or lessee with respect to acreage relinquished by the licensee or lessee.

(7) The relinquished acreage shall be vested in the Government and may be awarded on the basis of a bidding round pursuant to section 0 of this Bill.

(8) Any rent paid in respect of the area of the licence 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 licence or lease or any contract entered in pursuance thereof before such relinquishment.

(9) The shape and size of the area to be retained and of the area to be relinquished or surrendered shall be as approved by the Inspectorate.

(10) Subsections (5), (6), (7), (8) and (9) of this section shall apply to the initial grant of an oil mining lease, and the lessee of such oil mining lease shall relinquish 50% of the lease prior to the termination of the tenth year of the lease.

Surrender of license or lease.

235.—(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 at least 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 licence or lease and complies with any surviving obligations.

(2) No rent paid prior to the surrender shall be refundable.

Rights of Way.

236. Subject to the provisions of all relevant laws and on such terms and conditions as may be approved by the Inspectorate, the licensee or lessee shall be entitled to such rights of way for the laying, operation and maintenance of gathering lines, telephone lines and the like through or across areas as the licensee or lessee may reasonably require for the carrying on of upstream petroleum operations under the licence or lease.

Surface Rights reserved to the Inspectorate.

237.—(1) The Inspectorate 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 of the Inspectorate, are necessary or desirable for the laying, operation and maintenance of gathering lines, telephone lines and power lines and the likes; and any right of ways or other rights so reserved shall continue for the benefit of any entity to whom the Inspectorate may subsequently grant the same.

(2) Licensees and lessees shall not object to the grant of rights of way, easements or other rights over any surface or seabed areas of a licence or lease unless they affect the health of personnel or safety of the upstream petroleum operations, in which case the Inspectorate, as the case may be, shall consider the objection and rule on the matter.

Award process. Powers of the

238.—(1) There shall be no grant of any award, save as provided under this Bill.

(2) The grant of a petroleum prospecting licence or a petroleum mining lease not derived from a petroleum prospecting licence in respect of any territory in, under or upon the territory of Nigeria shall be by open, transparent and competitive bidding process conducted by the Inspectorate pursuant to the provision of subsection (3) of this section.

(3) The winning bid 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 in addition to the relevant subsisting royalty percentage;

(*iii*) a work commitment in terms of number of wells to be drilled to a specified minimum depth during the initial exploration period; or

(*iv*) work units.

(*b*) a combination of the parameters indicated under subsection (*a*) of this section, 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 determine the winning bidder.

(3) There shall be no grant of discretionary awards, except as provided for under section 191 of this Bill.

(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 Minister directs for a call for bids pursuant to subsection (1) of this section, the Inspectorate shall propose the technical, legal, economic and financial requirements as well as the

minimum experience and capacity necessary for prospective licensees, and lessees, which shall be contained in guidelines prepared by the Inspectorate and approved by the Minister, and without prejudice to the provisions of subsection (2) of this section, licensees, lessees and contractors shall be chosen in accordance with these guidelines.

(6) All bids received based on the bid parameters established in subsection (2) of this section shall be processed in accordance with the published guidelines and monitored by the Nigeria Extractive Industries Transparency Initiative (NEITI).

President to grant licenses and leases in special circumstances.

239. Notwithstanding the provisions of section (3) of section 190 or any other provision of this Bill, the President shall have the power to grant a licence or lease under this Bill.

Right of participation.

240.—(1) A licence or lease may include the right of the Government to a participating interest in the licence or lease and in such cases; the Minister may exercise this right to participate in accordance with the terms of the said licence or lease.

(2) A petroleum prospecting licence may include the right to participate at the option of Government in any petroleum mining lease derived from such licence upon the grant of such lease:

(*a*) without obligation to pay any share of costs incurred under the licence prior to the grant of the lease, or

(*b*) with the obligation to pay the proportionate share of all or certain costs incurred in petroleum operations under the licence prior to the grant of the lease.

(3) Any payment obligation pursuant to paragraph (*b*) of subsection (2) of this section may be in the form of:

(*a*) cash on the date of the grant of the lease, or

(*b*) such other arrangement as may be stipulated in the licence.

Relinquishment from current licences and leases and marginal fields.

241.—(1) With respect to any existing oil prospecting licences at the effective date that convert pursuant to paragraph (*b*) of subsection (7) of section 226, all provisions of this Bill shall apply, save:

(*a*) with respect to the licence period, the remainder of the oil prospecting license period shall apply to the petroleum prospecting licence as its entire exploration period, provided however, that licensees may be able to benefit from the provisions under this Bill relating to additional periods for appraisal and significant gas discovery retention;

(*b*) with respect to relinquishment during the exploration period of the converted petroleum prospecting licence, the terms of the oil prospecting licence shall apply to the new petroleum prospecting licence, provided however that at the end of the exploration period, the provisions of subsection (2) of section 234 shall apply;

(*c*) any provisions relating to work obligations for the oil prospecting licence shall continue to apply to the end of the exploration period of the converted petroleum prospecting licence.

(2) With respect to any oil mining lease existing at the effective date, including leases that are subject to production sharing contracts, to be converted pursuant to paragraph (*b*) of subsection (7) of section 226, the holders of the oil mining lease ("holders") shall select prior to the end of three years following the effective date, the parcels within such lease area that the holders intend 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 Bill and shall select the parcels based on the selection process as follows:

(*a*) discoveries which the holders propose for appraisal pursuant to subsection (8) of section 226 and for which the holders are prepared to present the appraisal programme pursuant to this Bill,

(*b*) discoveries for which the holders have made a declaration of commercial discovery pursuant to paragraph (*a*) of subsection (11) of section 226 and are prepared to submit or are preparing a development programme pursuant to this Bill;

(*c*) discoveries for which the holders have made a declaration of a significant gas discovery pursuant to paragraph (*b*) of subsection (11) of section 226;

(*d*) fields in which development is underway based on an approved development plan; and

(*e*) fields in which commercial production is occurring.

(3) Where the total acreage selected pursuant to paragraphs (*a*), (*b*), (*c*), (*d*) and (*e*) of subsection (2) of this section is less than the total acreage of the oil mining lease, the holders shall have the option to select further parcels of such lease area as petroleum prospecting licenses for the purpose of carrying out further exploration, provided the holders commit to a minimum work programme acceptable to the Inspectorate and all other obligations pursuant to this Bill for each petroleum prospecting licence.

(4) On or prior to three years following the effective date, the holders shall relinquish all parcels from the oil mining lease areas with the exception of the parcels selected pursuant to subsections (2) and (3) of this section.

(5) (*a*) Holders, Licensees and marginal field operators who have made their selections pursuant to the provisions of this section, shall apply to the Inspectorate for review, and if approved, recommendation to the Minister for conversion.

(*b*) Subject to the recommendation of the Inspectorate, the Minister shall convert:

(*i*) the areas selected pursuant to paragraph (*a*) of subsection (2) of this section into appraisal areas;

(*ii*) the areas selected pursuant to paragraph (*b*) of subsection (2) of this section to proposed petroleum mining lease areas of a petroleum prospecting license; and

(*iii*) areas selected pursuant to paragraph (*c*) of subsection (2) of this section into significant gas discovery retention areas under the same petroleum prospecting license.

(*c*) Where the holders select parcels pursuant to subsection (3) of this section, the Minister shall convert each area into a further PPL upon the approval of the respective work programs and areas by the Inspectorate.

(6) The Minister shall convert the areas selected pursuant to paragraphs (*d*) and (*e*) of subsection (2) of this section, into petroleum mining leases under this Bill with a term of up to 20 years, subject only to the areas complying with the selection methodology established in subsection (5) of this section

(7) (*a*) Notwithstanding the provisions of section 0 of this Bill, the operators of marginal fields at the commencement of this Bill, shall be entitled within three months after the commencement of this Bill. 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, provided that any granting of such PMLs shall be subject to existing contractual arrangements with farmors.

(*b*) 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.

(8) The Inspectorate shall carry out the bidding process pursuant to the provisions of section 0 of this Bill over any parcels relinquished pursuant to subsection (4) of this section and not granted to marginal field operators pursuant to paragraph (*b*) of subsection (7) of this section.

(9) Any downstream assets existing in OMLs shall be dealt with pursuant to subsection (2) of section 414 of this Bill.

(10) Where a petroleum prospecting licence has been selected pursuant to subsection (3) of this section. the initial exploration period of such licence shall be six years for shallow water and onshore areas

and seven years for deep water areas and frontier acreages.

Assignment, mergers and acquisitions.

242.—(1) Where a licensee, lessee or production sharing or service contractor is taken over by another company or merges, or is acquired by another company either by acquisition or exchange of shares, including a change of control of a parent company outside Nigeria, it shall be deemed to be and treated as an assignment within Nigeria and shall be subject to the terms and conditions of this Bill.

(2) A licensee, lessee or contractor shall not assign his licence, lease or contract, or any part thereof, or any right, power or interest therein without the prior written consent of the Minister.

(3) An application for assignment shall be in accordance with terms and conditions specified within this Bill.

(4) The Minister may consent to an assignment if the proposed assignee is able to show to the satisfaction of the Minister that —

(*a*) the proposed assignee is of good reputation;

(*b*) the proposed assignee has sufficient technical knowledge, experience or financial resources to enable it effectively carry out the responsibilities under the licence, lease or contract which is to be assigned; and

(*c*) where the proposed assignee is to serve as operator, such assignee has proven operating experience or is supported by a competent operator under a technical service agreement with respect to operations to be carried out under the licence, lease or contract which is to be assigned.

(5) Fees prescribed by the Minister in regulations shall be payable for assignment as provided in this section.

(6) The Minister may approve review of the fee, if he is satisfied that the assignment is to be made to an affiliate of a holder.

(7) Any assignment pursuant to this section shall be fully disclosed by the company to the Service within a month of consent by the Minister or in its income tax returns, whichever is earlier.

Grounds for revocation of licence or lease.

243. The Minister on the advice of the Inspectorate may revoke a licence 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 on conditions which the Minister finds to be reasonably comparable to the conditions upon which such concessions are granted to subjects of the country;

(*b*) in the opinion of the Inspectorate, is not conducting operations continuously and in a vigorous and business-like manner and in accordance with good oil field practice;

(*c*) is not fulfilling his obligations under the conditions of his 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 Bill;

(*e*) has failed to furnish any reports on its operations that are prescribed by this Bill or any other Act in force within the stipulated time;

(*f*) has assigned or otherwise transferred its interest in the licence or lease to any person or company without the prior written consent of the Minister as is required by section 194;

(*g*) in the opinion of the Inspectorate, is not implementing its environmental management plan in accordance with good oil field practice; and

(*h*) has not complied with such other specific requirements for which revocation is a consequence of non- compliance under this Bill;

(*i*) has obtained or acquired the licence or lease on the basis of false representations or corrupt practices; or

(*j*) is owned or controlled by a former or present public officer who has obtained the licence or lease through misuse of public office.

Representation permitted before revocation.

244.—(1) Where the Minister receives information from the Inspectorate of any of the acts listed in section 243 of this Bill the Minister shall;

(a) within one month of the matter coming to his knowledge, inform the licensee or lessee in writing of the grounds on which a revocation is contemplated and

(b) invite the licensee or lessee to make any representation to the Minister within 90 days taking into consideration the act in question; and

(c) if the Minister is satisfied with the explanation, the revocation process shall terminate forthwith.

(2) Where, Minister is otherwise dissatisfied with the explanation, the Minister may ask the licensee or lessee to rectify the matter complained of pursuant to subsection (1) of this section within a specified but reasonable period.

(3) Where —

(a) a matter relates to subsection (1) of this section and a licensee or lessee is unable to offer explanation or does not rectify the matter complained of within the specified period, the Minister may revoke the licence or lease;

(b) a matter relates to subsection (2) of this section and a licensee or lessee is unable to disprove the matters under subsection (1) of section 195; the Minister shall revoke the licence or lease.

(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, rent and royalties.

245. There shall be paid in respect of licences, leases and permits under this Bill such royalties, fees and rental as may be prescribed in this Bill and in any regulations made by the Minister pursuant to this Bill.

Damage to protected objects and other property.

246.—(1) In the course of upstream petroleum operations, no person shall injure or destroy any tree or object which is:

(*a*) of commercial value:

(*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 damage or injury.

Compensation.

247.—(1) The amount of compensation payable under section 246 shall be determined by the Inspectorate in consultation with designated persons and representatives of the person whose protected objects, property or land have been damaged and the licensees or lessees, in accordance with regulations made by the Minister on the advice of the Inspectorate.

(2) Where a licensee or lessee fails to pay compensation, the Inspectorate may order the licensee or lessee to make the payment as determined by the Inspectorate within thirty (30) days.

(3) Where the licensee or lessee fails to pay compensation within thirty days in accordance with subsection (2) of this section, the Minister may suspend or revoke the licence or lease.

Environmental quality management.

248.—(1) Every licensee or lessee engaged in upstream petroleum operations shall;

(*a*) comply with any provisions pursuant to section 337 of this Bill or

(*b*) within one year of the commencement of this Bill, or within six months after having been granted the license or lease, submit an environmental management plan to the Inspectorate for approval:

Provided that the requirements under subparagraphs (*b*), (*c*) and (*d*) of subsection (3) of this section shall only be required when approval is sought from the Inspectorate for projects which requires environmental impact assessment as defined under the Environment Impact Assessment Act.

(2) The Licensee's or Lease's environmental management plan shall contain:

(*a*) environmental management policy, objectives, and targets; and

(*b*) commitment to comply with relevant laws, regulations, guidelines and standards;

(3) The environmental management plan shall:

(*a*) establish initial baseline information and a program for collecting further baseline information concerning the affected environment to determine protection;

(*b*) investigate, assess and evaluate the impact of the licensees or lessee's 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 upstream petroleum operations;

(*c*) develop an environmental awareness plan describing the manner in which the applicant intends to inform his employees of any environmental risks which may result from their work and the manner in which the risks may be dealt with in order to avoid pollution or the degradation of the environment; and

(*d*) 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.

(4) The Inspectorate shall approve the environmental management program if:

(*a*) it complies with subsection (1) of this section; and

(*b*) the applicant has the capacity, or has provided for the capacity to rehabilitate and manage negative impacts on the environment.

(5) The Inspectorate, in approving the environmental management program shall take into account the comments of the Federal or State Ministries of Environment.

(6) The Inspectorate may call for additional information from the licensee or lessee and. may direct that the environmental management programme in question be adjusted in such ways as the Inspectorate may require.

(7) The Inspectorate may at any time after it has approved an environmental management programme and after consultation with the holder of the licence or lease concerned, request an amendment of the environmental management programme.

(8) No chemicals shall be utilized for upstream petroleum operations, unless the Inspectorate has granted the applicable permits.

Gas flaring penalties.

249.—(1) Except for gas flared pursuant to a permit obtained from the Minister as provided for under subsection (2) of section 325of this Bill, 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 Ministries and Departments.

250.—(1) When considering an environmental management programme, the Inspectorate shall consult with the Federal Ministry of the Environment and the State Ministries of Environment within which the licence or lease is situated and with any other relevant bodies within which 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.

251.—(1) As a condition for the grant of the licence or lease and prior to the approval of the environmental management plan by the Inspectorate, every licencee 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.

(2) 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.

(3) 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 notice in writing to such licensee or lessee, use all or part of the fund contemplated in subsection (1) of this section to rehabilitate or manage the negative environmental impact in question.

(4) The licensee or lessee must annually assess its environmental liability and if necessary increase its financial contribution to the fund referred subsection (1) of this section.

(5) If the Inspectorate is not satisfied with the assessment and financial contribution contemplated in subsection (4) of this section, the Inspectorate may appoint an independent assessor to conduct the assessment and determine the financial contribution and the licensee or lessee shall be obliged to pay the fees of the assessor and the

determined financial contribution.

Abandonment, decommissioning and disposal.

252.—(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 regulations and implemented by the Inspectorate, provided that such guidelines, standards and regulations shall be in line with the guidelines and standards set by the International Maritime Organisation with respect to offshore petroleum installations and structures.

(2) No decommissioning or abandonment shall take place without the approval of the Inspectorate.

(3) The Inspectorate shall by notice in writing, require a licensee or lessee to provide a plan for the decommissioning and abandonment of a well, project or installation, structure or other asset used in upstream petroleum operations where such decommissioning or abandonment is required by the guidelines or regulation.

(4) A licensee or lessee may request the Inspectorate by written notice to issue a notice pursuant to subsection (3) of this section.

(5) Upon such notice as provided in subsection (3) of this section, the lessee or licensee, shall prior to any decommissioning or abandonment submit to the Inspectorate, a programme setting out:

(*a*) an estimate cost of the proposed measure;

(*b*) details of measures proposed to be taken in connection with the decommissioning of disused installations, structures or pipelines as the case may be;

(*c*) clear descriptions of the methods to be employed to undertake the work programme, which shall be in line with best oil field practices, and environmental standards; and

(*d*) steps to be taken to ensure maintenance of and safeguard health, safety and the environment where any installations, structures or pipelines are to remain disused and in position, or are to be partly removed.

(6) 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.

(7) 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 met.

(8) 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 facility or pipeline in connection with existing or 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 management; 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.

(9) The Inspectorate may recall any licensee or lessee responsible for the decommissioning or abandonment programme with respect to a licence or lease that has expired to carry out its decommissioning and abandonment obligations under this Bill.

(10) 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.

(11) 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 this Bill.

(12) The amounts to be contributed to the abandonment fund shall be based on the abandonment plan presented and accepted pursuant to paragraph (3) of this section or for existing fields at the effective date based on a reasonable estimate of abandonment and decommissioning costs, as adjusted from time to time pursuant to applicable regulations for changes in costs, earning of interest and amendments to the field development plan and the amounts to be contributed to the fund shall be regularly reported and approved.

Upstream Petroleum Regulations.

253.—(1) Subject to the advice of the Inspectorate, the Minister may make regulations pursuant to Section 8 of this Bill, prescribing anything that require regulation for upstream petroleum operations and on such other matters as in the opinion of the Minister may be necessary or desirable to give proper effect to this Bill.

(2) In the absence of regulations at the commencement of production, the Inspectorate shall issue directives to such licensee or lessee regarding the abandonment and decommissioning of oil and gas, or bitumen installations within their licence or lease area, as the case may be.

PART IV — DOWNSTREAM LICENSING

Licensing.

254.—(1) Subject to the provisions of this Bill the Minister shall have power to grant downstream licences, which shall include but not limited to licence for —

(*a*) constructing and operating a process plant, including those for gas processing and gas liquefaction;

(*b*) constructing and operating a petroleum transportation pipeline for crude oil, gas, condensate or petroleum products;

(*c*) constructing and operating a petroleum transportation network;

(*d*) constructing and operating a petroleum distribution network.

(*e*) constructing and operating a refinery;

(*f*) constructing and operating a large scale tank farm ,gas storage facility or depots; and

(*g*) constructing and operating an import or export facility for petroleum or petroleum products.

(2) The Agency shall have power to issue permits for:

(*a*) utilisation of all chemicals used for downstream petroleum operations in Nigeria including chemicals used in the processing, distribution and storage of petroleum products,

(*b*) bulk transport of any petroleum products or compressed natural gas by truck, rail car, lighter, vessel or other form of mobile transport,

(*c*) construction and operation of filling stations and petroleum product retail outlets,

(*d*) construction and operation of a depot or tank farm for small scale storage of petroleum products,

(*e*) the supply of petroleum products or natural gas to the domestic market, and

(*f*) such other matters as are provided for under this Bill and its regulations.

(3) A person shall not conduct any downstream petroleum operations without a licence granted by the Minister or permit issued by the Agency.

(4) Subject to the provisions of this Bill, the Minister shall have the power to grant a project approval certificate for an integrated downstream project requiring several different licenses pursuant to subsection (1) of this section based on an integrated project application pursuant to subsection (2) of section 256 of this Bill.

(5) (*a*) The Agency shall take such measures as appropriate to

create franchise areas for gas processing facilities in Nigeria to support the National Gas Master Plan.

(*b*) A licensee of a gas processing plant pursuant to paragraph (*a*) of subsection (1) of this section, may apply, within five years after the effective date, for a franchise area, where such plant is providing feedstock to a fertilizer, petrochemical or other strategic sector facility at regulated gas prices, provided such gas processing plant has an inlet gas capacity of at least 500 million standard cubic feet per day.

(*c*) Subject to availability of pipeline capacity within such franchise area, producers shall process their contractually uncommitted gas in such plant for a period not exceeding ten (10) years from the commencement of operations of such plant and subject to the initial maximum capacity of such plant. The granting of any franchise area shall be pursuant to applicable regulations and a franchise area shall not be granted unless the Agency has consulted with all the licensees of petroleum prospecting licenses and oil prospecting licences and lessees of petroleum mining leases and oil mining leases in the respective franchise area and the Agency is satisfied that the creation of a franchise area will not deny producers the fair market value for their production.

(6) (*a*) The obligation of the producer to supply the gas is subject to —

(*i*) the franchisee providing transport capacity for such supply;

(*ii*) the obligation of the producer to supply shall be limited by the available customers for its gas.

(*b*) Where the gas processing plant is not in operation within five (5) years from the grant of the franchise license, such a franchise license shall cease to be of effect.

Conditions for licensing permits.

255.—(1) Conditions to be included in a licence issued pursuant to this Bill may require the licensee to —

(*a*) comply with any directions given by the Agency in relation to matters specified in the licence;

(*b*) undertake or refrain from undertaking anything specified in the licence;

(*c*) secure the approval of the Agency prior to undertaking anything specified in the licence;

(*d*) comply with industry codes, standards and market rules;

(*e*) provide any required information related to the licence and permits to the Agency;

(*f*) restrict the use of certain types of information deemed to be sensitive by the Agency, provided that this condition is not in contravention of any law relating to freedom of information that may be in force at the time;

(*g*) prepare and submit to the Agency such information and periodical reports as the Agency may require;

(*h*) operate its licensed and related facilities, if any, according to the standards of a reasonable and prudent operator in the downstream petroleum sector as may be specified by the Agency; and

(*i*) publish terms of access to its facilities as required by the Agency.

(2) Conditions applicable to a licence may cease to have effect or may be modified under circumstances specified in the licence or in regulations made pursuant to this Bill.

(3) Licences granted by the Agency to licensees of the same class shall contain similar conditions, which shall be standard licence conditions for that class and any differences in conditions contained in licences issued to licensees of the same class shall only be for objectively justifiable reasons.

(4) Subject to the provisions of this Bill, the Agency shall have the power to include special conditions specific to a particular licence, provided that such special licence conditions shall be designed to meet

specific circumstances and shall not unduly disadvantage one licensee in relation to another.

(5) The Agency may specify a date after the grant of a licence on which licensed activities shall commence.

(6) The Agency 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 licence;

(*c*) a specific purpose;

(*d*) a specified geographical area, or route; or

(*e*) any combination of the foregoing.

Modification or amendment of a licence.

256.—(1) The Agency may grant, renew, modify or extend licences issued pursuant to this Bill.

(2) An application for the grant, renewal, modification or extension of a licence shall be submitted to the Agency in the form and manner prescribed by regulations issued by the Minister on the advice of the Agency and payment of any prescribed fee, together with such information or documents as may be prescribed in the regulations.

Assignment of licences.

257.—(1) No licensee under this Part shall, directly or indirectly, assign or transfer its licence or any rights or obligations arising from such licence without the prior written consent of the Agency.

(2) An application for the assignment or transfer of a licence shall be made to the Agency.

(3) The Agency may require the applicant to publish a notice of the application in such form and manner within the period as may be prescribed in regulations.

(4) In determining whether a licence may be assigned or transferred, the Agency shall —

(*a*) follow the same procedures with such modifications as may be appropriate in the circumstances;

(*b*) apply the same rules and criteria, and consider the same issues as if the party to whom the licence is being assigned or transferred is itself applying for a new licence; and

(*c*) if required by the regulations, consider the representations made to it by third parties in respect of the application.

(5) The Agency shall, subject to subsection (4) of this section, communicate its refusal or approval of an application for the assignment or transfer of a licence in writing.

(6) The Agency shall advise the applicant of the reasons for its refusal of an application for an assignment or a transfer of a licence, and specify the period within which further representations may be made by the applicant or by third parties in respect of the application.

(7) The Agency shall grant its consent to an assignment or transfer of a licence, subject to such conditions as it may consider appropriate.

Surrender of a license.

258.—(1) A licensee may apply to the Agency to surrender its licence where —

(*a*) the licensed activity is no longer required;

(*b*) in the opinion of the licensee, the licensed activity is not economically justifiable;

(*c*) the licensee has failed to commence licensed activity within the time frame specified in the licence; or

(*d*) another qualified person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Bill.

(2) A licensee applying to surrender its licence shall, where applicable, comply with all requirements of the law in respect of relinquishment and decommissioning of installations and reclamation of land.

(3) Where the licensee has commenced activities and has on-going operations, it shall, unless a shorter period is stipulated in the licence, give the Agency at least twelve months' notice in writing of its intention to cease its activities.

Revocation or suspension of licence or permit.

259. The Agency may suspend or revoke a licence where —

(*a*) the licensee has breached or continues to breach a condition of the licence, a regulation, or a provision of this Bill; and

(*b*) on the expiry of a six months' notice of intention to suspend or revoke the licence issued by the Agency, the licensee fails to remedy the breach of the conditions of the licence.

Grounds for revocation of licences/ Permits.

260.—(1) A licence may be revoked by the Minister —

(*a*) where the licensee —

(*i*) becomes insolvent or bankrupt;

(*ii*) enters into an agreement or composition with its creditors;

(*iii*) goes into liquidation, except as part of a scheme for an arrangement or amalgamation.

(*b*) where the licensee has assigned or transferred the licence without approval of the Minister;

(*c*) where a licensee fails to commence activities within the period of time prescribed in the licence; or

(*d*) where the licensee is in breach of the conditions of his licence or the provisions of this Bill or any regulation made in pursuance of this Bill.

(2) A permit may be revoked by the Agency —

(*a*) where the permit holder —

(*i*) becomes insolvent or bankrupt;

(*ii*) enters into an agreement or composition with its creditors;

(*iii*) goes into liquidation, except as part of a scheme for an arrangement or amalgamation.

(*b*) where the permit holder has assigned or transferred the permit without approval of the Agency;

(*c*) where a permit holder fails to commence activities within the period of time prescribed in the permit; or

(*d*) where the permit holder is in breach of the conditions of his permit or the provisions of this Bill or any regulation made in pursuance of this Bill.

Register of licences and permits.

261.—(1) The Agency shall establish, maintain and make publicly available a register of all licences issued, revoked, suspended, surrendered or withdrawn and all modifications and exemptions granted for the purposes of this Bill.

(2) The officer registering the issuance of a licence or any modifications or exemptions as contemplated under subsection (1) of this section shall require an acknowledgment of the receipt of a copy of the licence modification or exemption in such form as may be prescribed.

Preparation of licences, permits and duplicates.

262.—(1) All licences, permits or exemptions granted by the Agency under this Part shall be prepared in duplicate, and a copy given to the licensee or permit holder while the Agency retains the other copy.

(2) The Agency shall ensure that licences and permits are serially numbered and bound up in a book and also made available on the website of the Agency.

(3) The Agency shall not prepare any licence or permit until the requisite fees have been paid by the licensee or permit holder.

Register of memorials.

263. The Agency shall enter in the appropriate register a memorial of the extensions, transfers, surrenders, revocations, exemptions, forfeitures, change of addresses, change of names or any other matter affecting the status of or any interest in any licence registered under this Part together with the date of such entry.

Effect of registration.

264. The registration of any licence or permit registered under this Part shall be conclusive evidence —

(*a*) that the rights described in the licence or permit are vested in the person named therein as the licensee or permit holder; and

(*b*) of the conditions and other provisions binding on the licensee or permit holder.

Public access to registers.

265.—(1) The registers required under sections 261 and 263 of this Bill shall be accessible to the public and shall be available on the website of the Agency.

(2) On 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 registers referred to in subsection (1) of this section.

Disclosure of confidential or other information.

266.—(1) Where:

(*a*) any employee of the Agency obtains information relating to the financial affairs of any licensee, or to any commercial secret in the course of duty or otherwise howsoever; and

(*b*) any other person obtains such or other information required to be kept confidential under the provisions of this Bill from any employee of the Agency, the person shall not make use of such information, nor 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 required to be kept confidential:

(*a*) for the purpose of legal proceedings under this Part or any other law:

(*b*) to the extent that it may be necessary to do so for the purpose of this Bill or any other law; or

(*c*) to another employee of the Agency.

(3) An employee of the Agency shall not, for personal gain, make use of any confidential information acquired in the course of duty or otherwise howsoever for a period of five years after the date on which the person ceases to be an or employee of the Agency.

Contravention and enforcement of licence and permit conditions.

267.—(1) Where it appears to the Agency that a licensee is contravening, has contravened, or is likely to contravene any of the conditions of the licence, the Agency 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 or threatened contravention of the licence.

(2) The notice shall —

(*a*) specify the actual or potential contravention:

(*b*) direct the licensee to do, or not to do, such things as it may specify;

(*c*) specify the remedy and the period of time for compliance; and

(*d*) notify the licensee of its intention to issue an enforcement order.

(3) The licensee and any other interested party shall be entitled to make representations against or in support of the enforcement notice within the date specified in the notice.

(4) If a licensee fails to comply with a notice served pursuant to subsection (1) of this section, the Agency may issue an enforcement order.

(5) Failure to comply with an enforcement order shall constitute an offence under this Bill.

(6) The Agency may not issue an enforcement order where —

(*a*) the licensee is able to demonstrate to the satisfaction of the Agency that it is not contravening or about to contravene a condition of a licence; or

(*b*) the licensee has ceased to contravene a condition of a licence, provided that if the earlier contravention was deliberate, the Agency may, at its discretion, impose an appropriate penalty as determined by regulations made pursuant to this Bill.

(7) If the licensee fails to comply with the enforcement order, the Agency may institute legal proceedings at the Federal High Court against the licensee to ensure compliance.

(3) Subject to the regulations made pursuant to this Bill, the Agency may adjust from time to time the penalty referred to in subsection (6) (*b*) of this section to reflect current rates of inflation.

Downstream Petroleum Regulations and Fees.

268. Subject to the advice of the Agency, the Minister may make regulations pursuant to Section 8 of this Bill, prescribing anything required to be prescribed for downstream petroleum operations and on such other matters as in the opinion of the Minister may be necessary or desirable to give proper effect to this Bill, including any fees applicable to downstream petroleum operations.

Deregulation.

269. The pricing of petroleum products in the downstream product sector is deregulated to ensure —

(*a*) a market related pricing;

(*b*) adequate supply of petroleum product;

(*c*) removal of economic distortions;

the creation of fair market value for petroleum products in the Nigerian economy.

Refining.

270. Every holder of a refining licence shall have the right to:

(*a*) supply to the domestic market refined petroleum products at fair market value or export petroleum products, or both;

(*b*) purchase crude oil, natural gas and other products at fair market value ;

(*c*) own any and all storage facilities integral to the refinery.

Open Access.

271.—(1) Any company with the required licence shall have access to facilities which are designated as regulated open access facilities by the Agency:

(*a*) in the manner prescribed by Sections 298, 299 and 300 and other provisions of this Bill for pipelines, pipeline networks and distribution networks and for other open access facilities as prescribed by regulations under this Bill; and

(*b*) on commercially viable terms as may be determined by the Agency from time to time.

(2) The Agency has the power pursuant to this Bill and applicable regulations to designate downstream petroleum operations facilities, including but not limited to the under-listed facilities as regulated open access facilities:

(*a*) Pipelines for natural gas, crude oil, condensates and petroleum products;

(*b*) Gas transportation networks;

(c) Bulk storage of crude oil and petroleum products,

(d) Terminals, jetties and loading facilities;

(e) Gas processing plants, gas conditioning plants and natural gas liquids extraction plants; and

(f) such other facilities as are designated open access facilities pursuant to applicable regulations.

(3) Access to any regulated open access facilities shall take into consideration the commitments for existing capacity in such facilities prior to the sharing of remaining unused capacity.

Independent facilities.

272.—(1) Any facility licensed pursuant to Part IV of this Bill which is not designated as an open access facility pursuant to subsection (2) of section 271 shall be considered an independent facility.

(2) The independent facilities referred to in subsection (1) of this section shall be subject to the regulation of the Agency and in particular the Agency shall determine the tariff methodology and tariff for gas distribution networks and may, pursuant to an application under subsection (14) of section 273, determine the tariff methodology, and tariff for the use of such other independent facilities for the purposes of Part V of this Bill.

(3) An applicant for a licence or a licensee may request the Agency to designate a facility to be independent for a certain period of time and the Agency may grant such designation for a time specified by the Agency where the Agency considers that such designation does not hinder access unnecessarily or is in the national interest.

(4) Subject to Sections 301, 302 and 303 of this Bill, any licensee of an independent facility, which is not a holder of a gas distribution network licence, is free to contract for the use of the independent facility with any party under such terms and conditions as the parties agree.

(5) A gas distribution network shall be an independent facility pursuant to the provisions of this Bill.

273.—(1) The Agency shall regulate the tariff methodologies and oversee tariffs for all open access facilities pursuant to subsection (2) of section 271 of this Bill, as well as for gas distribution networks.

Tariff Methodology.

(2) Tariffs referred to in subsection (1) of this section shall be determined by the Agency for each open access facility and for gas distribution networks according to one or more tariff methodologies adopted by the Agency 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*) avoid cross-subsidies among different categories of consumers.

(3) (*a*) In establishing tariff methodologies, rules and procedures shall be developed for different types of use of the facility, such as:

(*i*) use of all or a part of the facility,

(*ii*) commitments for use of firm capacity, interruptible services or occasional services,

(*iii*) calculation methods for various tariffs for the facility depending on the type of use of the facility, and

(*iv*) such other rules and procedures as may be prescribed by regulations.

(*b*) The tariff methodologies 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) Subject to the provisions of subsection (14) of section 273, in determining tariff methodologies pursuant to subsection (2) of section 272, the Agency shall have the power to establish tariff methodologies for independent facilities that reflect the terms and conditions of a contract between operators or between an operator and one or more eligible customers of such independent facilities, where in the opinion of the Agency such tariff methodologies are reasonable.

(5) Prior to approving a tariff methodology the Agency shall give notice in at least two newspapers with nationwide circulation and its website 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 Agency shall conduct for discussion of that methodology.

(6) Prior to the establishment of the tariff methodology, the Agency 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.

(7) (*a*) The Agency shall fix a date upon which the determined tariff methodology shall come into effect and it shall cause the notice of that day to be published in at least two national newspapers and its website.

(*b*) Subsequent to the publication of the determined tariff methodology, owners and intending users of facilities may enter into agreements about the details for the calculations and the implementation of the tariffs from time to time and shall notify the Agency within thirty days of any such agreements.

(8) If it appears to the Agency that a tariff methodology and tariffs for open access facilities and gas distribution networks should be changed, it shall conduct a public inquiry on the proposal to change the methodology and tariffs and shall give notice of the public hearing in accordance with the terms of subsection (5) of this section, indicating the period within which any person may make representations to the Agency in connection with the proposal.

(9) The Agency may confirm the proposed changes to tariff methodology and tariffs for open access facilities and gas distribution networks after taking into account any objections or representations received in response to notices issued under subsection (8) of this section and shall comply with the provisions of subsection (7) of this section.

(10) 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.

(11) Every downstream operator shall display at its office a current copy of the tariff methodology applicable to such operator.

(12) A downstream operator shall not pass the costs of any fines or penalties incurred under this Bill or any other law on to the consumers as an operational cost

(13) For new regulated open access facilities or expansion of existing facilities which are designated open access facilities by the Agency, which are in operation prior to 2023, tariffs shall be determined based on:

(*a*) a capital component based on the estimated life of the facility not exceeding 30 years, with an equity rate of return not less than 5% over typical rates of Organisation for Economic Cooperation and Development (OECD) countries or similar globally accepted benchmark; and

(*b*) recovery of all operating costs, depreciation, interests, taxes, other required payments and storage, line and process losses, as well as other allowed costs pursuant to regulations.

(14) Where parties seeking to agree a tariff are unable to do so within 120 days of commencing negotiations, the Agency shall upon the application of either party set the tariff which shall apply to the use of the facility in accordance with the principles established under this Bill.

National Strategic Stock.

274. The Agency shall:

(*a*) administer and ensure compliance, distribution and storage of the national strategic stocks of petroleum products in accordance with regulations made by the Minister on the advice of the Agency;

(*b*) determine the amount to be charged as a levy for the financing of the national strategic stock, which shall form part of the retail price of each petroleum product; 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.

Price Monitoring of Petroleum Products.

275.—(1) The Agency shall monitor —

(*a*) the prices of petroleum products applying in the domestic market to ensure that there is no pricing collusion or manipulation; and

(*b*) any activity of any operator in the downstream petroleum sector that, in the opinion of the Agency, is likely to adversely affect the prices of petroleum products.

(2) In monitoring the prices of petroleum products, the Agency shall coordinate with other relevant authorities to —

(*a*) inspect the metering of pumps and other facilities at retail outlets to ensure they conform to existing national standards, to the extent that any distortion of such metering is likely to affect the prices of petroleum products;

(*b*) inspect all facilities at retail outlets to ensure that the products conform to such quality standards as set by the Agency, to the extent that non-compliance is likely to affect the prices of petroleum products; and

(*c*) inspect any facility used in the storage and transportation of petroleum products in whatever 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.

Offences.

276.—(1) A person shall not —

(*a*) obstruct or assault any officer of the Agency or any person authorised by the Agency in the exercise of the powers conferred on to the Agency under this Bill;

(*b*) refuse any officer of the Agency 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 Agency

(*c*) refuse to acknowledge the receipt of any summons by the Agency 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 Agency in the execution of the officer's duties under this Bill.

(2) A person or company shall not —

(*a*) engage in any downstream petroleum operations without a valid licence or permit;

(*b*) unlawfully remove, destroy or damage any facilities used for downstream petroleum operations;

(*c*) furnish a statement or incomplete information calculated to mislead or wilfully delay or obstruct the Agency and its officers in the exercise of their duties;

(*d*) fail to cooperate with the Agency in its investigation of any suspected crime or corrupt practice:

(*e*) discriminate among third parties in the allocation of capacity, access to regulated open access facilities and payment of 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.

277.—(1) Any person who violates the provision of section 276 of this Bill shall be liable to a fine which shall be prescribed by the Minister in regulation made pursuant to this Bill.

(2) Where an offence has been committed under the provisions of paragraph (*b*) of subsection (2) of section 276, the affected company or person shall discontinue the operations of the affected facility until any damage, alteration, malfunction or loss has been rectified and all safety issues have been resolved.

Dispute Resolution.

278. The Agency shall be responsible for mediating in disputes between downstream operators or between downstream consumers and downstream operators in the downstream petroleum sector in respect of all matters to which this Bill pertains and in accordance with the provisions of this Bill.

B: SPECIFIC PROVISIONS ON DOWNSTREAM LICENCES

Transportation Pipeline Licence.

279. Notwithstanding the provisions of Oil Pipelines Act, the Minister may grant a transportation pipeline licence, which shall include the right to construct and operate a new transportation pipeline or operate an existing transportation pipeline for oil, gas, condensates or petroleum products within a route as defined in the licence.

Duties of a transportation pipeline licensee.

280. A transportation pipeline licensee shall undertake the activities contemplated by the transportation pipeline licence in a manner best suited to comply with the obligations to:

(*a*) construct, operate and maintain efficient, 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 transportation pipeline licence.

281. In addition to such conditions as may be imposed by the Minister under the terms of this Bill, a transportation pipeline licensee shall —

(*a*) conduct its licensed activities safely and reliably in compliance with any law then in force and prescribed health and safety regulations made pursuant to this or any other Act;

(*b*) 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 Bill and any applicable law; and

(*c*) mark, maintain and secure the boundaries of any pipelines and associated infrastructure constructed under the terms of its license under any applicable law.

Transportation Network Operator Licence.

282. The Minister may grant a transportation network operator license authorizing the conduct of activities specified in the license, including:

(*a*) the construction of a pipeline network, and the transportation of gas through such network;

(*b*) balancing the inputs and off takes from the transportation network;

(*c*) providing third party access to the transportation network; and

(*d*) charging for the use of the transportation network based on tariff methodologies and tariffs approved by the Agency.

General Duties of a transportation network operator.

283. The 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*) manage 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 pursuant to approved tariff methodologies and tariffs; and

(*e*) enter into agreements with transportation pipeline licensees, distributors, and, where appropriate, wholesale customers, for connection to and operation of the transportation network;

(*f*) develop the Network code for own network in line with guidelines for the network code by the Agency.

Rights of a transportation network operator.

284. Subject to the provisions of this Bill and to facilitate the conduct of its licensed activities, the Minister may grant to a transportation network operator —

(*a*) the power to request and obtain from all users, information required to operate the nominations and balancing mechanism, to operate the network or to facilitate competition;

(*b*) the right to recover, on the basis of an invoice, expenses reasonably incurred in undertaking its licensed activities subject to any restrictions or conditions imposed by the Agency with respect to both the level and structure of its charges; and

(*c*) the right to purchase gas for its own operations for purposes such as testing and commissioning of facilities, for compression purposes and for line fill.

Conditions applicable to a transportation network operator licence.

285. In addition to such conditions as may be imposed by the Agency pursuant to this Part, a transportation network operator licence may include an obligation to develop mutually agreeable market rules among stakeholders in accordance with the provisions of this Bill.

Gas Supply permit.

286.—(1) The Agency may issue a permit to supply gas into the downstream petroleum sector.

(2) A producer of gas intending to supply gas into the downstream sector shall be a qualified person within the meaning of the provisions of this Bill and shall be entitled to apply for and be issued a gas supply permit by the Agency.

(3) A gas supply permit shall authorize the licensee ("supplier") to sell and deliver gas to purchasers of gas at any location in Nigeria.

General Duties of a Gas Supplier.

287. A supplier shall undertake the activities contemplated by the supply licence in a manner best calculated to comply with the obligations to:

(*a*) provide a reliable supply of gas to purchasers with which the supplier has entered into gas purchase and sale contracts; and

(*b*) do nothing that, in the opinion of the Agency, may prevent, restrict or distort competition.

Rights of a Supplier.

288.—(1) Subject to the provisions of this Part and to facilitate the conduct of its activities, the Agency may grant to a gas supply permit holder specific rights and powers which may include —

(*a*) the right to terminate gas supply to a customer in the event of non-payment, following a notice period and disconnection procedure specified in prescribed regulations;

(*b*) the right to recover from a customer, on the basis of an invoice, and subject to any restrictions or conditions imposed by the Agency with respect to both the level and structure of charges of the permit holder:

(*i*) all costs reasonably incurred in the supply of gas, inclusive of the cost of gas, the cost of transportation and distribution of gas; and

(*ii*) permit fees.

(*c*) the right to enter a premises to remove meters, for the purpose of reading meters, to test metering equipment and to disconnect customers, such entry to be undertaken in accordance with a metering code which shall be issued by the Agency.

(2) The sale of gas under a gas supply permit shall be subject to the provisions of this Bill.

Conditions applicable to a supply licensee.

289. In addition to such conditions as may be imposed by the Agency pursuant to this Part, a gas supply permit holder shall —

(*a*) 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; and

(*b*) comply with customer protection measures in accordance with the provisions of this Bill.

Gas Distribution Licence.

290.—(1) The Minister may grant a gas distribution licence conferring exclusive right to construct and operate a gas distribution system and to distribute gas within a local distribution zone.

(2) The holder of a distribution licence shall be entitled to apply for, hold and operate a licence for the exclusive supply of gas within the local distribution zone to retail customers.

(3) In considering an application for a gas distribution licence, the Agency shall consider the potential demand for its use.

(4) The geographical limits of each local distribution zone shall be defined in the relevant distribution licence.

Obligations of a distribution licensee.

291. The holder of a gas distribution licence shall undertake the activities contemplated by the gas distribution licence in a manner best calculated to comply with the obligations:

(*a*) to construct and operate an efficient distribution network for the safe and reliable conveyance of gas;

(*b*) to purchase gas as a wholesale customer at the most economic price and to ensure a reliable and efficient distribution of such gas to customers on request;

(*c*) subject to safety and network capacity constraints, to distribute gas on request to any retail customer capable of paying 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 or any other Act;

(*e*) to connect all retail 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 Agency 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 Bill and any regulation made in pursuance of this Bill; and

(*i*) to do nothing to prevent, restrict or distort competition.

Rights of the Distribution Licensee.

292.—(1) Subject to the provisions of this Bill and in order to facilitate the conduct of its licensed activities, the Minister may grant the holder of a distribution licence the right to:

(*a*) enter the premises of a retail customer in order to read meters, to test metering equipment or to disconnect customers and remove meters;

(*b*) 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 Agency 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 amount paid to Agency as fees.

Conditions applicable to a gas distribution licensee.

293.—(1) In addition to such conditions as may be imposed by the Minister pursuant to this Bill, or that may be prescribed by regulations issued pursuant to this Bill, each gas distribution 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 Bill or any other act;

(*b*) having due regard to the effect of its licensed activities on the environment, comply with any requirements for environmental protection, management, and restoration under this Bill and any law in force;

(*c*) mark, maintain and secure the boundaries of the pipelines constructed as prescribed;

(*d*) comply with customer protection measures set out in this Bill.

(2) The gas distribution licensee shall connect customers within its local distribution zone in the manner prescribed by regulations issued pursuant to this Bill, provided that it is economical and practical to do so.

(3) Regulated customer prices shall reflect:

(*a*) the reasonable costs incurred in the purchase of wholesale gas;

(*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 distributor.

(4) The Agency shall settle any disputes that may arise in relation to the distribution network.

Arrangements for gas distribution.

294. The holder of a gas distribution licence shall consult stakeholders on proposed gas development projects within its local distribution zone and shall duly consider all representations received.

Network Code.

295.—(1) In consultation with licensees and other stakeholders, the Agency shall establish the guidelines for network code governing the operation of the downstream gas distribution network or gas transportation network.

(2) The guidelines for the network code shall include —

(*a*) a connection policy, standard terms for connection to the transportation network and distribution network, and a statement of the connection charging methodology;

(*b*) 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; and

(*c*) with respect to gas transportation networks, 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 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;

(*d*) 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;

(*e*) the structure of charges and the applicable tariff methodologies and tariffs charged for using the transportation network and distribution networks;

(*f*) where required for gas transportation networks, arrangements for balancing the wholesale gas being conveyed;

(*g*) registration arrangements;

(*h*) metering, allocation and settlement arrangements; and

(*i*) governance arrangements.

(3) The Agency shall make copies of the guidelines for the network code available to interested parties.

Wholesale gas market.

296.—(1) Following consultations with interested stakeholders, the Agency may request the Minister to issue regulations:

(*a*) defining the class or classes of customers that, from time to time, shall constitute wholesale customers under this Bill, provided that any holder of a gas distribution licence shall be classified as a wholesale customer; and

(*b*) specifying the qualifying criteria for such classification.

(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.

297. Wholesale customers shall be entitled to secure gas from any gas supply permit holder.

Third party Access.

298.—(1) A person shall be permitted access to an open access transportation pipeline, an open access transportation network, as the case may be, for the purpose of having gas transported to points of consumption, subject to compliance with the prescribed terms and conditions for access stated in the Network Code of the particular pipeline.

(2) The Agency shall be primarily responsible for the development of guidelines for the Network Code that shall set out standard terms and conditions for connection to, access and use of the transportation networks.

(3) Where a transportation pipeline is isolated from the main transportation network, the Agency shall develop separate terms of

access for such isolated transportation pipeline.

Access to gas transportation network.

299.—(1) Third party access to the open access gas transportation 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 Agency;

(*d*) on the condition that the applicant requiring access is or becomes a party to and undertakes to comply with the applicable gas network code; and

(*e*) subject to the pricing principles in sections 301 and 305 of this Bill.

(2) Connection agreements may be entered into between:

(*a*) a gas transportation pipeline licensee and a gas transportation network operator;

(*b*) a distributor and the transportation network operator, when a gas distribution network connects to the main gas transportation network; or

(*c*) a supplier and a transportation pipeline owner or transportation network operator.

Disputes in respect of third party access.

300.—(1) Disputes in respect of third party access shall be mediated by the Agency.

(2) Any person not satisfied with the mediation made by the Agency in connection with third party access may seek redress at the Federal High Court.

Pricing and revenues of licensees of independent facilities.

301.—(1) Where the Minister on the advice of the Agency determines with respect to a licensed activity, which is not conducted through an open access facility:

(*a*) that a particular licensed activity, is a monopoly service or operation;

(*b*) that competition has not yet developed to such an extent as to protect the interests of users, buyers, customers or suppliers; or

(*c*) that a particular licensee is a dominant provider or is in a dominant position,

then the Agency shall have the power to regulate the prices charged or the revenues earned by licensees in respect of such activities, in a manner consistent with the Agency's duties under this Bill.

(2) The Agency shall consult with licensees, industry participants and proposing stakeholders before undertaking a price review or determining a methodology for regulating prices and revenues earned by licensees providing monopoly or dominant services.

(3) Any pricing methodology or methodology for determining revenues developed by the Agency shall be approved by the Minister.

Gas Pricing Principles.

302. In the exercise of its powers to regulate prices charged for downstream gas and the revenues earned by downstream gas licensees pursuant to Section 301, the Agency 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*) prices shall not discriminate 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.

303.—(1) Subject to price or revenue regulations issued pursuant to this Bill, all licensees in the downstream gas sector, which are not licensees of open access facilities, shall where instructed by the Agency pursuant to the provisions of section 301:

(*a*) propose tariffs and tariff methodologies for the approval of the Agency, prior to the application of such charges; and

(*b*) impose tariffs in accordance with such approval.

(2) Tariffs charged for the use of the gas transportation network shall reflect:

(*a*) efficient investment and capital costs;

(*b*) efficient operating and maintenance expenses; and

(*c*) a reasonable return to licensees on their investments.

304.—(1) Terms and conditions of gas supplies between a supplier and a wholesale customer shall be negotiated directly between the parties on an arm's length basis. Wholesale Gas Prices.

(2) Any supplier or wholesale customer may inform the Agency that conditions pursuant to Section 301 apply to certain gas supplies.

(3) Where the Agency receives information pursuant to subsection (2) of this section or subsection (2) of section 307, the Agency shall have the power to investigate such conditions and request the relevant information from the respective suppliers, wholesale or retail customers.

(4) The information provided to the Agency by the suppliers, wholesale or retail customers 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 person or institution, except the Service, for a period of five years commencing from the date of the submission of the information to the Agency.

(5) If the supplier, wholesale or retail customer without reasonable excuse fails to provide the required information within fourteen days, the supplier, wholesale or retail customer shall be liable to pay a penalty not exceeding ₦1,000,000 per day until he provides the information. Where the suppliers, wholesale or retail customers knowingly —

(*a*) 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.

Transitional gas pricing arrangements.

305.—(1) Where the Agency finds it imperative, a transitional gas pricing plan setting out temporary or transitional pricing arrangements for the strategic sectors that allow for a gradual transition towards pricing arrangements that comply with the pricing principles outlined in section 302 of this Bill shall be introduced and implemented by the Agency.

(2) The transitional pricing plan shall be formulated by the Agency in consultation with the Ministers in charge of petroleum resources, finance, industries and power and steel, and with gas producers, electricity producers, the National Electricity Regulatory Commission and other key stakeholders.

(3) Where the Agency considers it necessary in order to facilitate the implementation of the transitional pricing plan, the Agency may impose special temporary licence conditions on licensees during the transitional period, which conditions shall not disadvantage any licensee in relation to another licensee of the same class.

Determinations for downstream gas and petroleum products.

306.—(1) The Agency shall investigate any matter of suspected anti-competitive behaviour and make necessary determinations thereon with respect to downstream gas and petroleum products.

(2) The Agency may impose penalties if the licensee is adjudged to have conducted its activities in a non-competitive manner.

(3) A determination made by the Agency in respect of any matter within this Part shall be legally binding and may be appealed against at the Federal High Court.

Consumer Protection with respect to gas distribution.

307.—(1) In order to protect the interests of consumers, the Minister on the advice of the Agency may issue regulations requiring gas suppliers or gas distributors, as the case may be:

(*a*) to publish their terms of supply or distribution;

(*b*) to establish hearings 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 necessary; and

(*d*) such other provisions as are necessary to protect natural gas customers.

(2) Any representative of the retail customers, as provided for in regulations, may inform the Agency that the purchase price for gas paid by the holder of the gas distribution licence or retail customer requires review pursuant to the provisions of subsection (3) of section 304.

Provision of service to customers.

308. The Agency may, at its discretion and at such time or times as it deems appropriate, 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 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 licence to distribute or supply gas to customers; and

(*c*) in such other circumstances as the Agency may deem appropriate, provided that any reasonable additional costs associated with the obligation to act as distributor or supplier of last resort will be recoverable through appropriate charging arrangements agreed with the Agency.

Public Service Obligations.

309. The Minister may issue regulations, on the advice of the Agency 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.

Public Service Levy.

310.—(1) Where the Agency considers that it is in the wider public interest, the Agency shall advise the Minister to issue regulations providing for the recovery of any additional costs incurred in complying with the public service obligations, through a public service levy, which may be imposed on customers.

(2) The amount of and mechanism for the collection and remittance of the public service levy imposed on each customer shall be set out in guidelines issued pursuant to this section.

Competition and market regulation for petroleum products.

311.—(1) A licensee or permit holder or any other person having the ability to influence the terms and conditions on which activities are performed and the price at which petroleum products are supplied shall not —

(*a*) make it a condition for the provision or supply of a product or service that any person acquiring such a product or service will 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 Agency deems anti-competitive

(2) Where the Agency identifies anti-competitive activities or conditions, in relation to petroleum products, the provisions of section

306 shall apply.

312.—(1) Notwithstanding any other provision of this Bill or any other enactment, the Agency shall have the exclusive authority to prevent and take action against anti-competitive behaviour in the downstream petroleum sector.

Power of the Agency to determine abuse of market power.

(2) Where in the opinion of the Agency there is, or may be, or there exists a likelihood of, anti-competitive behaviour and in particular an abuse of market power, the Agency shall apply the provisions of section 306.

(3) Nothing in subsections (1) and (2) of this section shall be construed to preclude or restrict the right of the Agency or any person to seek an injunction against any conduct prohibited in this Part.

(4) Any person who wishes to proceed to court or to arbitration for the enforcement of any of the provisions of this Part shall first notify the Agency within 30 days.

(5) In the exercise of its powers under subsection (1) of this section, the Agency 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 Agency deems relevant.

313.—(1) The Agency shall have responsibility to monitor the state of the downstream petroleum sector for the purpose of encouraging a fair market by (without prejudice to the generality of the foregoing):

Competition and Market Monitoring.

(a) determining whether the downstream gas sector is ready for an increased level of competition in retail and supply services in order that it may advise the Minister to issue regulations which allow for increased level of competition in retail and supply services;

(b) determining whether there is a need for an organised market for wholesale gas in order that it may take the relevant steps pursuant to this Bill to develop a wholesale market arrangement;

(c) assessing 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) determining whether there is any anti-competitive activity being carried on, in which case the Agency will be required to exercise its powers under this Bill to prevent the continuance of such activity;

(e) determining any pre-conditions and any transitional arrangements required for any services to be offered competitively.

(2) To enable the Agency to discharge its responsibilities under this Bill and in particular, to determine whether there is, or may be, an abuse of market power, the Agency shall have power to:

(a) require and compel the disclosure of information from licensees; and

(b) undertake inquiries and investigations.

(3) Where, in the opinion of the Agency there has been an abuse or a threatened abuse of market power, the Agency 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 Agency shall publish a notice —

(a) specifying the actual or threatened contravention;

(b) directing the company or person to whom the notice is issued, to do or desist from doing 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 N50,000,000.00 provided that such fine shall not exceed 10% of the annual turnover of the company or person for the preceding year.

(5) The Agency 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) Where the company or person to whom the notice is issued fails to comply with a notice under subsection (2) of this section, the Agency 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 N50,000,000.00 and the revocation of the relevant licence or permit where that company or person 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 Agency 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, and it is found that such threat or threat of abuse was deliberate, the Agency may impose an appropriate penalty which shall be prescribed in regulations issued pursuant to this Bill.

Offences and Penalties.

314.—(1) A person shall not —

(*a*) cause damage to any infrastructure, plant or equipment which is part of a downstream facility, including fittings, meters, apparatus or other equipment;

(b) alter the operation of any meter, equipment or apparatus including those used for measuring the quantity or quality of oil, gas, condensates or petroleum products;

(c) prevent any meter, equipment or apparatus including items used for measuring or registering the quantity of oil, gas, condensates or petroleum products 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 of the offences listed in subsection (1) of this section shall be liable to —

(a) pay a penalty not exceeding ₦100,000,000.00; and

(b) reimburse the licensee for any oil, gas, condensates or petroleum products illegally taken and for any damage to the licensee's equipment, provided that where the person is unable to pay the penalty or to reimburse the licensee, the person 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 10 years and not more than five years unless, the officer proves to the strictest standard that all reasonable precautions were taken and due diligence exercised to prevent the commission of the offence;

(3) A person convicted for negligently committing any of the offences listed in subsection (1) of this section shall be liable to:

(a) pay a penalty not exceeding ₦2,000,000.00; and

(b) reimburse the licensee for any gas illegally taken and for any damage to the licensee's equipment, provided that where such person is unable to pay the penalty or to reimburse the licensee, the person 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 the person or officers functions in that capacity and to all circumstances, the officer proves that all reasonable precautions were taken and due diligence was exercised to prevent the commission of the offence.

(4) Where an offence has been committed under subsection (1) of his section, the supplier may, discontinue the supply of oil, gas, condensates or petroleum products until any damage, alteration, malfunction or loss has been rectified and all safety issues resolved.

Prohibition on the wrongful use of equipment.

315. A licensee shall not 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 Agency or any other lawful or duly empowered Agency, assist the Agency or such lawful authority, in preventing the commission or attempted commission of any criminal offence under this Bill or any other laws in force in the Federal Republic of Nigeria, including but not limited to those affecting the public revenue and the preservation of national security;

(*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 Agency or other lawful authority.

Penalty not prescribed.

316. Where no specific penalty is prescribed for any offence under this Part, a person who contravenes any of the provisions of this Part or any regulations issued pursuant to this Part commits of an offence and liable on conviction —

(*a*) as a first offender, to:

(*i*) a fine not exceeding ₦2,000,000.00 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.

(*b*) for subsequent convictions, to:

(*i*) a fine not exceeding ₦10,000,000.00 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*) to both fine and imprisonment.

Penalty for refusal to furnish return or supply information.

317. Any person who:

(*a*) fails or refuses to furnish a return or to supply information to the Agency or any other duly empowered lawful authority at the time and in the manner prescribed;

(*b*) who furnishes a false or incomplete return;

(*c*) supplies false or incomplete information; or

(*d*) wilfully delays or obstructs the Agency, its officers, an inspector or police officer in the exercise of the powers or duties conferred or imposed on the Agency under this Bill; or

(*e*) conceals, fails or refuses, without lawful cause, to supply information required by the Agency or any duly empowered lawful authority at the time and in the manner prescribed or when required to do so, commits an offence and liable on conviction to a fine not exceeding ₦20,000,000.00 or to imprisonment for a period not exceeding one year or to both fine and imprisonment.

C: DOMESTIC GAS SUPPLY OBLIGATION

Domestic Gas Management.

318.—(1) The Inspectorate and Agency shall regulate the gas sector, in accordance with the National Master Plan for Gas ("National Gas Master Plan") this Bill and policies of the Government from time to time.

(2) The National Gas Master Plan referred to in subsection (1) of this section shall be the plan updated by the Minister 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, 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 Government from time to time, within the domestic economy for a specific period of time, not exceeding twenty years.

(4) The Inspectorate shall allocate the Domestic Gas Supply Obligation to every petroleum mining lessee in accordance with the Domestic Gas Demand Requirement generated by the Agency.

(5) The Agency shall require the Domestic Gas Aggregator or its successor entity to establish an aggregate price for gas ("Aggregate Gas Price") for only the volume of the Domestic Gas Demand Requirement, which shall be based on the weighted average of the purchase prices and supplied volumes of the purchased gas, and shall be used by the Domestic Gas Aggregator or its successor entity as a basis for gas supply to the domestic market.

(6) The Agency may mediate on all issues of conflict between purchasers and suppliers.

(7) Any person dissatisfied with any determination made by the Agency in connection with subsection (6) of this section may seek redress at the Federal High Court.

(8) Upon the commencement of this Bill a transitional pricing regime pursuant to section 313 of this Bill shall apply to the strategic sectors, based on the following characteristics:

(*a*) the maximum price at the inlet for each strategic sector customer shall be the transitional price at the marketable gas delivery point plus transportation costs from this point to the customer;

(*b*) the maximum transitional price at the marketable gas delivery point shall be determined by the Agency pursuant to regulations;

(*c*) where transportation to the customer is by a gas pipeline or gas pipelines, the transportation costs shall be based on tariffs or sum of tariffs determined pursuant to section 316 of this Bill;

(*d*) where the transportation costs is based on other forms of gas transportation, the transportation costs shall be freely negotiated with the company providing natural gas transport services.

Gas Management Model.

319.—(1) The Inspectorate and the Agency shall:

(*a*) implement a gas management model, through which the demand and supply of gas for utilization within Nigeria shall be monitored;

(*b*) ensure transparency of dealings between gas suppliers and purchasers with respect to the volumes of gas being marketed under its jurisdiction;

(*c*) monitor gas sales purchase agreements to ensure that they are in conformity with the national gas pricing policy and regulations.

(2) The gas management model pursuant to subsection (1) of this section shall be a supply and demand model to analyse marketable gas availability from the oil mining leases and petroleum mining leases and to compare the volume with the demand of gas by the strategic sectors.

(3) The Inspectorate and the Agency shall have the power to:

(*a*) ensure that the domestic gas demand requirement is being met, through the implementation of the Domestic Gas Supply Obligation;

(*b*) ensure a balanced growth of domestic gas projects, through the availability of adequate volume of gas to the strategic sectors.

Penalty for non-compliance with the Domestic Gas Supply Obligation.

320.—(1) Any supplier who does not comply with the Domestic Gas Supply Obligation as specified by the Inspectorate shall:

(*a*) pay a penalty as may be prescribed by regulations in addition to applicable deliver or pay obligation penalties; unless it can demonstrate to the satisfaction of the Inspectorate that —

(*i*) the non-compliance is caused by force-majeure; or

(*ii*) it has made reasonable commercial endeavours to make gas available.

(2) Where the supplier continues to fail to comply with the Domestic Gas Supply Obligations for a period in excess of three months for reasons other than paragraphs (*i*) and (*ii*) of subsection (1) above, additional penalties including the prioritization of supply to domestic market shall be imposed pursuant to the regulations.

(3) The Inspectorate shall inform the Agency whenever the Inspectorate has imposed a penalty on a supplier for non-compliance under subsections (1) and (2) above and the Agency shall ensure that such supplier does not supply gas for export in contravention of its supply obligation to the domestic market.

Gas Export.

321.—(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.

(2) Any company intending to export gas, shall submit an application for a gas export permit 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 determined that the exports of gas from Nigeria are not in the national interest due to insufficiency of available proved gas reserves to supply to long term domestic market, provided that the Agency shall not interfere with contracted gas export capacity being undertaken under an export licence.

(4) Where the domestic gas market in Nigeria and export markets reach a level of maturity that is reflective of fully competitive conditions, the Agency may recommend to the Minister on the process and activities aimed at deregulating and unwinding the regulated gas market for the strategic sectors.

General gas market provisions.

322. Nothing in this Part shall limit any purchaser or supplier to enter into any gas sales and purchase agreement for the domestic market under such terms and conditions as they may freely decide, for volumes that are in excess of the Domestic Gas Supply Obligation.

D: GAS FLARING (PROHIBITION AND PUNISHMENT)

General Terms.

323. Natural gas shall not be flared or vented after a date ('the flare-out date') to be prescribed by the Minister in regulations made pursuant to this Part, in any upstream petroleum operations or downstream petroleum operations, with the exception of permits granted under subsection (1) of section 325 of this Bill.

Gas Flaring Plan.

324.—(1) Lessees with flared gas resources shall within six months of the commencement of this Bill categorize all of their flared gas resources (daily flare quantity, reserve, location, composition) and submit this data along with gas utilization plans to the Inspectorate for the gas they intend to utilize before the flare out date as stated in section 323 of this Bill.

(2) The Inspectorate shall approve the categorization within sixty days of receipt of the plan and shall post all approved plans, data of planned natural gas resource and unplanned natural gas resources on the Inspectorate's website for public information.

Prohibition of flaring.

325.—(1) A person shall not direct, permit or otherwise aid, empower or authorize any company engaged in petroleum operations to flare or vent gas with the exception of such permits granted under this section.

(2) The Inspectorate or Agency may grant a permit of not more than one hundred days, or such longer period, to flare or vent gas in cases of equipment failure or shut down not due to any wrongful act or omission of the operator, or start-up, safety flaring or such other justified reasons as provided for in applicable regulations.

(3) Any licensee or lessee who flares or vents gas without the permission of the Inspectorate or agency in the circumstances mentioned in subsection (2) of this section shall be liable to pay a fine which shall not be less than the value of the gas flared.

Gas utilization plan.

326.—(1) The proposals for elimination of routine gas flaring pursuant to paragraph (*f*) of subsection (3) of section 227 of this Bill shall include a comprehensive programme acceptable to the

Inspectorate, for the utilization or reinjection of natural gas.

(2) The utilization programme referred to in subsection (1) of this section, shall be in consonance with the National Gas Master Plan, Domestic Gas Supply Obligation, and national policies as may be made in respect of the gas sector from time to time by the Federal Government.

Gas flaring measurement.

327.—(1) The volumes of gas flared from any facility engaged in upstream and downstream petroleum operations shall be measured using the metering equipment specified from time to time by the Inspectorate or Agency, as the case may be.

(2) Within twelve months from the effective date, each lessee or holder of a licence granted under Part IV shall install the metering equipment specified in regulation on every facility in its operations from which gas is flared or vented.

Gas flare reports.

328.—(1) After the flare-out date, any person, group of persons or community may lodge a documented report of gas flaring or venting with the nearest office of the Inspectorate.

(2) The Inspectorate and Agency shall each appoint an officer to receive and record reports of gas flaring or venting.

(3) An officer appointed pursuant to subsection (2) of this section who receives a report of gas flaring or venting shall within forty-eight hours of receipt of such report, inspect the facility where gas is allegedly being flared, verify the authenticity of the report to determine the cause of the gas flaring, the date when the gas flaring commenced and the volumes of gas flared or vented from the facility each day.

(4) The officer shall submit a report of the verification exercise to the Inspectorate or Agency, as the case may be, within seven days of his visit to the facility from which gas is being flared or vented.

(5) Where the Inspectorate or Agency, as the case may be, determines that the report of gas flaring is authentic and that the flared gas does not fall within any of the exceptions specified in section 373 of this Bill, it may at its discretion, impose the fine specified in

subsection (3) of section 373 in respect of the volumes of gas flared or vented from that facility or issue a shutdown order mandating the shut-down of the facility in question or both.

(6) On receipt of a shutdown order, the operator of the facility shall comply with the order within forty-eight hours from the time of receipt of the shutdown order.

Gas flaring offences and penalties.

329.—(1) (*a*) Any lessee, licensee or holder of a licence pursuant to Part IV of this Bill, who flares gas after the flare-out date contrary to section 323, commits an offence under this Bill, and shall be liable on conviction to pay a fine which shall not be less than the value of gas flared or vented pursuant to subsection (3) of section 325:

Provided that —

(*i*) the penalty for currently flared gas, without a permit pursuant to subsection (1) of section 325 of this Bill or certificate pursuant subsection (2) of section Error! Reference source not found., shall be the aggregate gas price until after the flare-out date as prescribed by the Minister when the new penalty regime shall commence;

(*ii*) in the case of third party utilization, penalties will only be imposed at the end of the approved project schedule or the flare-out date whichever is later; and

(*iii*) for flares accessed through third party contractors, penalties will be imposed on third party accessing companies which have signed contracts for the gas, and not on the licensee of the field from which the gas is being accessed.

(*b*) The penalty payable on the volume of gas flared by any person from the Gas flare out date, and for each day the flare or vent continues shall also be made public by the Inspectorate and the licensee separately and independently within a maximum of 60 days of the offence.

(2) (*a*) It shall be an offence to fail, refuse or neglect to forward or lodge a gas flare report or to falsify any report under section 0 of

this Bill to the Inspectorate or Agency, as the case may be, for appropriate action.

(*b*) A person who commits an offence under paragraph (*a*) of this subsection is liable on conviction to three months imprisonment or an option of fine of not less than the value of fifty per cent of the volume of gas flared or vented.

Power to make regulations.

330. Subject to the provisions of section 8, the Minister may, taking into consideration the time frame specified in section 420, on the advice of the Inspectorate or Agency, as the case may be, make regulations pursuant to the matters relating to this Part V.

Special considerations.

331. The certificates issued under section 3 (2) of the Associated Gas Re-Injection Act, prior to the Effective date shall continue to have effect until they lapse.

Part VI — Indigenous Petroleum Companies

General terms.

332. This Part applies to:

(*a*) oil prospecting licences, petroleum prospecting licences, oil mining leases and petroleum mining leases in which indigenous petroleum companies or person(s) have a majority beneficial interest; and

(*b*) to petroleum operations undertaken pursuant to such licences and leases.

Non-participation by the Federal Government.

333. Participation by the Federal Government pursuant to section 240 of this Bill or any law in force shall not be applicable to indigenous companies carrying out petroleum operations whose aggregate production from petroleum operations in a particular lease area is not more than twenty-five thousand barrels per day of crude oil or its natural gas equivalent.

Production by indigenous petroleum companies.

334. An indigenous petroleum company whose aggregate production of crude oil and gas is not more than twenty-five thousand barrels per day or its natural gas equivalent may be allowed to produce up to the technical allowable output set for the licence or lease, by the Inspectorate.

Regulations for indigenous petroleum companies.

335. The Minister shall on the advice of the Inspectorate, issue regulations, pursuant to section 8 of this Bill, 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 Bill which regulations or guidelines shall include:

(*a*) targets for indigenous petroleum reserves; and

(*b*) production personnel content and measurable parameters for determining the level of indigenous participation.

Review of participation of indigenous petroleum companies.

336. Pursuant to section 335 of this Bill, the Minister shall not later than three months after the Effective date 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 Bill.

PART VII — HEALTH, SAFETY AND ENVIRONMENT

Responsibility over the environment.

337.—(1) Without prejudice to the overall responsibility of the Federal Ministry of Environment for the environment of Nigeria, the Inspectorate and the Agency shall have responsibility in their respective areas over the aspects of health, safety and environmental matters in respect of the petroleum industry under this Bill.

(2) The Inspectorate and Agency in their respective areas shall at all times ensure the enforcement of environmental laws, regulations, guidelines and directives issued by the Federal Ministry of Environment and other relevant Government agencies.

(3) For the avoidance of doubt the Inspectorate and Agency in their respective areas shall, in consultation with the Ministry of Environment, make regulations and issue directives specifically relating to environmental aspects of the petroleum industry related to matters under this Bill.

(4) The Inspectorate and Agency shall at all times ensure that any regulation or directive in respect of the petroleum industry, made in pursuance of subsections (1) and (3) of this section, shall not conflict with any regulation or directive issued by the Federal Ministry of Environment.

Compliance with health regulations.

338. Every company engaged in activities requiring a licence, lease or permit in the upstream and downstream sectors of the petroleum industry in Nigeria, shall comply with all environmental health and safety laws, regulations, guidelines or directives as may be issued by the Federal Ministry of Environment, the Minister, the Inspectorate or the Agency, as the case may be.

Conduct of operations.

339. Every company engaged in activities requiring a licence, lease or permit in the upstream and downstream petroleum industry in Nigeria shall conduct its operations in accordance with internationally acceptable principles of sustainable development which includes the necessity to ensure that the constitutional rights of present and future generations to a healthy environment is protected.

Obligations of licensee, lessee and contractors.

340. Every company engaged in activities requiring a licence, lease or permit in the upstream and downstream sectors of the petroleum industry shall:

(*a*) support a precautionary approach to environmental challenges;

(*b*) encourage the development and use of environmentally friendly technologies for exploration and development in Nigeria.

(*c*) comply with the relevant requirements of environmental guidelines and standards approved for the petroleum industry in Nigeria.

Duty to restore the environment.

341.—(1) Any person engaged in activities requiring a licence, lease or permit in the upstream and downstream petroleum industry shall:

(*a*) manage all environmental impacts in accordance with the licensee or lessee's environmental management plan or programme, as approved by the Agency.

(*b*) as far as it is reasonably practicable, rehabilitate the environment affected by exploration and production 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.

(2) Subject to subsection (1) of this section, the licensee or lessee shall not be liable for, or under an obligation, to rehabilitate where the act adversely affecting the environment has occurred as a result of sabotage of petroleum facilities, which also includes tampering with the integrity of any petroleum pipeline and storage systems.

(3) Where there is a dispute as to the cause of an act that has resulted in harm to the environment, the licensee, lessee or any affected person or persons shall refer the matter to the Agency for a determination with respect to downstream petroleum operations and the Inspectorate for a determination with respect to upstream petroleum operations.

(4) Where the act referred to in subsection (3) of this section is found to have occurred as a result of sabotage, the licensee or lessee shall restore and remediate and the cost shall be charged on the receipt of the host community fund accruable to the Host community.

Development Programme.

342. Upon the commencement of this Bill, the Agency and Inspectorate shall undertake an annual comprehensive review of the impact of development programmes and practices by petroleum companies in all sectors of the industry dating back to the inception of the petroleum industry in order to identify potential areas of conflict or areas that may lead to possible unrest in the areas of operation.

Utilisation of best industry practices.

343. Every licensee, lessee, permit holder, contractor or company engaged in upstream and downstream petroleum operations in the petroleum industry shall adopt best industry practices in the course of their operations within the country.

Compensation.

344.—(1) The holder of a lease or licence for upstream petroleum operations shall have liability for payment of compensation pursuant to sections 246 and 247 of this Bill.

(2) The holders of a licence granted pursuant to Part IV of this Bill, shall pay fair and adequate compensation for the disturbance of the surface of the land, damage to buildings or other property or any other rights to any person who owns or is in lawful occupation of the licensed or leased lands or buildings or other property, in accordance with written guidelines issued by the Agency.

(3) The rates of compensation contained in the guidelines referred to in subsection (2) of this section shall be arrived at through a consultative process and the Agency shall update the guidelines issued annually to reflect rates of inflation and any other relevant factors.

Publications of development project.

345. Every year, all licensees, lessees and contractors and service companies in the upstream petroleum industry shall publish the criteria used for the location of community development projects and other social investment initiatives within their respective areas of operation.

Penalties and sanctions.

346. Any person or company who violates the provisions of this Part is liable to sanctions, including payment of fines as prescribed by the Inspectorate and the Agency in consultation with the Minister.

PART VIII — FISCAL PROVISIONS IN THE PETROLEUM INDUSTRY

A. GENERAL MATTERS

Adjustment factors and other indices.

347.—(1) Certain amounts expressed in US$ in this Bill, where such adjustment is indicated, shall be adjusted on April 1 of each calendar year with an adjustment factor as follows:

$$\text{Adjustment Factor} = \frac{\text{CPI (y-1)}}{\text{CPI (2012)}}$$

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 (2012)" 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 2012.

(2) Subject to any powers given to any person to specify fees, fines or impositions under this Bill, amounts expressed in Naira under this Bill shall be adjusted on April 1 of each calendar year with an adjustment factor based on Naira inflation index determined by the Minister pursuant to regulations.

(3) Where the statistical information for the CPI (y-1), LIBOR or such other index in use under this Bill, is no longer available, the Minister may by regulation replace such index with another published similar index.

(4) For the purpose of this Part, reference to the Minister, where the context so admits in this Part refers to the Minister responsible for matters relating to Finance.

B. NIGERIAN HYDROCARBON TAX

Imposition of the Nigerian hydrocarbon tax.

348.—(1) There shall be levied upon the profits of each accounting period of any company engaged in upstream petroleum operations during that period, a tax to be known as the Nigeria Hydrocarbon Tax ('the tax') which shall be charged assessed and payable in accordance with the provisions of this Part.

(2) The due administration of this Part relating to the assessment and collection of the tax referred to in subsection (1) of this section

shall be under the supervision and management of the Service.

(3) The Service may do all such acts as are necessary and expedient for the assessment and collection of the tax and shall account for all amounts collected.

(4) A person which is:

(*a*) (*i*) a licensee or lessee; or

(*ii*) the beneficiary of an over-riding royalty or similar income;

which earns petroleum revenues from upstream petroleum operations without taking the financial risk associated with exploration or appraisal activities which are creating those revenues shall be subject to Nigerian Hydrocarbon Tax on such income as further provided in regulations;

(*b*) a person pursuant to paragraph (*a*) of this subsection shall incorporate a separately taxable "petroleum revenue company" with respect to such revenues and such company shall only be able to claim deductions or allowances directly attributable to the earning of such petroleum revenues pursuant to regulations and shall not be able to claim any allowances and deductions related to upstream petroleum operations pursuant to this Bill;

(*c*) the provisions of paragraphs (*a*) and (*b*) of this subsection shall not apply to carried interests or farm-out agreements as generally understood in the petroleum industry and to any arrangements where Nigerian Hydrocarbon Tax has already been paid in order to calculate the petroleum revenues to the parties.

Power and duties of the Service in the administration of the tax.

349.—(1) In the exercise of the powers and duties conferred upon the Service under this Part, 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 Chairman of the Service shall be carried out by the Service.

(2) 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 raise an additional assessment upon such company or to 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 to or to defer the collection of any tax, penalty or judgment debt due by such company, or 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 the tax.

(3) Every claim, objection, appeal, representation or the like made by any person under any provision of this Part or of any subsidiary legislation made thereunder shall be made in accordance with this Part.

(4) In any claim or matter or upon any objection or appeal under this Part, any act, matter or thing done by or with the authority of the Service, in pursuance of any provisions of this Part shall not be subject to challenge on the ground that such act, matter or thing was not or was not proved to be done in accordance with any direction, order or instruction given by the Minister.

Signification and execution of powers and duties.

350.—(1) Anything required to be done by the Service, in relation to the powers or duties specified in the Third Schedule to this Bill, may be signified under the hand of the Chairman of the Service or any other duly authorised officer of the Service.

(2) Any authorisation given by the Service under this Part shall be signified under the hand of the Chairman of the Service unless such authority is published in the Gazette.

(3) Subject to subsection (1) of this section, any notice or other document to be given under this Part shall be valid if —

(*a*) it is signed by the Chairman of the Service or by any person authorised by him; 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.

Confidentiality requirements.

351.—(1) Every person having any official duty or being employed in the administration of this Part shall treat and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income, chargeable profits and related items of any company, as secret and confidential.

(2) A person appointed under or employed to carry out functions under this Part shall not be required to produce in any court, any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Part except as may be necessary for the purpose of carrying into effect the provisions of this Part, or in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to the provisions of this Part.

(3) Where under any law in force in any territory outside Nigeria provision is made for the allowance of relief from income tax and similar tax in respect of the payment of income tax and similar tax in Nigeria or for the exemption of income from income tax and similar taxes in respect of income subject to income tax and similar taxes in Nigeria, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the government in that territory of such facts as may be necessary to enable the proper relief or exemption to be given in cases where relief or exemption is claimed from income tax and similar taxes in Nigeria or from income tax and similar taxes in that territory.

(4) For the purposes of subsection (3) of this section, tax (as

defined in this Part) shall be regarded as a tax similar to an income tax.

(5) Notwithstanding anything contained in this section, the Service may permit the Auditor-General of the Federation or any officer duly authorised in that behalf to have access to any records or documents as may be necessary for the performance of his official duties, and the Auditor-General of the Federation or any such officer shall be deemed to be a person employed in carrying out the provisions of this Part.

Rules and Forms.

352.—(1) The Minister may, from time to time, make rules generally for the carrying out of the provisions of this Part.

(2) The Service may, from time to time, specify the form of returns, claims, statements and notices required for the purpose of this Part.

Ascertainment of profits, Adjusted Profits, assessable profits and chargeable profits.

353.—(1) Subject to any express provisions of this Part, in relation to any accounting period, the profits of that period for a company shall be taken to be the aggregate of:

(*a*) the fair market value of all chargeable oil, chargeable gas, chargeable condensates, chargeable unconventional oil and chargeable unconventional gas sold or disposed of by the company in that period,

(*b*) all income of the company of that period incidental to and arising from any one or more of its upstream petroleum operations, and

(*c*) any amount attributed following the procedure in subsection (5) of section 406 of this Bill.

(2) For the purposes of subsection (1) (*a*) of this section, the fair market value of any chargeable oil, chargeable gas, chargeable condensate, chargeable unconventional oil or chargeable unconventional gas disposed of shall be taken to be the value at the measurement point.

(3) The adjusted profit of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 354 of this Bill and any adjustments to be made in accordance with the provisions of section 356 of this Bill.

(4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 358 of this Bill.

(5) The chargeable profit of an accounting period shall be the assessable profit of that period after the deduction allowed by section 361 of this Bill.

Allowable Deduction.

354.—(1) In computing the adjusted profit of any company for any accounting period from its upstream petroleum operations, there shall be deducted all outgoings and expenses wholly, exclusively, necessarily and reasonably incurred by such company, during that period for the purpose of those operations, 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 non-productive rents, the liability for which was incurred by the company during that period;

(*c*) all royalties, the liability for which was incurred by the company during that period in respect of natural gas sold and actually delivered to any customer or disposed of in any other commercial manner;

(*d*) all royalties, the liability for which was incurred by the company during that period in respect of crude oil or of condensate won in Nigeria;

(*e*) all royalty, the liability for which was incurred by the company during that period in respect of unconventional oil or unconventional gas;

(*f*) all sums the liability for which was incurred by the company to the Government during that period by way of customs or excise duty or other like charges levied in respect of machinery, equipment and goods used in the company's upstream petroleum operations;

(*g*) 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;

(*h*) debts directly owed to the company and proved to the satisfaction of the Service to have become bad or doubtful in the accounting period for which the adjusted profit is being ascertained, notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period:

Provided that —

(*i*) the deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during that accounting period, nor in respect of any particular debt shall it include any amount deducted under the provisions of this paragraph in determining the adjusted profit of a previous accounting period;

(*ii*) all sums recovered by the company during that accounting period on account of amounts previously deducted in respect of bad or doubtful debts shall, for the purposes of paragraph (*b*) of subsection (1) of section 353 of this Bill, be treated as income of that company of that period; and

(*iii*) it is proved to the satisfaction of the Service that the debts in respect of which a deduction is claimed were either —

(*aa*) included as a profit from the carrying on of upstream petroleum operations in the accounting period in which they were incurred: or

(ab) advances made in the normal course of carrying on upstream petroleum operations not being advances on account of any item falling within the provisions of section 355 of this Bill;

(i) any cost directly incurred in connection with the drilling of one exploration and the next two appraisal wells in the same field whether the wells are productive or not, excluding qualifying drilling expenditures.

(j) any cost directly incurred in connection with the drilling of development wells, whether such wells are productive or not, excluding qualifying drilling expenditures.

(k) where a deduction may be given under this section in respect of any expenditure, that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the Fourth Schedule.

(l) any contribution to a pension, provident or other society, scheme or fund in line with the provisions of the Pensions Reform Act:

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 paragraph (b) of subsection (1) of section 353 of this Bill, be treated as income of that company of that accounting period;

(m) 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, education tax, taxes (other than the tax imposed by this Bill) or any other rate, fee or other like charges;

(n) such other deductions as may be prescribed by any rule made under this Bill.

(*o*) all sums set aside, in a fund by the company as decommissioning and abandonment expenditure, under the terms determined by the Inspectorate, provided that:

(*i*) any company that has claimed deduction on any amount set aside for decommissioning and abandonment shall not claim further deduction upon incurring the decommissioning and abandonment expenditure except on amount incurred in excess of the money set aside for that purpose; and

(*ii*) any amount in excess of that expended for the decommissioning and abandonment shall be treated as taxable income.

(2) Where a deduction has been allowed for 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 (*b*) of subsection (1) of 353 of this Bill, be treated as income of the company for its accounting period in which such waiver or release was made or given

Non allowable deduction.

355. Subject to the express provisions of this Bill, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its upstream petroleum 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 operation;

(*b*) any capital withdrawn or any sum employed or intended to be employed as capital;

(*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 except tax imposed in accordance with the Education Tax Act;

(*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 except such payments are allowed under subsection (1) (*m*) of section 305 of this Bill;

(*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 expenditure for the purchase of information relating to the existence and extent of petroleum deposits;

(*k*) any expenditure for the purpose of paying a penalty or fee relating to:

(*a*) gas flaring, and

(*b*) domestic gas supply obligations;

(*c*) and any other penalty;

(*l*) any signature bonuses, production bonuses or other bonuses due on the lease or on the renewal of a lease;

(*m*) all general, administrative and overhead expenses incurred outside Nigeria in excess of one percent of the total annual capital expenditure;

(*n*) one hundred percent of any expense, other than pursuant to paragraph (*m*), incurred outside Nigeria, where such expenditure relates to the procurement of goods or services which are available domestically in the required quantity and quality as approved by Nigerian Content Development and Monitoring Board;

(*o*) any legal and arbitration costs related to cases against the Service or the Government, unless specifically awarded to the company during the legal or arbitration process

(*p*) costs incurred prior to the establishment of the company in Nigeria;

(*q*) any cost resulting from any arrangement or event that arises from fraud or wilful misconduct or negligence on the part of the company;

(*r*) insurance costs where such costs are earned by the company or an affiliate of the company.

(*t*) costs or fees incurred in the obtaining and maintenance of a performance bond under a Production Sharing Contract.

Exclusion of certain profits.

356. Where a company engaged in upstream petroleum operations undertakes the transportation of chargeable oil, chargeable gas, chargeable condensate or unconventional oil by ocean going oil-tankers pipeline, or other vessels operated by or on behalf of the company from Nigeria to another territory then such adjustments shall be made in computing an adjusted profit or a loss as shall have the effect of excluding therefrom any profit or loss attributable to such transportation in order to properly determine the fair market value at the measurement point.

Artificial Transactions, etc.

357.—(1) Where the Service is of the 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 and direct that such adjustments shall be made as respects liability to tax as the Service considers appropriate in accordance with its transfer pricing rules so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessed accordingly.

(2) In this Section, the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.

(3) 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.

(4) 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 as provided under this Part and on the hearing of any such appeal, the appropriate court may confirm or vary any such decision including any directions made under this section.

Assessable Profit and Loss.

358.—(1) Subject to the provisions of this section, 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 the amount of any loss incurred by that company during any previous 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.

359.—(1) Without prejudice to section 368 of this Bill, 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) Where subsection (1) of this section applies, the Service may in its discretion —

(*a*) if, on or before the date on which the trade or business is so sold or transferred, the first sale of or bulk disposal of chargeable oil, chargeable gas, chargeable condensate or bitumen by or on behalf of the company selling or transferring the trade or business has occurred, but the first sale of or bulk disposal of chargeable oil, chargeable gas, chargeable condensate or bitumen by or on behalf of the Nigerian company acquiring that trade or business has not occurred —

(*i*) direct that the first accounting period of the Nigerian company shall be the period of twelve months commencing on the date on which the sale or transfer of the trade or business takes place, or commencing on such date within the calendar month in which the sale or transfer takes place as may be selected by the Nigerian company with the approval of the Service, and

(*ii*) for the purposes of subparagraph (1) of this , an accounting period as respects the Nigerian company shall be a period of twelve months commencing on the date on which the sale or transfer of the trade or business to the Nigeria company takes place or commencing on such date within the calendar month in which the sale or transfer takes place as may be selected by the Nigerian company with the approval of the Service, and the definition of "accounting period" in paragraph (*a*) of this section shall be construed accordingly, but without prejudice to the continued application in respect of the Nigerian company of the provisions of paragraphs (*b*), (*c*) and (*d*) of that definition;

(*b*) direct that for the purposes of the Fourth Schedule an 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

(*c*) direct that the Nigerian company acquiring the asset so sold or transferred shall not be entitled to any initial allowance in respect of that asset. and 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 Fourth Schedule and any allowances deemed to have been received by that company under the provisions of this section provided that the Service in its discretion —

(*i*) may 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*) may impose such conditions as it deems fit on either of the companies earlier mentioned 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 fulfill 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.

(3) In this section —

(*a*) "Nigerian company" means any company the control and management of whose activities are exercised in Nigeria; and

(*b*) References to a trade or business shall include references to any part of the trade or business.

Call for returns and information relating to certain assets.

360. For the purpose of section 310 of this Bill, the Service may by notice require any person, including a company to which any assets are sold or transferred, 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, not being a period of less than twenty-one days from the service of the notice.

Chargeable Profit and Allowances.

361.—(1) The chargeable profits of any company for 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.

(2) There shall be computed the aggregate amount of all allowances due to the company under the provisions of the Fourth and Fifth Schedules to this Bill for the accounting period.

(3) The amount to be allowed as a deduction under subsection (1) of this section in respect of the said allowances shall be the aggregate amount computed under subsection (2) of this section.

(4) 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 insufficiency of or no assessable profits of the accounting period, such total amount or the part thereof which has not been so deducted as the case may be, 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 provisions of the Fourth and Fifth Schedules to this Bill for that following accounting period.

Assessable Tax.

362.—(1) The assessable tax for any accounting period of a company shall be a percentage of the chargeable profits for that period aggregated separately as follows:

(*a*) 50% for onshore and shallow water areas;

(*b*) 25% for frontier acreages and deep water areas;

(*c*) 50% for petroleum revenue companies pursuant to subsection (4) of section 0 of this Bill for any area in Nigeria;

(2) Where a company carries on upstream petroleum operations in a geographical area or areas that are subject to more than one tax rate as provided under subsection (1) of this section, tax at the appropriate rates shall be levied on the proportionate parts of the chargeable profits arising from those operations.

Additional Chargeable Tax Payable in certain circumstances.

363. If, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Bill is insufficient as a result of transfer pricing, the company shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between the amounts with and without transfer pricing.

Prohibition of persons other than a company from upstream operations.

364.—(1) Any person (other than a company) who engages in upstream petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing profits arising from those operations commits an offence under this Bill.

(2) Where the person referred to in subsection (1) of this section has benefitted from any profits on upstream crude oil operations, such person shall be subject to the tax under this Bill on such profits and shall pay a penalty as provided for under section 343 of this Bill.

(3) Where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, the Service may with the approval of the Minister, make rules for the ascertainment of the tax to be charged and assessed upon each company so engaged.

Company to file tax returns.

365. Notwithstanding anything to the contrary in this Part, every company, including a contractor in a Production Sharing Contract arrangement, shall be responsible for reporting its own upstream petroleum operations profits, outgoings, expenses, and for paying the tax chargeable on its upstream petroleum operations.

Manager of companies, etc. to be answerable.

366. 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 Bill for the assessment and charge to tax of such company and for payment of such tax.

Winding up of companies.

367.—(1) Where a company is being wound up or 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, 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 responsible for doing all such acts as are required to be done by virtue of this Bill for the assessment and charge to tax of such company and for payment of such tax.

(3) The liquidator or receiver shall not distribute any assets of the company to the shareholders or debenture holders of the company unless the liquidator 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.

368. 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, a reason for such transfer by the company was to avoid payment of the 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 390 of this Bill.

Indemnity of Company Representatives.

369. Every person responsible under this Bill 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 of such monies as shall be sufficient to pay such tax, and shall be indemnified against any person whatsoever for all payments made by him in accordance with the provisions of this Bill.

Preparation and delivery of accounts and particulars.

370.—(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*) a computation of its adjusted profit or loss and of its assessable profits of that period with its completed self-assessment form;

(*b*) in connection with the Fourth Schedule to this Bill, a schedule showing —

(*i*) the residual value 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 (estimated by references to the provisions of that Schedule) disposed of in that period, and

(*iv*) the allowances due to it under that Schedule for that period;

(*c*) in connection with the Fifth Schedule to this Bill, a schedule showing its total production allowances from all its upstream petroleum operations;

(*d*) a computation of its chargeable profits of that period;

(*e*) a statement of all amounts repaid, refunded, waived or released to it, during that period; and

(*f*) a computation of its tax for that period.

(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 Bill 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.

(3) Notwithstanding the other provisions of this section, every company which is yet to commence bulk sale or disposal of chargeable oil, chargeable natural gas, chargeable condensate or chargeable unconventional oil as defined under this Bill shall file with the Service

audited accounts and returns

(*a*) in the case of a newly incorporated company, within eighteen months from the date of its incorporation;

(*b*) in the case of any other company, within six months after any period ending on 31st December of the following year provided that where there is an interval between 31st December of the preceding year and the date on which such company commences the bulk sale or disposal of chargeable oil chargeable gas, chargeable condensate or bitumen the interval shall be deemed to form part of the preceding period.

Request for further information.

371. The Service may give notice in writing to any company which is or has been engaged in upstream petroleum operations when and as often as the Service may deem necessary, requiring 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 in section 322 of this Bill or as to any other matters which the Service may consider necessary for the purposes of this Bill.

Power to call for returns, books, etc.

372.—(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, books, documents, accounts and particulars which the Service may deem necessary.

(2) Where a company assessable to tax under the provisions of this Bill 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 the High Court.

(4) On hearing such appeal, the Court may confirm or modify such direction.

Returns of estimated tax.

373.—(1) Not later than two months after the commencement of each accounting period, a company engaged in upstream petroleum operations 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 the revised tax over the estimated tax paid by the company.

(4) Every return made by a company engaged in upstream petroleum operations 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.

Extension of period for making returns.

374. Where it is shown by any company to the satisfaction of the Service that for good reasons the company is not able to comply with the provisions of section 370 of this Bill within the time limited by that section or any notice given to it under section 371and 372 of this Bill 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.

Self-assessment of tax payable.

375.—(1) Every company liable to file tax returns as provided under section 370 of this Bill shall file self-assessment returns, within the specified period, showing the tax payable by the company for the accounting period.

(2) Where a company has delivered accounts and particulars, including the self-assessment returns 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.

(3) Where, for any accounting period of a company, the company has failed to deliver accounts and particulars provided for in section 370 of this Bill within the time limited by that section or has failed to comply with any notice given to it under the provisions of 372 of this Bill within the time specified in such notice or within any extended time provided for in 372 of this Bill 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 376 of this Bill.

Making of Assessments, etc.

376.—(1) Assessments 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 such companies (with the names of the 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 profit 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 profit, 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 Bill.

Additional Assessments.

377.—(1) If the Service discovers or is of the opinion at any time that, with respect to any company liable to tax, that 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 Bill as to notice of assessment, objection, appeal and other proceedings under this Bill 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 which subsection (3) of section 383 of this Bill 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 Bill, the Service may, at any time and as often as may be necessary, assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to the fraud, wilful default or neglect.

Notices of Assessments, etc.

378.—(1) The Service shall cause to be served personally on or sent by registered post to each person who is liable to this tax but fails to file self-assessment returns, 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 Part 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 a 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 in respect of any matter 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 had objected to an assessment made upon him agreeing with the Service as to the amount of tax liable to be assessed, the assessment shall be amended accordingly, and the 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 on 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 of the tax payable together with notice of refusal to amend the revised assessment and, wherever required, any reference in this Bill 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 assessments and notice.

379.—(1) No assessment, warrant or other proceeding made in accordance with the provisions of this Bill 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 Bill 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 impeached 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 is 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.

Income Tax Computation.

380.—(1) Notwithstanding anything to the contrary in any law, all income tax computations made under this Part shall be made in the currency in which the transaction was effected.

(2) Notwithstanding anything to the contrary in any law, any assessment made under section 376 of this Bill shall be made in the currency in which the computation giving rise to the assessment was made.

Redress against Assessment.

381. Any person (being a company or, a person in whose name a company is assessed) aggrieved by an assessment made upon him, or who has failed to agree with the Service as referred to in subsection (6) of section 378 of this Bill, may seek redress against such assessment from the Federal High Court within thirty days after the date of the Service upon such person or company of the notice of the refusal of the Service to amend the assessment as desired, provided that:

Notwithstanding the lapse of such period of thirty days, by not more than a further period of sixty days, such person or company may seek redress against such assessment from the Federal High Court if good cause is shown to the satisfaction of the Federal High Court why redress against such assessment was not sought within thirty days.

Suits at the Federal High Court.

382. Notwithstanding the provisions of section 333, any person or company aggrieved by or dissatisfied with any tax imposed upon it by the Service or with any other action of the Service or who has any complaint, objection, claim, set off, representation or other grievance arising from the provision of this Part whether against the Service or any other taxable person or government agency may seek redress in respect thereof at the Federal High Court.

Assessment to be final and conclusive.

383.—(1) Where no valid objection or appeal has been lodged within the time provided under sections 378. and 379 of this Bill, as the case may be, against an assessment as regards the amount of the tax assessed, or where the amount of the tax has been agreed to under subsection (5) of section 378 of this Bill, or where the amount of the tax has been determined on objection or revision under subsection (6) of section 378 of this Bill, or on appeal, the assessment made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Bill as regards the amount of the 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 Bill, the provisions contained in this Bill relating to the recovery of tax, and to any penalty under section 393 shall apply.

(2) Where an assessment has become final and conclusive, any tax overpaid shall be repaid.

(3) Nothing in section 378 of this Bill or in this Part 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 378 of this Bill by agreement or otherwise or on appeal.

Procedure in cases where objection or appeal is pending.

384. Collection of tax in cases where notice of an objection or an appeal has been given shall not be enforced and any pending proceedings for any instalment of the tax shall be stayed until the objection or appeal is determined and the Service may in any such case enforce payment of any portion of the tax which is not in dispute.

Time limit for making payment.

385.—(1) Subject to the provisions of section 386 of this Bill, tax for any accounting period shall be payable in equal monthly instalment 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 provision of subsection (1) of section 373of this Bill

(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 the provision of subsection (2) of section 373 of this Bill less the amount already paid for such accounting period divided by the number of the monthly payments remaining to be made in respect of the applicable accounting period.

(4) A final instalment of tax shall be due and payable within twenty-one days after filing of the self-assessment for such accounting period, and shall be the amount of the tax assessed for that accounting period less the amount paid under subsections (2) and (3) of this section or is the subject of any 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 388 of this Bill.

Penalty for non payment of tax and enforcement of penalty.

386.—(1) If any instalment of tax due and payable pursuant to section 387 of this Bill is not paid within the appropriate time limit prescribed —

(*a*) a sum equal to ten per cent of the amount of the instalment of tax due and payable shall be added to the tax, and the provisions of this Bill relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;

(*b*) in the case of Naira remittances, the tax due shall attract interest at the prevailing minimum rediscount rate of the Central Bank of Nigeria plus a spread to be determined by the Minister from the date when the tax becomes payable until it is paid, and the provisions of this Bill relating to the collection and recovery of tax shall apply to the collection and recovery of the interest:

(*c*) in the case of foreign currency remittance, the tax due shall attract interest at the prevailing London Inter-Bank Offered Rate, plus a spread to be determined by the Minister from the date when the tax becomes payable until it is paid, and the provisions of this Bill relating to the collection and recovery of tax shall apply to the collection and recovery of the interest.

(2) Any company or person in whose name the company is assessed, who, without lawful justification or cause, fails to pay the tax within the period of one month prescribed in paragraph (*b*) of subsection (1) of this section, commits an offence.

(3) The Service may, for good cause shown, remit the whole or any part of the penalty due under subsection (1) of this section.

Collection of tax after determination of objection or appeal.

387. Where payment of tax in whole or in part has been held over pending the result of a notice of objection or appeal, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable immediately and the balance of the tax shall be paid as to any part of the tax in the proceedings stayed within one month from the date of service on the company assessed, or on the person in whose name the company is assessed, and if such balance is not paid within such period the provisions of section 388 of this Bill shall apply.

Suit for tax by the service.

388.—(1) The Service may sue and recover tax in any court of competent jurisdiction at the place where the tax is due against a company or the person in whose name the company is assessed and the cost of the proceedings shall be borne by the company or the person in whose name the company is assessed.

(2) 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 due and sufficient authority for the court to give judgment for this amount.

Relief in respect of error or mistake.

389.—(1) Where any person who has paid tax for any accounting period alleges that any assessment made upon him or in his 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) Upon receipt of the application, referred to in subsection (1) of this section 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.

Tax Refund.

390.—(1) Save as is otherwise in this Bill expressly provided, no claim for the refund 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 sections 376 and 377 of this Bill shall apply.

(2) The Service shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Bill 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 with provision of the certificate.

Penalty for Offences not Specifically Provided.

391.—(1) Any person who fails to comply with the provisions of this Bill or any rule made under this Bill for which no other penalty is specifically provided, shall be liable to a fine of One Million, Five Hundred Thousand Naira (₦1,500,000)

(2) A person who commits an offence under subsection (1) of section 364 of this Bill, or where such offence is a failure to submit a return under section 373 of this Bill or is a failure, arising from the provisions of this Part, to deliver accounts, particulars or information or to keep records required, a further sum of ₦300,000.00 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 the additional sum to commence from the day following the conviction, or from such day thereafter as the court may order.

(3) A person who —

(*a*) fails to comply with the requirements of a notice served on him under this Part; or

(*b*) having a duty so to do, fails to comply with the provisions of section 370 of this Bill; or

(*c*) without sufficient cause fails to attend in answer to a notice or summons served on him under this Part or having attended fails to answer any question lawfully put to him; or

(*d*) fails to submit any return required to be submitted by section 370 of this Bill in accordance with the requirement of that section or in accordance with section 374 of this Bill, commits an offence.

Penalty for making incorrect accounts.

392.—(1) Every person who without lawful cause:

(*a*) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses in the accounts; or

(*b*) prepares or causes to be prepared any incorrect schedule required to be prepared by section 370 of this Bill by overstating any expenditure or any incorrect statement or overstating any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released; or

(*c*) gives or causes to be given any incorrect information in relation to any matter or thing affecting his liability to tax, commits an offence and liable to a fine of One Hundred and Fifty Thousand Naira (₦150,000.00) and to double the amount of tax which has been undercharged in consequence of such incorrect accounts, schedule, statement or information, or would have been so undercharged if the accounts, schedule, statement or information had been accepted as correct.

(2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made at any time within six years after the end of the accounting period in respect of which the offence was committed.

(3) The Service may compound any offence under this section, and may before judgment stay or compound any proceedings under this Bill.

False statements and returns.

393.—(1) Any person who:

(*a*) for the purpose of obtaining any deduction, rebate, reduction or repayment in respect of tax for himself or for any other person, or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation, or forges or fraudulently alters or used, or fraudulently lends, or allows to be used by any other person any receipt or token evidencing payment of the tax under this Bill; or

(*b*) aids, abets, assists, counsels, incites or induces any other person to:

(*i*) make or deliver any false return or statement under this Bill;

(*ii*) keep or prepare any false accounts or particulars affecting tax; or

(*iii*) unlawfully refuse or neglect to pay tax;

commits an offence and liable to a fine of ₦150,000.00 and three times the amount of tax for which the person assessable is liable under this Bill for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months, or to both fine and imprisonment.

(2) The Service may compound any offence under this section and with the leave of the court may before judgment stay or compound any proceedings arising from the implementation of this section.

Penalty for failure to pay tax.

394.—(1) Any person who being obliged to deduct any tax under this Bill, but fails to deduct, or having deducted, fails to pay to the Service within thirty days from the date the amount was deducted or the time the duty to deduct arose, shall upon determination by the Service, be liable to pay the tax withheld or not remitted in addition to a penalty of ten per cent of the tax withheld or not remitted per annum and interest at the prevailing Central Bank of Nigeria minimum re-discount rate.

(2) Any person who continues to commit the breach referred to in subsection (1) of this section beyond thirty days and after the determination by the Service commits an offence and is liable on conviction to imprisonment for a period of not more than six months.

Penalties for offences by authorised and unauthorized persons.

395. Any person who —

(*a*) being a member of the Service charged with the due administration of this Bill or any consultant engaged in connection with the assessment and collection of the tax who —

(*i*) demands from any person an amount in excess of the authorised assessment of the tax payable;

(*ii*) withholds for his own use or otherwise any portion of the amount of tax collected;

(*iii*) renders a false return, whether verbal or in writing, of the amount of tax collected or received by him;

(*iv*) defrauds any person, embezzles any money, or otherwise uses his position to deal wrongfully either with the Service or any other individual; or

(*b*) not being authorised under this Bill to do so, collects or attempts to collect the tax under this Bill; commits an offence and liable to a fine of ₦1,000,000.00 or to imprisonment for three years or to both.

Deduction of tax at source.

396.—(1) Income tax assessable on any company, partnership or person (whether or not resident in Nigeria) who provides petroleum operation services 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 payment is to deduct tax at the date when the payment is made or credited, whichever first occurs, shall be as specified in any extant Government Notice.

(3) A company which has deducted tax under this section shall forward to the Service the amount of tax deducted and 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 any payment was made.

(4) Income 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 shall not exceed the amount of the assessment.

Tax to be payable notwithstanding any proceedings for penalties.

397. The institution of proceedings for or the imposition of a penalty, fine or term of imprisonment under this Bill shall not relieve any person from liability to payment of any tax for which the person is or may become liable.

Prosecution to be with the sanction of the Service.

398. Subject to the provision of the Constitution no prosecution in respect of an offence under section 302,343, 344, 345 or 346 of this Bill may be commenced, except at the instance of or with the sanction of the Service.

Savings for criminal proceedings.

399. The provisions of this Bill shall not affect any criminal proceedings under any other Act or law.

Restrictions on effects of Personal Income tax and other Acts.

400. Tax shall not be charged under the provisions of the Personal Income Tax Act or any other Act in respect of dividends paid out of any profits which are taken into account, under the provisions of this Bill, in the calculation of the amount of any chargeable profits upon which tax is charged, assessed and paid under the provisions of this Bill.

Double Taxation arrangements with other territories.

401.—(1) Where the Minister by order declares that arrangements specified in the order have been made with the Government of a territory outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Bill and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in any enactment.

(2) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.

(3) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for accounting periods commencing or terminating before the making of the order and provisions as to income (which expression includes profits) which is not itself liable to double taxation.

(4) Any regulation, order or rule made or deemed to have been made by the Minister in respect of any double taxation arrangement with the Government of any territory outside Nigeria prior to the effective date shall continue to have effect as if made pursuant to the provisions of this Part.

Method of calculating relief to be allowed for double taxation.

402.—(1) Where under arrangements having effect under section 403 of this Bill, foreign tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria.

(2) In this section, the expression —

(*a*) "foreign tax" means any tax payable in that territory which, under the double taxation arrangements, is to be allowed; and

(*b*) "income" means that part of the profits of any accounting period which is liable to both tax and foreign tax, before the deduction of any tax, foreign tax, credit therefore or relief granted under subsection (6) of this section.

(3) The amount of the credit admissible to any company under the terms of any double taxation arrangement shall be set off against the tax chargeable upon that company in respect of the income, and where that tax has been paid the amount of the credit may be repaid to that company or carried forward against the tax chargeable upon that company of any subsequent accounting period.

(4) The credit for an accounting period shall not exceed whichever is the less f the following amounts —

(*a*) the amount of the foreign tax payable on the income; or

(*b*) the amount of the difference between the tax chargeable under this Part (before allowance of credit under, any arrangements having effect under section 403 of this Bill) and the tax which would be so chargeable if the income were excluded in computing profits.

(5) Without prejudice to the provisions of subsection (4) of this section, the total credit to be allowed to a company for any accounting period for foreign tax under all arrangements having effect under section 397 of this Bill shall not exceed the total tax which would be ultimately borne by that company, for that accounting period, if no such credit had been allowed.

(6) Where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering the credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not

so chargeable which falls to be taken into account in computing the amount of the credit.

(7) Where the amount of the foreign tax attributable to the income exceeds the credit computed under subsection (4) of this section, then the amount of that income, to be included in computing profits for any purposes of this Bill other than that of subsection (4) of this section, shall be taken to be the amount of that income increased by the amount of the credit after deduction of the foreign tax.

(8) Where —

(*a*) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering the credit to be given against tax in respect of the dividends; and

(*b*) a dividend is paid which is not of a class in relation to which the arrangements provide, then, if dividend is paid to a company which controls, directly or indirectly, not less than half of the voting power in the company paying the dividends, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements provide.

(9) Any claim for an allowance by way of credit shall be made not later than three years after the end of the accounting period, and in the event of any dispute as to the amount allowable, the Service shall give to the claimant notice of refusal to admit the claim which shall be subject to appeal in like manner as an assessment.

(10) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in this Bill limiting the time for the making of assessments or claims for repayment of tax shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not

later than three years from the time when all such assessments, adjustments and other determination have been made whether in Nigeria or elsewhere, as are material in determining whether any, and if so, the credit to be given.

(11) Where a company is not resident in Nigeria throughout an accounting period no credit shall be admitted in respect of any income included in the profits of that company of that period.

Procedure for amendment of Schedules.

403. As from the effective date, the President may on the advice of the Minister propose to the National Assembly for the deletion of the powers or duties specified in the Third Schedule or inclusion therein of additional powers or duties by amendment of such Schedule or the substitution of a new Schedule therefore.

C. COMPANIES INCOME TAX APPLICABLE TO PETROLEUM OPERATIONS

Companies Income Tax Act.

404.—(1) All companies, concessionaires, licensees, lessees, contractors and subcontractors involved in upstream petroleum operations under this Bill shall be subject to tax under the Companies Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004.

(2) Notwithstanding the provisions of section 27 of the Companies Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, any company involved in both upstream petroleum operations and downstream petroleum operations shall determine the Companies Income Tax separately for:

(*a*) upstream petroleum operations under this Bill; and

(*b*) downstream petroleum operations under this Bill.

(3) In determining the Company Income Tax payable, the Nigerian Hydrocarbon Tax under this Bill shall not be deductible.

(4) Notwithstanding the provisions of subsection (1) of section (22) of Companies Income Tax Act:

Where the Service is of the 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 and direct that such adjustments shall be made as respects liability to tax as the Service considers appropriate in accordance with its transfer pricing rules in order to determine the fair market value, so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessable accordingly. In this subsection, the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.

(5) Notwithstanding the provisions of Section 24 of the Companies Income Tax Act, for the purpose of ascertaining the profit or loss of any Upstream Petroleum Company of any period from any source chargeable with tax under this Bill, there shall be deducted all expenses for that period by that company wholly, exclusively, necessarily and reasonably incurred in the production of those profit including, but without otherwise expanding or limiting the generality of the foregoing — "Any rents and royalties payable on upstream petroleum operations".

(6) Notwithstanding the provisions of Subsection (3) of Section 29 of the Companies Income Tax Act, the assessable profits of any company from any trade or business for the year of assessment in which it commenced to carry on such trade or business (or in the case of a company other than a Nigerian company, for the year of assessment in which it commenced to carry on such trade or business in Nigeria) and for the subsequent years shall be ascertained in accordance with the following provisions —

(*a*) for the first year the assessable profits shall be the profit from the date of commencement of business to the end of the accounting period in the preceding year;

(*b*) for the second year the assessable profits shall be the profits for the accounting year following the first year;

(c) for the third year and thereafter the assessable profits shall be computed in accordance with subsection (1) of this section forth accounting year:

(7) Notwithstanding the provisions of subparagraph (ii) of paragraph (a) of subsection (2) of section 31 of the Companies Income Tax Act:

"a deduction under section 31 of Companies Income Tax Actfor any particular year of assessment shall not exceed the amount, if any, of assessable profits, included in the total profits for that year of assessment, from the trade or business in which the loss was incurred and shall be made as far as possible from the amount of such assessable profits of the first year of assessment after that in which the loss was incurred and, so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on".

(8) The incentives provided under Section 39 of the Companies Income Tax Act shall be available to:

(a) companies engaged in export gas operations with respect to LNG;

(b) companies engaged in downstream gas distribution:

(c) companies operating gas extraction facilities; and

(d) companies operating refineries.

(9) "Notwithstanding the provisions of subsections (1), (2), (3), (4), (5), and (6) of section 43 of Companies Income Tax Act, tax shall not be charged under the provisions of the Personal Income Tax Act or this Bill in respect of dividends paid out of any profits which are derived from the holders of OPLs, OMLs, PPLs and PMLs as defined under the Petroleum Industry Act".

(10) For purposes of computation, assessment and payment of Companies Income Tax, companies engaged in upstream petroleum

operations shall apply the Nigerian Hydrocarbon Tax accounting periods on an actual year basis and the procedures for paying tax estimates on a monthly basis in anticipation of paying the balance of the full tax due at the end of the accounting period.

(11) Notwithstanding the provisions of The Second Schedule of the Companies Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004 — "Qualifying Upstream Petroleum Expenditure" means Qualifying Expenditure as defined in the Fourth Schedule of the Petroleum Industry Act.

(12) Notwithstanding the provisions of the Second Schedule to the Companies Income Tax Act, shall be amended by inserting below the word "Mining Expenditure" in Table I (Initial Allowance) and Table II (Annual Allowances) with respect to Initial and Annual Allowance, the word "Qualifying Upstream Petroleum Expenditure", with an initial allowance of "Nil" and annual allowances of 20%, with a retention of 1% in the last year until the asset is disposed, shall be read together.

(13) Notwithstanding the provisions of paragraph 7 of the Second Schedule of the Companies Income Tax Act:

"Where a production sharing contract between a concessionaire and a contractor provides for the contractor to incur the cost of equipment and such equipment becomes the property of the concessionaire, the contractor shall be deemed to be the owner of the qualifying expenditure. for the purpose of the claim of capital allowances and the concessionaire shall not deduct the same expenditures and shall not declare the income related to the received asset".

Rents.

405.—(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) (*a*) 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.

(*b*) During any significant gas discovery retention period pursuant to subsection (12) of section 226 of this Bill the rent shall be US $10,000 per annum per square kilometer 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 5% 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 243 of this Bill shall be initiated.

(6) The rents imposed under this section shall be adjusted pursuant to subsection (1) of section 347 of this Bill.

(7) Any rents imposed under this section shall be verified by the Inspectorate and be paid to the Federation Account.

(8) The provisions of this section applicable to a PPL shall also apply to an OPL and the provisions applicable to a PML shall also apply to an OML.

Royalty.

406.—(1) All production of petroleum including from production tests shall be subject to royalty.

(2) The production and value of the petroleum for the purpose of determining the royalty shall be determined at the measurement point(s) in the Oil Mining Lease (OML) or Petroleum Mining Lease ("PML")

as defined in subsection (3) of this section and shall be determined monthly.

(3) The measurement point(s) referred to in subsection (2) of this section shall be determined by the Inspectorate pursuant to subsection (7) of this section and where there is production from production tests under an Oil Prospecting Licence (OPL) or Petroleum Prospecting Licence (PPL), the Inspectorate shall determine the 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 licensee or lessee into reservoirs for the purpose of improving or enhancing production of crude oil, condensates or unconventional oil and for conservation of natural gas;

(*c*) any volumes used in the upstream petroleum operations for the production of electricity or heat for exclusive use in the operations of the PPL, OPL, OML or PML; and

(*d*) any water, sediments or other foreign substances.

(5) The value for the purpose of royalty calculation for unconventional oil, unconventional gas, crude oil, condensates and natural gas shall be determined by the Inspectorate and shall be based on the fair market value at the measurement point, subject to such provisions as may apply to domestic natural gas prices pursuant to this Bill and the value of any ethane, propane, butane, natural gas liquids and condensates produced at any gas processing plant or liquid extraction plant shall be attributed back to the measurement point, adjusting for the applicable gas processing, extraction, conditioning and transport allowances as may be applicable pursuant to regulations.

(6) The fair market value 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 unconventional oil, crude oils, condensates and natural gas sold in the international market, as determined by the Inspectorate.

(7) (*a*) Unconventional oil, crude oil, condensates and natural gas production shall be measured at the point(s) where the Inspectorate determines that petroleum leaves the oil mining lease or petroleum mining lease area prior to transportation;

(*b*) Where on the commencement of this Bill, petroleum is measured downstream from where the measurement point should be located pursuant to this Bill and where installing measurement equipment to measure production at the measurement point would be too costly in the opinion of the Inspectorate, based on a review of a comprehensive report by the lessee, the current measurement practices may continue provided the adjustments are made as required by regulation in order to determine the production and fair market value at the measurement point(s), otherwise a program shall be submitted for the installation of equipment at the measurement point within three (3) years from the commencement of this Bill.

(*c*) Where after the commencement of this Bill and based on a review of a comprehensive report by the lessee, the Inspectorate is of the opinion that it is economically or technically not prudent to carry out measurement inside the lease area, the Inspectorate may approve measurement downstream of the measurement point at a suitable location; provided the adjustments are made as required by regulation in order to determine the production and fair market value at the measurement point(s),

(*d*) Where petroleum is measured at the field measurement points pursuant to paragraph (*a*) or (*b*), or measured under paragraph (*c*), of this section, and theft or sabotage occurs in any month downstream of where petroleum is being measured, the volume and value of petroleum loss as a result of such theft or sabotage shall be deducted as an extra-ordinary pipeline loss during the subsequent month from the fair market value and volume of the production determined pursuant to this section.

(8) At the option of the Government, the Inspectorate shall inform the lessee whether the Government elects to take all or part of the royalty in kind or in cash pursuant to the regulations

(9) (*a*) Where royalty is paid in cash, it shall be paid in the month following the month during which the petroleum was determined at the measurement point.

(*b*) Where royalty is paid in kind, it shall be taken pursuant to agreement between the lessee, and the Inspectorate and any other Government designated agency responsible for sale of such petroleum.

(10) Where applicable royalty is not paid when due, an interest of LIBOR plus 5% 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 or where arrangements for payment of royalty in kind are not adhered to, revocation of such lease pursuant to paragraph (*d*) of subsection (1) of section 243 of this Bill shall be initiated.

(11) Royalty from petroleum prospecting licences, oil prospecting licences, petroleum mining leases and oil mining leases shall be based on the production for the month from each licence or lease and shall be determined separately at the measurement points or as otherwise determined by the Inspectorate for:

(*i*) the volume of crude oil and condensates,

(*ii*) the volume of unconventional oil, and

(*iii*) the volume of natural gas.

(12) (*a*) Subject to the provisions of subparagraph (*ii*) of paragraph (*a*) of subsection (2) of section 238 of this Bill and paragraph (*d*) of this

subsection, the total royalty rate for crude oil and condensates for each PPL, OPL, OML and PML, shall be based on average monthly daily production pursuant to paragraph (*b*) of this subsection and the royalty rate based on the average monthly value pursuant to paragraph (*c*) of this subsection.

(*b*) The royalty rates based on average monthly daily production for crude oil and condensates shall be:

(*i*) for onshore areas, 5% of the share of the production up to and including 10,000 barrels per day, 15% of the share of the production over 10,000 barrels per day and up to and including 20,000 barrels per day and 25% of the share of the production over 20,000 barrels per day;

(*ii*) for shallow water areas, 5% of the share of the production up to and including 20,000 barrels per day, 15% of the share of the production over 20,000 barrels per day and up to and including 40,000 barrels per day and 25% of the share of the production over 40,000 barrels per day; and

(*iii*) for deep water areas, 5% of the share of the production up to and including 50,000 barrels per day, 7.5% of the share of the production over 50,000 barrels per day and up to and including 100,000 barrels per day and 12.5% of the share of the production over 100,000 barrels per day.

(*c*) the royalty rates based on average monthly value for crude oil and condensates for all areas shall be as follows:

(*i*) 0% from US$0 per barrel and up to and including US$80 per barrel;

(*ii*) over US$80 per barrel and up to and including US$180 per barrel the royalty rate shall increase by 0.1% royalty percentage for every US $1 increase in value over US$80 per barrel;

(*iii*) over US $180 per barrel the rate shall be 10%; and

(*iv*) the US dollar amounts of this paragraph (*c*) shall be adjusted pursuant to subsection (1) of section 347 of this Bill.

(*d*) with respect to oil mining leases and petroleum mining leases converted from oil mining leases that on the effective date were in production and were produced by companies which in total produce on the effective date more than 25,000 barrels per day of crude oil and condensates from onshore and shallow water areas, the royalty rates shall be 20% for onshore areas and 18.5% for shallow water areas and such royalty rates shall apply to the total production of all such leases in which such company has an interest and are not leases for which production started after the effective date of this Bill; provided however that where the Inspectorate is of the opinion that a company of the same ultimate owner has restructured or reorganized its interest in order to reduce the royalty applicable, the Inspectorate may disregard such action for the determination of applicable royalty rate.

(13) Subject to the provisions of subparagraph (*ii*) of paragraph (*a*) of subsection (2) of section 238 of this Bill, the total royalty rate for natural gas for each PPL, OPL, PML and OML shall be based on average monthly daily production as follows:

(*a*) for onshore areas, 2.5% of the share of the production up to and including 100 million standard cubic feet per day, 5% of the share of the production over 100 million standard cubic feet per day and up to and including 200 million standard cubic feet per day and 7.5% of the share of the production over 200 million standard cubic feet per day;

(*b*) for shallow water areas,2.5% of the share of the production up to and including 200 million standard cubic feet per day, 5% of the share of the production over 200 million standard cubic feet per day and up to and including 400 million standard cubic feet per day and 7.5% of the share of the production over 400million standard cubic feet per day; and

(*c*) for deep water areas,2.5% of the share of the production up to and including 500 million standard cubic feet per day. 5% of the share of the production over 500 million standard cubic feet per day.

(14) Where a PML or OML produces crude oil and condensates and natural gas partly from onshore and partly from shallow water, or partly from shallow water areas and partly from deep water areas, the weighted average royalty shall be calculated pursuant to the regulations.

(15) For unconventional oil, and for crude oil, condensates and natural gas in frontier acreage the royalty based on volume shall be 5% and the royalty based on value pursuant to paragraph (*c*) of subsection 12 shall also apply.

(16) Where a field is covered by two or more licences or leases, the royalty rates based on daily production pursuant to subsection 12 of this section shall be determined based on the total production from such licences or leases.

(17) Any royalty shall be determined by the Inspectorate and such royalty shall be paid to the designated account of the Federation Account.

(18) The detailed procedures for determining the royalty shall be established in regulations.

(19) All royalties rates established under this Bill may be subject from time to time by the Minister through regulation and such regulations shall be subject to national Assembly approval.

Production Sharing.

407.—(1) All production sharing and other upstream contracts pursuant to section 221 of this Bill shall be subject to the rents, royalties and tax provisions contained in this Bill pursuant to this section.

(2) Under any production sharing contracts, the amount of royalty shall be determined first and subsequently, the cost oil, cost gas and cost condensates, and the shares of the lessee and contractor of the profit oil, profit gas and profit condensates shall be calculated net of

royalty, prior to determining any Nigerian Hydrocarbon Tax, Companies Income Tax and Education Tax.

(3) All contractor parties shall pay Companies Income Tax, Nigerian Hydrocarbon Tax and Education Tax on their share of cost oil, cost gas, cost condensates, profit oil, profit gas and profit condensates and any other shares of unconventional oil, crude oil, condensates and natural gas and on any remuneration under contracts pursuant to section 221 of this Bill as well as incidental income that the companies may have obtained as a result of the operations under the contract and any royalty paid shall not be deductible from determining chargeable profit.

(4) Profit Oil and Profit Gas payments by contractors to the National Oil Company or any private party shall be deductible for Nigerian Hydrocarbon Tax, Companies Income Tax and Education Tax purposes or shall not be considered part of the contractor's income.

Conversion of Production Sharing Contracts.

408.—(1) Where a company has an interest in a production sharing contract in which NNPC is the lessee on the effective date and such company voluntarily agrees to convert pursuant to paragraph (*b*) of subsection (7) of section 220 of this Bill within three years from the effective date, such company shall be entitled to the specific benefits in subsections (2) and (3) of this section.

(2) (*a*) The production allowances of the Fifth Schedule shall apply.

(*b*) The company shall be permitted by NNPC to merge all beneficial interests into a single new company in order to benefit from the consolidation provisions under the Companies Income Tax Act, Education Tax and the provisions of Chapter B (Nigerian Hydrocarbon Tax) of this Part.

(*c*) For each PML which commences commercial production after the commencement of the Act in a PSC containing a profit oil sliding scale based on an R-factor, the contractor shall have the option to convert to a sliding scale based on cumulative production per PML, as follows:

Up to 200 million barrels — 30% for NNPC;

From 201 Million barrels up to 400 million barrels — 35% for NNPC;

From 401 Million barrels up to 600 million barrels — 47.5% for NNPC;

From 601 Million barrels up to 800 million barrels — 55% for NNPC;

From 801 Million barrels up to 1000 million barrels — 57.5% for NNPC; and

Over 1000 million barrels — 60% for NNPC.

(*d*) For each PML which commences commercial production after the commencement of the Act in a PSC with cumulative production sliding scales, the contractor shall have the option to ring-fence the further cost oil and profit oil for such PML and apply the scale in paragraph (*c*) of this subsection.

(*e*) NNPC shall convert pursuant to paragraph (*b*) of subsection (7) of section 220 all related oil prospecting licenses and oil mining leases and contractor shall benefit in the production sharing contracts from the renewal provisions of subsection (3) of section 232 of this Bill and other provisions related to PPLs and PMLs under this Bill.

(*f*) Upon conversion all assets shall be deemed to be owned by the contractor and to the extent that capital allowances have not been fully claimed on such assets, the contractor shall deduct the remaining capital allowances.

(3) NNPC shall permit the inclusion of a new provision in the contract providing for gas terms as follows:

(*a*) for cost gas:

(*i*) where the current PSC already establishes a cost oil limit, the same percentage limit shall be established for cost gas.

(*ii*) where the current PSC does not establish a cost oil limit, there shall be a cost gas limit of 60%.

(*b*) the accounting procedure in the production sharing contract shall be adjusted to provide for an allocation procedure for cost oil and cost gas pro-rata to the gross revenues from oil and from gas.

(*c*) for profit gas:

(*i*) for new gas developments, where tax consolidation opportunity is not available, and which require the construction of major new large diameter gas pipelines, new grass roots onshore LNG facilities, floating LNG facilities, large gas processing facilities or other large infrastructure works as further defined by regulations, the profit gas split shall be on a sliding scale based on cumulative production per PML, as follows:

Up to 1 trillion standard cubic feet — 20% for NNPC;

From 1.01 trillion standard cubic feet up to 3 trillion standard cubic feet — 40% for NNPC; and

Over 3 trillion standard cubic feet — 60% for NNPC:

Provided that upon renewal of the underlying leases, the profit gas split shall be reset at 80% for NNPC and 20% for the contractor.

(*ii*) For other associated gas developments, including from leases in production, as further defined by regulations, the profit gas split shall be 80% for NNPC and 20% for the contractor subject to existing gas utilisation agreements.

(4) The conversion shall be implemented based on a Model Contract Amendment pursuant to regulations under this Bill.

409. Except for production sharing contracts to be transferred to the National Oil Company pursuant to section 152 of this Bill, the National Oil Company shall not be a lessee in any production sharing contracts to be issued by the Government. No New Production Sharing Contracts for National Oil Company.

Other fiscal provisions.

410.—(1) All companies, lessees, licensees, 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) Section 1 subsection (3) of the Education Tax Act is hereby amended by deleting the following words: "or the Petroleum Profits Tax Act as the case may be.

Oversight and Electronic Information Management System.

411.—(1) All payments under Chapters D and E of this Part VIII are subject to the oversight function of the Service, and in particular:

(*a*) the Service shall be entitled to carry out such verifications and inspections as the Service deems necessary with respect to government revenue sources under Chapters D and E of this Part in order to ensure the proper collection of revenues. The Inspectorate, Agency and any government owned or appointed entity involved directly or indirectly in royalty and rents collection shall provide such assistance, documents and information as the Service may require during such verifications and inspections; and

(*b*) the Service shall have the obligation to challenge any fair market value on which royalties are based under Chapter D of this Part, where in the opinion of the Service the value is less than the fair market value.

(2) All companies involved in upstream petroleum operations shall establish an electronic information management system acceptable to the Service which includes a modern oil and gas accounting system as prescribed by regulation, which 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 Bill.

(3) The electronic management information system shall have automatic data transfer procedures to electronic management information systems of the Inspectorate, Agency and the Service.

(4) The electronic information management information systems pursuant to subsection (1) of this section shall be fully operational not later than two years after the commencement of this Bill, and where such systems are not operational and accessible to authorized persons as provided under subsection (1) of this section, a company in default shall pay a penalty of US S10,000 for every day such system is not operational after the date required.

Further Amendments.

412.—(1) The Oil Pipelines Act, Cap. ....Laws of the Federation of Nigeria, 2004 is hereby amended as follows:

(*a*) all references to the "Minister" in the Act are hereby substituted with "relevant authority".

(*b*) The definition of "Minister", is hereby deleted.

(*c*) "relevant authority" in the Act shall mean the Upstream Petroleum Inspectorate with regard to oil pipelines in the upstream petroleum sector and the Downstream Petroleum Regulatory Agency in the case of oil pipelines in the downstream petroleum sector.

(2) Section 164 of the Nigerian Minerals and Mining Act, Cap. ....Laws of the Federation of Nigeria, 2004 is hereby amended as follows:

By deleting the words "bitumen", "bituminous shales", "tar sands" and "coal bed gases" from the definition of "minerals" or "mineral resources".

Repeals.

413.—(1) From the Effective date, the following enactments are repealed —

(*a*) Associated Gas Re-injection Act. Cap. A25, Laws of the Federation of Nigeria, 2004;

(*b*) Petroleum Act, Cap. P10, Laws of the Federation of Nigeria, 2004;

(*c*) Petroleum (Amendment) Act, 1996

(*d*) Petroleum Products Pricing Regulatory Agency (Establishment) Act, 2003;

(*e*) Petroleum Equalisation Fund (Management Board, etc.) Act, Cap. P11 Laws of the Federation of Nigeria, 2004;

(*f*) Petroleum (Special) Trust Fund Act. Cap. P14 Laws of the Federation of Nigerian, 2004; and

(*g*) Petroleum Technology Development Fund Act, Cap. P15 Laws of the Federation of Nigeria, 2004.

(*h*) Deep Offshore and Inland Basin Production Sharing Act, Cap. D3 Laws of the Federation of Nigeria, 2004, except for sections 16 subsection (1) and (2).

(*i*) Petroleum Profits Tax Act, Cap. P13 Laws of the Federation of Nigeria, 2004.

(2) Any subsidiary legislation made pursuant to any of the enactments repealed in subsection (1) of this section shall, where it is not inconsistent with the provisions of this Bill, remain in operation until it is revoked or replaced by subsidiary legislation made under this Bill, and shall be deemed for all purposes to have been made under this Bill.

(3) The NNPC Act, NNPC (Projects) Act and NNPC Amendment Act shall be deem to be repeal on the date that the Minister signifies by legal notice in the Gazette that the assets and liabilities of NNPC are fully vested in successor entities.

Savings Provisions.

414.—(1) Any licence or lease granted under the Oil Minerals Act 1958 and the Petroleum Act 1969 shall remain effective subject to the provisions of this Bill, except that oil prospecting licences from the effective date, and which are converted pursuant to paragraph (*b*) of subsection (7) of section 220 of this Bill shall not be subject to the provisions of section 225, subsections (1) - (10) of section 226 and subsections (1) and (2) of section 234 and for such licences, the terms with respect to the oil prospecting licences regarding duration of the licence, work program, commitments and relinquishments during the license period shall continue unaltered for the duration of the licence.

(2) Any company granted a licence, permit or other right in respect of activities in the downstream petroleum, sector including refineries, pipelines, storage, transportation, distribution and retail, under any law in force at the time in Nigeria, shall within three months from the Effective date apply to the Agency for the issuance of the appropriate licence under this Bill, and pending the issuance of the appropriate licence, the prior licence, permit, or right shall continue in force as if it had been issued under the provisions of this Bill.

(3) Any other licence, lease, permit or other right in respect of any sector of the petroleum industry in Nigeria to which subsections (1) and (2) of this section do not apply, which were granted by the Department of Petroleum Resources or the Petroleum Products Pricing and Regulatory Authority, as the case may be, and which is still valid on the effective date, shall continue in force for the remainder of its duration as if it had been issued under this Bill.

(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 Bill or any regulations made under it, whichever is earlier.

(5) Within three months from the effective date, the Minister on the advice of the Inspectorate, or the Agency, or NNPC as the case

may be, may make any further transitional and savings provisions as are consistent with the transitional and savings provisions in this Bill.

Transfer of staff, etc.

415.—(1) All staff performing duties relating to upstream petroleum operations of the Department of Petroleum Resources in the Ministry of Petroleum Resources on the Effective date shall be deemed to have transferred their services to the Inspectorate with effect from that date on terms and conditions no less favourable than those obtained prior to the Effective date, unless they indicate otherwise before the expiration of three months after the Effective date.

(2) From the Effective date, the staff of the former Petroleum Products Pricing Regulatory Authority shall be regarded as having transferred their services to the Agency with effect from that date on terms and conditions no less favourable than those obtaining prior to the Effective date.

(3) From the date of vesting of the assets and liabilities of NNPC in the National Oil Company, staff performing functions relating to those assets and liabilities shall be regarded as having transferred their services to the National Oil Company.

(4) From the date of vesting of the assets and liabilities of NNPC in the National Gas Company, the staff of the Nigerian Gas Company performing functions relating to such assets being vested in the National Gas Company shall be regarded as having transferred their services to the National Gas Company Plc.

(5) From the date of vesting of the assets and liabilities of NNPC in the Management Company, the staff of the NNPC performing functions relating to such assets and liabilities vested in the Management Company Limited shall be regarded as having transferred their service to the Management Company.

(6) Any transfer of services by virtue of the provision of subsections (1) and (2) of this section shall be regarded as continuous for the purpose of pension and gratuity.

Transfer of Employment.

416. Every person whose service has been transferred to the Inspectorate or the Agency by virtue of the provision of section 414 of this Bill shall be deemed to be employed by the Inspectorate or the Agency as the case may be with effect from the Effective date and shall cease to be in the employment of the former Petroleum Pricing Regulatory Authority and the Department of Petroleum Resources.

Application of subsisting contracts.

417.—(1) The provisions of this section shall apply to —

(*a*) all contracts or other instruments subsisting before the Effective date entered into by the former Department of Petroleum Resources in relation to its downstream petroleum operations:

(*b*) all contracts or other instruments subsisting before the Effective date entered into by the Petroleum Products Pricing Regulatory Agency.

(2) By virtue of this Bill there is vested in the Agency as from the Effective date and without further assurance all assets, funds, resources and other moveable or immovable property relating to the downstream petroleum operations functions which prior to the Effective date were vested in the Department of Petroleum Resources.

(3) Any proceeding or cause of action pending or existing or which could have been taken by or against the Department of Petroleum Resources of the Ministry of Petroleum Resources prior to the effective date in respect of any such right, interest, obligation or liability of the Petroleum Agency or the Department of Petroleum Resources may be commenced, continued or enforced or taken by or against the Agency as if this Bill had not been made.

(4) By virtue of this Bill there is vested in the Agency as from the Effective date and without further assurance all assets, funds, resources and other moveable or immovable property which prior to the effective date were vested and held by the Petroleum Products Pricing and Regulatory Authority.

(5) As from the Effective date:

(*a*) the rights, interest, obligations and liabilities of the Petroleum Products Pricing and Regulatory Authority existing prior to the Effective date under any 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 Bill be assigned to and vested in the Downstream Petroleum Regulatory Agency;

(*b*) any such contract or instrument as is mentioned in subparagraph (*a*) of the subsection, shall be of the same force and effect against or in favour of the Downstream Petroleum Regulatory Agency and shall be enforceable as fully and effectively as if instead of the Petroleum Products Pricing and Regulatory Authority, 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 Department of Petroleum Resources of the Ministry of Petroleum Resources prior to the effective date in respect of any such right, interest, obligation or liability of the Petroleum Agency or the Department of Petroleum Resources may be commenced, continued or enforced or taken by or against the Agency as if this Bill had not been made.

(*d*) 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 prior to 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 Inspectorate as if this Bill had not been made.

(6) As from the Effective date:

(*a*) the rights, interest, obligations and liabilities relating to upstream functions of the Department of Petroleum Resources existing prior to the Effective date under any 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 Bill be assigned to and vested in the Upstream Petroleum Inspectorate;

(*b*) any such contract or instrument as is mentioned in sub-paragraph (*a*) of this subsection, shall be of the same force and effect against or in favour of the Upstream Petroleum Inspectorate and shall be enforceable as fully and effectively as if instead of the Department 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 33against the Department of Petroleum Resources of the Ministry in relation to its upstream petroleum functions prior to the Effective date in respect of any such right, interest, obligation or liability of the Department of Petroleum Resources may be commenced, continued or enforced or taken by or against the Inspectorate as if this Bill had not been made.

Delisting of subsidiaries.

418. The subsidiaries of NNPC listed under the relevant Schedule to the Public Enterprises (Privatisation and Commercialisation) Act, 2004 shall be delisted from the schedule and as from the effective date the Power of Attorney earlier donated to the Bureau of Public Enterprises in respect of the subsidiaries of NNPC shall be vacated and shall have no force or effect.

Other Institutions.

419.—(1) The Petroleum Training Institute, established by the Petroleum Training Institute Act, Cap. 16 of the Laws of the Federation of Nigeria 2004 shall remain as a parastatal supervised by the Minister and shall have the objective of delivering quality education and providing efficient technological manpower for the needs of Nigerian and African Petroleum Industries in accordance with its enabling legislation.

(2) The Nigerian Content Development and Monitoring Board,

established by the Nigerian Oil and Gas Industry Content Development Act, 2010 shall remain as a parastatal under the Minister and shall have the objective of developing Nigerian content in the upstream petroleum sector in accordance with its enabling legislation.

Regulations.

420. Subject to the existing power of the Minister to promulgate regulations under this Bill, all initial regulations under this Bill, as determined by the Minister, shall be promulgated within one year from the effective date.

Interpretation.

421. In this Bill unless the context otherwise requires –

"accounting period", in relation to a company engaged in petroleum operations; means –

(*a*) a period of one year commencing on 1st January and ending on 31st December of the same year; or

(*b*) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil or chargeable natural gas, or chargeable condensates or bitumen domestic or export or both, and ending on 31st December of the same year; or

(*c*) 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, and

(*d*) in the event of any dispute with respect to the date of the first sale of chargeable oil or chargeable natural gas or chargeable condensate or bitumen with respect to the date on which the company ceases to be engaged in upstream petroleum operations, the Minister shall determine the same and no appeal shall lie therefrom.

"Act" means the Petroleum Industry Act, 2012.

"adjusted profit" means adjusted profit as stated in Part VIII of this Bill.

"aggregate gas price" means the calculated volume-based weighted average price for gas in a particular month by the three consuming sectors of power generation, gas based industries and local distribution companies.

"assessable profit" means assessable profit as stated in Part VIII of this Bill.

"assessable tax" means assessable tax as stated in Part VIII of this Bill.

"associated gas" means natural gas, commonly known as gas-cap gas, which overlies and is in contact with crude oil in a reservoir.

"benchmark prices" means a price based on globally benchmarked indices set by the Agency to be used as a reference point for petroleum products.

"bitumen" means ultra-heavy oil of less than 10 degrees API which does not flow to a well as well as oil sands and tar sands.

"British Thermal Unit" or "BTU" means the amount of energy needed to heat 1 pound of water by 1 degree Fahrenheit and 1 BTU = 1.06 Kilojoules.

"change of control" means a substantial direct or indirect change in the shareholding or voting control or financial control of a company.

"chargeable unconventional oil" in relation to a company engaged in upstream petroleum operation means unconventional oil won or obtained by the company from such operations.

"chargeable condensates" in relation to a company engaged in upstream petroleum operation means condensate won or obtained by the company from such operations.

"chargeable natural gas" in relation to a company engaged in upstream petroleum operations means natural gas actually disposed by such company to a customer, based on arm's length gas sales purchase contract (GSPA) in respect of which revenue is earned.

"chargeable oil" in relation to a company engaged in upstream Petroleum operations, means crude oil won or obtained by the company from such operations.

"chargeable profit" means chargeable profit as stated in Part VIII of this Bill.

"chargeable tax" means chargeable tax as stated in Part VIII of this Bill.

"commercial discovery" means a discovery of a petroleum accumulation within a petroleum prospecting licence or petroleum mining lease which, in the sole opinion of the licensee, can be economically developed and operated, taking into account all relevant economic, funding, fiscal and risk considerations normally applied for the evaluation.

"commercial production" means regular on-going production of petroleum on the basis of facilities that have been installed for that purpose.

"company" means any entity incorporated under any law in force in Nigeria or elsewhere.

"Compressed Natural Gas" or "CNG" means natural gas pressurized to 200 - 248 bar to reduce its volume and comprises mainly methane.

"condensate" refers to hydrocarbon of such composition that are in the gaseous phase at temperature and pressure of the reservoirs and in the liquid phase at surface pressure and temperature after the extraction of water, sand or other foreign substance therefrom but before the condensate has been refined.

"contract area" refers to the area of —

(*i*) a PPL and any PML derived therefrom; or

(*ii*) an OPL and any PPL derived therefrom; or

(*iii*) an OML and any PML derived therefrom plus any contractual consolidated areas as defined in the respective production sharing contracts.

"Court" means Federal High Court in Nigeria within whose jurisdiction —

(*a*) in relation to any offence under this Bill, the place is situated where such offence is, for the purposes of this Bill, deemed to have occurred;

(*b*) in relation to any suit for tax or appeal against an assessment of tax, the place is situated where the return under section..... of this Bill was submitted or where the assessment of the tax was made as the case may be;

(*c*) in relation to any direction under section .... of this Bill, the place is situated from which the direction was issued; and

(*d*) in relation to any claim or other matter which is subject to appeal in like manner as an assessment, or to which the provisions of section of this Bill apply with any modifications, the place is situated from which the claim or other matter was refused by the Service.

"crude oil" or "oil" means any mixture of liquid hydrocarbons (other than oil extracted by destructive distillation from coal) either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before the crude oil has been refined or otherwise converted.

"decommissioning" or "abandonment" refers to the approved process of cessation of operations of oil and gas wells, installations and structures, including shutting down an 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 Aggregator" has the meaning as specified in Part V of this Bill.

"Domestic Gas Supply Obligation" has the meaning as specified in Part V of this Bill.

"downstream gas distribution and operations" comprises the activities of processing, distribution and supply of gas to customers, construction and operation of city-gate reception terminals for natural gas and gas or ethane distribution pipelines, and the sale, marketing and delivery to final consumers of gas and compressed natural gas.

"downstream gas sector" comprises the sector of the Nigerian economy that consist of downstream petroleum operations relating to gas distribution.

"downstream" or "downstream petroleum operations" means activities downstream of the measurement point(s), or activities unrelated to oil mining leases or petroleum mining leases with respect to the construction and operation of upgrading facilities for heavy oil or unconventional oil: construction and operation gas conditioning plant for the extraction of nitrogen, H2S,CO2 or other non-petroleum substances, construction and operation of transport or transmission pipelines for crude oil and natural gas, including the related pumping and compressor 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: 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 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 liquefied natural gas ("LNG") plants, and related LNG terminals; acquisition, operation or chartering of LNG tankers for coastal and marine transportation and LNG trucks for land transportation; purchase and sale, trading, bartering, aggregating and marketing of natural gas transported by pipelines, compressed natural gas, natural gas liquids and liquids from GTL plants; distribution and supply of marketable gas through gas distribution networks, construction and operation of city-gate reception terminals for natural gas and gas or ethane distribution pipelines; construction and operation 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; purchase and sale, trading, bartering and marketing of crude oil; purchase and sale, trading, bartering and marketing of petroleum products on a wholesale basis; import and export of crude oil, natural gas, petroleum products, ethane, NGLs, LNG and GTL; and downstream administration, overhead and such other activities which are considered by regulation to be downstream petroleum operations.

"downstream petroleum sector" comprises the sector of Nigerian oil and gas activities that consist of downstream petroleum operations.

"disposal" and "disposed of", in relation to chargeable oil owned by a company engaged in upstream petroleum operations, mean or connote respectively:

(*a*) delivery, without sale, of chargeable oil to; and

(*b*) chargeable oil delivered, without sale, to, a refinery or to an adjacent storage tank for refining by the company.

"effective date" means the date on which this Bill comes into force.

"enforcement order" means an order issued by the Inspectorate, or the Agency under this Bill.

"Exclusive Economic Zone" shall have the same meaning as defined in the Exclusive Economic Zone Act, Cap. 350, Laws of the Federation of Nigeria, 2004.

"field" includes an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature or stratigraphic condition; and may refer to both the vertical projection to the surface and the sub-surface productive formations.

"field development plan" means a proposed plan to develop the discovered petroleum in a field which is approved by the Inspectorate and which is subject to amendment from time to time.

"Force Majeure" means —

(*a*) acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade in each case occurring within or involving Nigeria;

(*b*) acts of rebellion, riot, civil commotion, strikes excluding those restricted to the employees of the person claiming force majeure, act or campaign of terrorism, or sabotage occurring within Nigeria;

(*c*) failure to receive from a Governmental regulatory entity a required permit, authorisation, licence, lease, or renewal for the required activity upon such application having been properly made; and

(*d*) boycott, sanction or embargo imposed by or on countries from where critical equipment is sourced.

"frontier acreages" means any or all licences or leases located in an area or related to a geological play defined as frontier pursuant to this Bill.

"gas" or "natural gas" means all gaseous hydrocarbons, and all substances contained therein, as exists in their natural state in strata, associated or not with crude oil, and are in a gaseous state upon production from a reservoir and includes unconventional gas but excludes condensates, prior to extraction of water, sand or other foreign substance therefrom but before the gas or natural gas has been processed.

"gas flaring" means any flaring of natural gas associated with the process of oil production.

"Gazette" means the Official Publication of the Federal Government of Nigeria.

"best industry practice" means generally the reasonable, prudent and diligent use of policies, procedures, methods, equipment and materials that result in effective and efficient exploration, appraisal and development of petroleum including optimum recovery of petroleum from a discovery area with minimal impact on the environment as permitted and use of efficient and effective practices for transforming produced petroleum into marketable form and delivering it to the market, having due regard for safety and other factors and means in particular, knowledge of and compliance with the latest standards developed by relevant professional institutions or any other organisation acceptable by the Inspectorate and the Agency.

"Government" means the government of the Federal Republic of Nigeria.

"gas distribution network" means a distribution system licenced pursuant to section (290) of this Bill for supply of gas to retail customers.

"indigenous petroleum company" means a company:

(*a*) engaged in the exploration for and production of petroleum of which fifty-one per cent or more of its shares are beneficially owned directly or indirectly by Nigerian citizens or associations of Nigerian citizens; and

(*b*) which meets the requirements of any guidelines or regulations that may be issued by the Inspectorate, the Agency or the Nigerian Content Development Management Boards, and

(*c*) which is accredited as an indigenous petroleum company by the Service provided that a company listing on any stock of exchange in Nigeria with a majority of Nigerian directors shall be deemed to qualify as an indigenous petroleum company in Nigeria.

"lease" means an oil mining lease or petroleum mining lease or both.

"LIBOR" means, as of any date of determination, the per annum rate of interest, based on a three hundred and 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.

"Liquefied Natural Gas" or "LNG" means refrigerated natural gas in its liquid state at approximately atmospheric pressure.

"local distribution zone" means an authorized area as specified in regulations issued under this Bill, within which one distributor of downstream natural gas may operate.

"marketable gas" means natural gas which meets specifications determined by the Agency for distribution to wholesale and other customers for use as a domestic, commercial and industrial fuel and 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.

"Marginal field" means fields granted or farmed-out as such prior to the effective date.

"measurement point" means a point defined in subsections (2) and (3) of section 406 of this Bill.

"Minister" means the minister in charge of petroleum resources and overseeing the petroleum industry in Nigeria except for Chapters (A) — General Matters -, (B) — Nigerian Hydrocarbon Tax — and (C) — Companies Income Tax — of Part VIII of this Bill and any definitions related thereto, where "Minister" means the minister in charge of finance.

"Ministry" means the Ministry of Petroleum Resources.

"MMbtu" means one million British Termal Unit.

"MMscf" means one million standard cubic feet.

"National Gas Master Plan" has the meaning as specified in section 318.

"National Oil Company" has the meaning as specified in section 171.

"natural gas liquids or "NGL" means hydrocarbons which is liquid at the surface in separators, field facilities or in gas processing plants and include but are not limited to ethane, propane, butanes, pentanes, natural gasoline and liquefied petroleum gas.

"network code" has the meaning as specified in section 295.

"Nigerian Content" has the meaning as defined in the Nigerian Oil and Gas Industry Content Development Act, 2010.

"Nigerian company" means a company incorporated under the laws of Nigeria.

"Nigerian Hydrocarbon Tax" or "NHT" has the meaning as specified in Part VIII of this Bill.

"NNPC" means, Nigerian National Petroleum Corporation or any of its successor entities, as the case may be.

"non-associated gas" means natural gas accumulation which does not occur with crude oil.

"Oil Mining Lease" (or OML) means a lease granted to a company, under the Minerals Act or the Petroleum Act, Cap. N12, LFN, 2004 for the purpose of winning petroleum or any assignment of such lease.

"Oil Prospecting Licence" or (OPL) means a licence granted to a company, under the Petroleum Act, Cap. N12, LFN, 2004, for the purpose of prospecting for petroleum, or any assignment of such licence.

"Open access facility" means a facility that is designated as such pursuant to subsection (2) of section 271 of this Bill.

"Operator" means in the Upstream, any party designated as such by a party to a lease or licence, and in Downstream, any person of company designated as such by the Agency.

"permit" means a petroleum right issued by the Inspectorate or the Agency.

"petroleum" means hydrocarbons and associated substances as exist in its natural state in strata, and includes crude oil, natural gas, condensate, unconventional oil and mixtures of any of them, but does not include coal.

"Petroleum Exploration Licence" or "PEL" means a licence granted to a company to explore for petroleum pursuant to section 223 of this Bill.

"petroleum exploration operations" means to make a preliminary search by surface geological and geophysical methods, including aerial surveys but excluding drilling below 150 metres.

"petroleum prospecting 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, activities involved in declaration of commercial discoveries, preparation of field development plans and other related operation and the right to carry away and dispose of crude oil, natural gas or unconventional oil won during prospecting operations as a result of production tests, subject to the fulfilment of obligations imposed by or under this Bill or any other enactment in force at the time.

"Petroleum Industry Act" means this Bill.

"Petroleum Mining Lease" or "PML" means a lease granted to a company pursuant to section 220of this Bill.

"petroleum products" include motor spirit, black oil, automotive gas oil, fuel oil, aviation oil, kerosene, liquefied natural gas, compressed natural gas, natural gas liquids, liquefied petroleum gases and any lubrication oil or grease or other lubricant.

"petroleum prospecting licence" or "PPL" means a licence pursuant to section 220 of this Bill.

"petroleum revenue company" is a company pursuant to subsection (4) of section 348 of this Bill.

"production allowance" means an allowance provided for under the Fifth Schedule to this Bill.

"profits" means profits for the purpose of Part VIII of this Bill.

"qualifying drilling expenditure" means the total drilling expenditure less expenditure for labour, fuel, repairs, maintenance, hauling, and supplies and materials (not being supplies and materials for well cement, casing or other well fixtures) which are for or incidental to drilling, cleaning, deepening or completing wells or the preparation thereof incurred in respect of:

(*a*) determination of well locations, geological studies, topographical and geographical surveys preparatory to drilling;

(*b*) drilling, shooting, testing and cleaning wells;

(*c*) cleaning, draining and levelling land, road building and the laying of foundations;

(*d*) erection of rigs and tankage assembly and installation of pipelines and other plant and equipment required in the preparation or drilling of wells producing petroleum.

"regulations" mean rules or order having force of law issued by the Minister in accordance with the provisions of this Bill.

"rent" means any annual charge pursuant to section 405 of this Bill.

"resident in Nigeria", in relation to a company, means a company the control and management of the business of which are exercised in Nigeria.

"retail customer" is a residential or commercial gas customer which is not a wholesale customer and is not a strategic sector customer.

"royalty" means periodic charges made pursuant to section 406 of this Bill.

"Service" means the Federal Inland Revenue Service.

"shallow water" means areas in the continental shelf 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 such 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 the best option for development is based on future expansion of such systems or 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.

"standard cubic feet" means, in relation to natural gas, the quantity of dry ideal gas at a temperature of sixty degrees Fahrenheit and a pressure of fourteen decimal six nine six (14.696) pounds per square inch absolute contained in a volume of one cubic foot.

"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:

(*a*) the power sector,

(*b*) the industrial sector, consisting of industries using gas as feed stock or industrial raw material but not including GTL and other industries that may be excluded by the Minister; and

(*c*) the commercial sector, consisting of industries, as may be determined by the Minister, which use gas as an energy source.

"tariff" means the regulated price charged by a licensee of a licensed open access facility for the use of its facility and with respect to independent facilities, the deemed price as determined by the Agency for the use of the independent licensee of its facility.

"Unconventional gas" means shale gas, coal bed methane and gas from gas hydrates, after the extraction of water, sand or other foreign substance therefrom but before the petroleum has been processed.

"Unconventional oil" means bitumen, oil sands, tar sands, oil from bituminous shales, oil shales and shale oil after the extraction of water, sand or other foreign substance therefrom but before the petroleum has been refined, upgraded or converted, but does not include coal.

"upstream" or "upstream petroleum operations" means petroleum exploration operations, petroleum prospecting operations and all activities upstream of the measurement points, related to the winning of petroleum through wells or mining from petroleum reservoirs; drilling, fracking, completing, treatment and operation of wells producing petroleum; construction and operation of gathering lines and manifolds for petroleum and water; construction and operation of high and low pressure separators; construction and operation of facilities to treat petroleum; flaring of natural gas;

compression and reinjection of natural gas in reservoirs; construction and operation of facilities for the production of electricity or heat from natural gas or other fuels as energy source for the winning of petroleum; injection or re-injection of water into the reservoirs: construction and operation of pipelines and other facilities for the discharge of water; construction and operation of fixed or floating platforms or other vessels required for the winning of petroleum: construction and operation of fixed or floating storage facilities of petroleum in the lease area; transportation to and from the lease area of personnel, goods and equipment; metering of well stream fluids; metering of petroleum at the measurement point prior to transportation; other construction and activities incidental thereto and related administration and overhead; sale and marketing of petroleum at the measurement point(s) and such other activities which by regulation are considered upstream petroleum operations.

"U.T.M" means Universal Transverse Mercator co-ordinate system.

"Wholesale customers" mean wholesale customers of gas pursuant to section 296 of this Bill.

422. This Bill may be cited as the Nigerian Petroleum Industry Bill, 2015. Short Title.

SCHEDULES

First Schedule

Section 7 (2)

Rights of Pre-Emption

1.—(2) The Minister shall have the right to require the holder of any licence or lease granted under this Bill (referred to in this Schedule as "the licensee or lessee") to —

(*a*) provide for the Federal Government, to the extent of any refinery or petroleum products storage capacity he may have in Nigeria, petroleum products complying with specification given by the Minister; or

(*b*) deliver to any person holding a licence to operate a refinery, such quantity and quality of crude oil as may be specified by the Minister to the extent that the licensee or lessee has crude oil of that quantity and quality.

(2) The licensee or lessee shall use his best endeavours to increase so far as possible with his existing facilities, the supply of petroleum or petroleum products, or both, for the Federal Government to the extent required by the Minister.

(3) The licensee or lessee shall, with all reasonable expedition and so as to avoid demurrage on the vessels conveying the same, use his best endeavours to deliver all petroleum or petroleum products purchases by the Minister under the right of pre-emption in such quantities, and at such places of shipment or storage in Nigeria, as may be determined by the Minister.

(4) If a vessel employed to carry petroleum or petroleum products pursuant to paragraph 3 of this Schedule is detained on demurrage at the port of loading, the licensee or lessee shall pay the amount due for demurrage according to the terms of the charter-party or the rates of loading previously agreed by the licensee or lessee, unless the delay is due to causes beyond the control of the licensee or lessee.

(5) Any dispute which may arise as to whether a delay is due to causes beyond the control of the licensee or lessee shall be settled by agreement between the Minster and the licensee or lessee or, in default of agreement, by arbitration.

(6) The price to be paid for petroleum or petroleum products taken by the Minister in exercise of the right of pre-emption shall be —

(*a*) the reasonable value at the point of delivery, less discount to be agreed by both parties; or

(*b*) if no such agreement has been entered into prior to the exercise of the right of pre-emption, a fair price at the port of delivery to be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.

(7) To assist in arriving at a fair price for the purposes of paragraph 6(b) of this Schedule, the licensee or lessee shall, if the Minister so requires-

(*a*) furnish for the confidential information of the Minister particulars of quantities, descriptions and prices of petroleum or petroleum products sold to other customers and of charters or contracts entered into for their carriage; and

(*b*) exhibit original or authenticated copies of the relevant contracts or charter-parties.

(8) The Minister may take control of any works, plants or premises of the licensee or lessee and if he does so, the licensee or lessee and his servants or agents shall conform to and obey all directions issued by the Minister or on his behalf.

(9) Reasonable compensation shall be paid to the licensee or lessee for any loss or damage caused to him by reason of the exercise by the Minister of the powers conferred by paragraph 8 of this Schedule.

(10) Any compensation payable under paragraph 9 of this Schedule shall be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.

SECOND SCHEDULE

Sections 17, 47, 76, 101, *etc.*

SUPPLEMENTARY PROVISIONS PROCEEDING OF THE BOARD OF INSTITUTIONS UNDER THIS BILL

Proceeding of the Boards of Institutions

1. Subject to this Bill and the provisions of section 27 of the Interpretation Act, the Board ('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.—(*a*) There shall be at least one ordinary meeting of the Board in every quarter of the year and subject thereto, the 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, the Chairman shall summon a meeting of the Board to be held within fourteen days from the date on which the notice is given.

(*b*) 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 the majority of the other members, as appropriate.

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, the 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 Board and shall not count towards the quorum.

8. The Board may constitute one or more committees for the purpose of carrying out any of its functions as the Board may determine and report on any matter with which the Board 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 the Board.

11. The fixing of the seal of the entity 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 the entity by the Director-General or the Executive Secretary, as the case may be, 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 entity 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 shall —

(*a*) forthwith disclose his interest to the Board or committee, as the case may be; and

(*b*) not vote on any question relating to the contract or arrangement.

THIRD SCHEDULE

Sections 301

POWERS AND DUTIES OF THE SERVICES UNDER THIS BILL

1. The Service shall have the exclusive power and responsibility to exercise the functions required to be carried out under the following sections of this Bill —

(*i*) Section 347;

(*ii*) Sections 348 through 403; and

(*jj*) Section 404.

2. Notwithstanding the provisions of paragraph 1 of this Schedule, powers or duties as consist of a power or duty to make inquiries or other incidental or preparatory powers or duties of a like nature which may be undertaken by any other dully authorised person or entity.

FOURTH SCHEDULE

Section 312

CAPITAL ALLOWANCES

Interpretation

1.—(1) For the purposes of this Schedule, unless the context otherwise requires —

"Concession" includes an oil exploration licence, an oil prospecting licence, an oil mining lease, a petroleum exploration licence, a petroleum prospecting licence and a petroleum mining lease, 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 asset 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 asset, 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;

"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 and 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, structures 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, petroleum operations in view on —

(*i*) the acquisition of, or of rights in or over, petroleum deposits.

(*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 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 354 of this Bill.

(2) For the purposes of the interpretation of qualifying expenditure above, 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 petroleum operations carried on by the company, and 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 (3) of section 353.

Provisions Relating to Qualifying Petroleum Expenditure

2.—(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 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 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 as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information shall be left out of account for the purposes of this Schedule provided that where the company which originally incurred such costs was a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of such rights or information with a view to the assignment or sale, the price paid on such assignment or sale shall be substituted for the aforementioned costs.

Owner and meaning of relevant interest

3.—(1) For the purposes of this Schedule, where an asset consists of a building, structure or works, the owner 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 drilling 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.

Sale of Buildings, etc.

4. Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the company which

buys that interest shall be deemed, for all the purposes of this Schedule except the granting of petroleum investment allowance, 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 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 with the omission of the words "except the granting of investment tax credit" and the original cost of construction shall be taken to be the amount of the purchase price on such sale.

Owner under production sharing contract

5. Where a production sharing contract between a concessionaire and a contractor provides for the contractor to incur the cost of equipment and such equipment becomes the property of the concessionaire, the contractor shall be deemed to be the owner of the qualifying expenditure, for the purpose of the claim of capital allowances and the concessionaire shall not deduct the same expenditures and shall not declare the income related to the received asset.

Annual Allowance

6.—(1) Subject to the provisions of this Schedule, where in any accounting period, a company owning any asset has incurred in respect thereof qualifying expenditure wholly, necessarily and exclusively for the purposes of 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 Bill referred to as "an annual allowance") at the appropriate rate per centum specified in Table II of this Schedule.

(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, there shall be retained in the books, in respect of each asset, one 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 of Finance or any person authorised by him.

Cost to be incurred at end of accounting period

7. 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 has been incurred

during such accounting period for the purposes of the upstream petroleum operations carried on by it.

Balancing Allowances

8. 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 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 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 petroleum operations for which such qualifying expenditure was incurred.

Balancing Charges

9. 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 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 this Bill, 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 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.

Residue

10. 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.

Meaning of "disposed of"

11. Subject to any express provision to the contrary and 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 petroleum operations carried on by the owner;

(*b*) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;

(*c*) assets in respect of which qualifying drilling expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the petroleum operations of the company incurring the expenditure either on such company ceasing to carry on all such operations or on such company receiving insurance or compensation monies therefor.

Value of an Asset

12.—(1) The value of an asset at the date of its disposal shall be the net proceeds of the sale of the asset 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 in the asset, 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.

Apportionment

13.—(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.

(2) For the purposes of this 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.

(3) 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.

Part of an asset

14. 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.

Extension of meaning of "in use"

15. For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.

Exclusion of certain expenditure

16.—(1) 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) to this Bill, such expenditure shall not be or be treated as qualifying expenditure.

(2) Where any company has incurred expenditure upon any ocean going oil-tanker plying between Nigeria and any other territory that expenditure shall not be treated as qualifying expenditure.

Asset used or expenditure incurred partly for the purpose of petroleum operations

17.—(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 petroleum operations carried on by him and partly for other purposes; and

(*b*) the asset in respect of which the owner has incurred qualifying expenditure thereof is used partly for the purposes of 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 petroleum operations and 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 sub-paragraph (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 and reasonable having regard to all circumstances and to the provisions of this Schedule.

Disposal without change of ownership

18. Where an asset in respect of which qualifying expenditure has been incurred by the owner of the asset has been disposed of in such circumstances that such owner remains the owner, 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 asset prior to the date of such disposal shall be left out of account;

(*b*) the owner shall be deemed to have bought the asset immediately after the disposal for a price equal to the residue of the qualifying expenditure at the date of the disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of the disposal.

TABLE I

[*Paragraph*]

Qualifying expenditure in respect of	*Rate per centum*
On-shore operations	5
Operations in territorial waters and continental shelf up to and including 100 metres of water depth	10
Operations in territorial waters and continental shelf areas in water depth between 100 metres and 200 metres of water depth	15
Operations in territorial waters and continental shelf areas beyond 200 metres of water depth	20

TABLE II

Annual allowance	*Rate per centum*
First year	20
2nd year	20
3rd year	20
4th year	20
5th year	19

FIFTH SCHEDULE

1. The Minister shall have the right to require the holder of any licence or lease granted under this Bill (referred to in this Schedule as "the licensee or lessee") to —

(*a*) provide for the Federal Government, to the extent of any refinery or petroleum products storage capacity he may have in Nigeria, petroleum products complying with specification given by the Minister; or

(*b*) deliver to any person holding a licence to operate a refinery, such quantity and quality of crude oil as may be specified by the Minister to the extent that the licensee or lessee has crude oil of that quantity and quality.

2. The licensee or lessee shall use his best endeavours to increase so far as possible with his existing facilities, the supply of petroleum or petroleum products, or both, for the Federal Government to the extent required by the Minister.

3. The licensee or lessee shall, with all reasonable expedition and so as to avoid demurrage on the vessels conveying the same, use his best endeavours to deliver all petroleum or petroleum products purchases by the Minister under the right of pre-emption in such quantities, and at such places of shipment or storage in Nigeria, as may be determined by the Minister.

4. If a vessel employed to carry petroleum or petroleum products pursuant to paragraph 3 of this Schedule is detained on demurrage at the port of loading, the licensee or lessee shall pay the amount due for demurrage according to the terms of the charter-party or the rates of loading previously agreed by the licensee or lessee, unless the delay is due to causes beyond the control of the licensee or lessee.

5. Any dispute which may arise as to whether a delay is due to causes beyond the control of the licensee or lessee shall be settled by agreement between the Minster and the licensee or lessee or, in default of agreement, by arbitration.

6. The price to be paid for petroleum or petroleum products taken by the Minister in exercise of the right of pre-emption shall be —

(*a*) the reasonable value at the point of delivery, less discount to be agreed by both parties; or

(*b*) if no such agreement has been entered into prior to the exercise of the right of pre-emption, a fair price at the port of delivery to be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.

7. To assist in arriving at a fair price for the purposes of paragraph 6 (*b*) of this Schedule, the licensee or lessee shall, if the Minister so requires —

(*a*) furnish for the confidential information of the Minister particulars of quantities, descriptions and prices of petroleum or petroleum products sold to other customers and of charters or contracts entered into for their carriage; and

(*b*) exhibit original or authenticated copies of the relevant contracts or charter-parties.

8. The Minister may take control of any works, plants or premises of the licensee or lessee and if he does so, the licensee or lessee and his servants or agents shall conform to and obey all directions issued by the Minister or on his behalf.

9. Reasonable compensation shall be paid to the licensee or lessee for any loss or damage caused to him by reason of the exercise by the Minister of the powers conferred by paragraph 8 of this Schedule.

10. Any compensation payable under paragraph 9 of this Schedule shall be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.

Production Allowance

11.—(1) This schedule only applies to:

(*a*) new PMLs granted under this Bill, or

(*b*) PMLs converted from OMLs pursuant to paragraph (*b*) of subsection (7) of section 220 of this Bill, in which case the benefit only applies from the date of conversion subject to Paragraph 12 of this Schedule.

(2) The right to claim the allowances in this schedule shall be pro rata to the ownership of the beneficial interest of the company in the relevant cumulative production in the PML, provided however, that a passive revenue company pursuant to subsection (4) of section 348 of this Bill shall not share in the allowances.

(3) For PMLs which commence commercial production after the effective date, there shall be a production allowance for crude oil and condensate production as follows:

(*a*) for onshore areas — the lower of US$30 per barrel and 35% of the fair market value, up to a cumulative maximum of 20 million barrels per PML and the lower of

US$5 per barrel and 35% of the fair market value for volumes exceeding 20 million barrels;

(*b*) for shallow water areas — the lower of US$30 per barrel and 35% of the fair market value, up to a cumulative maximum of 40 million barrels per PML and the lower of US$5 per barrel and 35% of the fair market value, for volumes exceeding 40 million barrels; and

(*c*) for frontier acreage and deep water areas — the lower of US$30 per barrel and 35% of the fair market value, up to a cumulative maximum of 200 million barrels per PML and the lower of US$10 per barrel and 35% of the fair market value for volumes exceeding 200 million barrels.

(4) For PMLs which commence commercial production after the effective date, there shall be a production allowance for natural gas for any level of production, equal to lower of:

(*a*) 50% of the fair market value of the natural gas production, but not be less than $ 1.75 per million Btu; and

(*b*) US $ 4 per million Btu.

(5) There shall be a production allowance for bitumen for any level of production, equal to lower of:

(*a*) 35% of the fair market value of the bitumen; and

(*b*) US $ 30 per barrel.

(6) From the date of conversion to PMLs, companies with OMLs in commercial production at the effective date shall benefit from production allowances as follows:

(*a*) (*i*) for a company with a total production of crude oil and condensate of 25,000 bopd, the lesser of $15 per barrel or 35% of the fair market value of the oil and condensates produced shall be applicable, provided that where in future periods the production for such company exceeds 25,000 bopd, no allowance shall apply on such incremental production.

(*ii*) for a company with a total production of 250 million cubic feet per day of natural gas or less, the lesser of $4 per MMBtu or 50% of the fair market value for natural gas shall be applicable, provided that where in future periods the production from such company exceeds 250,000 Mcf, no allowance shall apply on such incremental

(11) 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 PMLs.

(12) There shall be a general production allowance of the lower of S 5 per barrel or 35% of the fair market value for PMLs of production sharing contracts which are in production prior to the effective date and such allowance may be claimed from the later of:

(*a*) the effective date, or

(*b*) three hundred and sixty-five days prior to the conversion date.

(13) Where allowances other than capital allowance were claimed for the development of a field prior to the commencement of this Bill, the total amount of credit or allowances related to such field converted into a PML shall be adjusted pursuant to regulations, such that the resulting amount shall be deducted from the applicable production allowance under this Schedule for such PML until the resulting amount is fully recovered from such production allowance.

(14) Whenever the Service is of the opinion that a company of the same ultimate owner has restructured or reorganized its interest in order to claim any allowance based on the volume of corporate production in excess of levels permitted under this Schedule, the Service may disregard such action for the determination of applicable allowances.

production.

(*b*) where a lessee is producing crude oil with associated gas at the effective date and is flaring a substantial volume of gas, as determined by regulation, and proposes a development program in order to eliminate routine flaring in the PML and such development plan is approved by the Inspectorate, the lessee shall be able to claim the allowances under paragraph (4) of this Schedule, with respect to the total natural gas production from such lease.

(*c*) where a lessee is producing petroleum on the effective date and a new field is being developed within the PML with respect to production from new formations based on an approved development plan, the lessee shall be able to claim the allowances under paragraphs (3) and (4) of this Schedule, where:

(*i*) the top of the producing formations is the deeper of a vertical depth below the surface of:

(*a*) 4000 meters, or

(*b*) 500 meters deeper than the deepest well drilled in the lease area; and

(*ii*) the development plan has established satisfactory procedures for determining the volumes to be produced from the deeper formations.

(7) The allowances under paragraphs (3), (4) and (5) of this Schedule can be taken separately where a PML produces any combination of:

(*a*) bitumen,

(*b*) crude oil, condensates, or both; and

(*c*) natural gas.

(8) The allowances pursuant to this Schedule shall only apply to any production which is subject to royalty.

(9) Any companies with interests in petroleum mining leases granted pursuant to subsection (7) of section 241 of this Bill to marginal field operators shall be able to apply the allowances under this Schedule for the full cumulative amounts from the date such new leases are granted, regardless of earlier production from such fields.

(10) The US\$ amounts related to the bitumen, oil, gas and condensate allowances in paragraphs (3), (4), (5), (6) (*b*) and (12) of this Schedule shall be adjusted pursuant to section 347 of this Bill.