

PETROLEUM INDUSTRY BILL, 2020

ARRANGEMENT OF SECTIONS

Sections

CHAPTER 1

GOVERNANCE AND INSTITUTIONS

Part I

Vesting, Objectives and Application

1. Vesting of petroleum
2. Objectives

Part II

Minister of Petroleum

3. Powers of the Minister

Part III

The Commission

4. Establishment of the Nigerian Upstream Regulatory Commission
5. Application of this part
6. The objectives of the Commission
7. Technical regulatory functions of the Commission
8. Commercial regulatory functions of the Commission
9. Functions of the Commission for frontier basins
10. Powers of the Commission
11. Governing board of the Commission
12. Functions of the board of the Commission
13. Remuneration and allowances of the board of the Commission
14. Suspension or removal of members of the board of the Commission
15. Resignation of a Non-Executive Commissioner
16. Vacancy on the Board of the Commission
17. Filling of vacancy on the board of the Commission
18. Commission Chief Executive and Executive Commissioners
19. Employees of the Commission
20. Terms and conditions of service in the Commission

21. Remuneration and allowances of employees of the Commission
22. Statement of estimated income and expenditure of the Commission
23. Secretary to the Commission
24. Fund of the Commission
25. Notice to the Commission
26. Special Powers of the Commission
27. Special Investigation Unit
28. Indemnity of officers of the Commission

Part IV

The Authority

29. Establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority
30. Application of this part
31. The objectives of the Authority
32. Functions of the Authority
33. Regulations by the Authority
34. Governing board of the Authority
35. Functions of the board of the Authority
36. Remuneration and allowances of members of the board of the Authority
37. Suspension or removal of a member of the board of the Authority
38. Resignation of a Non-Executive Member of the board of the Authority
39. Vacancy on the board of the Authority
40. Filling of vacancy on the board of the Authority
41. Authority Chief Executive and Executive Directors of the Authority
42. Employees of the Authority
43. Terms and conditions of service in the Authority
44. Remuneration and allowances of employees of the Authority
45. Statement of estimated income and expenditure of the Authority
46. Secretary to the Authority
47. Fund of the Authority

48. Notice to the Authority
49. Special powers of the Authority
50. Special Investigation Unit
51. Indemnity of officers of the Authority
52. The midstream gas infrastructure fund

Part V

The Nigerian National Petroleum Company Limited

53. The Nigerian National Petroleum Company limited
54. Transfer of assets and liabilities
55. Appointment of NNPC limited as agent of NNPC
56. Subsistence of guarantee
57. Transfer of employees and conditions of service
58. The board of NNPC limited
59. Composition of the board of NNPC limited
60. Committees of the board of NNPC limited
61. Application of principle of corporate governance
62. Annual audit of NNPC limited
63. Responsibilities of the board of NNPC limited
64. The objects of NNPC limited
65. Establishment of incorporated joint venture companies

CHAPTER TWO - ADMINISTRATION

Part I

General Administration

66. Objectives
67. Management of petroleum resources

Part II

Administration of Upstream Petroleum Operations

68. Administration of acreage and vesting of data
69. National grid system
70. Licences and leases
71. Petroleum exploration licence
72. Petroleum prospecting licence

-
73. Bidding process
 74. Award process
 75. Licensing round guidelines
 76. Model licence and model lease
 77. Duration and area of petroleum prospecting licence
 78. Work commitment, commercial discovery and significant gas discovery
 79. Commercial discovery and field development plan
 80. Unitisation
 81. Petroleum mining leases
 82. Exclusive right to conduct operations
 83. Confidentiality
 84. Power to enter into contracts
 85. Model contracts
 86. Duration and renewal of leases and licences
 87. Conditions for renewal of petroleum mining leases
 88. Relinquishment
 89. Surrender of licence or lease
 90. Rights of way relating to upstream petroleum operations
 91. Rights of way reserved for the Commission
 92. Voluntary conversion of an oil prospecting licence to a petroleum prospecting licence or oil mining lease to petroleum mining lease
 93. Relinquishment upon renewal or conversion of an oil mining lease
 94. Marginal field
 95. Assignments, mergers, transfers and acquisitions
 96. Grounds for revocation of licence or lease
 97. Notice of default prior to revocation
 98. Administration of a revoked producing lease
 99. Power of revocation of participating or shareholders interest
 100. Fees
 101. Damage to protected and venerated objects
 102. Environmental management

103. Financial contribution for remediation of environmental damage
104. Gas flaring penalties
105. Prohibition of flaring or venting of natural gas
106. Measurement of flared natural gas
107. Exemption
108. Natural gas flare elimination plan
109. Domestic crude oil supply obligations
110. Domestic gas delivery obligations

Part III

General Administration of Midstream and Downstream

Petroleum Operations

111. Matters relating to licence applications
112. Advertisement of licence applications
113. Licensing regulations
114. Conditions in licences or permits
115. Compensation for acquisition of land
116. General non-discrimination
117. Assignment or transfer of licence or permit
118. Suspension and amendment of conditions in a licence or permit
119. Surrender of licence or permit
120. Grounds for the revocation of a licence or permit
121. Notice of default prior to revocation
122. Tariff principles
123. Tariff methodology
124. Approval and publication of charging structures

Part IV

Administration of Midstream and Downstream Gas Operations

125. Activities requiring a licence midstream and downstream gas operations
126. Special regulations for midstream and downstream gas operations
127. Rights of way in relation to midstream and downstream gas operations

-
128. Surface rights reserved for the Authority relating to midstream and downstream gas operation
 129. Grant of a gas processing licence
 130. General duties of the holder of a gas processing licence
 131. Conditions applicable to a gas processing licence
 132. Grant of a bulk gas storage licence
 133. General duties of a bulk gas storage licensee
 134. Conditions applicable to a bulk gas storage licence
 135. Grant of gas transportation pipeline licence
 136. General duties of a transportation pipeline owner
 137. Conditions applicable to a gas transportation pipeline licence
 138. Grant of gas transportation network operator licence
 139. General duties of a gas transportation network operator
 140. Powers of a gas transportation network operator
 141. Conditions applicable to a gas transportation network operator licence
 142. Grant of a wholesale gas supply licence
 143. General duties of a wholesale gas supplier
 144. Rights of a wholesale gas supplier
 145. Conditions applicable to a wholesale gas supply licence
 146. Grant of a retail gas supply licence
 147. General duties of a gas retailer
 148. Grant of gas distribution licence
 149. General duties of a gas distributor
 150. Rights of the gas distributor
 151. Conditions applicable to a gas distribution licence
 152. Arrangements for gas distribution
 153. Domestic gas aggregation licence
 154. Functions of the domestic gas aggregator
 155. Establishment of the aggregator
 156. Gas purchase orders
 157. Price conditions of gas purchase orders

158. Wholesale customers
159. Trading and settlement of wholesale gas
160. Gas network code
161. Third party access relating to midstream and downstream gas operations
162. Conditions for the provision of open access in relation to gas operations
163. Disputes in respect of third party access
164. Customer protection
165. Provision of service to customers
166. Transfer of customers
167. Natural gas prices for the strategic sector, gas distributors and retailers
168. Gas based industries gas price
169. Power to regulate and review prices
170. Pricing principles in relation to gas
171. Public service obligations related to policy issues
172. Public service levy
173. Domestic Gas Demand Requirement

Part V

Administration of Midstream and Downstream Petroleum

Liquids Operations

174. Activities requiring a licence for midstream and downstream petroleum liquids operations
175. Special regulations for midstream and downstream petroleum liquids operations
176. Rights of way relating to midstream and downstream petroleum liquids operations
177. Surface rights reserved for the authority for midstream and downstream petroleum liquids operations
178. Petroleum liquids midstream network code

-
179. Third party access relating to midstream and downstream petroleum liquids operations
 180. Conditions for the provision of open access in relation to petroleum liquids operations
 181. National strategic stocks
 182. Operating stock
 183. Grant of a crude oil refining licence
 184. General duties of a crude oil refiner
 185. Access rights
 186. Conditions applicable to a crude oil refining licence
 187. Grant of a bulk petroleum liquids storage licence
 188. General duties of a bulk storage licensee
 189. Conditions applicable to a bulk petroleum liquids storage licence
 190. Grant of petroleum liquids transportation pipeline licence
 191. General duties of a petroleum liquids transportation pipeline owner
 192. Conditions applicable to a petroleum liquids transportation pipeline licence
 193. Grant of transportation network operator licence
 194. General duties of a petroleum liquids transportation network operator
 195. Powers of a petroleum liquids transportation network operator
 196. Conditions applicable to a petroleum liquids transportation network operator licence
 197. Grant of a wholesale petroleum liquids supply licence
 198. General duties of a wholesale petroleum liquids supplier
 199. Rights of a wholesale petroleum liquids supplier
 200. Conditions applicable to a wholesale petroleum liquids supply licence
 201. Grant of licence for distribution of petroleum products
 202. General duties of petroleum product distributor
 203. Grant of a licence to construct and operate a facility for retail supply and distribution of petroleum products

204. Grant of a permit to construct and operate a facility for the production of petrochemicals
205. Pricing regime and power to regulate tariffs
206. Wholesale prices for petroleum products
207. Pricing principles in relation to petroleum products
208. Publication of prices

Part VI

Other Matters Related to Midstream and Downstream Operations

209. Public service obligations
210. Competition and Market Regulation
211. Power to prevent anti-competitive behaviour
212. Separation of certain licenced activities
213. Non-discrimination among customers
214. Considerations for exercise of the Authority's powers
215. Power to serve notice, issue "cease and desist" order, etc.

Part VII

Common Provisions for Upstream, Midstream and Downstream

Petroleum Operations

216. Consultation for regulations
217. Contravention and enforcement of conditions of leases, licences or permits
218. Mandatory registration
219. Register of licences, permits and authorisations
220. Preparation of licences, permits and authorisations
221. Effective date and authentication of licences, permits and authorisations
222. Register of memorials
223. Register of interests
224. Effect of registration
225. Public access to the registry
226. Default approvals
227. Disclosure of confidential or other information

- 228. Offences
- 229. Penalties
- 230. Refusal to furnish, return or supply information
- 231. Power to issue administrative penalties
- 232. Abandonment, decommissioning and disposal
- 233. Decommissioning and abandonment fund

CHAPTER THREE

Host Communities Development

- 234. Objectives and regulations
- 235. Incorporation of host communities development trusts
- 236. Timeframe for incorporation of host communities development trust
- 237. Transfer of settlor's interest and obligations subject to host communities development trust obligation
- 238. Failure to incorporate host communities development trust
- 239. Objectives of host communities development trust
- 240. Sources of funding for petroleum host communities development trust
- 241. Matters on which the funds may be utilised
- 242. The Board of trustees, composition, management, etc.
- 243. Duties and functions of the Board of Trustees
- 244. Allocation of funds
- 245. Matrix for distribution of trust fund
- 246. Engagement of fund managers
- 247. Management committee, composition, powers, etc.
- 248. Duties and functions of the management committee
- 249. Host community advisory committee, composition, etc
- 250. Duties and functions of the host community advisory committee
- 251. Host community needs assessment
- 252. Contents of host community development plans
- 253. Financial year of the host communities development trust
- 254. Accounts and audit
- 255. Mid-year and annual reports

- 256. Exemption from income tax
- 257. Deduction of payment for petroleum host community development

CHAPTER FOUR

Petroleum Industry Fiscal Framework

Part I

Objectives and Administration

- 258. Objectives
- 259. Administration

Part II

Hydrocarbon Tax

- 260. Application of this Part
- 261. Charge of hydrocarbon tax
- 262. Ascertainment of crude oil revenue, adjusted profit, assessable profits and chargeable profits
- 263. Allowable deductions
- 264. Deductions not allowed
- 265. Assessable Profits and Losses
- 266. Chargeable profits and allowances

Part III

Ascertainment of Chargeable Tax

- 267. Chargeable Tax
- 268. Additional Chargeable Tax payable in certain circumstances

Part IV

Ascertainment of Total Profits and Consolidation for Tax Purposes

- 269. Artificial transactions, etc.
- 270. Assessable Profits and adjusted Losses
- 271. Trade or business sold or transferred
- 272. Consolidation of costs and taxes

Part V

Persons Chargeable

- 273. Partnerships, etc.

-
274. Company wound up, etc.
275. Avoidance by transfer
276. Indemnification of representative
- Part VI
- Applicability, Accounts and particulars
277. Preparation and delivery of accounts and particulars
278. Power of the Service to request further information
279. Power to call for returns, books, etc.
280. Returns of estimated tax
281. Extension of periods for making returns
282. Assessment of Tax Payable
283. Additional assessments
284. Making of assessments, etc.
285. Notices of assessment, etc
286. Errors and defects in assessment and notice
287. Tax computation
- Part VII
- Appeals
288. Appeals to Tax Appeal Tribunal
289. Assessment to be final and conclusive
- Part VIII
- Collection, Recovery and Repayment of Tax
290. Procedure in cases where objection or appeal is pending
291. Time within which payment is to be made
292. Penalty for non-payment of tax and enforcement of payment
293. Collection of tax after determination of objection or appeal
294. Suit for tax by the Service
295. Relief in respect of error or mistake
296. Repayment of tax
- Part IX
- Offences and Penalties
297. Penalty for defaults

- 298. Penalty for making incorrect accounts, etc
- 299. False statements and returns
- 300. Penalties for offences by authorised and unauthorised Persons
- 301. Tax to be payable notwithstanding any proceedings for penalties

Part X

Application of Companies Income Tax to Petroleum Operations

- 302. General requirement of companies engaged in petroleum operations to pay companies income tax

Part XI

General Provisions

- 303. General Application of this Part and other matters
- 304. Regulations, rules and forms
- 305. Fiscal stabilization
- 306. Royalty

CHAPTER FIVE

Miscellaneous Provisions

- 307. Legal proceedings, etc.
 - 308. Pre-Action Notice
 - 309. Consequential Amendments
 - 310. Repeals
 - 311. Saving provisions
 - 312. Transfer of assets and liability to the Commission
 - 313. Transfer of assets and liability to the Authority
 - 314. Transfer of employees and conditions of service
 - 315. Movement of staff of the institutions
 - 316. Transfer of Existing Host Community Development Projects and Host Community Development Schemes
 - 317. Transitional and Savings Provisions related to Chapter Four
 - 318. Interpretation
 - 319. Short title
- Schedules

A BILL [EXECUTIVE]

FOR

AN ACT TO PROVIDE LEGAL, GOVERNANCE, REGULATORY AND FISCAL
FRAMEWORK FOR THE NIGERIAN PETROLEUM INDUSTRY, THE
DEVELOPMENT OF HOST COMMUNITIES AND FOR RELATED MATTERS

[] Commencement

ENACTED BY THE National Assembly of the Federal Republic
of Nigeria as follows-

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CHAPTER 1

GOVERNANCE AND INSTITUTIONS

PART I

VESTING AND OBJECTIVES

1. The property and ownership of petroleum within Nigeria and its
territorial waters, continental shelf and Exclusive Economic Zone is vested
in the Government of the Federation of Nigeria.

Vesting of
Petroleum

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

Objectives

PART II

MINISTER OF PETROLEUM

3. The Minister shall-
(a) formulate, monitor and administer government policy in the
petroleum industry;

Powers of the
Minister

- 1 (b) exercise general supervision over the affairs and operations of the
2 petroleum industry in accordance with the provisions of this Act;
- 3 (c) report developments in the petroleum industry to the government;
- 4 (d) represent Nigeria at international organisations on petroleum
5 matters;
- 6 (e) promote an enabling environment for investment in the Nigerian
7 petroleum industry;
- 8 (f) negotiate treaties or other international agreements on matters
9 pertaining to petroleum on behalf of the Government;
- 10 (g) upon the recommendation of the Commission, grant Petroleum
11 Prospecting Licences and Petroleum Mining Leases through the processes
12 established in this Act;
- 13 (h) upon the recommendation of the Commission and pursuant to the
14 provisions of this Act and the Regulations, revoke and assign interests in
15 Petroleum Prospecting Licences and Petroleum Mining Leases;
- 16 (i) delegate in writing to the Chief Executive of the Commission or
17 Authority any power conferred on the Minister by or under this Act;
- 18 (j) upon the recommendation of the Commission or Authority
19 approve the fees for services rendered by the Commission or Authority in
20 Regulations;
- 21 (k) upon the recommendation of the Commission or the Authority,
22 direct in writing the suspension of petroleum operations in any area-
- 23 (i) until arrangements to prevent danger to life or property have been
24 made to his satisfaction, or
- 25 (ii) where in his opinion, a contravention of this Act or any Regulation
26 made under this Act has occurred or is likely to occur.
- 27 (2) The Minister may order a cutback of the levels of crude oil or
28 condensate production in the context of international oil pricing agreements
29 supported by Nigeria.
- 30 (3) The Minister shall have rights of pre-emption of petroleum and

1 petroleum products marketed under any licence or lease in the event of a
2 national emergency under the First Schedule to this Act.

3 (4) The Minister may give general policy directives to the
4 commission on matters concerning upstream petroleum operations and to
5 the authority on matters relating to midstream and downstream petroleum
6 operations in line with the provisions of this Act and the Commission and the
7 Authority shall comply with such directives.

8 (5) The Minister shall cause the general policy directives issued
9 pursuant to sub-section (4) of this section to be published in the Gazette.

10 PART III

11 THE COMMISSION

12 4.-(1) There is established the Nigerian Upstream Regulatory
13 Commission (the "Commission") which shall be a body corporate with
14 perpetual succession and a common seal. Establishment
of the Nigerian
Upstream
Regulatory
Commission

15 (2) The Commission shall have the power to acquire, hold and
16 dispose of property, sue and be sued in its own name.

17 (3) The Commission shall be responsible for the technical and
18 commercial regulation of upstream petroleum operations.

19 5. The objects and functions of the Commission in this Part are
20 limited to upstream petroleum operations. Application of
this Part

21 6. The objectives of the Commission shall be to- Objectives of
the Commission

22 (a) regulate upstream petroleum operations including technical,
23 operational and commercial activities;

24 (b) ensure compliance with all applicable laws and Regulations
25 governing upstream petroleum operations;

26 (c) ensure that upstream petroleum operations are carried out in a
27 manner to minimise waste and achieve optimal government revenues;

28 (d) promote healthy, safe, efficient and effective conduct of
29 upstream petroleum operations in an environmentally acceptable and
30 sustainable manner;

1 (e) ensure efficient, safe, effective and sustainable infrastructural
2 development of upstream petroleum operations;

3 (f) determine, administer and ensure the implementation and
4 maintenance of technical standards, codes, practices and specifications
5 applicable to upstream petroleum operations pursuant to good international
6 petroleum industry practices;

7 (g) implement government policies for upstream petroleum
8 operations as directed by the minister of petroleum and in accordance with this
9 act;

10 (h) promote an enabling environment for investment in upstream
11 petroleum operations;

12 (i) ensure strict implementation of environmental policies, laws and
13 regulations for upstream petroleum operations;

14 (j) ensure the implementation of national policies for upstream
15 petroleum operations; and

16 (k) implement such other policies and objectives as are consistent
17 with the provisions of this act.

Technical regulatory
functions of the
Commission

18 7. The technical regulatory functions of the Commission include the
19 following-

20 (a) enforce, administer and implement laws, regulations and policies
21 relating to upstream petroleum operations;

22 (b) ensure compliance with applicable national and international
23 petroleum industry policies, standards and practices for upstream petroleum
24 operations;

25 (c) establish, monitor, regulate and enforce health, safety and
26 environmental measures and standards relating to upstream petroleum
27 operations including-

28 (i) management of petroleum reserves and installations, and

29 (ii) exploration, development and production activities within the
30 onshore, offshore and exclusive economic zone of Nigeria;

- 1 (d) administer, monitor and enforce compliance with the terms and
2 conditions of leases and licences granted and permits and authorisations
3 issued to a company in respect of upstream petroleum operations;
- 4 (e) set, define and enforce approved standards and regulations for
5 design, construction, fabrication, operation and maintenance of plants,
6 installations and facilities used or to be used in upstream petroleum
7 operations including-
- 8 (i) crude oil and natural gas evaluation and management,
9 (ii) upstream natural gas gathering,
10 (iii) natural gas treatment, and
11 (iv) the elimination of natural gas flaring and venting;
- 12 (f) keep public registers of-
- 13 (i) licences and leases granted by the Minister and permits and
14 other authorisations issued by the Commission,
15 (ii) beneficial ownership, and
16 (iii) award, renewal, assignment, amendment, suspension and
17 revocation thereof;
- 18 (g) carry out enquiries, tests, audits or investigations and take other
19 steps to monitor the activities of licensees, lessees or permit holders;
- 20 (h) establish and enforce standards relating to upstream petroleum
21 operations;
- 22 (i) undertake evaluation of national reserves and develop policies
23 for prudent reservoir management practices;
- 24 (j) maintain a Nigerian petroleum industry data bank comprising of
25 materials, information and data acquired by, or submitted to, the
26 Commission in the exercise of its statutory and regulatory functions;
- 27 (k) require lessees, licensees and permit holders to furnish and
28 publish specified information relating to upstream petroleum operations in
29 this Act and the National Data Repository Regulation, 2020;
- 30 (l) supervise and ensure accurate calibration and certification of

- 1 equipment used for metering upstream petroleum operations and issue
2 certificates of quality and quantity for petroleum produced;
- 3 (m) publish reports and statistics on upstream petroleum operations to
4 promote the growth of the petroleum industry;
- 5 (n) advise the Minister on fiscal, operational, technical and other
6 matters to enhance the upstream petroleum operations;
- 7 (o) issue permits and other authorisations as may be necessary for
8 technical activities, including-
- 9 (i) seismic operations,
10 (ii) drilling operations, and
11 (iii) design, construction and operation of facilities for upstream
12 petroleum operations;
- 13 (p) establish special laboratories to provide data storage and testing,
14 quality assurance and certification for upstream petroleum operations;
- 15 (q) perform technical evaluation and assessments regarding
16 submissions made to the Commission by licensees, lessees or permit holders
17 involved in upstream petroleum operations;
- 18 (r) keep records, data and reports obtained from upstream petroleum
19 operations, as may be required under any Act or regulation and give directive to
20 any person, company or entity in that regard;
- 21 (s) manage and administer data regarding unallocated acreage;
- 22 (t) conduct bidding rounds for the award of petroleum prospecting
23 licences and petroleum mining leases pursuant to this act and applicable
24 regulations;
- 25 (u) when requested, provide assistance to parties conducting
26 upstream petroleum operation, where in the sole opinion of the commission
27 such assistance is merited;
- 28 (v) approve field development plans and commercial terms for
29 upstream petroleum operations;
- 30 (w) compute, determine, assess and ensure payment of royalties,

1 rents, fees, and other charges for upstream petroleum operations as
2 stipulated under this Act and any Regulations;

3 (x) establish parameters and codes of conduct for licensees, lessees
4 or permit holders in the upstream petroleum operations;

5 (y) monitor the financial viability of licensees, lessees or permit
6 holders with respect to upstream petroleum operations;

7 (z) develop, maintain and publish a database of upstream
8 petroleum operations; and

9 (aa) perform such other function as may be necessary to give effect
10 to the provisions of this Act.

11 **8.** The commercial regulatory functions of the Commission shall
12 be to-

Commercial
regulatory
functions of the
Commission

13 (a) review and approve the commercial aspects of field
14 development plans and other related upstream petroleum operations;

15 (b) supervise costs and cost control in upstream petroleum
16 operations;

17 (c) review and approve commercial aspects of work programmes
18 and field development plans for all licensees, lessees or permit holders in
19 upstream petroleum operations, including the NNPC and NNPC Limited;

20 (d) develop cost studies and benchmarks for the evaluation of
21 upstream petroleum operations taking into account petroleum industry
22 specific issues, including field size, reservoir depth, location of operations,
23 technology applied, production methods and petroleum quality;

24 (e) implement cutbacks of crude oil or condensate production
25 ordered by the Minister; and

26 (f) make arrangements with NNPC Limited regarding any
27 functions under section 64 of this Act.

28 **9.-(1)** The functions of the Commission with respect to Frontier
29 Basins shall be to-

Functions of the
Commission for
frontier basins

30 (a) promote the exploration of the frontier basins of Nigeria;

1 (b) develop exploration strategies and portfolio management for the
2 exploration of unassigned frontier basins in Nigeria;

3 (c) identify opportunities and increase information about the
4 petroleum resources base within frontier basins in Nigeria;

5 (d) undertake studies, analyse and evaluate unassigned frontier basins
6 in Nigeria.

7 (2) Where data acquired and interpreted under a Petroleum
8 Exploration Licence is, in the judgment of the Commission, requires testing
9 and drilling of identifiable prospects and leads, and no commercial entity has
10 publicly expressed an intention of testing or drilling such prospects, the
11 Commission may engage the services of a competent person to drill or test such
12 prospect and leads on a service fee basis.

13 (3) There shall be maintained, for the purpose of this section, a
14 Frontier Exploration Fund.

15 (4) The Frontier Exploration Fund shall be 10% of rents on petroleum
16 prospecting licences and petroleum mining leases.

17 (5) The Commission shall manage the Frontier Exploration Fund in
18 accordance with regulations made under this Act.

Powers of the
Commission

19 **10.** The Commission shall have power to-

20 (a) enforce the provisions of any-

21 (i) regulation made pursuant hereto, with respect to upstream
22 petroleum operations,

23 (ii) enactments with respect to the upstream petroleum industry made
24 prior to the coming into force of this Act and any Regulations made pursuant to
25 powers given under them; and

26 (iii) regulations, policies or guidelines formerly administered by the
27 department of petroleum resources or the petroleum inspectorate, with respect
28 to upstream petroleum operations;

29 (b) seal up any premises, pursuant to section 217 of this Act, including
30 any facility or plant engaged in upstream petroleum operations, where there

- 1 has been a contravention of this Act or any regulations made under this Act;
- 2 (c) issue guidelines on the generation, use, storage and
3 transportation of radioactive sources and materials, in respect of upstream
4 petroleum operations in consultation with the Nigerian Nuclear Regulatory
5 Authority;
- 6 (d) set standards to promote the adoption of new technologies for
7 upstream petroleum operations;
- 8 (e) require lessees, licensees and permit holders to publish
9 specified and non-proprietary information relating to upstream petroleum
10 operations;
- 11 (f) issue guidelines in accordance with the provisions of this Act or
12 any other regulation in respect of upstream petroleum operations;
- 13 (g) with the approval of the Minister, renew and suspend licences
14 and leases in accordance with provisions of this Act;
- 15 (h) within the jurisdiction of the Commission, have access to-
- 16 (i) areas or rights of way regarding licences, leases or any related
17 offices or buildings where information or data are available for inspection
18 under this Act; and
- 19 (ii) all installations to which this Act applies, including plants and
20 stations of every description, for the purpose of inspecting the operations
21 conducted therein and enforcing the provisions of this Act and any
22 regulations made under it.
- 23 (i) impose on a petroleum prospecting licence, petroleum
24 exploration licence or any petroleum mining lease to which this Act applies,
25 special terms and conditions not inconsistent with this Act at the grant or
26 renewal of the licence or lease;
- 27 (j) subject to section 3(1)(j) of this Act, make regulations
28 pertaining to operations, monitoring, lease management and any other
29 matter in respect of upstream petroleum operations as the Commission may
30 deem necessary after due stakeholder consultation pursuant to section 216

1 of this Act, including regulations related to dispute resolution; and(k) d o
2 such other things as are necessary and expedient for the effective and full
3 discharge of any of its functions under this Act.

Governing Board
of the Commission

4 **11.**-(1) There is established a Governing Board (the “ Board of the
5 Commission”) which shall be responsible for the policy and general
6 administration of the Commission.

7 (2) The Board of the Commission shall consist of the following
8 members-

9 (a) one non-executive chairman;

10 (b) two non-executive commissioners;

11 (c) the chief executive of the Commission (the “Commission Chief
12 Executive”);

13 (d) two other executive commissioners who are responsible for
14 Finance and Accounts and Exploration and Acreage Management;

15 (e) one representative of the Authority not below the rank of director;

16 (f) one representative of the Ministry not below the rank of director;

17 and

18 (g) one representative of the Ministry of Finance not below the rank of
19 director.

20 (3) Appointments to the Board of the Commission under subsection
21 (2) of this section shall be made by the President and be subject to confirmation
22 by the Senate, except for the appointments of ex-officio members under
23 subsection (e), (f) and (g) of this section.

24 (4) A person appointed pursuant to sub-section (2) (a) and (b) of this
25 section shall have at least 15 years post-qualification experience in petroleum
26 or other relevant sector of the economy and shall hold office for a period of 5
27 years and may be re-appointed for a further term of 5 years, on such terms and
28 conditions as may be specified in the letter of appointment.

29 (5) Subject to subsection 0 of this section and section 18(7) of this
30 Act, a commissioner shall hold office for 5 years and may be re-appointed for a

1 further term of 5 years.

2 (6) A non-executive commissioner shall hold office on part-time
3 basis.

4 (7) The Board of the Commission may authorise in writing any
5 commissioner, committee of the Board of the Commission, the Commission
6 Chief Executive or any other officer or employee of the Commission, to
7 exercise any power or carry out any duty or function of the Commission
8 under this Act or regulation made under this Act.

9 (8) The proceedings of the Board of the Commission and other
10 ancillary matters shall be as prescribed by Regulation made under this Act.

11 **12.** The Board of the Commission shall-

Functions of the
Board of the
Commission

12 (a) be responsible for the formulation of policy, supervision and
13 giving strategic direction to the Commission;

14 (b) provide general guidance for the carrying out of the functions
15 of the Commission;

16 (c) review and approve the business, strategic and operating plans
17 of the Commission;

18 (d) consider and approve the annual budget of the Commission
19 before submission to the National Assembly for appropriation;

20 (e) approve the management accounts and audited accounts of the
21 Commission and consider the management letter from the external auditors;

22 (f) determine the terms and conditions of service of employees of
23 the Commission;

24 (g) recommend remuneration, allowances, benefits and pensions
25 of employees of the Commission in consultation with the National Salaries,
26 Incomes and Wages Commission, having regard to the-

27 (i) specialised nature of work to be performed by the Commission;

28 (ii) need to ensure the financial self-sufficiency of the
29 Commission; and

30 (iii) remuneration and allowances paid in the private sector in

1 upstream petroleum operations to individuals with equivalent responsibilities,
2 expertise and skills;

3 (h) structure the Commission into such number of departments as it
4 deems fit for the effective discharge of the functions of the Commission; and

5 (i) carry out such other functions as may be necessary for the efficient
6 and effective administration of the Commission under this Act.

Remuneration
and allowances
of the Board of
the Commission

7 **13.**-(1) Commissioners shall be paid from the funds of the
8 Commission such remuneration and allowances as applicable.

9 (2) The Commission shall comply with the policy and guidelines of
10 the National Salaries, Incomes and Wages Commission regarding
11 remunerations.

Suspension or
removal of
members of the
Board of the
Commission

12 **14.** A member of the Board of the Commission may be suspended or
13 removed from office by the President, where the member-

14 (a) is found to-

15 (i) be unqualified for appointment under section 11 of this Act,

16 (ii) have been unqualified subsequent to his appointment, or

17 (iii) be in breach of conflict of interest provisions in the Companies
18 and Allied Matters Act or any Regulation regarding conflicts of interest passed
19 pursuant to this Act;

20 (b) ceases to be an employee of the ministry or agency he represents
21 on the Board of the Commission;

22 (c) has demonstrated an inability to effectively perform the duties of
23 his office;

24 (d) has been absent from the meeting of the Board of the Commission
25 for 3 consecutive times without the consent of the Chairman or in the case of
26 the Chairman, without the consent of the President, except where good reason
27 is shown for the absence;

28 (e) is found guilty of serious misconduct by a Court or Tribunal of
29 competent jurisdiction; or

30 (f) has, under the law in force in any country-

- 1 (i) been adjudged or declared bankrupt or insolvent and has not
2 been discharged,
- 3 (ii) made an assignment to or arrangement or composition with his
4 creditors which has not been rescinded or set aside, or
- 5 (iii) been declared to be of unsound mind.
- 6 **15.** A non-executive commissioner may resign his appointment by Resignation of
7 giving two-months' written notice to the President. a Non-Executive
Commissioner
- 8 **16.** A vacancy on the Board of the Commission shall occur, where Vacancy on the
9 a commissioner- Board of the
Commission
- 10 (a) dies;
- 11 (b) is removed from office in accordance with section 14 of this
12 Act;
- 13 (c) resigns from office;
- 14 (d) completes his tenure of office; or
- 15 (e) is incapacitated.
- 16 **17.** A vacancy on the Board of the Commission shall be filled by Filling of vacancy
17 the appointment of another person in accordance with section 11 of this Act. on the Board of
the Commission
- 18 **18.** The Commission Chief Executive is the accounting officer Commission
19 and shall be responsible for the day-to-day running of the affairs of the Chief Executive
and Executive
20 Commission. Commissioners
- 21 (2) There shall be 6 executive commissioners for the Commission
22 with each responsible for one of the following-
- 23 (a) Exploration and Acreage Management;
- 24 (b) Development and Production;
- 25 (c) Health, Safety, Environment and Community;
- 26 (d) Economic Regulations and Strategic Planning;
- 27 (e) Corporate Services and Administration; and
- 28 (f) Finance and Accounts.
- 29 (3) A person to be appointed as Commission Chief Executive and
30 as an executive commissioner of the Commission shall have extensive

1 managerial, technical or professional knowledge of the upstream petroleum
2 operations with a minimum of 15 years post-qualification experience.

3 (4) The Commission Chief Executive shall be appointed on such
4 terms and conditions as may be set out in the letter of appointment, except as
5 otherwise provided for in this Act.

6 (5) An Executive Commissioner shall be appointed on such terms and
7 conditions as may be set out in the letter of appointment, except as otherwise
8 provided for in this Act.

9 (6) The Commission Chief Executive shall be appointed for an initial
10 term of five years and may be re-appointed for a further term of 5 years, subject
11 to confirmation by the Senate.

12 (7) The President may, not later than 14 days prior to the expiration of
13 the tenure of the Commission Chief Executive or an Executive Commissioner,
14 re-appoint the Commission Chief Executive or Executive Commissioner or
15 appoint another qualified person.

16 (8) A person shall not be appointed as a Commission Chief Executive
17 or an Executive Commissioner, where the person-

18 (a) is likely to be in breach of conflict of interest provisions under the
19 Companies and Allied Matters Act or Regulation made under this Act;

20 (b) has a financial interest in any business connected, directly or
21 indirectly with the petroleum industry;

22 (c) is engaged in any activity for remuneration or otherwise
23 connected with the petroleum industry;

24 (d) is a relative of a person who has an interest or is engaged in any of
25 the activities under paragraphs (a)–(c) of this sub-section, provided that-

26 (i) such person may be appointed Commission Chief Executive or an
27 executive commissioner if he declares his interest and makes appropriate
28 arrangements to ensure the avoidance of a conflict of interest,

29 (ii) the President is satisfied that the interest or activity shall not
30 interfere with the person's impartial discharge of his duties as the Commission

1 Chief Executive or an executive commissioner, or
2 (iii) the financial interest is terminated prior to the appointment
3 taking effect; or
4 (e) has, under the laws in force in any country,-
5 (i) been adjudged or declared bankrupt or insolvent and has not
6 been discharged,
7 (ii) made an assignment to or arrangement or composition with his
8 creditors, which has not been rescinded or set aside,
9 (iii) been declared to be of unsound mind,
10 (iv) been convicted of any criminal offence by a court of competent
11 jurisdiction except for traffic offences, or
12 (v) been disqualified or suspended from practising his profession
13 by the order of a competent authority.

14 **19.** The Board of the Commission shall determine the number of
15 persons that shall be employees of the Commission.

Employees of
the Commission

16 **20.**-(1) The employees of the Commission shall be subject to terms
17 and conditions set out by the Board of the Commission.

Terms and conditions
of service in the
Commission

18 (2) The terms and conditions of service referred to in sub-section
19 (1) of this section may provide for-

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

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

24 (c) the grant of pensions, gratuities and other retirement benefits to
25 employees.

26 (3) In this section, the term "appointment" include secondment,
27 transfer and contract appointments.

28 (4) Employees of the Commission shall be "public officers" as
29 defined in the Constitution.

30 (5) Employment by the Commission shall be subject to the

1 provisions of the Pension Reform Act and officers and employees of the
2 Commission shall be entitled to pension and other retirement benefits as
3 prescribed under the Pensions Reform Act.

4 (6) Nothing in subsection (5) of this section shall prevent the
5 Commission from appointing a person to an office on terms that preclude the
6 grant of pension or other retirement benefits in respect of that office.

Remuneration
and allowances
of employees
of the Commission

7 **21.** The Board of the Commission, in consultation with the National
8 Salaries, Incomes and Wages Commission, shall determine and periodically
9 review the remuneration and allowances payable to the employees of the
10 Commission, having regard to the-

11 (a) specialised nature of work to be performed by the employees of
12 the Commission;

13 (b) need to ensure the financial self-sufficiency of the Commission;
14 and

15 (c) remuneration and allowances paid within the petroleum industry
16 to individuals with equivalent responsibilities, expertise and skills.

Statement of
estimated income
and expenditure
of the Commission

17 **22.**-(1) The Commission shall, not later than 30th of September of each
18 year or such other date that the Minister responsible for Budget and National
19 Planning may determine, prepare and present to the National Assembly, a
20 statement of estimated income and expenditure of the Commission for the next
21 financial year.

22 (2) Notwithstanding the provisions of this section, the Commission
23 may, in each financial year, submit to the National Assembly, supplementary or
24 adjusted statements of estimated income and expenditure of the Commission.

25 (3) The financial year of the Commission shall be a period of 12
26 calendar months commencing on the 1st of January in each year or such other
27 date as the Minister of Finance may determine.

Secretary to the
Commission

28 **23.**-(1) The Board of the Commission shall appoint a Secretary, who
29 shall-

30 (a) be the Legal Adviser to the Commission;

1 (b) attend meetings of the Board of the Commission and keep
2 minutes, corporate records and the common seal of the Commission; and

3 (c) carry out such administrative and other secretarial duties as the
4 Commission Chief Executive and the Board of the Commission may direct.

5 (2) The Secretary shall be a legal practitioner with a minimum of
6 10 years post-qualification experience.

7 **24.**-(1) The Commission shall maintain a Fund (the “Commission Fund of the
8 Fund”) into which money accruing to the Commission shall be paid. Commission

9 (2) The source of the Commission Fund shall be as follows-

10 (a) money appropriated by the National Assembly for the
11 Commission on a first-line charge;

12 (b) fees charged by the Commission for services rendered to
13 licensees, lessees permit holders and other authorisations issued by the
14 Commission;

15 (c) money derived from revenue collection in accordance with
16 government policy;

17 (d) income derived from publications made by the Commission
18 and other related activities, including data sales;

19 (e) fees paid to the Commission for using facilities owned or
20 managed by the Commission; and

21 (f) money accruing to the Commission by way of grants, aids, gifts,
22 testamentary dispositions, endowments and contributions.

23 (3) The Commission Fund shall be applied-

24 (a) to meet approved budgetary obligations of the Commission;

25 (b) to meet administrative and operating cost of the Commission;

26 (c) to pay salaries, wages, fees or other remuneration or
27 allowances, pensions and other retirement benefits payable to employees of
28 the Commission;

29 (d) to acquire and maintain any property acquired by or vested in
30 the Commission;

1 (e) for investments, as provided under the Trustee Investments Act or
2 any other applicable legislation, subject to the approval of Minister responsible
3 for Finance; and

4 (f) in connection with any of the functions of the Commission under
5 this Act.

6 (4) The Commission shall ensure that money accruing from royalties
7 and rents charged under this Act or any subsidiary legislation made pursuant to
8 this Act on royalties and rents are paid into the Federation Account.

9 (5) At the end of each financial year, any money that accrued to the
10 Commission Fund pursuant to subsection (2) of this section, which have not
11 been utilised for the purposes provided under subsection (3) of this section,
12 shall be paid into the Consolidated Revenue Fund.

13 (6) The Commission may accept grants of money or property on such
14 terms and conditions as may be specified by the person or organisation making
15 the grant, provided that-

16 (a) the terms and conditions of the grant are not inconsistent with the
17 objectives and functions of the Commission; or

18 (b) no such grant is accepted from any person or organisation
19 regulated by the Commission.

20 (7) Nothing in subsection (6) of this section or under this Act shall be
21 construed as authorising the Commission Chief Executive, Commissioners,
22 officer or employee of the Commission to accept any grant for their personal
23 use.

24 (8) The Commission shall keep proper accounts of its income and
25 expenditure for each financial year and cause it to be audited within 6 months
26 after the end of each financial year by auditors appointed by the Commission
27 from a list and in accordance with guidelines, supplied by the Auditor-General
28 for the Federation.

29 (9) The Commission shall submit to the Minister-

30 (a) a mid-year report of its operations and finances not later than the

1 31st of August of each year;
2 (b) an annual report of its operations and performance; and
3 (c) an audited financial account for the year, not later than 31st
4 of March of the following year.

5 (10) The Commission shall, not later than the 31st of March of each
6 year-

7 (a) submit to the Minister a summary of its annual report and
8 audited financial accounts; and

9 (b) publish the annual report and audited financial accounts on its
10 website.

11 (11) The provisions of any enactment relating to the taxation of
12 companies or trust funds shall not apply to the Commission.

13 **25.** A Government agency exercising any power or function or
14 taking any action, which may have direct impact on upstream petroleum
15 operations shall notify the Commission prior to-

Notice to thr
Commission

16 (a) issuing any Regulation, guideline, Enforcement Order or
17 directive;

18 (b) exercising any such power or function; or

19 (c) taking any such action.

20 **26.** The Commission shall in carrying out its functions under this
21 Act have special powers to-

Special powers
of the Commission

22 (a) inquire, inspect, examine or investigate any business or activity
23 relating to upstream petroleum operations under this Act, where it believes
24 that illegal upstream petroleum operations are going on;

25 (b) conduct surveillance on crude oil and natural gas installations,
26 premises and vessels where it believes that illegal upstream petroleum
27 operations are going on;

28 (c) enter any upstream wellsite, plant, facility or place-

29 (i) at which crude oil or natural gas is produced, handled or treated,

30 (ii) that is used in connection with any upstream wellsite, plant,

- 1 facility or place where crude oil or natural gas is produced, handled or treated;
- 2 (d) enter at any reasonable time premises containing any records or
- 3 property required to be maintained pursuant to this Act or related to the
- 4 administration of upstream petroleum operations under this Act for the purpose
- 5 of inspecting those records or that property;
- 6 (e) require any person or his agent, representative, partner, director,
- 7 officer or employee engaged in upstream petroleum operations to-
- 8 (i) answer any question that may be relevant to the inquiry, inspection,
- 9 examination or investigation, and
- 10 (ii) provide any required information contained in a computer
- 11 hardware or software or any other data storage, processing or retrieval device
- 12 or system used in connection with the business or activities relating to
- 13 upstream petroleum operations under this Act;
- 14 (f) take any sample or carry out any test or examination as it may
- 15 consider necessary in the performance of its functions;
- 16 (g) use any machinery, equipment, appliance or thing as it may
- 17 consider necessary in the performance of its functions;
- 18 (h) remove for examination and copy anything that may be relevant to
- 19 the inquiry, inspection, examination or investigation, including removing any
- 20 computer hardware or software or any other data storage, processing or
- 21 retrieval device or system;
- 22 (i) in conjunction with the Nigeria Police or other law enforcement
- 23 agencies, arrest with a warrant, any person reasonably believed to have
- 24 committed an offence under this Act; and
- 25 (j) exercise any other power that may be conferred on it under any law
- 26 or regulation.
- 27 (2) An entity, person or agent, representative, partner, director, officer
- 28 or employee of that entity or person under investigation by the Commission
- 29 shall-
- 30 (a) grant access to officers of the Commission with regard to any

1 place, wellsite, plant, facility, upstream machinery, equipment, appliances
2 or things that may be relevant to the investigation; and

3 (b) provide on request, any book, account, record, document,
4 voucher, information and explanation relating to upstream petroleum
5 operations as the officers of the Commission may require;

6 (3) An entity, person or agent, representative, partner, director,
7 officer or employee of that entity or person who fails to comply with sub-
8 section (2) of this section commits an offence and is liable on conviction to-

9 (a) a term of 5 years imprisonment or a minimum fine of
10 N5,000,000; and

11 (b) in the case of a continuous offence, to an additional minimum
12 fine of N100,000 for each day during which the offence continues.

13 (4) The Commission shall in the exercise of its powers under this
14 section avoid undue hindrance of entities and persons engaged in lawful
15 upstream petroleum operations.

16 **27.** The special powers of the Commission under section 26 of this
17 Act shall be performed by the Special Investigation Unit of the Commission
18 or any person authorised by the Commission.

Special
Investigation
Unit

19 **28.** The Commission Chief Executive, a commissioner or any
20 officer of the Commission shall each be indemnified out of the Commission
21 Fund against any liability incurred in defending any proceeding against the
22 Commission or brought against him in his official capacity.

Indemnity of
officers of the
Commission

23 (2) Notwithstanding the provisions of subsection (1) of this
24 section, the Commission shall not indemnify the Commission Chief
25 Executive, a commissioner or any officer of the Commission for any
26 liability incurred as a result of wilful misconduct or gross negligence.

27 PART IV

28 THE AUTHORITY

29 **29.-(1)** There is established the Nigerian Midstream and
30 Downstream Petroleum Regulatory Authority (the "Authority"), which

Establish of the
Nigerian Midstream
and Downstream
Petroleum
Regulatory
Authority

1 shall be a body corporate with perpetual succession and a common seal.

2 (2) The Authority shall have the power to acquire, hold and dispose of
3 property, sue and be sued in its own name.

4 (3) The Authority shall be responsible for the technical and
5 commercial regulation of midstream and downstream petroleum operations in
6 the petroleum industry.

Application of
this Part

7 **30.** The objects and functions of the Authority in this Part are limited
8 to midstream and downstream petroleum operations in the petroleum industry.

Objectives of
the Authority

9 **31.** The objectives of the Authority shall be to-

10 (a) regulate midstream and downstream petroleum operations,
11 including technical, operational, and commercial activities;

12 (b) ensure efficient, safe, effective and sustainable infrastructural
13 development of midstream and downstream petroleum operations;

14 (c) promote healthy, safe, efficient and effective conduct of
15 midstream and downstream petroleum operations in an environmentally
16 acceptable and sustainable manner;

17 (d) promote a competitive market for midstream and downstream
18 petroleum operations;

19 (e) promote the supply and distribution of natural gas and petroleum
20 products in midstream and downstream petroleum operations and the security
21 of natural gas supply for the domestic gas market;

22 (f) ensure compliance with applicable laws and regulations governing
23 midstream and downstream petroleum operations;

24 (g) ensure the efficient, safe, effective and sustainable infrastructure
25 development of midstream and downstream petroleum operations;

26 (h) determine, administer and ensure the implementation and
27 maintenance of technical standards, codes, practices and specifications
28 applicable to midstream and downstream petroleum operations pursuant to
29 good international petroleum practices;

30 (i) implement Government policies for midstream and downstream

1 petroleum operations as directed by the Minister and in accordance with this
2 Act;

3 (j) promote, establish and develop a positive environment for
4 international and domestic investment in midstream and downstream
5 petroleum operations;

6 (k) ensure strict implementation of environmental policies, laws
7 and regulations for midstream and downstream petroleum operations;

8 (l) develop and enforce a framework on tariff and pricing for
9 natural gas and petroleum products; and

10 (m) implement such other policies and objectives as are consistent
11 with the provisions of this Act.

12 **32.** The functions of the Authority shall be to-

Functions of the
Authority

13 (a) regulate and monitor technical and commercial midstream and
14 downstream petroleum operations in Nigeria;

15 (b) regulate commercial midstream and downstream petroleum
16 operations, including-

17 (i) petroleum liquids operations,

18 (ii) domestic natural gas operations, and

19 (iii) export natural gas operations;

20 (c) determine appropriate tariff methodology for-

21 (i) processing of natural gas,

22 (ii) transportation and transmission of natural gas,

23 (iii) transportation of crude oil, and

24 (iv) bulk storage of crude oil and natural gas;

25 (d) setting cost benchmarks for midstream and downstream
26 petroleum operations;

27 (e) provide pricing and tariff frameworks for natural gas in
28 midstream and downstream gas operations and petroleum products based on
29 the fair market value of the applicable petroleum products;

30 (f) advise the Government, government agencies and other

- 1 stakeholders on commercial matters relating to tariff and pricing frameworks;
- 2 (g) develop open access rules applicable to petroleum liquids and
3 natural gas transportation pipelines, terminal facilities and bulk storage
4 facilities;
- 5 (h) regulate the bulk storage, distribution, marketing and
6 transportation pipelines of petroleum products;
- 7 (i) grant, issue, modify, extend, renew, review, suspend, cancel,
8 reissue or terminate licences, permits and authorisations for midstream and
9 downstream petroleum operations;
- 10 (j) monitor and enforce compliance with the terms and conditions of
11 licences, permits and authorisations issued by the Authority;
- 12 (k) keep public registers of-
- 13 (i) licences, permits and other authorisations issued by the Authority,
14 and
- 15 (ii) renewals, assignments, amendments, suspensions or revocations
16 thereof;
- 17 (l) set, define and enforce approved standards and regulations for
18 design, construction, fabrication, operation and maintenance of plants,
19 installations and facilities used or to be used in midstream and downstream
20 petroleum operations;
- 21 (m) carry out enquiries, tests, audits or investigations and take other
22 steps to monitor the midstream and downstream petroleum operations;
- 23 (n) ensure security of supply, development of the markets and
24 competition in the markets for natural gas and petroleum products;
- 25 (o) ensure third party access to facilities under gas processing
26 licences, transportation pipelines and transportation networks and midstream
27 bulk storage facilities, where such facilities are operated for the own account of
28 the owner;
- 29 (p) develop rules for trading in wholesale gas supplies to gas distributors;
- 30 (q) establish customer protection measures in accordance with the

1 provisions of this Act;

2 (r) publish decisions, directions or determinations of the Authority
3 that have implications for customers and industry participants, together with
4 the reasons for such decisions, directions or determinations which, in the
5 opinion of the Authority, should be published;

6 (s) promote the interests of customers with regard to midstream
7 and downstream petroleum operations;

8 (t) promote the principles of economic development of
9 infrastructure with regard to midstream and downstream petroleum
10 operations;

11 (u) promote competition and private sector participation in
12 midstream and downstream petroleum operations;

13 (v) determine the domestic gas demand requirement and the crude
14 oil required for the domestic crude oil supply obligation and ensure that
15 economic and strategic domestic demands are met;

16 (w) regulate the supply, distribution, marketing and retail of
17 petroleum products;

18 (x) administer and monitor strategic stocks of petroleum products;

19 (y) monitor the application of petroleum product prices, pricing
20 formulae and frameworks;

21 (z) monitor market behaviour with respect to midstream and
22 downstream petroleum operations;

23 (aa) identify, investigate and prevent abuse of dominant positions
24 and restrictive business practice with regard to midstream and downstream
25 petroleum operations;

26 (bb) establish, monitor, regulate and enforce technical, health,
27 environmental and safety measures relating to midstream and downstream
28 petroleum operations;

29 (cc) develop, specify and monitor technical and safety standards
30 for wholesale marketing, processing plant, retail marketing and bunkering

- 1 of petroleum products;
- 2 (dd) ensure the accuracy of metering pumps and related measurement
3 facilities in midstream and downstream petroleum operations;
- 4 (ee) define and enforce approved standards and guidelines for the
5 design, procurement, construction, operation and maintenance of plants,
6 installations and facilities in the midstream and downstream petroleum
7 operations;
- 8 (ff) establish laboratories to provide data storage and testing, quality
9 assurance and certification of crude oil, natural gas and petroleum products and
10 regulate the activities of third party laboratories used in midstream and
11 downstream petroleum operations;
- 12 (gg) keep and classify records, data and reports as may be prescribed
13 in regulations or guidelines;
- 14 (hh) ensure the promotion of safe and development of midstream and
15 downstream petroleum operations;
- 16 (ii) issue certificates of quality and quantity to exporters of crude oil,
17 LNG and petroleum products;
- 18 (jj) implement and enforce compliance with laws, regulations and
19 policies relating to midstream and downstream petroleum operations;
- 20 (kk) establish parameters and codes of conduct for operators in the
21 midstream and downstream petroleum operations;
- 22 (ll) monitor the financial viability of operators with respect to
23 midstream and downstream petroleum operations;
- 24 (mm) develop, maintain and publish a database of midstream and
25 downstream petroleum operations;
- 26 (nn) monitor and ensure that the quality of petroleum products sold in
27 Nigeria conform to defined specifications;
- 28 (oo) establish, monitor and ensure compliance with the standards for
29 the processing of petroleum products in Nigeria;
- 30 (pp) request information and documents relating to licenced

1 activities, including pricing information and macro economic data from any
2 licensee or permit holder in midstream and downstream petroleum
3 operations;

4 (qq) publish or direct licensees, lessees and permit holders to
5 publish, in the interest of the public, information relating to midstream and
6 downstream petroleum operations in accordance with applicable law or
7 regulation;

8 (rr) determine the domestic base price and the prices applicable to
9 wholesale customers of the strategic sectors and gas distributors; and

10 (ss) perform such other function as may be necessary to give effect
11 to the provisions of this Act.

12 **33.** Subject to section 216 of this Act, the Authority may make
13 Regulations-

Regulations by
the Authority

14 (a) concerning the processing, refining, transmission, distribution,
15 supply, sale and storage of petroleum and petroleum products as well as
16 other midstream and downstream petroleum operations;

17 (b) establishing those midstream and downstream petroleum
18 operations to be subject to a licence or permit from the Authority;

19 (c) establishing the application criteria and procedure for licences
20 and permits for midstream and downstream petroleum operations;

21 (d) establishing the procedure for review and approval of licence
22 and permit applications for midstream and downstream petroleum
23 operations;

24 (e) establishing the duration and conditions of licences and permits
25 for midstream and downstream petroleum operations;

26 (f) concerning those licences and permits already in effect prior to
27 the date of any regulations issued by the authority for midstream and
28 downstream petroleum operations;

29 (g) establishing the conditions and procedures for the transfer,
30 surrender, suspension or revocation of licences and permits for midstream

- 1 and downstream petroleum operations;
- 2 (h) establishing the procedure for the modification of licences and
3 permits for midstream and downstream petroleum operations;
- 4 (i) establishing the penalties and enforcement mechanisms in respect
5 of breaches of the regulations issued by the Authority;
- 6 (j) monitoring processes for midstream and downstream petroleum
7 operations;
- 8 (k) concerning the construction and operation of, and third party
9 access to, infrastructure for midstream and downstream petroleum operations;
- 10 (l) concerning the production, transportation, and sale of
11 petrochemicals and lubricants;
- 12 (m) concerning the national strategic stock;
- 13 (n) establishing tariffs for midstream and downstream petroleum
14 operations;
- 15 (o) concerning domestic natural gas supply and demand;
- 16 (p) concerning natural gas trading and export;
- 17 (q) ensuring the continuity and security of the supply of natural gas,
18 crude oil, and petroleum products to customers;
- 19 (r) concerning rights of way and pertaining to surface rights;
- 20 (s) relating to the retail sale and distribution of petroleum products;
- 21 (t) concerning dispute resolution and customer protection;
- 22 (u) establishing pricing regimes for midstream and downstream
23 petroleum operations;
- 24 (v) establishing fees payable to the Authority subject to section 3(1)(j)
25 of this Act;
- 26 (w) concerning competition and anti-competitive behaviour;
- 27 (x) establishing public and non-public registries in respect of
28 licences, permits and authorisations issued by the Authority, to be maintained
29 by the Authority; and
- 30 (y) any other matters as may be determined by the Authority.

- 1 34.-(1) There is established a Governing Board (the “Board of the
2 Authority”), which shall be responsible for the policy and general
3 administration of the Authority. Governing Board
of the Authority
- 4 (2) The Board of the Authority shall consist of the following
5 members-
- 6 (a) one non-executive chairman;
- 7 (b) two non-executive members;
- 8 (c) the Chief Executive of the Authority (the “Authority Chief
9 Executive”);
- 10 (d) two other executive directors responsible for Finance and
11 Accounts and Transportation and Distribution Infrastructure;
- 12 (e) one representative of the Commission not below the rank of
13 executive commissioner;
- 14 (f) one representative of the Ministry not below the rank of
15 director; and
- 16 (g) one representative of the Ministry of Finance not below the
17 rank of director.
- 18 (3) Appointments to the Board of the Authority under subsection
19 (2) of this section shall be made by the President and be subject to
20 confirmation by the Senate, except for the appointments of ex-officio
21 members under subsection (e), (f) and (g) of this section.
- 22 (4) A person appointed pursuant to subsection (2) (a) and (b) of this
23 section shall have at least 15 years post-qualification experience in
24 Petroleum or other relevant sector of the economy and shall hold office for a
25 period of 5 years and may be re-appointed for a further term of 5 years, on
26 such terms and conditions as may be specified in the letter of appointment.
- 27 (5) Subject to subsection (4) of this section and section 41(3) of this
28 Act, a member of the Board of the Authority shall hold office for 5 years and
29 may be re-appointed for a further term of 5 years.

1 (6) A non-executive Board member shall hold office on part-time
2 basis.

3 (7) The Board of the Authority may authorise in writing any executive
4 director, committee of the Board of the Authority, the Authority Chief
5 Executive or any other officer or employee of the Authority, to exercise any
6 power or carry out any duty or function of the Authority under this Act or
7 Regulation made under this Act.

8 (8) The proceedings of the Board of the Authority and other ancillary
9 matters shall be as prescribed by regulation made under this Act.

Functions of
the Board of
the Authority

10 **35.** The Board of the Authority shall-

11 (a) be responsible for the formulation of policy, supervision and
12 giving strategic direction to the Authority;

13 (b) provide general guidance for the carrying out of the functions of
14 the Authority;

15 (c) review and approve the business, strategic and operating plans of
16 the Authority;

17 (d) consider and approve the annual budget of the Authority before
18 submission to the National Assembly for appropriation;

19 (e) approve the management accounts and audited accounts of the
20 Authority and consider the management letter from the external auditors;

21 (f) determine the terms and conditions of service of employees of the
22 Authority;

23 (g) recommend remuneration, allowances, benefits and pensions of
24 employees of the Authority in consultation with the National Salaries, Incomes
25 and Wages Commission, having regard to the-

26 (i) specialised nature of work to be performed by the Authority,

27 (ii) need to ensure the financial self-sufficiency of the Authority, and

28 (iii) remuneration and allowances paid in the private sector in
29 upstream petroleum operations to individuals with equivalent responsibilities,
30 expertise and skills;

1 (h) structure the Authority into such number of departments as it
2 deems fit for the effective discharge of the functions of the Authority; and

3 (i) carry out such other functions as may be necessary for the
4 efficient and effective administration of the Authority under this Act.

5 **36.** Executive Directors of the Authority shall be paid from the
6 funds of the Commission such remuneration and allowances as applicable.

Remuneration
and allowances
of members of
the Board of the
Authority

7 The Authority shall comply with the policy and guidelines of the National
8 Salaries, Incomes and Wages Commission regarding remunerations.

9 **37.** A member of the Board of the Authority may be suspended or
10 removed from office by the President where the member-

Suspension or
removal of a
member of the
Board of the
Authority

11 (a) is found to-

12 (i) be unqualified for appointment under section 34 of this Act,

13 (ii) have been unqualified subsequent to his appointment,

14 (iii) be in breach of conflict of interest provisions in the Companies
15 and Allied Matters Act or any regulation regarding conflicts of interest
16 passed pursuant to this Act;

17 (b) ceases to be an employee of the ministry or agency he
18 represents on the Board of the Authority;

19 (c) has demonstrated an inability to effectively perform the duties
20 of his office;

21 (d) has been absent from the meeting of the Board of the Authority
22 for 3 consecutive times without the consent of the Chairman or in the case of
23 the Chairman, without the consent of the President, except where good
24 reason is shown for the absence;

25 (e) is found guilty of serious misconduct by a Court or Tribunal of
26 competent jurisdiction; or

27 (f) has, under the law in force in any country-

28 (i) been adjudged or declared bankrupt or insolvent and has not
29 been discharged,

30 (ii) made an assignment to or arrangement or composition with his

	1	creditors which has not been rescinded or set aside, or
	2	(iii) been declared to be of unsound mind.
Resignation of a Non-Executive member of the Board of the Authority	3	38. A non-executive member of the Board of the Authority may resign
	4	his appointment by giving two-months' written notice to the President.
Vacancy on the Board of the Authority	5	39. A vacancy on the Board of the Authority shall occur, where a
	6	member of the Board-
	7	(a) dies;
	8	(b) is removed from office in accordance with section 37 of this Act;
	9	(c) resigns from office;
	10	(d) completes his tenure of office; or
	11	(e) is incapacitated.
Filling of Vacancy on the Board of the Authority	12	40. A vacancy on the Board of the Authority shall be filled by the
	13	appointment of another person in accordance with section 34 of this Act.
Authority Chief Executive and Executive Directors of the Authority	14	41. -(1) The Authority Chief Executive is the accounting officer and
	15	shall be responsible for the day-to-day running of the affairs of the Authority.
	16	(2) There shall be 7 Executive Directors for the Authority with each
	17	responsible for one of the following-
	18	(a) Processing Systems and Plants;
	19	(b) Transportation and Distribution Infrastructure;
	20	(c) Health, Safety, Environment and Community;
	21	(d) Economic Regulations and Strategic Planning;
	22	(e) Corporate Services and Administration;
	23	(f) Finance and Accounts; and
	24	(g) Midstream Gas Infrastructure Fund.
	25	(3) A person to be appointed as Authority Chief Executive and as an
	26	Executive Director of the Authority shall have extensive managerial, technical
	27	or professional knowledge of the midstream and downstream petroleum
	28	operations with a minimum of 15 years post-qualification experience.
	29	(4) The Authority Chief Executive shall be appointed on such terms
	30	and conditions as may be set out in the letter of appointment, except as

1 otherwise provided for in this Act.

2 (5) An Executive Director shall be appointed on such terms and
3 conditions as may be set out in the letter of appointment, except as otherwise
4 provided for in this Act.

5 (6) The Authority Chief Executive shall be appointed for an initial
6 term of five years and may be re-appointed for a further term of 5 years,
7 subject to confirmation by the Senate.

8 (7) The President may, not later than 14 days prior to the expiration
9 of the tenure of the Authority Chief Executive or an Executive Director, re-
10 appoint the Authority Chief Executive or Executive Director or appoint
11 another qualified person.

12 (8) A person shall not be appointed as Authority Chief Executive,
13 where the person-

14 (a) is likely to be in breach of conflict of interest provisions under
15 the Companies and Allied Matters Act or Regulation made under this Act;

16 (b) has a financial interest in any business connected, directly or
17 indirectly with the petroleum industry;

18 (c) is engaged in any activity for remuneration or otherwise
19 connected with the petroleum industry;

20 (d) is a relative of a person who has an interest or is engaged in any
21 of the activities under paragraphs (a) – (c) of this subsection, provided that-

22 (i) such person may be appointed Authority Chief Executive or as
23 an Executive Director if he declares his interest and makes appropriate
24 arrangements to ensure the avoidance of a conflict of interest,

25 (ii) the President is satisfied that the interest or activity shall not
26 interfere with the person's impartial discharge of his duties as the Authority
27 Chief Executive or as an executive director, or

28 (iii) the financial interest is terminated prior to the appointment
29 taking effect; or

30 (e) has, under the laws in force in any country,-

1 (i) been adjudged or declared bankrupt or insolvent and has not been
2 discharged,

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

5 (iii) been declared to be of unsound mind,

6 (iv) been convicted of any criminal offence by a court of competent
7 jurisdiction except for traffic offences, or

8 (v) been disqualified or suspended from practising his profession by
9 the order of a competent authority.

Employees of
the Authority

10 **42.** The Board of the Authority shall determine the number of persons
11 that shall be employees of the Authority.

Terms and
conditions of
service in the
Authority

12 **43.**-(1) The employees of the Authority shall be subject to terms and
13 conditions set out by the Board of the Authority.

14 (2) The terms and conditions of service referred to in subsection (1) of
15 this section may provide for-

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

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

20 (c) the grant of pensions, gratuities and other retirement benefits to
21 employees.

22 (3) In this section, the term “appointment” include secondment,
23 transfer and contract appointments.

24 (4) Employees of the Authority shall be “public officers” as defined in
25 the Constitution.

26 (5) Employment by the Authority shall be subject to the provisions of
27 the Pensions Reform Act and officers and employees of the Authority shall be
28 entitled to pension and other retirement benefits as prescribed under the
29 Pensions Reform Act.

30 (6) Nothing in subsection (5) of this section shall prevent the

1 Authority from appointing a person to an office on terms that preclude the
2 grant of pension or other retirement benefits in respect of that office.

3 44.-(1) The Board of the Authority, in consultation with the
4 National Salaries, Incomes and Wages Commission, shall determine and
5 periodically review the remuneration and allowances payable to the
6 employees of the Authority, having regard to the -

Remuneration
and allowances
of employees of
the Authority

7 (a) specialised nature of work to be performed by the Authority;

8 (b) need to ensure the financial self sufficiency of the Authority;

9 and

10 (c) remuneration and allowances paid within the petroleum
11 industry to individuals with equivalent responsibilities, expertise and skills.

12 45.-(1) The Authority shall, not later than 30th of September of
13 each year or such other date that the Minister responsible for Budget and
14 National Planning may determine, prepare and present to the National
15 Assembly, a statement of estimated income and expenditure of the Authority
16 for the next financial year.

Statement of
estimated income
and expenditure
of the Authority

17 (2) Notwithstanding the provisions of this section, the Authority
18 may also, in any financial year, submit to the National Assembly
19 supplementary or adjusted statements of estimated income and expenditure
20 of the Authority.

21 (3) The financial year of the Authority shall be a period of 12
22 calendar months commencing on the 1st of January in each year or such
23 other date as the Minister of Finance may determine.

24 46.-(1) The Board of the Authority shall appoint a Secretary, who
25 shall-

Secretary to the
Authority

26 (a) be the Legal Adviser to the Authority;

27 (b) attend meetings of the Board of the Authority and keep minutes,
28 corporate records and the common seal of the Authority; and

29 (c) carry out such administrative and other secretarial duties as the
30 Authority Chief Executive and the Board of the Authority may direct.

Fund of the
Authority

1 (2) The Secretary shall be a legal practitioner with a minimum of 10
2 years post-qualification experience.

3 **47.** The Authority shall maintain a Fund (the “Authority Fund”) into which
4 money accruing to the Commission shall be paid.

5 (2) The source of the Authority Fund shall be as follows -

6 (a) money appropriated by the National Assembly for the Authority
7 on a first-line charge;

8 (b) fees charged by the Authority for services rendered to licensees,
9 lessees permit holders and other authorisations issued by the Authority;

10 (c) not more than 1% of the levy prescribed in a Regulation under this
11 Act, derived from wholesale price of petroleum products sold in the country;

12 (d) income derived from publications made by the Authority and
13 other related activities, including data sales;

14 (e) fees paid to the Authority for using facilities owned or managed by
15 the Authority; and

16 (f) money accruing to the Authority by way of grants, aids, gifts,
17 testamentary dispositions, endowments and contributions.

18 (3) The Authority Fund shall be applied-

19 (a) to meet the approved budgetary obligations of the Authority;

20 (b) to meet the administrative and operating cost of the Authority;

21 (c) to pay salaries, wages, fees or other remuneration or allowances,
22 pensions and other retirement benefits payable to employees of the Authority;

23 (d) to acquire and maintain any property acquired by or vested in the
24 Authority;

25 (e) for investments, as provided under the Trustee Investments Act or
26 any other applicable legislation, subject to the approval of Minister responsible
27 for Finance; and

28 (f) in connection with any of the functions of the Authority under this
29 Act.

30 (4) At the end of each financial year, any money that accrued to the

1 Authority Fund pursuant to subsection (2) of this section, which have not
2 been utilised for the purposes provided under subsection (3) of this section
3 of this section, shall be paid into the Consolidated Revenue Fund.

4 (5) The Authority may accept grants of money or property on such
5 terms and conditions as may be specified by the person or organisation
6 making the grant, provided that-

7 (a) the terms and conditions of the grant are not inconsistent with
8 the objectives and functions of the Authority; or

9 (b) no such grant is accepted from any Person or organisation
10 regulated by the Authority.

11 (6) Nothing in subsection (6) of this section shall be construed as
12 authorising the Authority Chief Executive, directors, officer or employee of
13 the Authority to accept any grant for their personal use.

14 (7) The Authority shall keep proper accounts of its income and
15 expenditure for each financial year and cause it to be audited within 6
16 months after the end of each financial year by auditors appointed by the
17 Authority from a list and in accordance with guidelines, supplied by the
18 Auditor-General for the Federation.

19 (8) The Authority shall submit to the Minister-

20 (a) a mid-year report of its operations and finances not later than
21 the 31st of August of each year;

22 (b) an annual report of its operations and performance; and

23 (c) an audited financial account for the year, not later than 31st of
24 March of the following year.

25 (9) The Authority shall, not later than the 31st of March of each
26 year-

27 (a) submit to the Minister a summary of its annual report and
28 audited financial accounts; and

29 (b) publish the annual report and audited financial accounts on its
30 website.

	1	(10) The provisions of any enactment relating to the taxation of
	2	companies or trust funds shall not apply to the Authority.
Notice to the Authority	3	48. A Government agency exercising any power or function or taking
	4	any action, which may have direct impact on upstream petroleum operations
	5	shall notify the Authority prior to-
	6	(a) issuing any regulation, guideline, enforcement order or directive;
	7	(b) exercising any such power or function; or
	8	(c) taking any such action.
Special powers of the Authority	9	49. -(1) The Authority shall in carrying out its functions under this Act
	10	have special powers to-
	11	(a) inquire, inspect, examine or investigate any business or activity
	12	relating to midstream or downstream petroleum operations under this Act,
	13	where it believes that illegal midstream or downstream petroleum operations
	14	are going on;
	15	(b) conduct surveillance on crude oil and natural gas installations,
	16	premises and vessels where it believes that illegal midstream or downstream
	17	petroleum operations are going on;
	18	(c) enter any midstream or downstream wellsite, plant, facility or
	19	place-
	20	(a) at which crude oil or natural gas is refined, processed, handled or
	21	treated, or
	22	(ii) that is used in connection with any midstream or downstream
	23	wellsite, plant, facility or place where crude oil or natural gas is refined,
	24	processed, handled or treated;
	25	(d) enter at any reasonable time premises containing any records or
	26	property required to be maintained pursuant to this Act or related to the
	27	administration of midstream or downstream petroleum operations under this
	28	Act for the purpose of inspecting those records or that property;
	29	(e) require any person or his agent, representative, partner, director,
	30	officer or employee engaged in midstream or downstream petroleum

1 operations to-

2 (a) answer any question that may be relevant to the inquiry,
3 inspection, examination or investigation, and

4 (b) provide any required information contained in a computer
5 hardware or software or any other data storage, processing or retrieval
6 device or system used in connection with the business or activities relating
7 to midstream or downstream petroleum operations under this Act;

8 (f) take any sample or carry out any test or examination as it may
9 consider necessary in the performance of its functions;

10 (g) use any midstream or downstream machinery, equipment,
11 appliance or thing as it may consider necessary in the performance of its
12 functions;

13 (h) remove for examination and copy anything that may be
14 relevant to the inquiry, inspection, examination or investigation, including
15 removing any computer hardware or software or any other data storage,
16 processing or retrieval device or system;

17 (i) in conjunction with the Nigeria Police or other law enforcement
18 agencies, arrest with a warrant, any person reasonably believed to have
19 committed an offence under this Act; and

20 (j) exercise any other power that may be conferred on it under any
21 law or regulation.

22 (2) An entity, person or agent, representative, partner, director,
23 officer or employee of that entity or person under investigation by the
24 Authority shall-

25 (a) grant access to officers of the Authority with regard to any
26 place, wellsite, plant, facility, midstream or downstream machinery,
27 equipment, appliances or things that may be relevant to the investigation;
28 and

29 (b) provide on request, any book, account, record, document,
30 voucher, information and explanation relating to midstream or downstream

1 petroleum operations as the officers of the Authority may require;

2 (3) An entity, person or agent, representative, partner, director, officer
3 or employee of that entity or person who fails to comply with subsection (2) of
4 this section commits an offence and is liable on conviction to-

5 (a) a term of 5 years imprisonment or a minimum fine of N5,000,000;
6 and

7 (b) in the case of a continuous offence, to an additional minimum fine
8 of N100,000 for each day during which the offence continues.

9 (4) The Authority shall in the exercise of its powers under this section
10 avoid undue hindrance of entities and persons engaged in lawful midstream or
11 downstream petroleum operations.

Special
investigation
unit

12 **50.** The special powers of the Authority under section 49 of this Act
13 shall be performed by the Special Investigation Unit of the Authority or any
14 person authorised by the Authority.

Indemnity of
officers of the
Authority

15 **51.**-(1) The Authority Chief Executive, a director or any officer of the
16 Authority shall each be indemnified out of the Authority Fund against any
17 liability incurred in defending any proceeding against the Authority or brought
18 against him in his official capacity.

19 (2) Notwithstanding the provisions of subsection (1) of this section,
20 the Authority shall not indemnify the Authority Chief Executive, a director or
21 any officer of the Authority for any liability incurred as a result of wilful
22 misconduct or gross negligence.

The midstream
gas infrastructure
fund

23 **52.**-(1) There is established a fund to be known as the Midstream Gas
24 Infrastructure Fund, which shall be-

25 (a) a body corporate with perpetual succession and a common seal;
26 and

27 (b) reside in the Authority as prescribed in accordance with this Act.

28 (2) The Midstream Gas Infrastructure Fund shall have the power to
29 acquire, hold and dispose of property, sue and be sued in its corporate
30 name.

1 (3) There shall be a Governing Council which shall supervise and
2 make investment decisions for the Fund.

3 (4) The Governing Council shall comprise the following members-

4 (a) the Minister, who shall be the Chairman of the Council;

5 (b) representative of the Central Bank of Nigeria not below the
6 rank of a Director;

7 (c) representative of the Ministry of Finance not below the rank of a
8 Director;

9 (d) the Authority Chief Executive;

10 (e) Executive Director Midstream Gas Infrastructure Fund;

11 (f) 2 independent members, who shall be appointed by the Minister
12 of Finance for a period of 4 years and may be reappointed for another 4 years
13 and no more; and

14 (g) the Legal Adviser of the Authority who shall serve as the
15 Secretary to the Governing Council.

16 (5) The Executive Director, Midstream Gas Infrastructure Fund
17 shall-

18 (a) have extensive managerial, technical or professional
19 knowledge of the midstream petroleum operations and or fund management
20 or any other relevant industry with a minimum of 15 years' post-
21 qualification experience; and

22 (b) be responsible for project management and the day-to-day
23 running of the affairs of the Midstream Gas Infrastructure Fund.

24 (6) The members referred to in subsection (4) (f) of this section
25 shall have extensive managerial, technical or professional knowledge of the
26 midstream petroleum operations, fund management or any other relevant
27 industry with a minimum of 15 years post-qualification experience.

28 (7) The source of the Midstream Gas Infrastructure Fund shall be
29 as follows-

30 (a) not more than 1% of the levy prescribed in a regulation under

1 this Act, derived from wholesale price of petroleum products sold in Nigeria
2 and natural gas produced and sold, which shall be collected on wholesale basis;

3 (b) funds and grants accruing from multilateral agencies, bilateral
4 institutions and related sources dedicated partly or wholly for the development
5 of infrastructure for midstream gas operations in Nigeria;

6 (c) interest, if any, payable in respect of money in the Midstream Gas
7 Infrastructure Fund; and

8 (d) any other sum, freely donated or accruing to the Midstream Gas
9 Infrastructure Fund for development of infrastructure in midstream gas
10 operations;

11 (8) The Authority shall ensure the prompt payment of all such sums
12 directly into the Midstream Gas Infrastructure Fund's Account.

13 (9) The levy under subsection (6) (a) of this section shall become due
14 within 21 days of the sale of petroleum products in Nigeria and natural gas
15 produced and sold, and the Minister shall, after consultation with the Council,
16 make regulations for-

17 (a) administration procedures; and

18 (b) penalties for-

19 (i) late payment of the levy,

20 (ii) non-payment of the levy, or

21 (iii) submission of false information in respect of the levy.

22 (10) The purpose of the Fund shall be to make equity investments of
23 Government owned participating or shareholder interests in infrastructure
24 related to midstream gas operations aimed at-

25 (a) increasing the domestic consumption of Natural Gas in Nigeria in
26 projects which are financed in part by private investment; and

27 (b) encouraging private investment.

28 (11) There shall be a Transaction Advisor, who shall be responsible
29 for providing transaction advisory services, including technical and
30 commercial evaluation of proposals, defining project screening criteria and

1 profitability target for projects and any other duty as may be assigned by the
2 Council on behalf of the Fund.

3 (12) The Transaction Advisor shall be selected on need basis
4 through a competitive and transparent criteria specified by the Council and
5 the selection process shall be managed by the Executive Director,
6 Midstream Gas Infrastructure Fund subject to the approval of the Council.

7 (13) The Transaction Advisor shall, in performing his duties under
8 subsection (11) of this section, submit report of his findings and
9 recommendations to the Council.

10 (14) The Midstream Gas Infrastructure Fund shall be managed as
11 follows-

12 (a) the Council shall at the beginning of every financial year,
13 approve the Midstream Gas Infrastructure Fund's programme of action with
14 its cost implications and the Accountant General of the Federation shall
15 release the approved amount for that financial year;

16 (b) the money in the Midstream Gas Infrastructure Fund's Account
17 that is not utilised as prescribed under this Act shall be held or invested as the
18 Council may direct;

19 (c) an annual statement of the Midstream Gas Infrastructure Fund
20 shall be prepared and submitted to the Council and Minister of Finance after
21 3 months of the end of the financial year to which they relate; and

22 (d) a certified annual audited accounts of the Midstream Gas
23 Infrastructure Fund, together with a report on the operations of the
24 Midstream Gas Infrastructure Fund, shall be submitted to the Council within
25 6 months of the end of the financial year to which they relate.

26 (15) Earnings, interest and other income accruing from the equity
27 investment made pursuant to subsection (10) shall be paid directly to the
28 Midstream Gas Infrastructure Fund's Account.

29 (16) The Midstream Gas Infrastructure Fund shall not be subject to
30 the provisions of the Fiscal Responsibility Act, Infrastructure Concession

1 Regulatory Commission Act and the Public Procurement Act, but shall comply
2 with the Midstream Gas Infrastructure Fund procurement and fiscal
3 regulations made under this Act.

4 PART V

5 THE NIGERIAN NATIONAL PETROLEUM COMPANY LIMITED

The Nigerian
National Petroleum
Company Limited

6 **53.**-(1) The Minister shall within 6 months from the commencement
7 of this Act, cause to be incorporated under the Companies and Allied Matters
8 Act, a limited liability company, which shall be called Nigerian National
9 Petroleum Company Limited (NNPC Limited).

10 (2) The Minister shall at the incorporation of NNPC Limited, consult
11 with the Minister of Finance to determine the number and nominal value of the
12 shares to be allotted, which shall form the initial paid-up share capital of NNPC
13 Limited and the Government shall subscribe and pay cash for the shares.

14 (3) Ownership of all shares in NNPC Limited shall be vested in the
15 Government at incorporation and held by the Ministry of Finance Incorporated
16 on behalf of the Government.

17 (4) The Ministry of Finance Incorporated in consultation with the
18 Government, may increase the equity capital of NNPC Limited.

19 (5) Shares held by the Government in NNPC Limited are not
20 transferable, including by way of sale, assignment, mortgage or pledge unless
21 approved by the Government.

22 (6) Notwithstanding any provision to the contrary in the Companies
23 and Allied Matters Act and except by way of security, any sale or transfer of
24 shares of NNPC Limited shall be at a fair market value and subject to an open,
25 transparent and competitive bidding process.

26 (7) NNPC Limited and any of its subsidiaries shall conduct their
27 affairs on a commercial basis without recourse to government funds and their
28 memorandum and articles of association shall state these restrictions.

Transfer of
assets and
liabilities

29 **54.**-(1) The Minister and the Minister of Finance shall determine the
30 assets, interests and liabilities of NNPC to be transferred to NNPC Limited or

1 its subsidiaries and upon the identification, the Minister shall cause such
2 assets, interests and liabilities to be transferred to NNPC Limited.

3 (2) Assets, interests and liabilities of NNPC not transferred to
4 NNPC Limited or its subsidiary under subsection (1) of this section, shall
5 remain the assets, interests and liabilities of NNPC until they become
6 extinguished or transferred to the Government.

7 (3) NNPC shall cease to exist after its remaining assets, interests
8 and liabilities other than its assets, interests and liabilities transferred to
9 NNPC Limited or its subsidiaries under subsection (1) of this section shall
10 have been extinguished or transferred to the Government.

11 (4) Bonds, hypothecations, securities, deeds, contracts,
12 instruments, documents and working arrangements with regards to assets,
13 interests or liabilities transferred to NNPC Limited or any of its subsidiary
14 under subsection (1) of this section and which remains subsisting before the
15 date of transfer shall, beginning from the date of transfer be effective and
16 enforceable against or in favour of NNPC Limited.

17 (5) Any pending action or proceeding brought by or against NNPC
18 before the transfer date with regard to assets, interests or liabilities
19 transferred to NNPC Limited under subsection (1) of this section may be
20 enforced or continued by or against NNPC Limited as the successor of
21 NNPC.

22 (6) Notwithstanding the provisions of subsection (5) of this
23 section-

24 (a) an action or proceeding shall not be commenced against NNPC
25 Limited, its subsidiary, director, officer, employee or agent with regard to
26 asset, interest or liability of NNPC Limited, where the time for commencing
27 the action or proceeding would have expired had such asset, interest or
28 liability not been transferred to NNPC Limited or its subsidiaries; and

29 (b) the transfer of asset, interest and liability of NNPC to NNPC
30 Limited under subsection (1) of this section shall not create or be deemed to

1 have created a new cause of action in favour of a-

2 (i) creditor of NNPC, or

3 (ii) party to a contract, agreement or arrangement with NNPC that
4 was entered into before the date of transfer.

5 (7) For the purpose of this section and the Second Schedule to this
6 Act, “assets, interests and liabilities” means tangible, intangible, real or
7 personal property, rights and obligation, in each case of all types.

Appointment
of NNPC limited
as agent of NNPC

8 **55.**-(1) The Minister shall upon incorporation of NNPC Limited,
9 consult with the Minister of Finance to appoint NNPC Limited as agent of
10 NNPC for the purpose of managing the process of winding down the assets,
11 interests and liabilities of NNPC.

12 (2) Subject to the appointment under subsection (1) of this section, the
13 NNPC Limited shall have the power to deal with the applicable assets, interests
14 and liabilities of NNPC and may enter into contract with third parties on such
15 assets, interests and liabilities.

16 (3) Pursuant to the appointment under subsection (1) of this section,
17 NNPC shall-

18 (a) not deal with the applicable assets, interests and liabilities;

19 (b) at the request of NNPC Limited execute and deliver any document
20 and do such other acts or things as may be required by NNPC Limited with
21 regard to any asset, interest or liability referred to under subsection (1) of this
22 section; and

23 (c) pay a nominal fee of one United States Dollar (\$) to NNPC
24 Limited as administrative charges on the applicable assets, interests and
25 liabilities to which NNPC Limited has been appointed under subsection (1) of
26 this section.

27 (4) The cost of winding down the assets, interests and liabilities of
28 NNPC shall be borne by the Government.

29 (5) A cause of action shall not arise in tort, contract or otherwise
30 between NNPC and NNPC Limited in respect of the applicable assets, interests

1 or liabilities to which NNPC Limited has been appointed as agent under
2 subsection (1) of this section.

3 **56.** Any guarantee granted or issued by the Government with
4 regard to the transfer of liability of NNPC to NNPC Limited under section
5 54 of this Act shall be enforceable against the Government as if such liability
6 was a liability of NNPC, provided that such guarantee was effective prior to
7 such transfer.

Subsistence of
guarantee

8 **57.**-(1) Upon incorporation of NNPC Limited pursuant to section
9 53 of this Act, employees of NNPC shall be deemed to be employees of
10 NNPC Limited on terms and condition not less favourable than that enjoyed
11 prior to the transfer of service and shall be deemed to be service for
12 employment related entitlements as specified under any applicable law.

Transfer of
employees and
conditions of
service

13 (2) NNPC Limited shall continue to fulfil the statutory obligations
14 of NNPC in relation to the pension scheme of employees of NNPC prior to
15 the date of incorporation of NNPC Limited.

16 **58.** There shall be a Board of the NNPC Limited which shall
17 perform its duties in accordance with the provisions of this Act, the
18 Companies and Allied Matters Act and the articles of association of NNPC
19 Limited.

The Board of
NNPC limited

20 **59.**-(1) Except as set out in this section, the composition of the
21 NNPC Limited Board shall be determined in accordance with the provisions
22 of the Companies and Allied Matters Act and its Articles of Association.

Composition of
the Board of
NNPC limited

23 (2) The Board of NNPC Limited shall be appointed by the
24 President and composed of the following members-

25 (a) a non-executive chairman;

26 (b) the Chief Executive of NNPC Limited;

27 (c) the Chief Financial Officer of NNPC Limited;

28 (d) a representative of the Ministry of Petroleum, not below the
29 rank of a Director;

30 (e) a representative of the Ministry of Finance, not below the rank

1 of a Director; and

2 (f) two non-executive members with at least 15 years post-
3 qualification experience in Petroleum or any other relevant sector of the
4 economy.

5 (3) A person to be appointed as the Chief Executive of NNPC Limited
6 shall have extensive managerial, technical and professional knowledge in the
7 petroleum or other relevant industry with at least 15 years' post-qualification
8 experience.

9 (4) In the absence of the chairman, the members of the Board of
10 NNPC Limited may appoint a non-executive member of the Board to act as
11 alternate Chairman.

12 (5) The provisions of this section shall apply where NNPC Limited
13 remains wholly-owned by the Government and where NNPC Limited is not
14 wholly owned by Government, the composition of the Board of NNPC Limited
15 shall be determined by the shareholders of NNPC Limited in accordance with
16 the provisions of the Companies and Allied Matters Act and the articles of
17 association of NNPC Limited.

18 **60. Committees of the Board of NNPC limited**

19 -(1) The Board of NNPC Limited shall, within 3 months of the incorporation of
20 NNPC Limited, develop formal and transparent process for the creation of its
21 committees and nomination of members of the Board to the committees.

22 (2) The mandate, composition and procedures of each committee of
23 the Board of NNPC Limited shall be comprehensive and open for inspection by
24 the shareholders of NNPC Limited.

25 (3) The Board of NNPC Limited shall nominate non-executive
26 members of the Board capable of exercising independent judgement to its
27 committees where there is likelihood of conflict of interest.

28 (4) The Board of NNPC Limited shall have committees for-

29 (a) ensuring the integrity of financial and non-financial reporting;

30 (b) the nomination of Board members and key executives;

1 (c) remuneration of members of the Board of NNPC Limited; and
2 (d) any other committee as the Board of NNPC Limited may
3 consider appropriate.

4 **61.**-(1) Members of the Board of NNPC Limited shall discharge
5 their responsibilities in accordance with the highest standards, practices and
6 principles of corporate governance.

Application of
principle of
corporate
governance

7 (2) The Board of NNPC Limited shall, upon request by one or more
8 of shareholders holding not less than 10% of the voting interests in NNPC
9 Limited, provide a comprehensive written explanation of any action or
10 decision taken by the Board of NNPC Limited to its shareholders, provided
11 that the Board of NNPC Limited may withhold the explanation if permitted
12 under a duty of confidentiality NNPC Limited owed to any third party.

13 **62.**-(1) NNPC Limited shall ensure that an annual audit of NNPC
14 Limited is conducted by an independent, competent, experienced and
15 qualified auditor.

Annual audit of
NNPC limited

16 (2) The auditor of NNPC Limited shall provide an external and
17 objective assurance to the Board and shareholders of NNPC Limited that the
18 financial statements of NNPC Limited fairly represent the financial position
19 and performance of NNPC Limited.

20 (3) Where the auditor of NNPC Limited is unable to provide the
21 assurance required under subsection (2) of this section, the Board shall
22 immediately convene an extraordinary general meeting of the company to-

23 (a) notify the shareholders of NNPC Limited; and

24 (b) consider any action that may be necessary in that regard.

25 **63.**-(1) The Board of NNPC Limited shall, in addition to its
26 responsibilities under the Companies and Allied Matters Act and its articles
27 of association-

Responsibilities
of the Board of
NNPC limited

28 (a) be responsible for the strategic guidance and determining the
29 business structure of NNPC Limited;

- 1 (b) be responsible for the approval of the annual budget of NNPC
2 Limited;
- 3 (c) act in good faith and exercise due diligence and care in the best
4 interests of NNPC Limited, the shareholders and the sustainable development
5 of Nigeria;
- 6 (d) apply the highest ethical standards in performing its duties, taking
7 into account the interests of its stakeholders and the fiduciary duty of the
8 directors to NNPC Limited;
- 9 (e) make decisions guided by commercial and technical
10 considerations that represents good international petroleum industry practices;
- 11 (f) determine and report to the shareholders of NNPC Limited on key
12 performance indicators on at least annual basis;
- 13 (g) review and guide corporate strategy, major plan of action, risk
14 policy and business plan;
- 15 (h) set performance objectives for NNPC Limited, the Board of
16 NNPC Limited, members of NNPC Limited's management and individual
17 business units and subsidiaries of NNPC Limited;
- 18 (i) monitor NNPC Limited's corporate performance;
- 19 (j) oversee major capital expenditures, acquisitions and divestitures;
- 20 (k) monitor the effectiveness of NNPC Limited's governance
21 practices and propose and implement changes;
- 22 (l) select, compensate, monitor and replace management executives
23 and oversee succession plan;
- 24 (m) align key executive and Board of NNPC Limited remuneration
25 with the longer term interests of NNPC Limited, its shareholders and
26 stakeholders;
- 27 (n) monitor and address potential conflicts of interest of management
28 and members of the Board of NNPC Limited and breach of fiduciary duty by
29 members of the Board of NNPC Limited;
- 30 (o) ensure the integrity of NNPC Limited's accounting and financial

1 reporting systems, including audit of NNPC Limited's accounts by
2 independent third party;

3 (p) ensure that appropriate system of control is in place for risk
4 management, financial and operational control and compliance with
5 applicable law and relevant standards;

6 (q) oversee the process of disclosure and communications to
7 shareholders and the public; and

8 (r) determine the dividend policy of NNPC Limited, ensure
9 sustained growth and a sound financial base for NNPC Limited .

10 (2) The provisions of this section shall be incorporated into the
11 memorandum and articles of association of-

12 (a) NNPC Limited at the time of its incorporation; and

13 (b) each of the NNPC Limited's wholly-owned subsidiaries as if
14 references in this section to 'NNPC Limited' were references to such wholly-
15 owned subsidiary.

16 **64.** The objects of NNPC Limited shall include the following-

Objects of NNPC
limited

17 (a) carry out petroleum operations on a commercial basis;

18 (b) to lift and sell royalty oil and profit oil for commercial fees,
19 payable by Government, at the request of the Commission and pay the
20 corresponding revenue to accounts indicated by the Commission;

21 (c) at the request of the Commission carry out test marketing to
22 ascertain the value of crude oil and report to the Commission;

23 (d) be vested with the rights to natural gas under production sharing
24 contracts entered into prior to the effective date;

25 (e) upon the request of the Commission, act as agent of the
26 Commission for the management of production sharing contracts for a fee,
27 based on the profit oil share or profit gas share to Government under such
28 contracts between NNPC Limited and the Commission;

29 (f) with respect to any joint operating agreement in which NNPC is
30 a party on the effective date assume the working interest held by NNPC

1 irrespective of whether such licence or lease is converted pursuant to section 92
2 of this Act;

3 (g) engage in the development of renewable resources in competition
4 with private investors;

5 (h) promote the domestic use of natural gas through development and
6 operation of large-scale gas utilization industries;

7 (i) maintain the role of NNPC, where companies elect not to convert
8 pursuant to Section 92 of this Act;

9 (j) carry out task requested by the Commission or Authority on a fee
10 basis; and

11 (k) carry out such other tasks as may be determined by the Board of
12 NNPC Limited.

Establishment
of incorporated
joint venture
companies

13 **55.**-(1) NNPC Limited and other parties to joint operating agreements
14 in respect of upstream petroleum operations, may on a voluntary basis
15 restructure their joint operating agreement as a joint venture carried out by way
16 of a limited liability company, each referred to as an “incorporated joint
17 venture company” (IJV), based on the principles established in the Second
18 Schedule to this Act.

19 (2) The incorporated joint venture companies referred to in
20 subsection (1) of this section shall not be subject to the provisions of the Fiscal
21 Responsibility Act and the Public Procurement Act.

22 CHAPTER TWO - ADMINISTRATION

23 PART I

24 GENERAL ADMINISTRATION

Objectives

25 **66.** The objectives of Chapter 2 are to-

26 (a) promote the exploration and exploitation of petroleum resources
27 in Nigeria for the benefit of the Nigerian people;

28 (b) promote the efficient, effective and sustainable development of
29 the petroleum industry;

30 (c) promote the safe and efficient operation of the transportation and

- 1 distribution infrastructure for the petroleum industry;
- 2 (d) provide the framework for developing third party access
- 3 arrangements to petroleum infrastructure;
- 4 (e) encourage and facilitate both local and foreign investment in
- 5 the petroleum industry;
- 6 (f) promote transparency and accountability in the administration
- 7 of petroleum resources in Nigeria;
- 8 (g) develop, where appropriate, competitive markets for the sale
- 9 and distribution of petroleum and petroleum products;
- 10 (h) promote safe and affordable access to petroleum and petroleum
- 11 products in Nigeria;
- 12 (i) promote the processing of petroleum within Nigeria and the
- 13 development of fuel and chemical industry and other related value-added
- 14 products and activities;
- 15 (j) create a conducive business environment for operations in the
- 16 petroleum industry;
- 17 (k) promote the liberalisation of the downstream petroleum
- 18 industry;
- 19 (l) establish an orderly, fair and competitive commercial
- 20 environment within the petroleum industry; and
- 21 (m) ensure that petroleum operations are conducted in a manner
- 22 that protects the health and safety of persons, property and the environment.
- 23 (2) The provisions of Chapter 2 of this Act shall apply to-
- 24 (a) activities within or associated with petroleum operations and
- 25 the petroleum industry; and
- 26 (b) persons conducting such activities.
- 27 **67.** The administration and management of petroleum resources
- 28 and their derivatives shall be conducted in accordance with this Act and the
- 29 principles of good governance, transparency and sustainable development
- 30 of Nigeria.

1 PART II

2 ADMINISTRATION OF UPSTREAM PETROLEUM OPERATIONS

Administration
of acreage and
vesting data

3 **68.**-(1) Title to any data and its interpretation relating to upstream
4 petroleum operations are vested in the Government of the Federation of
5 Nigeria and shall be administered by the Commission.

6 (2) The Commission shall administer any acreage for upstream
7 petroleum operations in Nigeria.

8 (3) Where a significant petroleum discovery is made in a frontier
9 basin, the Minister may, on the recommendation of the Commission, reclassify
10 all or part of the basin from frontier acreages to a general onshore area and the
11 fiscal terms applicable to onshore under this Act shall apply to-

12 (a) new licences and leases in the basin after reclassification; and

13 (b) any existing lease upon renewal, provided that it shall not be
14 applied to Licences and Leases existing at the moment of reclassification.

15 (4) The Commission may issue a permit for the collection of
16 geological samples for scientific research.

National grid
system

17 **69.**-(1) The Commission shall, after consultation with the Surveyor-
18 General of the Federation, adopt a national grid system for acreage
19 management.

20 (2) The grid system referred to under subsection (1) of this section
21 shall be based on the UTM system or any other projection system in use by the
22 office of the Surveyor-General of the Federation.

23 (3) The Commission shall establish a system for numbering of
24 parcels, which shall allow for subdivision and aggregation of the parcels.

25 (4) The basic unit of the grid system shall be a parcel of one square
26 kilometer, subject to adjustment of the zones and national boundary.

27 (5) The Commission may further subdivide parcels into equal units of
28 one hectare or such sub-units as the Commission may deem appropriate. The
29 national grid system referred to under subsection (1) of this section shall be
30 used for the administration of upstream petroleum operations, including-

- 1 (a) the definition of licence and lease areas;
2 (b) relinquishments;
3 (c) bid procedures;
4 (d) identification of well locations;
5 (e) petroleum conservation measures; and
6 (f) other regulatory and acreage management procedures.
7 (7) Any current boundary of a licence or lease, which does not
8 conform with the new national grid system shall remain unaltered and be
9 apportioned in parcels.

10 **70.**-(1) There shall be the following Licences and Leases under this
11 Act-

Licences and
leases

- 12 (a) petroleum exploration licence, which may be granted to
13 qualified applicants to explore petroleum on a speculative and non-
14 exclusive basis;
15 (b) petroleum prospecting licence, which may be granted to
16 qualified applicants to carry out petroleum exploration operations on an
17 exclusive basis; and
18 (c) petroleum mining lease, which may be granted to qualified
19 applicants to search for, win, work, carry away and dispose of crude oil,
20 condensates and natural gas.

21 (2) A licence or lease may be granted under this Act only to a
22 company incorporated and validly existing in Nigeria under the Companies
23 and Allied Matters Act.

24 **71.**-(1) The Commission shall be responsible for granting of
25 petroleum exploration licences.

Petroleum
exploration licence

26 (2) The holder of a petroleum exploration licence shall have non-
27 exclusive right to carry out petroleum exploration operations within the area
28 provided for in the licence.

29 (3) A petroleum exploration licence shall be for 3 years and may be
30 renewable for additional period of 3 years subject to fulfilment of prescribed

1 conditions, but shall not include any right to win, extract, work, store, carry
2 away, transport, export or otherwise treat petroleum discovered in or under the
3 licence area.

4 (4) A Petroleum Exploration Licence may cover an area that includes
5 Petroleum Prospecting Licence or Petroleum Mining Lease, provided that the
6 holders of such licences or leases, shall have no obligation to purchase the
7 results of any survey conducted under the petroleum exploration licence.

8 (5) A petroleum exploration licence granted in respect of frontier
9 acreages may include a provision permitting the Licensee to select, based on
10 the result of his exploration work and be granted one or more petroleum
11 prospecting licences prior to the termination of the Licence containing the
12 fiscal provisions stipulated in Chapter Four of this Act.

13 (6) The Commission shall have sole right and title over any acquired
14 raw and interpreted data obtained by a licensee pursuant to a petroleum
15 exploration licence, provided that the licensee shall be entitled to grant a data
16 use licence to a third party subject to a written authorisation by the
17 Commission, which shall not be unreasonably withheld.

18 (7) A Licensee is entitled to a fee from a third party for data use
19 licence granted under subsection (6) of this section and shall remit to the
20 Commission any agreed portion of the fee due to the Commission.

21 (8) Exploration activities conducted pursuant to a petroleum
22 exploration licence shall be monitored and administered by the Commission in
23 accordance with regulations made under this Act.

24 (9) The Commission shall have sole right and title over all acquired
25 and interpreted data from existing speculative survey agreements entered into
26 with the Department of Petroleum Resources on behalf of the Government
27 prior to the effective date.

Petroleum
prospecting
licence

28 **72.**-(1) The holder of a petroleum prospecting licence shall, subject to
29 the fulfilment of obligations imposed by this Act, have-

30 (a) exclusive right to drill exploration wells and non-exclusive right to

1 carry out petroleum exploration operations within the area provided for in
2 the Licence; and

3 (b) right to carry away and dispose of crude oil or natural gas
4 won or extracted during the drilling of exploration wells as a result of
5 production tests,
6 subject to the fulfilment of obligations imposed by this Act.

7 (2) A holder of the petroleum prospecting licence shall not be
8 granted an extension except as prescribed under sections 78(4), 78(9) and
9 79(6) of this Act.

10 (3) Where a holder of a petroleum prospecting licence fails to
11 fulfil any term or condition of the licence, it shall not, except as provided
12 in the Licence, give the Minister a right of claim against the Licensee or
13 be deemed a breach of the Licence, if the failure arises from force
14 majeure.

15 (4) Where there is any delay by a Licensee in the fulfilment of
16 any term or condition of a petroleum prospecting licence caused by force
17 majeure, the period of such force majeure shall be added to the period
18 fixed for the fulfilment of the applicable term or condition, provided that
19 such period shall not exceed 3 years in total after which, the licence may
20 be terminated by the Commission or the licensee.

21 (5) The Minister shall, on the recommendations of the
22 Commission, grant a petroleum prospecting licences to a qualified
23 applicant.

24 **73.**-(1) Subject to the provisions of sections 71(5), 74(3), 81(1)
25 and 93(2) of this Act, petroleum prospecting licence or petroleum mining
26 lease shall only be granted-

27 (a) based on a fair, transparent and competitive bidding process;
28 and

29 (b) in compliance with the provisions of this Act, regulations
30 made under this Act and licensing round guidelines issued by the

Bidding process

1 Commission for each licensing round.

2 (2) The Commission may periodically publish a licensing round plan.

3 (3) Subject to the provisions of this Act, the Minister may, on the
4 recommendation of the Commission, grant a petroleum prospecting licence or
5 petroleum mining lease to a winning bidder in accordance with section 74 of
6 this Act, provided that the winning bidder has complied with the requirements
7 of the bid invitation.

8 (4) The Minister shall inform the Commission of his decision within
9 90 days of the application for licence or lease and where he fails to inform the
10 Commission within the stipulated time, the licence or lease shall be deemed
11 granted.

Award process

12 **74.**-(1) The grant of a petroleum prospecting licence or a petroleum
13 mining lease on a previously appraised area of a petroleum prospecting licence
14 or a surrendered, relinquished or revoked petroleum mining lease in, under or
15 upon the territory of Nigeria, shall be by an open, transparent, competitive and
16 non-discriminatory bidding process conducted by the Commission pursuant to
17 section 73(3) of this Act.

18 (2) The winning bidder shall be determined on the basis of the
19 following bid parameters-

20 (a) a single bid parameter, which shall be based on any one of the
21 following parameters-

22 (i) a signature bonus to be paid in full prior to the granting of the
23 licence or lease by or on behalf of the winning bidder;

24 (ii) a royalty interest;

25 (iii) a profit split or profit oil split;

26 (iv) a work programme commitment during the initial exploration
27 period; or

28 (v) any other parameter as may be defined specific to a bid round; and

29 (b) a combination of the bid parameters specified in paragraph (a) of
30 this subsection, based on a points system assessable by the bidder in such a

1 manner that the bidder with the highest aggregate number of points shall be
2 the winning bidder.

3 (3) Notwithstanding the bidding parameters prescribed in
4 subsection (2) of this section, where there is a bilateral or multi-lateral
5 agreement between Nigeria and another country, the Government may, for
6 strategic purposes and in return for substantive benefits to the nation, direct
7 the Commission to negotiate and award a petroleum prospecting licence or
8 petroleum mining lease to a qualified investor identified in the agreement or
9 treaty.

10 (4) A signature bonus payable in respect of any licence or lease
11 awarded pursuant to sub-section (3) of this section shall be based on a
12 transparent method for evaluating the acreage.

13 (5) The Commission shall call for bids in accordance with a
14 procedure published on its website and in at least two international financial
15 newspapers and two national newspapers with wide coverage.

16 (6) Where the Commission calls for bids pursuant to this section, it
17 shall prescribe a technical, legal, social, economic and financial
18 requirement, including the minimum experience and capacity for an
19 applicant in a regulation or guideline, and the applicant shall be chosen in
20 accordance with the regulation or guideline.

21 (7) The bids received based on the bid parameters prescribed in
22 subsection (2) of this section through an open, transparent and competitive
23 bidding process, shall include an electronic bidding process, open to public
24 and conducted in the presence of representatives of the Nigerian Extractive
25 Industry Transparency Initiative, the Ministry of Finance and the Ministry
26 of Petroleum Resources

27 **75.** The licensing round guidelines shall be accompanied with the
28 model licence for the petroleum prospecting licence or model lease for the
29 petroleum mining lease for the bid round and shall include the-

Licensing round
guidelines

1 (a) licence or lease acreages, the term and minimum work
2 obligations;

3 (b) requirements to be fulfilled by the bidders and the pre-
4 qualification criteria, as the case may be;

5 (c) bid parameter;

6 (d) list of documents required and criteria for the evaluation of
7 technical capacity, financial competence and legal status of interested parties,
8 including technical and financial assessment of the bid; and

9 (e) details and cost for the acquisition of relevant data and studies.

Model licence
and model lease

10 **76.** The model licence or model lease for each bid round shall reflect
11 the conditions of the licensing round guidelines for the bid round and shall in
12 all circumstances include the following clauses-

13 (a) description of the acreage;

14 (b) term of the licence or lease;

15 (c) minimum work programme and minimum level of investment;

16 (d) details of guarantees to be provided by the Licensee or Lessee
17 regarding the performance of its licence or lease obligations;

18 (e) details of obligations regarding relinquishment, decommissioning
19 and abandonment;

20 (f) rules for the resolution of disputes, including arbitration,
21 mediation, conciliation or expert determination;

22 (g) applicable sanctions in the event of failure by the Licensee or
23 Lessee to comply with the terms and conditions of the licence or lease; and

24 (h) such other clauses as the Commission may deem necessary.

Duration and area
of petroleum
prospecting
licence

25 **77.**-(1) A petroleum prospecting licence for onshore and shallow
26 water acreages shall be for a duration of not more than 6 years, comprising of
27 an initial exploration period of 3 years and an optional extension period of 3
28 years.

29 (2) A petroleum prospecting licence for deep offshore and frontier
30 acreages shall be for a duration of not more than 10 years, comprising of an

1 initial exploration period of 5 years and an optional extension period of 5
2 years.

3 (3) The area provided for in a petroleum prospecting licence shall
4 not exceed-

5 (a) 350 square kilometres for any onshore or shallow water
6 acreages;

7 (b) 1,000 square kilometres for any deep offshore acreages; and

8 (c) 1,500 square kilometres for any frontier acreages.

9 **78.**-(1) A petroleum prospecting licence shall contain a
10 requirement that the Licensee commit to a work programme and such other
11 terms and conditions as the Commission shall determine.

Work commitment,
commercial
discovery and
significant gas
discovery

12 (2) A licensee shall, during the initial exploration period and the
13 optional extension period provided for in a petroleum prospecting licence,
14 commit to drill at least one exploration well to a minimum depth specified in
15 the licence for each period, except for frontier acreages, where the work
16 program during the initial exploration period may only consist of
17 geophysical work.

18 (3) Where a licensee makes a discovery during the initial
19 exploration period or the optional extension period provided for in the
20 applicable petroleum prospecting licence, the licensee shall inform the
21 Commission within 90 days of the discovery if he considers that the
22 discovery merits appraisal or is of no interest to him.

23 (4) Where a licensee considers that a discovery merits appraisal,
24 the Licensee shall submit to the Commission within 180 days for approval-

25 (a) a commitment to an appraisal programme of not more than 2
26 years with a scope and nature permitting the licensee to declare a
27 commercial discovery, where the result of the appraisal is positive; and

28 (b) the appraisal area, not larger than the outer boundary of the
29 discovery, as determined by the licensee and a zone of not more than 2
30 kilometres surrounding the outer boundary; provided that the appraisal area

1 does not extend beyond the area provided for in the applicable petroleum
2 prospecting licence.

3 (5) A licensee shall, upon the approval of the appraisal programme
4 and appraisal area by the Commission, promptly carry out the committed
5 appraisal programme and the Commission shall act on the appraisal
6 programme within 60 days after its submission.

7 (6) Where the Commission fails to act on the appraisal programme
8 referred to under subsection (5) of this section within 60 days, the appraisal
9 shall be deemed approved.

10 (7) The provisions of section 88(3) of this Act shall apply to any
11 appraisal area under subsections (5) and (6) of this section.

12 (8) The licensee shall, upon the completion of the appraisal program-

13 (a) declare a commercial discovery;

14 (b) declare a significant gas discovery; or

15 (c) inform the Commission that the discovery is of no interest to the
16 licensee.

17 (9) Where a significant gas discovery has been declared, the licensee
18 shall be entitled to retain the area of such significant gas discovery for a
19 retention period as may be determined by the Commission, which shall not be
20 more than 10 years from the day the declaration was made.

21 (10) The retention area of a significant gas discovery shall continue to
22 subsist pursuant to a petroleum prospecting licence until the expiration of the
23 period under subsection of this section or declaration of a commercial
24 discovery by the licensee.

25 (11) The Commission shall approve an area of a significant gas
26 discovery which shall not be larger than the outer boundary of the discovery
27 declared by the licensee, including a zone of not more than 2 kilometres
28 surrounding the outer boundary; provided that such area shall not extend
29 beyond the area described in the applicable petroleum prospecting licence.

30 (12) The provisions of section 88(3) of this Act shall apply to any

1 Retention Area.

2 (13) Where, upon the expiry of the Retention Period determined
3 pursuant to subsection (9) of this section, the licensee has not declared a
4 Commercial Discovery, the area declared pursuant to subsection (9) of this
5 section shall be immediately relinquished by the Licensee.

6 (14) Upon the relinquishment of the retention area with the latest
7 expiry date referred to in subsection (13) of this section, the applicable
8 petroleum prospecting licence shall expire.

9 (15) Where a Licensee declare a discovery of no interest pursuant
10 to subsection (3) or (8) of this section, the Commission may require the
11 relinquishment of the parcels that cover the structure of such discovery.

12 (16) A commitment by a licensee under this section shall be
13 supported by a bank guarantee, letter of credit or performance bond issued
14 by a bank acceptable to the Commission for an amount determined by the
15 Commission.

16 (17) The licensee shall in each calendar year present an annual
17 work program and status report as prescribed by regulations for approval by
18 the Commission and such program shall as a minimum, contain the
19 committed work.

20 **79.-(1)** Where a licensee under a petroleum prospecting licence
21 declares a commercial discovery under section 78(8)(a) of this act, the
22 licensee shall within 2 years of the declaration, submit to the Commission a
23 field development plan with regard to the commercial discovery together
24 with a commitment to carry out the work described in the field development
25 plan.

Commercial
discovery and
field development
plan

26 (2) The Commission shall evaluate the technical and commercial
27 terms of the field development plan and shall only approve the field
28 development plan where-

29 (a) it meets the technical standards required for petroleum
30 operations based on good international petroleum industry practices;

- 1 (b) the location of the measurement point, measurement processes
2 and equipment are acceptable to the Commission;
- 3 (c) it results in the maximum recovery of crude oil, natural gas and
4 condensates from the applicable reservoirs;
- 5 (d) it meets the health, safety and environmental standards, as
6 determined by the Commission;
- 7 (e) it provides for the efficient and commercial use of facilities for
8 midstream petroleum operations;
- 9 (f) it does not involve excessive capital or operating expenditures;
- 10 (g) it includes an approved Nigerian content plan pursuant to the
11 Nigerian Oil and Gas Industry Content Development Act, 2010;
- 12 (h) it includes an environmental management plan in a form that
13 complies with section 102 of this Act;
- 14 (i) it includes a decommissioning and abandonment plan and a
15 decommissioning and abandonment fund that complies with sections 232 and
16 233 of this Act;
- 17 (j) it provides for the elimination of routine natural gas flaring;
- 18 (k) it does not relate to upstream petroleum operations that are in
19 conflict with domestic gas delivery obligation;
- 20 (l) it includes-
- 21 (i) a detailed programme for the recruitment and training of Nigerians
22 in all phases of petroleum operations handled directly by the licensee or
23 through agents and contractors of the licensee; and
- 24 (ii) provision for scholarship schemes, internships, continuous
25 professional development and other training requirements;
- 26 (m) it complies with the obligations to host communities under
27 Chapter 3 of this Act; and
- 28 (n) it includes a development period sufficient to construct any
29 required infrastructure and the development of the Field.
- 30 (3) Where the development of a commercial discovery requires

1 construction of facilities for midstream petroleum operations in a manner
2 integrated with the upstream petroleum operations, a licensee may submit
3 the development plan as a single integrated project, which may be reviewed
4 by the Commission and the Authority.

5 (4) Where a single project is submitted, the Commission and
6 Authority shall-

7 (a) review the project based on their regulatory responsibilities;
8 and

9 (b) cooperate to review and decide on the project.

10 (5) Where a Licensee does not submit a field development plan and
11 work commitment within the period set forth in subsection (1) of this
12 section, the area containing the commercial discovery shall be relinquished.

13 (6) Where the licensee has submitted a field development plan for
14 the field, the licence shall continue until the process for the grant of a Lease
15 has been completed or the Commission has decided not to grant the Lease.

16 (7) Where the licensee establishes and secures approval for an
17 appraisal area or declares a commercial discovery, a petroleum prospecting
18 licence shall, where required, be extended until the-

19 (a) grant of the petroleum mining lease; or

20 (b) decline of the approval for the appraisal area or commercial
21 discovery.

22 (8) Notwithstanding the provisions of section 78(10) of this Act,
23 the holder of the retention area shall within 2 years after declaring a
24 commercial discovery, submit to the Commission a field development plan
25 that complies with the requirements in subsection (2) of this section.

26 (9) The Commission shall give its final decision to approve or
27 disapprove a Field development plan within 180 days after the submission
28 of the Field development plan in compliance with the requirements in
29 subsection (2) of this section and a Lease shall be granted upon the approval
30 of the Field development plan.

1 (10) Where the Commission fails to respond to the field development
2 plan within 180 days, the plan shall be deemed approved.

3 (11) A commitment by a Licensee under this section shall be
4 supported by a bankguarantee, letter of credit or performance bond issued by a
5 bank acceptable to the Commission for an amount determined by the
6 Commission.

7 (12) Upon approval of a field development plan, no material
8 modification shall be made except in accordance with the approval provisions
9 set out in subsection (2) of this section and the submission and approval of an
10 amended Field development plan.

11 (13) Upon the granting of one or more petroleum mining leases, the
12 annual work program and status report referred to under section 78(17) of this
13 Act shall include the program and report for each Lease.

Unitisation

14 **80.**-(1) A licensee or lessee shall promptly notify the Commission of
15 any petroleum reservoir which extends beyond the boundaries of its licence or
16 lease area.

17 (2) The Commission may, for the purpose of ensuring optimum
18 recovery of petroleum from a petroleum reservoir, require all petroleum
19 operations relating to commercial discovery to be carried out by a licensee or
20 lessee on the basis of a unitised development of the applicable commercial
21 discovery, where-

22 (a) the petroleum reservoir covered by an area to which a licence or
23 lease relates extends beyond the boundaries of such area into an area to which
24 another licence or lease relates and in respect of which a different person is the
25 licensee or lessee; and

26 (b) at least one licensee or lessee has made a declaration of a
27 commercial discovery.

28 (3) The Commission may, upon receipt of a notification under
29 subsection (1) of this section direct the applicable Licensee or Lessee to enter
30 into a unit agreement to develop the petroleum reservoir as a unit, within a

1 period of time to be determined by the commission, which shall not be less
2 than 2 years.

3 (4) The unit agreement referred to in subsection (3) of this section
4 shall be approved by the Commission and shall-

5 (a) be based on terms agreed by the parties and in a form that
6 conforms with good international petroleum industry practices; and

7 (b) contain terms and conditions as may be required by a
8 Regulation issued by the Commission pursuant to subsection (9).

9 (5) A unit agreement shall, in addition to the requirements of
10 subsections (3) and (4) of this section-

11 (a) be based on reliable technical, operational and economic
12 considerations;

13 (b) set out the proposed operator of the applicable unit; and

14 (c) set out technical information regarding the petroleum reservoir
15 subject to unitisation, including structure mapping, net pay and such other
16 engineering and geophysical information as may be required by a regulation
17 issued by the Commission pursuant to subsection (9) of this section.

18 (6) Where the applicable Licensees or Lessees are unable to reach
19 agreement within the time limit imposed by the Commission pursuant to
20 subsection (3) of this section, the Commission may, in compliance with
21 subsections (4) and (5) of this section, impose a fair and equitable terms and
22 conditions of a unit agreement to the licensees or lessees.

23 (7) Where a petroleum reservoir extends beyond the boundaries of
24 the licence or lease into an adjacent area which is not covered by a licence or
25 lease, the Commission may-

26 (a) extend the boundaries of the licence or lease to include the
27 entire petroleum reservoir within such licence or lease, provided that the
28 licensee or lessee submits to the commission a field development plan that
29 includes the additional adjacent area acceptable to the Commission; or

30 (b) conduct a bid round for the adjacent area in accordance with the

1 licensing round guidelines and the provisions of this Act.

2 (8) Where a petroleum reservoir unitised pursuant to this section is
3 able to continue in production after the expiration of one or more licences or
4 leases relating to the petroleum reservoir, the Commission may grant an
5 extension of the term of the licence or lease.

6 (9) The Commission may from time to time issue regulations in
7 relation to unitisation.

Petroleum mining
leases

8 **81.**-(1) A petroleum mining lease shall be granted for each
9 commercial discovery of crude oil or natural gas or both, to the licensee of a
10 petroleum prospecting licence who has-

11 (a) satisfied the conditions imposed on the licence or the licensee
12 under this act; and

13 (b) received approval for the applicable field development plan from
14 the Commission.

15 (2) A petroleum mining lease shall be granted pursuant to the
16 provisions of sections 70(2) and 74 of this act, where a prospective lease area
17 contains petroleum field with suspended wells or continuing commercial
18 production, where the corresponding petroleum mining lease has been revoked
19 or has expired.

20 (3) A petroleum mining lease granted pursuant to subsection (2) of
21 this section may include an appraisal phase.

22 (4) A licensee shall subject to subsection (7) of this section, propose
23 that a separate petroleum mining lease be granted for each commercial
24 discovery to which a petroleum prospecting licence relates prior to the
25 expiration of the applicable petroleum prospecting licence.

26 (5) Notwithstanding any grant of a petroleum mining lease pursuant
27 to subsection (4) of this section, the applicable petroleum prospecting licence
28 shall continue for the remaining area to which that licence relates for the
29 duration provided for in that licence.

30 (6) The area to which a petroleum mining lease relates and derived

1 from a petroleum prospecting licence shall be proposed by the licensee,
2 based on an independent engineering report, which shall not be binding on
3 the Commission.

4 (7) The Commission shall approve the proposed area, which shall
5 contain every parcel within the outer boundary of the field based on oil-
6 water contacts or other reservoir limits, including a zone surrounding the
7 boundary consisting of all parcels that are in whole or in part within one
8 kilometre of such outer boundary; provided that such area shall not contain
9 parcels-

10 (a) outside the original licence area from which the lease is derived;

11 (b) in areas relinquished by the licensee; or

12 (c) in an existing petroleum mining lease.

13 (8) The Commission may approve modification of an area of a
14 petroleum mining lease to include further parcels as are appropriate, based
15 on the criteria prescribed under subsections (6) and (7) of this section, where
16 during the period provided for in a petroleum prospecting licence, the outer
17 boundary of the commercial discovery changes due to further-

18 (a) drilling or other exploration activities; or

19 (b) petroleum discoveries in deeper or shallower formations.

20 (9) Where two or more petroleum mining leases derived from the
21 same petroleum prospecting licence constitute a single field based on an
22 interpretation by the Commission of geological or petroleum engineering
23 data showing that the field is a single field, the leases shall be considered as a
24 single lease, notwithstanding that their boundaries do not join with another
25 lease, provided the granting date of the single lease shall be the date of the
26 first lease that was granted.

27 (10) A petroleum mining lease shall not consist of an area that is
28 less than one parcel or where a parcel has been subdivided pursuant to
29 section 69(5) of this act, less than one subdivision of such parcel.

30 **82.-**(1) A lessee under a petroleum mining lease shall have the

Exclusive right
to conduct operations

1 exclusive right to carry out upstream petroleum operations with respect to the
2 formations under the lease area as defined in the lease.

3 (2) A lessee under a petroleum mining lease shall have the right to
4 continue to explore in the lease area.

5 (3) A petroleum mining lease for conducting upstream petroleum
6 operations shall only be granted on the basis of a commitment from the
7 applicable lessee to-

8 (a) develop and produce the commercial discovery of crude oil or
9 natural gas in the area to which the lease relates in accordance with the
10 applicable development plan; or

11 (b) restart or continue petroleum production in the area to which such
12 lease relates.

13 (4) The Commission shall, during the term of a petroleum mining
14 lease-

15 (a) verify the implementation of the work commitments by the
16 applicable lessee and its compliance with the applicable development plan;

17 (b) monitor capital and operating costs incurred by the applicable
18 lessee; and

19 (c) ensure that upstream petroleum operations at all times are carried
20 out to conform with the standards required by this Act and by regulation made
21 under this Act.

Confidentiality

22 **83.**-(1) A licensee or lessee shall for each petroleum prospecting
23 licence or petroleum mining lease provide a yearly summary of royalties, fees,
24 taxes, profit oil shares and other payments to Government within 6 months
25 after each calendar year to the Commission and the Accountant General of the
26 Federation.

27 (2) The Commission shall define the required detail and classification
28 of the summary under subsection (1) of this section and the summaries shall be
29 non-confidential and published on the website of the Commission.

30 (3) The text of any existing contract, Licence or Lease and any

1 amendment or side letter with NNPC shall-

2 (a) not be confidential;

3 (b) be published on the website of the Commission within one year
4 after the effective date; and

5 (c) be provided to the Commission by a contractor of NNPC,
6 licensee or lessee within 1 year after the Effective Date.

7 (4) A contractor, licensee or lessee who does not or partially
8 provides the Commission with the required information referred to in
9 subsection (3) of this section, within the stipulated time contravenes the
10 provisions of this Act and is liable to an administrative penalty of the sum of
11 US \$10,000 for every day the default subsists.

12 (5) The text of any new licence, lease or contract or amendment to
13 it shall not be confidential and shall be published by the Commission
14 immediately following the granting or signing of such texts.

15 (6) A licensee or lessee who obtained geological, geophysical,
16 geochemical and other technical petroleum data during upstream petroleum
17 operations as determined by the Commission shall immediately provide the
18 data to the National Data Repository of the Commission.

19 (7) The data referred to in subsection (6) of this section shall not be
20 confidential, except for a period of confidentiality of exploration data,
21 which shall not exceed-

22 (a) 5 years or the period until the relinquishment date of the area,
23 whichever is lower; or

24 (b) such other period as prescribed in the National Data Repository
25 Regulations, 2020.

26 (8) Data in the National Data Repository of the Commission shall
27 be accessible to any interested person under such terms as may be
28 determined by the Commission.

29 **84.**-(1) Unless prohibited by this Act or regulation under this Act,
30 where the Commission grants a licence or lease, a licensee or lessee may

Power to enter
into contracts

1 enter into a contract with a third party for the exploration, prospecting,
2 production or development of crude oil or natural gas or both, in respect of any
3 licence or lease held by the licensee or lessee.

4 (2) The Commission shall develop a model licence and model lease,
5 which may contain an obligation to comply with contractual provisions in a
6 model contract attached to the licence or lease.

7 (3) The model licence and model lease referred to under subsection
8 (2) of this section shall comply with the provisions of this Act and may contain
9 the following additional contractual provisions-

10 (a) a production sharing contract for the exploration, development
11 and production of petroleum on terms under which the financial risk-bearing
12 party shall recover costs from a share of production as established in the
13 contract from the applicable area;

14 (b) a profit sharing contract which is a production sharing contract
15 whereby the profit oil is provided in cash to Government;

16 (c) a risk service contract for the exploration, development and
17 production of petroleum on terms under which the financial risk-bearing party
18 shall recover costs by a payment in cash or in kind from petroleum produced
19 from the applicable area;

20 (d) a concession agreement for exploration, development and
21 production of petroleum, which may include an incorporated or
22 unincorporated joint venture with NNPC Limited; and

23 (e) any contract being a variation of the contracts pursuant to
24 paragraphs (a), (b) (c) or (d), of this subsection or a contract which, at the time,
25 is an internationally recognised form of contract for the exploration and
26 production of petroleum.

27 (4) The power to enter into contracts pursuant to subsection (1) of this
28 section shall not confer on any licensee or lessee the right to assign an interest
29 in any licence or lease, except in accordance with the provisions of this Act.

1 not be granted by the Commission unless the appropriate model contract is
2 attached to the licence or lease and the licensee or lessee is the contractor.

3 **86.**-(1) A petroleum mining lease granted under section 81 of this
4 Act shall be for a maximum period of 20 years, which term shall include the
5 development period prescribed pursuant to subsection (4) of this section.

Duration and
renewal of leases
and licences

6 (2) Where a petroleum mining lease does not initiate regular
7 commercial production within the development period prescribed pursuant
8 to subsection (4) of this section, the Lease may be revoked by the
9 Commission at the end of the development period.

10 (3) Where a petroleum mining lease is revoked under subsection
11 (2) of this section, the applicable acreage shall vest in the Government and
12 be controlled and administered by the Commission, which may be subject to
13 a new petroleum mining lease granted in accordance with section 81 of this
14 Act.

15 (4) The development period for a petroleum mining lease granted
16 pursuant to section 81 of this Act shall be the period established in the Field
17 development plan under section 79(2)(n) of this Act and where development
18 period is not stipulated, the development period shall be-

19 (a) 5 years for an onshore lease; and

20 (b) 7 years for a Lease in shallow water or deep offshore or a lease
21 in a frontier acreage.

22 (5) An acreage in respect of an expired or revoked petroleum
23 mining lease under this Act shall be subject to a new bidding process
24 pursuant to section 73 of this Act, unless the term of the petroleum mining
25 lease is extended under this Act.

26 (6) A petroleum mining lease which continues to produce in paying
27 quantities may be renewed by the Commission in accordance with section
28 87 of this Act for one or more successive additional terms, of not more than
29 20 years each, provided that-

30 (a) the field continues to produce in paying quantities; and

1 (b) all rents, royalties, taxes and other applicable fiscal obligations
2 stipulated under this Act shall continue, subject to section 87 of this Act.

3 (7) a petroleum mining lease which ceases to produce in paying
4 quantities for a period of not less than 180 days may, except for force majeure
5 or any other reason acceptable to the Commission, be revoked by the
6 Commission.

7 (8) A lessee of a petroleum mining lease who intends to suspend
8 production for more than 180 days and to resume production at a later date,
9 shall submit to the Commission a specific shut-in plan and a commitment to
10 restart production in accordance with the shut-in plan/

Conditions for
renewal of
petroleum mining
leases

11 **87.**-(1) A lessee of a petroleum mining lease may, not less than 12
12 months before the expiration of the lease, apply in writing to the Commission
13 for a renewal, of leased area or any part of it.

14 (2) A petroleum mining lease shall be renewed by the Commission
15 where it is satisfied that the Lessee -

16 (a) has fulfilled its obligations relating to the development of the
17 Lease area;

18 (b) has fully met all payments requirement under this Act or any other
19 enactment in respect of royalties, rents, taxes and fees relating to the petroleum
20 mining lease;

21 (c) is not in default of any obligation or condition relating to the
22 Lease; and

23 (d) has discharged all operational obligations in compliance with
24 applicable rules and regulations.

25 (3) The renewal referred to under subsection (2) of this section shall
26 be on terms and conditions determined by the Commission and the Lessee shall
27 pay a renewal bonus of an amount specified by the Commission based on the
28 percentage of the market value on the renewal date prescribed in the regulation
29 made under this Act.

30 (4) The Commission may, in public interest, change, impose or add

1 new lease conditions, which shall be published in the Official Gazette.

2 **88.**-(1) Prior to the expiration of the initial exploration period of 3 Relinquishment
3 years or of the optional extension period of 3 years under section 77(1) of
4 this Act, a licensee shall relinquish every area that is not an appraisal area,
5 retention area or lease area based on parcels or sub-parcel under section 69
6 of this Act.

7 (2) Prior to the expiration of the initial exploration period of 5 years
8 or of the optional extension period of 5 years under section 77(2) of this Act,
9 a licensee shall relinquish every area that is not an appraisal area, retention
10 area or lease area on parcel or sub-parcel under section 69 of this Act.

11 (3) Every appraisal area or retention area shall be retained as
12 provided for under this act and the petroleum prospecting licence shall be
13 extended until the related petroleum mining lease has been granted or
14 denied.

15 (4) A Licensee of a petroleum prospecting licence may voluntarily
16 relinquish parcels and sub-parcels under section 69 of this Act, provided that
17 the-

18 (a) licensee has complied with the obligation in the petroleum
19 prospecting licence; and

20 (b) shape of a relinquished block shall be approved by the
21 Commission to maintain acreage of shape that is viable for award in future
22 licensing round.

23 (5) After 10 years of the commencement of a petroleum mining
24 lease-

25 (a) the applicable Lessee shall relinquish all parcels which do not
26 fall within the boundary of a producing field under this Act; and

27 (b) any formation deeper than the deepest producing formation
28 shall be relinquished, and the deep rights shall vest in the Government.

29 (6) Upon the expiration of any significant gas discovery retention
30 period in respect of a petroleum prospecting licence, every area relating to

1 the significant gas discovery retention area shall be relinquished, unless the
2 applicable licensee has declared a commercial discovery in such significant
3 gas discovery retention area.

4 (7) An area or zone relinquished pursuant to this section, shall be
5 vested in the Government and administered by the Commission and the
6 relinquishments shall be in a north-south, east-west direction and defined in a
7 rectangular or square shaped compact unit.

8 (8) Any rent paid in respect of an area or zone that is relinquished
9 pursuant to this section shall not be refundable and such relinquishment shall
10 be without prejudice to any obligation or liability imposed by or incurred under
11 the applicable Licence or Lease.

Surrender of
licence or lease

12 **89.** -(1) Notwithstanding the provisions of this Act on relinquishment,
13 a holder of a petroleum prospecting licence, petroleum exploration licence or
14 petroleum mining lease may surrender part or the whole of the licenced or
15 leased area or any zone, provided that the licensee or lessee has-

16 (a) complied with obligations imposed by or incurred under the
17 applicable licence or lease; and

18 (b) given 3 months' notice in writing to the Commission prior to the
19 surrender.

20 (2) Any rent or fee paid prior to a surrender pursuant to subsection (1)
21 of this section shall not be refundable and the licence or lease surrendered shall
22 be without prejudice to any obligation or liability imposed by or incurred under
23 the applicable Licence or Lease.

Rights of way
relating to
upstream petroleum
operations

24 **90.** Subject to applicable law and terms and conditions prescribed by
25 the Commission, a holder of a petroleum prospecting licence, petroleum
26 exploration licence or petroleum mining lease is entitled with the approval of
27 the Commission to a right of way for the laying, operation and maintenance of
28 gathering lines, telephone lines, power lines and other similar lines through or
29 across the areas the holder may require.

1 **91.**-(1) Subject to subsection (2) of this section, the Commission
 2 may reserve in accordance with applicable law, a right of way, easement or
 3 other right over an area to which a petroleum prospecting licence, a
 4 petroleum exploration licence or a petroleum mining lease, which the
 5 Commission considers necessary for the laying, operation and maintenance
 6 of pipelines, telephone lines and power lines and any right of way or other
 7 right reserved shall continue for the benefit of any person to whom the
 8 Commission may subsequently grant the same.

Rights of way
 reserved for the
 Commission

9 (2) Where a holder of a petroleum prospecting licence, petroleum
 10 exploration licence or petroleum mining lease is of the opinion that a
 11 reservation made by the Commission pursuant to subsection (1) of this
 12 section affects the health, safety or environment of a person, the licensee or
 13 lessee may object to the reservation in writing and the Commission shall
 14 reconsider the reservation in light of the objection.

15 (3) The holder of a petroleum prospecting licence, a petroleum exploration
 16 licence or a petroleum mining lease shall-

17 (a) be entitled to enter and remain on the land that is the subject of
 18 the Licence or Lease and do such things that are not prohibited by applicable
 19 law or under the Licence or Lease; and

20 (b) comply with applicable law relating to town or country
 21 planning or regulating the construction, alteration, repair or demolition of
 22 buildings, or providing for similar matters, which relates to the carrying out
 23 of operations authorised by the Licence or Lease.

24 **92.**-(1) A holder of an existing oil prospecting licence or oil mining
 25 lease may enter into a voluntarily conversion contract under this Act.

Voluntary
 conversion of an
 oil prospecting
 licence to a
 petroleum
 prospecting licence
 or oil mining lease
 to petroleum
 mining lease

26 (2) A licensee or lessee under a conversion contract shall benefit
 27 from applicable fiscal incentives where the licensee or lessee complies with
 28 the provisions of this Act.

29 (3) Where a holder of an existing oil prospecting licence or oil
 30 mining lease who wishes to enter into a voluntarily conversion contract

1 under this Act, the conversion contract shall contain a termination clause of all
2 outstanding arbitration and court cases related to the respective oil prospecting
3 licence or oil mining lease and for the avoidance of doubt-

4 (a) any stability provisions or guarantees provided by NNPC in
5 respect of oil prospecting licences or oil mining leases to be converted shall be
6 null and void; and

7 (b) the incentive provisions contained in sections 11 and 12 of the
8 Petroleum Profit Tax Act shall not apply.

9 (4) A conversion contract shall be concluded at a date (“Conversion
10 Date”) which is the earlier of-

11 (a) 18 months from the effective date; and

12 (b) the expiration date of the oil mining lease or date of conversion of
13 the oil prospecting licence to an oil mining lease.

14 (5) Prior to the conversion date, the terms applicable to the oil
15 prospecting licence or oil mining lease prior to the effective date shall continue
16 to apply.

17 (6) Where a holder of an existing oil prospecting licence or oil mining
18 lease does not enter into a conversion contract prior to the conversion date, the
19 terms and conditions applicable to the oil prospecting licence or oil mining
20 lease prior to the effective date of this Act shall continue to apply to the oil
21 prospecting licence or oil mining lease, subject to the provisions of section
22 311(2)(b) and 303(1) of this Act.

23 (7) Where an oil prospecting licence is converted, the term of years
24 included in such licence shall apply to the converted petroleum prospecting
25 licence.

Relinquishment
upon renewal or
conversion of
an oil mining
lease

26 **93.**-(1) A holder of oil mining lease, including oil mining lease that is
27 subject to production sharing contract, shall at the renewal date applicable to
28 the oil mining lease or at the conversion date, designate each area and zone of
29 the oil mining lease as areas and zones-

30 (a) which, in the opinion of the holder, merit appraisal and for which

1 the holder of the oil mining lease is prepared to present an appraisal program
2 pursuant to section 78 of this Act;

3 (b) in respect of which the holder is prepared to make a declaration
4 of a commercial discovery pursuant to section 78 of this Act and submit a
5 field development plan to the Commission pursuant to section 79 of this Act;

6 (c) in respect of which the holder is prepared to make a declaration
7 of a significant gas discovery pursuant to section 78 of this Act and submit
8 an application for approval of a retention area;

9 (d) in respect of which development is underway based on prior
10 approvals; and

11 (e) in respect of which regular commercial production is occurring.

12 (2) Where the total acreage selected pursuant to subsection (1) of
13 this section is less than 40% of the area to which the applicable oil mining
14 lease applies, the holder may select additional areas covered by the oil
15 mining lease for conversion to a petroleum prospecting licence in such a
16 manner that the total of all areas selected shall not be more than 40% of the
17 oil mining lease area.

18 (3) Any selected area pursuant to subsection (2) of this section shall
19 be based on parcels.

20 (4) Areas and zones subject to an oil mining lease and not selected
21 by the holder pursuant to subsections (1) and (2) of this section shall be
22 relinquished by the holder.

23 (5) The relinquishment date for the purpose of subsection (4) of
24 this section shall be the renewal date or the conversion date.

25 (6) Subject to section 94 of this Act on the applicable
26 relinquishment date, the Commission shall convert the applicable oil
27 mining lease in respect of each area and zone-

28 (a) designated by a holder pursuant to subsection (a), (b), (c) or (2)
29 of this section into a petroleum prospecting licence in accordance with
30 section 78 of this Act, with fiscal terms as applicable under Chapter Four of

1 this Act for new acreage and with the relinquishment date being the effective
2 date for such petroleum prospecting licence;

3 (b) selected pursuant to subsection (c) and (e) of this section, into
4 petroleum mining leases, with fiscal terms as applicable under section
5 267(1)(a), (b) and (e) of this Act to the lease, provided that for-

6 (i) production sharing contracts for the determination of the profit oil
7 sliding scale based on cumulative production, the total production from all
8 petroleum mining leases shall be applicable, and

9 (ii) Royalty purposes, the production of each petroleum mining lease
10 shall be the basis.

11 (7) Where a Licensee of an oil prospecting licence, including any oil
12 prospecting licence that is subject to a production sharing contract, voluntarily
13 opts to convert its Licence to a petroleum prospecting licence pursuant to
14 Section 92 of this Act, it shall select as provided in subsection (1) of this section
15 the areas and zones indicated in this subsection upon the conversion date and
16 the Commission shall convert the applicable oil prospecting licence of the
17 areas and zones-

18 (a) designated by a holder pursuant to subsection (a), (b) and (c) of
19 this section as areas to be continued under the petroleum prospecting licence
20 pursuant to the provisions of this Act, with fiscal terms as applicable under
21 Chapter Four of this Act for new acreage;

22 (b) selected pursuant to subsection and (e) of this section shall be
23 converted into petroleum mining leases with fiscal terms as applicable under
24 section 267(1)(a), (b) and (e) of this Act, applicable to these leases, provided
25 that-

26 (i) with respect to production sharing contracts for the determination
27 of the profit oil sliding scale based on cumulative production, the total
28 production from all petroleum mining leases shall be applicable, and

29 (ii) Royalty purposes, the production of each petroleum mining lease
30 shall be the basis; and

1 (c) the remaining area shall continue as exploration area under the
2 petroleum prospecting licence.

3 **94.**-(1) Notwithstanding the rights and obligations conferred under Marginal field
4 the applicable farm-out agreement, an existing and producing marginal field
5 shall be granted a separate petroleum mining lease, which shall benefit from
6 the terms for new acreage under Chapter Four of this Act.

7 (2) A discovery declared as a marginal field prior to 1st january,
8 2020 and is not producing shall be converted to petroleum prospecting
9 licence and shall benefit from the terms for new acreage under Chapter Four
10 of this Act.

11 (3) Where the discovery has been transferred to Government, the
12 Commission is entitled to offer the petroleum prospecting licence in a bid
13 round pursuant to section 74 of this Act.

14 (4) Within 3 years of the effective date, any discovery of marginal
15 field that has not been transferred to Government, shall be subject to the
16 following process and the holder of the oil mining lease-

17 (a) present a development plan for the field; or

18 (b) with the consent of the Commission and on terms and
19 conditions as the Commission may approve under regulations, farm out the
20 discovery; or

21 (c) relinquish the field in accordance with the provisions of this
22 Act.

23 (5) The consent of the Commission to the farm-out of a marginal
24 field under subsection (b)(b) of this section shall, amongst others, be subject
25 to the farmee presenting a field development plan over a period of time
26 agreed with the Commission and a regulation made under this Act.

27 (6) The failure of the farmee to present a field development plan to
28 the Commission within the prescribed period shall attract a penalty
29 prescribed in the Regulations.

30 (7) A discovery relinquished under subsection (c) of this section

1 shall be vested in the Government and be administered by the Commission.

2 (8) For the purposes of this section-

3 (a) "marginal field" means a Field or discovery which has been
4 declared a Marginal Field prior to 1st January 2020; and

5 (b) "farm-out" means an agreement between the holder of a
6 petroleum mining lease or petroleum prospecting licence and a third party,
7 which permits the third party to explore, prospect, win, work and carry away
8 any petroleum encountered in a licence or lease area during the validity of the
9 licence or lease.

Assignment,
mergers, transfers
and acquisitions

10 **95.**-(1) A holder of a petroleum prospecting licence or petroleum
11 mining lease shall not assign, novate or transfer his licence or lease or any right,
12 power or interest without prior written consent of the Minister.

13 (2) The consent of the Minister under subsection (1) of this section
14 shall be granted upon the recommendation of the Commission.

15 (3) For the purpose of subsection (1) of this section, a change of
16 control in the holder of a Licence or lease under subsection (1) of this section
17 shall be deemed to be an assignment.

18 (4) A licensee or lessee wishing to assign, novate or otherwise transfer
19 its interest pursuant to subsection (1) of this section, shall make an application
20 for approval of the transfer of a licence or lease to the Commission in the format
21 prescribed by the Commission, and be accompanied with any other
22 information that may be pursuant to any regulations published by the
23 Commission hereunder

24 (5) Notwithstanding the provisions of subsection (1) of this section, a
25 holder of a licence or lease under subsection (1) of this section, may by way of
26 security, wholly or partly assign, pledge, mortgage, charge or hypothecate its
27 interests under the applicable licence, lease or grant a security interest in
28 respect of the interest, provided that the consent of the Commission shall be
29 obtained.

30 (6) The Commission shall within 60 days of the receipt, act on the

1 application of the licensee or lessee. Where no response on the application
2 has been received within 60 working days from the receipt of the
3 recommendation of the Commission, the consent of the Minister under
4 subsection (1) of this section shall be deemed to have been granted.

5 (8) Where the consent of the Minister is granted in respect of the
6 application for a transfer, the Commission shall promptly record the transfer
7 in the appropriate register.

8 (9) The Commission shall communicate the refusal or approval of
9 an application for an assignment, novation or transfer of a licence or lease in
10 writing to the applicant.

11 (10) Where the application for an assignment or a transfer of a
12 petroleum prospecting licence or petroleum mining lease is refused, the
13 Commission shall inform the applicant of the reasons for the refusal and
14 may give reasonable time within which further representations may be made
15 by the applicant or by third parties in respect of the application.

16 (11) The Minister may grant consent to an assignment, novation or
17 transfer of a petroleum prospecting licence or petroleum mining lease,
18 subject to the following terms and conditions the Commission may consider
19 appropriate, that the proposed transferee-

20 (a) is a company incorporated in Nigeria;

21 (b) is of good reputation and standing;

22 (c) has sufficient technical knowledge, experience and financial
23 resources to enable it effectively carry out all responsibilities of a licensee or
24 lessee under the licence or lease; and

25 (d) shall comply with the Federal Competition and Consumer
26 Protection Act, 2018.

27 (12) The Commission shall make regulation to prescribe for
28 payment of fees as a condition for any transaction under subsection (1) of
29 this section, which fee shall be based on a percentage of the value of the
30 transaction and shall not be taxable.

1 (13) The consummation and details of any transaction to which
2 subsection (1) of this section applies shall be-

3 (a) fully disclosed to the Federal Inland Revenue Service by the
4 parties to the transaction; and

5 (b) published in the gazette by the Commission.

6 (14) For the purposes of this section, “change of control” means any
7 person or persons acting jointly or in concert, to acquire direct or indirect
8 beneficial ownership of a percentage of the voting power of the outstanding
9 voting securities of the holder, by contract or otherwise, that exceeds 50% at
10 any time.

11 (15) A holder of a petroleum exploration licence shall not assign,
12 novate or transfer his licence or lease or any right, power or interest without
13 prior written consent of the Commission.

Grounds for
revocation of
licence or lease

14 **96.**-(1) Upon receipt of the written recommendation of the
15 Commission for revocation, the Minister may revoke a petroleum prospecting
16 licence, petroleum exploration licence or petroleum mining lease, where the
17 applicable licensee or lessee-

18 (a) fails to conduct petroleum operations in accordance with good
19 international petroleum industry practices, the provisions of this Act and any
20 other relevant legislation;

21 (b) interrupts production for a period of over 180 consecutive days
22 without justification or as provided for in the applicable licence, lease or
23 approved development plan, provided that an event of *force majeure* shall be an
24 acceptable justification for interruption;

25 (c) fails to fulfil the terms and conditions of the applicable licence or
26 lease or the approved field development plan;

27 (d) fails to pay to Government, as they become due, rents, royalties,
28 taxes or other payments or production shares under this Act;

29 (e) fails to furnish any reports or data on operations as required by
30 law;

1 (f) assigns, novates or otherwise transfers any interest in the
2 applicable licence or lease other than in accordance with section 95 of this
3 Act;

4 (g) has obtained an interest, in the applicable licence or lease based
5 on false representation or contrary to corrupt practices and money
6 laundering Laws;

7 (h) is declared by a court of competent jurisdiction to be insolvent,
8 bankrupt or is liquidated, in each case except as part of a solvent plan or
9 scheme of re-organisation, amalgamation or arrangement;

10 (i) has failed to comply with environmental obligations required by
11 applicable law or by the provisions of the applicable Licence or Lease;

12 (j) is owned wholly or in part, directly or indirectly or is controlled
13 by a former or serving public official or member of the Government, who
14 obtained his interest in the applicable licence or lease other than as permitted
15 by applicable law;

16 (k) where the applicable licensee or lessee does not submit and
17 advance a field development plan and work commitment pursuant to
18 sections 78 and 79 of this Act;

19 (l) fails to abide by any expert determination, arbitration award or
20 judgment arising from the dispute resolution provisions set forth in a
21 licence, lease or this Act;

22 (m) fails to comply with domestic crude oil supply or domestic gas
23 delivery obligations under this Act and any subsidiary regulation; or

24 (n) fails to comply with the host communities obligations under
25 this Act.

26 (2) Subsection (j)(j) of this section shall apply to a former public
27 official or member of Government only where the applicable interest was
28 acquired while the public official was in office or was a member of the
29 Government.

Notice of default
prior to revocation

1 **97.**-(1) Prior to the revocation of a petroleum prospecting licence or
2 Petroleum Mining Lease by the Minister pursuant to section 96 of this Act, the
3 Commission shall-

4 (a) serve a notice of default on the applicable licensee or lessee stating
5 the grounds upon which the Commission may recommend a revocation of the
6 licence or lease to the Minister; and

7 (b) provide the licensee or lessee with a remediation period of not less
8 than 60 days within which to remedy the default.

9 (2) Where the Commission is satisfied with the remedy provided by
10 the licensee or lessee pursuant to subsection (1)(b) of this section, the
11 revocation process shall terminate.

12 (3) Where, at expiration of the remediation period provided under
13 subsection (1)(b) of this section, the default persist, the licence or lease may
14 subject to the provisions of section 99 of this Act, be revoked in accordance
15 with section 96 of this Act.

16 (4) A notice of default shall be-

17 (a) sent by the Commission to the last known address of the licensee
18 or lessee or its legal representative in Nigeria; or

19 (b) published in the gazette or on the website of the Commission,

20 (c) each of which shall constitute sufficient notice to the Licensee or
21 Lessee of the notice of default.

22 (5) Revocation of a petroleum prospecting licence or petroleum
23 mining lease shall be without prejudice to any-

24 (a) liability or obligation which the licensee or lessee may have
25 incurred in favour of the Commission, the Government or any third party; or

26 (b) claim, which the Commission, the Government or any third party
27 may make against the licensee or lessee.

28 (6) A revocation decision shall be published in the gazette and the
29 Commission shall amend relevant registers maintained by it to reflect the
revocation.

1 **98.**-(1) Within 30 days of the revocation of a petroleum mining
2 lease or any partial interest in the lease which is producing in paying
3 quantities, the Minister shall, on the recommendation of the Commission,
4 appoint an interim operator to ensure petroleum operations continue from
5 the areas and zones subject to the petroleum mining lease based on good
6 international oil field practices.

Administration of
a revoked producing
lease

7 (2) The interim operator appointed pursuant to subsection (1) of
8 this section shall serve for a period to be determined by the Commission and
9 the related contract shall be on a service fee basis.

10 (3) During the tenure of an interim operator, the Commission may
11 conduct a fair, transparent and competitive bidding process for the grant of
12 one or more petroleum mining leases in respect of the areas and zones
13 subject to the revoked petroleum mining lease or any partial interest in the
14 petroleum mining lease.

15 **99.**-(1) Where two or more persons are holders of a petroleum
16 prospecting licence or petroleum mining lease and one or more of the
17 grounds for revocation set forth in section 96 of this Act applies to not all of
18 the holders, the Minister-

Power of
revocation of
participating or
shareholders
interest

19 (a) may, in accordance with section 96 of this Act, revoke the
20 participating or shareholders interest of the holder or holders to which the
21 grounds apply; and

22 (b) shall not revoke the interests of the other holder or holders to
23 which the grounds do not apply.

24 (2) A holder to which the grounds apply under subsection (1) (a) of
25 this section is referred to as a “defaulting holder” and a holder to which the
26 grounds do not apply under subsection (1) (b) of this section is referred to as
27 a “non-defaulting holder”.

28 (3) Upon a revocation of an interest pursuant to subsection (1) (a)
29 of this section, the rights of the defaulting holder shall cease without
30 prejudice to any obligation or liability incurred or imposed on the defaulting

1 holder under the terms and conditions of the licence or lease prior to the time of
2 the revocation.

3 (4) The interests of each non-defaulting holder shall not be affected by
4 a revocation of the interest pursuant to subsection (1) (b) of this section and the
5 non-defaulting holders shall take such measures as provided for under the joint
6 operating agreement or shareholder agreement to redistribute the revoked
7 participating or shareholder interest to the non-defaulting holders or third
8 parties.

9 (5) Where subsection (1) of this section applies, an assignment to a
10 third party may require the approvals stipulated under this Act and any
11 replacement of the operator will require the approval of the Commission.

12 (6) The Minister may revoke a licence or lease, where a non-
13 defaulting holder under subsection (1) (b) of this section, fails to-

14 (a) take responsibility for the payment of rents, royalties, taxes,
15 production shares, profit shares or other contractual payments to Government
16 of the defaulting holder under the licence or lease; or

17 (b) comply with any other obligation under the licence or lease in a
18 manner that may result in the revocation of the licence or Lease pursuant to
19 section 96 of this Act.

Fees

20 **100.**-(1) A holder of a petroleum prospecting licence, petroleum
21 exploration licence or petroleum mining lease shall pay to the Government
22 royalties, fees, rents and production or profit shares in the amount and time as
23 prescribed under this Act and regulations made by the Commission.

24 (2) Where royalties, fees, rents, production or profit shares or other
25 required payment to Government due under this section remains unpaid for a
26 period of 30 days after the date when it becomes due for payment, it shall be
27 considered as a debt to the Commission with interest accruing at a daily rate to
28 be provided for in a regulation issued by the Commission.

29 (3) The Commission may, after the 30 days period referred to under
30 subsection (2) of this section and until the debt is repaid, together with accrued

1 and unpaid interest-

2 (a) enter into and upon any land, property or premises owned,
3 possessed or occupied by the holder of the licence or lease;

4 (b) seize, distrain and sell any petroleum, petroleum products,
5 engines, machinery, tools, implements or other effects belonging to the
6 holder of the Licence or Lease, and the costs incurred by the Commission in
7 connection with the seizure, distress and sale shall be added to the debt; and

8 (c) out of money arising from the sale of any item referred to in
9 subsection (b) of this section, pay off the debt and any surplus shall be paid
10 by the Commission to the holder of the licence or lease.

11 (4) Payment to Government referred to under this section shall not
12 be waived or discounted.

13 **101.**-(1) A licensee or lessee shall not enter upon, occupy or
14 exercise any of the rights or powers conferred by its licence or lease in
15 relation to any-

Damage to
protected and
venerated objects

16 (a) area held to be sacred, the question as to whether the area is
17 sacred or not shall be decided by the customary court of the area, where
18 necessary;

19 (b) part of the following relevant areas, except it obtains a written
20 permission from and subject to conditions as may be imposed by the
21 Commission, any part-

22 (i) set apart for, used or appropriated or dedicated to public
23 purposes;

24 (ii) occupied for the purposes of the government of the Federation
25 or a State;

26 (iii) situate within a township, town, village, market, burial ground
27 or cemetery;

28 (iv) which is the site of or is within 50 yards of any building,
29 installation, water reservoir, dam, public road or tramway or which is
30 appropriated for or situate within 100 metres of any railway; or

1 (v) of the land under cultivation;

2 (c) any part consisting of privately owned or legally occupied land
3 other than private land falling under paragraph (b) except permission in writing
4 to do so has been obtained by the licensee or lessee from the Commission,
5 which may grant permission if the licensee or lessee has-

6 (i) given previous notice in writing to the Commission specifying by
7 name or other sufficient designation and by quantity, the land proposed to be
8 occupied and the purpose for which it is required; and

9 (ii) paid or tendered to the person in lawful occupation or and the
10 owner or owners of the land fair and adequate compensation; and

11 (d) dispute under sub-paragraph 0 of this subsection as to who is in
12 lawful occupation or the owner of any land or as to the amount of any
13 compensation payable, the Licensee or Lessee, pending the determination of
14 the dispute, shall deposit with the Federal High Court with jurisdiction over the
15 matter such sum as shall be determined by the Federal High Court to be
16 reasonable compensation payable to the rightful owner or occupier of the
17 land.

18 (2) A person shall not, in the course of petroleum operations-

19 (a) injure or destroy any tree or object which is-

20 (i) of commercial value, or

21 (ii) the object of veneration to the people resident within the Licence
22 or Lease area;

23 (b) damage or destroy any building or property; or

24 (c) disturb or damage the surface of the land or any other rights to any
25 person who owns or is in lawful occupation of the surface area covered by the
26 Licence or Lease.

27 (3) A licensee or lessee who causes damage pursuant to subsection (2)
28 of this section shall pay fair and adequate compensation to the persons or
29 communities directly affected by the damage or injury.

30 (4) The amount of compensation payable under subsection (2) of this

1 section shall be determined by the Commission and prescribed by regulation
2 made under this Act.

3 (5) Where a licensee or lessee fails to pay compensation pursuant
4 to subsections (3) and (2) of this section within 30 days, the Commission
5 may apply sanctions in accordance with regulations made under this Act.

6 **102.-(1)** A licensee or lessee who engages in upstream and
7 midstream petroleum operations shall within-

Environmental
management

8 (a) 1 year of the effective date; or

9 (b) 6 months after the grant of the applicable Licence or Lease,

10 submit for approval an environmental management plan in respect of
11 projects which require environmental impact assessment to the Commission
12 or Authority, as the case may be.

13 (2) The environmental management plan under subsection (1) of
14 this section shall be in accordance with the regulations made under this Act.

15 (3) The Commission or Authority, as the case may be, shall
16 approve the environmental management plan, where-

17 (a) it complies with subsection (2) of this section; and

18 (b) the applicant has the capacity or has provided for the capacity to
19 rehabilitate and manage negative impacts on the environment.

20 (4) The Commission or Authority, as the case may be, shall in
21 considering the environmental management plan, take into account the
22 policy thrust of the Government regarding environmental protection and
23 management practices.

24 (5) The Commission or Authority, as the case may be, may request
25 for additional information from the licensee or lessee and may direct that the
26 environmental management plan be adjusted in a manner the Commission
27 or Authority may require.

28 (6) The Commission or Authority, as the case may be, may after its
29 approval of an environmental management plan and after engagement with
30 the operator of a licence or lease, call for an amendment of the

1 environmental management plan.

2 (7) Chemicals shall not be utilised for upstream petroleum operations,
3 except the Commission grants an applicable permit and approval.

Financial
contribution for
remediation of
environmental
damage

4 **103.**-(1) As a condition for the grant of a licence or lease and prior to
5 the approval of the environmental management plan by the Commission or
6 Authority, a licensee or lessee shall pay a prescribed financial contribution to
7 an environmental remediation fund established by the Commission or
8 Authority, as the case may be, for the rehabilitation or management of negative
9 environmental impacts with respect to the licence or lease.

10 (2) In determining the amount of the financial contribution the
11 Commission or Authority, as the case may be, shall take into consideration the
12 size of the operations and the level of environmental risk that may exist.

13 (3) The financial contribution to an environmental remediation fund
14 under subsection (1) of this section shall be subject to audit by the licensee or
15 lessee, in accordance with guidelines that the Commission or Authority may, as
16 the case may be, issue.

17 (4) Where licensee or lessee fails to rehabilitate or manage or is
18 unable to undertake the rehabilitation or management of any negative impact
19 on the environment, the Commission or Authority, as the case may be, may,
20 upon written notice to the holder, apply the fund under subsection (1) of this
21 section to rehabilitate or manage the negative environmental impact.

22 (5) A licensee or lessee shall, pursuant to subsections (1) and (2) of
23 this section assess its environmental liability annually and increase its financial
24 contribution to the satisfaction of the Commission or Authority, as the case may
25 be.

26 (6) Where the Commission or Authority, as the case may be, is not
27 satisfied with the assessment and financial contribution referred to in this
28 section, the Commission or Authority, as the case may be, may appoint an
29 independent assessor to conduct the assessment and determine the financial
30 contribution.

1	104. -(1) A licensee, lessee or operator that flares or vents natural	Gas flaring penalties
2	gas, except-	
3	(a) in the case of an emergency;	
4	(b) pursuant to an exemption granted by the Commission; or	
5	(c) as an acceptable safety practice under established regulations,	
6	commits an offence under this Act and shall be liable to a fine as prescribed	
7	by the Commission in regulations under this Act.	
8	(2) A fine due under this section shall be paid in the same manner	
9	and be subject to the same procedure for the payment of royalties to the	
10	Government by companies engaged in the production of petroleum.	
11	(3) A fine paid pursuant to this section shall not be eligible for cost	
12	recovery or be tax deductible.	
13	105. A Licensee or Lessee shall pay a penalty prescribed pursuant	Prohibition of flaring or venting of natural gas
14	to the Flare Gas (Prevention of Waste and Pollution) Regulations.	
15	106. -(1) A licensee shall, prior to the commencement of petroleum	Measurement of flared natural gas
16	production, install metering equipment conforming to the specifications	
17	prescribed on every facility from which natural gas may be flared or vented	
18	as the Commission or the Authority may prescribe in a regulation.	
19	(2) A licensee or lessee who fails or refuses to install metering	
20	equipment pursuant to subsection (1) of this section commits an offence	
21	under this Act and is liable to a fine as the Commission or the Authority may	
22	prescribe under a regulation.	
23	107. The Commission or the Authority may grant a permit to a	Exemption
24	Licensee or Lessee to allow the flaring or venting of natural gas for a specific	
25	period-	
26	(a) where it is required for facility start-up; or	
27	(b) for strategic operational reasons, including testing.	
28	108. Notwithstanding any provision to the contrary under this Act,	Natural gas flare elimination plan
29	a licensee or lessee producing natural gas shall, within 12 months of the	
30	effective date, submit a natural gas flare elimination and monetisation plan	

1 to the Commission, which shall be prepared in accordance with regulations
2 made by the Commission under this Act.

Domestic crude
oil supply
obligations

3 **109.**-(1) The supply of crude oil and condensates for the domestic
4 market shall, subject to subsection (2) of this section, be on a willing supplier
5 and willing buyer basis.

6 (2) The Commission may issue regulations or guidelines on the
7 mechanism for the imposition of a domestic crude oil supply obligation on
8 lessees of upstream petroleum operations, where in its opinion, the domestic
9 market results in shortages or inadequate supplies of crude oil and condensates
10 for holders of crude oil refining licences.

11 (3) The Authority shall, upon request by the Commission, promptly
12 supply to the Commission the crude oil requirements of refineries in operation.

13 (4) The Commission shall ensure that the domestic crude oil supply
14 obligation contains the following-

15 (a) crude oil may only be sold to holders of crude oil refining licences,
16 whose refineries are in operation;

17 (b) the supply of crude oil shall be commercially negotiated between
18 the lessee and the crude oil refining licensee, having regard to the prevailing
19 international market price for similar grades of crude oil; and

20 (c) holders of crude oil refining licences shall provide payment
21 guarantees as required by the applicable lessee and payment for crude oil
22 purchased pursuant to obligations shall be in US dollars.

Domestic gas
delivery obligations

23 **110.**-(1) Subject to subsection (2) of this section, the Commission
24 shall, by a Regulation or guideline made under this Act-

25 (a) prescribe and allocate the domestic gas delivery obligation on a
26 lessee before 1st March of each year based on the domestic gas demand
27 requirements determined or updated pursuant to section 173 of this Act; and

28 (b) ensure compliance by every Lessee with a domestic gas delivery
29 obligation.

30 (2) A lessee may, on a voluntary basis, conclude contracts with

1 wholesale customers of the strategic sectors or with wholesale gas suppliers
2 supplying the sectors for delivery of marketable natural gas to the customers
3 or suppliers and notify the Commission of the contracts, provided that where
4 the volume of the contract is equal to or higher than the domestic gas
5 delivery obligation for the lessee, the lessee shall-

6 (a) be deemed to have fulfilled its domestic gas delivery
7 obligation;

8 (b) not be a producer client of the gas aggregator; and

9 (c) inform the gas aggregator.

10 (3) A lessee who has complied with its domestic gas delivery
11 obligation or may wish to supply wholesale customers who are not part of
12 the strategic sectors may deliver further supplies of marketable natural gas
13 to the domestic market on a willing seller and willing buyer basis.

14 (4) A wholesale gas supplier may, on a voluntary basis and
15 following the procedure stipulated under subsection (2) of this section-

16 (a) enter into a contract with a lessee or wholesale customer of the
17 strategic sectors for the delivery of marketable natural gas to the customers;
18 and

19 (b) inform the Commission of the contracts.

20 (5) The Commission shall require a lessee producing natural gas to
21 carry out works and operations which may be required to increase
22 production and to dedicate specific volume of the natural gas produced
23 towards the requirements of the domestic market.

24 (6) The volume of natural gas to be dedicated by a lessee towards
25 the domestic gas delivery obligation shall be based on an allocation system
26 among lessees as determined by the Commission upon consultation with the
27 Authority with consideration of supporting infrastructure availability.

28 (7) A lessee shall be obliged to deliver the volume of natural gas
29 prescribed under subsection (6) of this section to a wholesale customer
30 determined by the domestic gas aggregator and at a location indicated by the

1 domestic gas aggregator pursuant to section 156 of this Act.

2 (8) Subject to the provisions of subsection (7) of this section, a lessee
3 who fails to comply with the domestic gas delivery obligation shall incur a
4 penalty of US\$ 3.50 per MMBtu not delivered, provided that, where the lessee
5 has signed a gas purchase and sale agreement with a wholesale supplier of the
6 strategic sectors, the penalty for failure to deliver shall be as stated in that
7 agreement.

8 (9) The penalty amount of US\$ 3.50 per MMBtu referred to under
9 subsection (8) of this section may be adjusted as the Commission may prescribe
10 in a regulation made under this Act.

11 (10) A lessee shall not incur a penalty prescribed under subsection (8)
12 of this section, where it can establish that its failure to comply is as a result of-

13 (a) force majeure;

14 (b) the inability of a purchaser to accept allocated natural gas
15 volumes;

16 (c) the inability to transport the allocated natural gas for reasons
17 beyond the control of the lessee; or

18 (d) the failure of a purchaser to pay for allocated natural gas volumes.

19 (11) The Commission shall discontinue the imposition of domestic
20 gas delivery obligations, where the Authority has determined that the natural
21 gas market has attained full market status.

22 (12) Upon being allocated the volumes to be supplied under the
23 domestic gas supply obligation pursuant to subsection (1) of this section, the
24 lessee shall submit a marketable natural gas production and supply plan
25 consistent with these obligations to the Authority.

26 (13) A producer-customer of the domestic gas aggregator shall pay
27 compensation to customer-client for any loss suffered as a result of default to
28 supply marketable natural gas in accordance with a gas purchase order issued
29 by the domestic gas aggregator.

30 (14) A Lessee who does not comply with the domestic gas delivery

1 obligation as directed by the Commission shall-

2 (a) in addition to the penalties provided under subsection (8) of this
3 section, not be entitled to supply natural gas to any midstream gas export
4 operations; and

5 (b) where the lessee is supplying natural gas to midstream gas
6 export operations, the Commission may impose other sanctions as are
7 prescribed in the Regulation made under this Act.

8 (15) An approval for the supply of natural gas for export projects
9 shall, from the effective date, be subject to prior compliance by the lessee
10 with its domestic gas delivery obligation.

11 PART III

12 GENERAL ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM

13 PETROLEUM OPERATIONS

14 **111.**-(1) The Authority may grant, renew, modify or extend
15 individual Licences or permits, provided that, where it relates to the
16 establishment of refineries the licence shall be issued by the Minister on the
17 recommendation of the Authority.

Matters relating
to licence
applications

18 (2) The Authority shall only grant a licence for midstream or
19 downstream petroleum operations, where-

20 (a) it meets the technical standards required for petroleum
21 operations based on good international petroleum industry practices;

22 (b) the location and size of the area occupied by the facilities or
23 right of way is acceptable to the Authority;

24 (c) it meets the health, safety and environmental standards, as
25 determined by the Authority; and

26 (d) it provides for the efficient and economic use of facilities and
27 pipelines.

28 (3) The Authority shall only grant a licence for midstream
29 petroleum operations where-

30 (a) it does not involve excessive capital or operating expenditures;

1 (b) it includes an acceptable environmental management plan
2 pursuant to section 102 of this Act;

3 (c) it includes a decommissioning and abandonment plan and a
4 decommissioning and abandonment fund that complies with sections 232 and
5 233 of this Act;

6 (d) it provides for the elimination of routine natural gas flaring;

7 (e) it does not relate to midstream petroleum operations that would
8 conflict with a licence already granted; and

9 (f) it includes-

10 (i) a detailed programme for the recruitment and training of Nigerians
11 in all phases of petroleum operations handled directly by the licensee or
12 through agents and contractors of the licensee; and

13 (ii) provision for scholarship schemes, internships, continuous
14 professional development and other training requirements;

15 (4) An application for the grant, renewal or extension of a licence or
16 permit shall-

17 (a) be made to the Authority in the form and manner prescribed by
18 regulation;

19 (b) be accompanied by the payment of a prescribed fee, where
20 applicable, together with information or documents as prescribed in the
21 regulations under this Act; and

22 (c) include a decommissioning and abandonment plan, where the
23 licence contemplates the construction of pipelines, storage tanks, processing or
24 other facilities.

25 (5) The Authority may furnish an applicant for the grant, renewal or
26 extension of a licence or permit, with non-confidential information as may
27 necessary to facilitate the filing of the application.

28 (6) An applicant for a licence or permit, who is an affiliate of a body
29 corporate that has applied for or holds any other licence or permit shall disclose
30 such relationship to the Authority in its application.

1 (7) The Authority shall consider information presented in respect
2 of an application for a licence or permit, including representations from
3 interested parties in favour of or against the granting, extension or renewal
4 of the licence or permit and shall inform the applicant of its decision within
5 90 days of the application.

6 (8) Where the Authority has decided to grant a licence or permit, it
7 shall publish a notice of its decision in the form and manner prescribed in
8 regulations issued by the Authority.

9 (9) Where the Authority decline an application, it shall inform the
10 applicant of its refusal of the application, reasons for the refusal and may
11 state a reasonable time within which the applicant may make further
12 representations.

13 (10) The Authority shall consider any representation made by an
14 applicant for a licence or permit on the refusal of an application.

15 (11) The Authority shall not consider further application or
16 representation made by an applicant in respect of a refusal of an application
17 previously considered and rejected by the Authority.

18 (12) An applicant that is not satisfied with the reasons given by the
19 Authority for refusal of an application may apply to the Federal High Court
20 for a judicial review.

21 **112.-(1)** The Authority shall publish a notification of any
22 application made for the grant of a licence or renewal under this Part in a
23 manner prescribed by a regulation under this Act.

Advertisement
of licence
applications

24 (2) Upon the publication of the notification of the application
25 referred to under subsection (1) of this section, interested parties may
26 comment or make representations to the Authority in respect of the
27 application in accordance with the time prescribed by regulation under this
28 Act.

29 (3) Upon the grant or renewal of a Licence, the Authority shall
30 publish notification of the grant or renewal in the form and manner

	1	prescribed by regulation under this Act.
Licensing regulations	2	113. -(1) The Authority shall make regulations and guidelines for the
	3	grant or renewal of licence under Chapter Two.
	4	(2) The Authority shall in consultation with the Commission ensure
	5	the implementation of the domestic crude oil supply obligation and domestic
	6	gas delivery obligation.
	7	(3) The Authority shall ensure third party access to facilities and
	8	pipelines for midstream and downstream petroleum operations.
	9	(4) The Authority shall encourage third party investment in facilities
	10	and pipelines for midstream and downstream petroleum operations.
	11	(5) The Authority may make regulations on tariffs, which shall be
	12	consistent with the tariff methodology set out in this Act.
Conditions in licences or permits	13	114. -(1) Conditions in a licence or permit issued pursuant to this Act
	14	may require the holder of a licence or permit to-
	15	(a) comply with any directions of the Authority in relation to matters
	16	specified in the licence or permit;
	17	(b) undertake or refrain from anything specified in the licence or
	18	permit;
	19	(c) secure the approval of the Authority prior to undertaking anything
	20	specified in the licence or permit;
	21	(d) comply with relevant industry codes, standards and market rules;
	22	(e) undertake its activities subject to the prescribed tariffs or tariff
	23	methodology;
	24	(f) provide relevant information to the Authority;
	25	(g) prepare and submit to the Authority true, fair and sufficient annual
	26	statements in such form, and particulars as the Authority may require;
	27	(h) make available to the Authority such books as may be requested
	28	by authorised officers of the Authority;
	29	(i) impose restrictions on the disposal of assets;
	30	(j) adhere to undertakings made within a business plan submitted as

1 part of the application process;

2 (k) prepare and submit to the Authority such information and
3 periodical reports as the Authority may require;

4 (l) publish terms of access to its transportation or distribution
5 pipeline or petroleum liquids or gas transportation networks as the case may
6 be; or

7 (m) operate its licence or permit and related facilities, if any,
8 according to the standard of a reasonable and prudent operator.

9 (2) The duration of a licence or permit shall be specified by
10 regulations made under this Act and the conditions applicable to the licence
11 or permit may cease to have effect or be modified in accordance with terms
12 specified in the licence or permit.

13 (3) A licence or permit of the same class granted by the Authority,
14 shall contain similar conditions representing standard conditions for that
15 class and any difference in the conditions in the licence or permit shall only
16 be for good reasons, which shall be published in the gazette.

17 (4) Subject to the provisions of this Act, the Authority shall have
18 power to include special conditions specific to a particular licence or permit
19 or to a holder of the licence or permit, provided that the special conditions
20 are designed to meet specific circumstances and shall not be a disadvantage
21 to another holder of a licence or permit.

22 (5) The Authority may specify in a licence or permit a date on
23 which activities shall commence.

24 (6) The Authority may provide that an activity be exclusive for all
25 or part of the period of the licence or permit for a-

26 (a) specific purpose;

27 (b) specified geographical area and route; or

28 (c) combination of paragraphs (a) and (b) of this subsection.

29 **115.-(1)** A Licence or Permit shall be issued subject to compliance
30 by the applicant with the provisions of the Land Use Act Cap L5 Laws of the

Compensation
for acquisition
of land

1 Federation of Nigeria 2004 in respect of compensation for acquisition of land
2 for midstream and downstream petroleum operations.

3 (2) The Governor of a State of which land is required for carrying out
4 operations or activities subject to a licence or permit may issue a certificate of
5 occupancy pursuant to the Land Use Act in respect of the land and in
6 accordance with existing state law.

General
non-discrimination
provisions

7 **116.** A holder of a licence or permit shall not discriminate against
8 customers, classes of customers or their related undertakings in respect of
9 access, Tariffs, prices, conditions or standards of service, except for justifiable
10 and identifiable differences regarding matters such as quantity, transmission
11 distance, length of contract, load profile, interruptible supply or other
12 distinguishing features approved by the Authority.

Assignment or
transfer of licence
or permit

13 **117.-(1)** A holder of a licence or permit shall not, without the prior
14 written consent of the Authority, assign or transfer its Licence or Permit or any
15 right or obligation arising from the licence or permit.

16 (2) An application for assignment or transfer of a licence or permit
17 shall be made to the Authority, which may require the applicant to publish a
18 notice of the application in the form, manner and time prescribed by regulation
19 under this Act.

20 (3) The Authority shall, in the determination of whether a licence or
21 permit is to be assigned or transferred-

22 (a) follow the same procedure with appropriate modifications;

23 (b) apply the same rules and criteria;

24 (c) consider the same issues as if the party to whom the Licence or
25 Permit is being assigned or transferred is applying for a new Licence; and

26 (d) consider the representations made to it by third parties in respect
27 of the application.

28 (4) The Authority shall, subject to subsection (3) of this section,
29 communicate in writing, its approval or refusal of an application for
30 assignment or transfer of a licence or permit within the time prescribed by

1 regulation under this Act.

2 (5) Where the Authority does not approve or refuse an application
3 and fails to communicate its decision to an applicant for the assignment or
4 transfer of a licence or permit within the prescribed time, the application
5 shall be deemed to be approved.

6 (6) Where the Authority refuses the grant of an application for an
7 assignment or a transfer of a licence or permit, it shall communicate to the
8 applicant the reason for the refusal and shall give reasonable time within
9 which further representation may be made by the applicant or by a third
10 party in respect of the application.

11 (7) Where the Authority grant consent to an assignment or transfer
12 of a licence or permit, it shall notify the applicant in writing, subject to any
13 condition it may consider appropriate.

14 **118.**-(1) The Authority may suspend or amend the conditions
15 applicable to a licence or permit or include additional conditions subject to
16 subsection (2) of this section.

Suspension and
amendment of
conditions in a
licence or permit

17 (2) The Authority shall not suspend or amend any condition
18 applicable to a licence or permit or include additional conditions to a licence
19 or permit unless it gives the holder-

20 (a) a written notice of its intention and a draft copy of the proposed
21 suspension or amendment; and

22 (b) an opportunity to make a written submissions to the Authority
23 within the time specified by regulation.

24 (3) The procedure for the suspension or amendment of a condition
25 in a licence or permit shall be as prescribed by the Authority in a regulation
26 under this Act.

27 (4) A holder of a licence or permit who is dissatisfied with the
28 decision of the Authority to suspend or amend a condition in a licence or
29 permit may apply to the Federal High Court against the decision.

Surrender of
licence or permit

1 **119.**-(1) The holder of a licence or permit may, upon an application in
2 the form, manner and meeting any conditions prescribed by the Authority in a
3 regulation made under this Act surrender the licence or permit, where-

4 (a) the licenced or permitted activity is no longer required;

5 (b) the licenced or permitted activity is not economically justifiable;

6 (c) another qualified person is willing and able to assume the rights
7 and obligations of the holder of the licence or permit in accordance with the
8 requirements and objectives of this Act; and

9 (d) applicable, the holder of the licence or permit has complied with
10 the requirements of the law in respect of relinquishment, decommissioning and
11 abandonment of installations and reclamation of land.

12 (2) A holder of the licence or permit who has commenced activities
13 and has ongoing operations shall, except a shorter period is stipulated in the
14 licence or permit, give the Authority a minimum of 12 months' notice in writing
15 of its intention to cease its activities.

16 (3) The form and procedure to be followed in surrendering a licence or
17 permit under subsection (2) of this section shall be as prescribed by regulation.

Grounds for the
revocations of
a licence or permit

18 **120.**-(1) Notwithstanding the provisions of Chapter Two of this Act, a
19 licence or permit may be revoked, where-

20 (a) the holder becomes insolvent, bankrupt, enters into an agreement
21 or composition with its creditors or takes advantage of any enactment for the
22 benefit of the debtors or goes into liquidation, except as part of a scheme for an
23 arrangement or amalgamation;

24 (b) upon the transformation or dissolution of the company or
25 corporation, except it is for the purpose of amalgamation or reconstruction,
26 provided that the prior written consent of the Authority has been obtained;

27 (c) a holder of a licence or permit fails to commence activity within
28 the timeframe prescribed in the licence or permit;

29 (d) the holder of a licence or permit fails to comply with applicable
30 laws and Regulations on terms and conditions of its licence or permit;

1 (e) the holder interrupts midstream or downstream petroleum
2 operations for a period of more than 180 consecutive days without
3 justification as provided for in the licence or permit, the acknowledgement
4 of an event of force majeure, shall be an acceptable justification for
5 interruption;

6 (f) the holder assigns or transfers any interest in the licence or
7 permit without obtaining the prior written consent of the Authority;

8 (g) the holder has acquired the licence or permit based on false
9 representation or contrary to corrupt practices and money laundering Laws;

10 (h) the holder has failed to comply with environmental obligations
11 as required by law or the provisions of the licence or permit;

12 (i) the holder is owned wholly or in part, directly or indirectly or is
13 controlled by a former or serving public official or member of the
14 Government, who obtained his interest in the applicable licence or lease
15 other than as permitted by applicable law; and

16 (j) the holder fails to abide by any expert determination, arbitration
17 award or judgment arising from the dispute resolution provisions set forth in
18 a licence or this Act.

19 (2) Subsection (1)(j) of this section shall apply to a former public
20 official or member of Government only where the applicable interest was
21 acquired while the public official was in office or was a member of the
22 Government.

23 **121.**-(1) Prior to a decision by the Authority to revoke a licence or
24 permit pursuant to section 120 of this Act, the Authority shall-

Notice of default
prior to revocation

25 (a) serve a notice of default on the holder setting forth in reasonable
26 detail the default of the holder; and

27 (b) give the holder 60 days within which to remedy the default.

28 (2) Where the Authority is satisfied with the remedy of the holder
29 pursuant to subsection (1)(b) of this section, the revocation process shall
30 terminate.

1 (3) Where, at the expiration of 60 days, the holder fails to remedy the
2 default, the licence or permit shall be terminated.

3 (4) A notice of default shall be-

4 (a) sent by the Authority to the last known address of the holder of
5 licence or permit or its legal representative in Nigeria; or

6 (b) published in the gazette or on the website of the Authority,
7 each of which shall constitute sufficient notice to the holder of licence or permit
8 of the notice of default.

9 (5) Revocation shall be without prejudice to any-

10 (a) liabilities which the holder may have incurred, or

11 (b) claim, which the Authority, the Government or any third party
12 may make against the holder of licence or permit.

13 (6) A revocation decision shall be published in the gazette and the
14 Authority shall amend relevant registers maintained by it to reflect the
15 revocation.

Tariff principles

16 **122.**-(1) The Authority shall, in exercising its powers of commercial
17 regulations, be guided by the following principles in designing a pricing
18 framework for transportation, distribution and processing petroleum-

19 (a) tariffs for transportation, distribution and processing of petroleum
20 shall be on a cost-reflective basis;

21 (b) tariffs charged shall permit a reasonable return for licensees on
22 their investments;

23 (c) tariffs shall not discriminate between customers with similar
24 characteristics pursuant to section 116 of this Act; and

25 (d) tariffs shall be determined in US Dollars or other foreign currency
26 as applicable with a view to attracting foreign investment to midstream and
27 downstream petroleum operations, provided that payments of the tariffs may
28 be made in the respective foreign currency or equivalent value of naira at the
29 open market rate published by the Central Bank of Nigeria as applicable under
30 the regulations.

1 (2) The tariff methodology for tariffs related to new gas
2 transportation pipelines, gas distribution networks and facilities requiring a
3 gas processing licence shall include the following-

4 (a) tariffs shall be determined in US dollars, but may be paid in
5 naira, where the applicable exchange rate shall be based on the Securities
6 and Exchange Commission over the counter market rate or any successor
7 rate;

8 (b) the capital costs may be recovered in equal installments over a
9 period as determined by the Authority;

10 (c) the after tax rate of return on equity shall be 20% on a nominal
11 basis and the rate of return shall apply during construction;

12 (d) where short pipelines connecting producers or consumers to a
13 gas transport pipeline or gas transport pipeline network and in other justified
14 cases, the Authority may approve that capital costs be based on 100% equity,
15 otherwise a reasonable debt or equity ratio shall apply;

16 (e) where a debt or equity ratio applies pursuant to paragraph (d) of
17 this subsection, the cost of any interest and financing charges shall be
18 recovered;

19 (f) operating costs, including allocation for overhead and profit
20 margin on operating costs, shall be recovered and the costs shall be adjusted
21 for inflation;

22 (g) line losses and gas energy use shall be taken into account;

23 (h) any applicable tax, levy and duty shall be recovered;

24 (i) where capital costs have been fully recovered, the Tariff shall no
25 longer include the items under paragraphs (b), (c) and (d) of this subsection;
26 and

27 (j) Tariffs shall be based on the estimated actual throughput as
28 estimated by the Authority, notwithstanding the capacity of the gas
29 transportation pipeline, gas distribution network or processing plant.

30 (3) The Authority may by regulation modify or provide further

1 detail on the provisions of subsection (2) of this section and establish more
2 favorable tariffs for credit worthy shippers willing to commit to long term ship-
3 or-pay agreements facilitating the financing of the respective pipelines or
4 plants.

5 (4) The Authority may approve negotiated tariffs where one or more
6 wholesale customers connect with a pipeline to a transportation network or
7 transportation pipeline or in other cases where justified in the opinion of the
8 Authority.

Tariff methodology

9 **123.**-(1) Tariffs charged by licensees for the use of any facility or
10 infrastructure licenced by the Authority for use in midstream and downstream
11 petroleum operations shall be set according to one or more tariff
12 methodologies adopted by the Authority for a particular set of licences, in
13 conformity with the applicable fiscal regime, provided that the tariff
14 methodologies shall-

15 (a) allow an operator to recover reasonable cost incurred,
16 benchmarked against industry best practice and a reasonable return on the
17 capital invested in the business;

18 (b) ensure the efficiency of the business;

19 (c) ensure the continued improvement of the quality of services;

20 (d) avoid discrimination between customers with similar
21 characteristics, such as similar size or similar consumption profile pursuant to
22 section 116 of this Act ;

23 (e) in case of distribution licences, ensure efficient charges relating to
24 petroleum product or natural gas supply covering billing, metering and other
25 services;

26 (f) avoid economic distortions and ensure a competitive market for
27 the sale and distribution of petroleum products and natural gas in Nigeria; and

28 (g) avoid cross-subsidies among different categories of consumers.

29 (3) Tariffs may differentiate between credit worthy shippers willing
30 to make long term ship-or-pay agreements facilitating the financing of the

1 pipeline or plant and other shippers or users.

2 (3) Except for the tariff methodology established in section 122 (2)
3 of this Act, the Authority shall, prior to establishing a tariff methodology,
4 initiate and conduct a stakeholders' consultation in the manner specified in
5 subsection (5) of this section to consult applicants, operators, consumers,
6 prospective customers, consumers associations, associations of prospective
7 customers and any other persons with interest in the subject matter of the
8 proposed tariff methodology.

9 (4) The Authority may, in establishing a Tariff methodology,
10 take into consideration the submissions of the stakeholders' consultation
11 referred to in subsection (3) of this section.

12 (5) Prior to holding a stakeholders' consultation referred to in
13 subsection (3) of this section, the Authority shall publish in at least two
14 national newspapers with wide coverage and on its website, notice of-

15 (a) the stakeholders' consultation;

16 (b) its invitation to licensees and stakeholders to participate in the
17 stakeholders' consultation;

18 (c) the venue and period during which the stakeholders'
19 consultation is to be held;

20 (d) the nature of the matter to which the stakeholders' consultation
21 relates;

22 (e) the matters upon which the Authority would require
23 submissions;

24 (f) the form in which licensees and stakeholders are to make
25 submissions to the Authority on the subject matter of the stakeholders'
26 consultation;

27 (g) the period of notice for the commencement of the stakeholders'
28 consultation, which shall not be less than 21 days; and

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

30 (6) Notwithstanding the requirements under subsection (3) of this

1 section, the Authority may, due to the exigency of the circumstances, establish
2 a tariff methodology without conducting a stakeholders' consultation, where it
3 considers it necessary to do so.

4 (7) A tariff methodology made pursuant to subsection (6) of this
5 section shall be valid for 6 months with effect from its commencement date,
6 except it is confirmed following a stakeholders' consultation conducted in
7 accordance with subsections (4) and (5) of this section.

8 (8) The Authority shall fix a date for which the determined tariff
9 methodology shall come into effect and shall cause the notice of the
10 commencement date to be published in at least two national newspapers with
11 wide coverage and its website.

12 (9) Where the Authority considers it necessary that an existing tariff
13 methodology or tariff should be amended, the Authority shall conduct a
14 stakeholders' consultation on the proposed amendment in accordance with the
15 provisions of subsections (4) and (5) of this section.

16 (10) A person under obligation to set tariffs shall be bound by
17 operative tariff methodology adopted through the method prescribed in this
18 section.

19 (11) A holder of a licence engaged in the sale of petroleum products to
20 retail customers or who is subject to third party access or open access
21 obligations under this Act, shall display at its office a current copy of the tariffs
22 applicable to the services provided by the holder.

23 (12) A holder of a licence shall not pass the costs of any fine or penalty
24 incurred under this Act or any other law to a consumer.

Approval and
publication of
charging structures

25 **124.-(1)** A licensee subject to tariff Regulation by the authority shall-

26 (a) propose tariffs and tariff methodologies for the approval of the
27 Authority prior to the application of the charges;

28 (b) impose tariffs in accordance with the approval referred to under
29 paragraph (a) of this subsection; and

30 (c) publish the tariffs as required by the Authority in a manner that

1 ensures that the customers of the licensees are able to identify and calculate
2 the charges for which they will become liable.

3 (2) The Authority shall, within one year after the effective date,
4 review, confirm or modify all applicable tariffs.

5 PART IV

6 ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM GAS OPERATIONS

7 **125.**-(1) Except in accordance with an appropriate Licence issued
8 by the Authority, a person shall not undertake the following activities with
9 respect to midstream gas operations-

Activities requiring
a licence for
midstream and
downstream gas
operations

10 (a) establish, construct or operate a facility for the processing of
11 natural gas;

12 (b) establish, construct or operate a facility for the storage of
13 natural gas;

14 (c) establish, construct or operate a gas transportation pipeline;

15 (d) engage in bulk transportation of natural gas by rail, barge or
16 other means of transportation;

17 (e) operate a gas transportation network;

18 (f) establish, construct or operate a terminal, jetty, or other facility
19 for the export or importation of natural gas;

20 (g) engage in wholesale gas supply; or

21 (h) engage in the construction or operation of petrochemical or
22 fertilizer plants.

23 (2) Except in accordance with an appropriate licence issued by the
24 Authority, a person shall not undertake the following activities with respect
25 to downstream gas operations-

26 (a) retail trading of natural gas;

27 (b) establishment, construction or operation of a gas distribution
28 network; or

29 (d) establishment, construction or operation of a facility for the
30 supply or trading of natural gas.

1 (3) The Authority may, by regulation, prescribe additional activities
2 to be undertaken only on the basis of a licence or permit and shall have power to
3 issue licences or permits for the activities in accordance with this Act.

4 (4) Where a person engages in any of the activities set out in
5 subsection (1), (2) or (3) of this section without a licence or permit, the
6 Authority shall-

7 (a) seal the premises where the activity is undertaken;

8 (b) seize the facilities by which the activities were undertaken;

9 (c) confiscate and dispose of equipment or materials employed by the
10 person in the activity in a manner prescribed by regulations under this Act;

11 (d) impose penalties as prescribed by regulations under this Act; or

12 (e) impose any combination of the penalties prescribed under
13 paragraphs (a), (b), (c) and (d) of this subsection.

14 (5) Notwithstanding any provision of this Act, a person who engages
15 in any of the activities set out in subsection (1), (2) or (3) of this section without
16 a licence or permit, commits an offence and is liable to imprisonment for a term
17 of-

18 (a) 1 year or to a fine prescribed by regulation, in the case of an
19 activity requiring a licence; or

20 (b) 6 months or to a fine prescribed by regulation, in the case of an
21 activity requiring a permit.

22 (6) A holder of a subsisting lease, licence or permit who is engaged in
23 activities in midstream or downstream gas operations prior to the effective date
24 shall, within 24 months from the effective date, apply to the Authority and the
25 Authority may issue the appropriate licence or permit, where applicable.

26 (7) The provisions of subsection (4) of this section shall not apply to
27 any person who has made an application contemplated under subsection (6) of
28 this section until the Authority has considered the application given a decision.

29 (8) Where any person, in applying for a Licence or Permit, knowingly
30 makes a false or misleading statement, the Authority may-

- 1 (a) suspend or revoke the licence or permit; or
2 (b) impose a fine on the licensee or permit holder on the basis of the
3 false or misleading information.

4 **126.** In addition to any matter provided under section 113 of this
5 Act, the Authority may issue regulations with respect to midstream and
6 downstream gas operations, which shall include-

Special regulations
for midstream and
downstream gas
operations

7 (a) the operation of gas processing plants, gas transportation
8 pipelines and gas transportation networks, gas distribution pipelines, natural
9 gas storage plants, liquefied petroleum gas depots and liquefied natural gas;

10 (b) the establishment and operation of a wholesale natural gas
11 market scheme to ensure continuity of supply of natural gas to customers,
12 which will apply to the owners and operators of gas transportation pipelines,
13 shippers of natural gas, holders of natural gas storage and distribution
14 licences and retailers; and

15 (c) matters ancillary to or consequential on the activities set out in
16 paragraphs (a) and (b) of this section.

17 **127.** Subject to applicable law and the terms and conditions
18 prescribed by the Authority, a licensee or permit holder is entitled to a right
19 of way for the laying, operation and maintenance of pipelines,
20 communication lines and other similar lines through or across the areas the
21 licensee or permit holder may require for carrying on midstream or
22 downstream gas operations under the Licence or permit.

Rights of way
relating to midstream
and downstream
gas operations

23 **128.** The Authority may for the purpose of efficiency, grant rights
24 of way, easements or other rights over any surface or seabed areas subject to
25 an existing licence or permit, which may be necessary for the laying,
26 operation and maintenance of transportation pipelines, communication
27 lines, power lines and other similar lines and any right of way or other rights
28 reserved shall continue for the benefit of any entity to whom the authority
29 may subsequently grant the same licence or permit.

Surface rights
reserved for the
Authority relating
to midstream and
downstream
operations

Grant of a gas
processing licence

1 **129.**-(1) Subject to sections 111 and 125 of this Act, the Authority
2 may upon approval of an application and payment of prescribed fees, grant and
3 issue a qualified person a gas processing licence, which shall permit the person
4 to install and operate the following facilities, on its own account or on the basis
5 of open access for customers as stipulated in the Licence-

6 (a) gas conditioning plants, to condition natural gas removing CO₂,
7 H₂S or other impurities;

8 (b) gas processing plants, to produce ethane, propane, butane, other
9 natural gas liquids and marketable natural gas;

10 (c) gas to liquids plants;

11 (d) liquefied natural gas plants;

12 (e) ethane extraction plants; and

13 (f) other plants, which in the opinion of the Authority, require a gas
14 processing licence.

15 (2) The Authority shall, in considering an application for a gas
16 processing licence, take into account the economic case for the specific facility
17 as provided under subsection (1) of this section, including the potential
18 demand for its use.

General duties
of the holder of
a gas processing
licence

19 **130.** The holder of a gas processing licence shall undertake the
20 activities contemplated by the licence in a manner that complies with the
21 following general obligations-

22 (a) to construct, operate and maintain its gas processing equipment
23 and facilities in an economical, safe, reliable and environmentally sustainable
24 manner;

25 (b) shut down its facilities in emergencies and in order to carry out
26 maintenance or in accordance with curtailment directives issued by the
27 Authority;

28 (c) manage its facilities as a responsible and prudent operator;

29 (d) avoid any act or omission that may affect the compatibility of the
30 processing facility with any natural gas facility or network that is likely to

- 1 prejudice the public interest or the integrity of network operations;
- 2 (e) operate the facilities in a manner that results in output of
- 3 products with specifications as determined by the Authority;
- 4 (f) to operate its facilities subject to open access commitments as
- 5 stipulated in the licence or where the licence is issued for operations on its
- 6 own account, provide third party access in an equitable manner;
- 7 (g) treat all customers in a non-discriminatory manner pursuant to
- 8 section 116 of this Act, where the licence is issued on an open access basis;
- 9 and
- 10 (h) abstain from activities, which in the opinion of the Authority
- 11 may prevent, restrict or distort competition.
- 12 **131.** A gas processing licence shall, in addition to the conditions
- 13 that may be imposed by the Authority pursuant to section 114 of this Act, be
- 14 deemed to be granted subject to the condition that-
- 15 (a) the holder shall not process natural gas on its own account,
- 16 where the licence is issued on an open access basis;
- 17 (b) a lessee, operating on its own account, may own the natural gas
- 18 in a gas conditioning plant or gas processing plant for the purpose of
- 19 conditioning or processing natural gas from its fields in order to deliver
- 20 marketable natural gas for domestic or export purposes, subject to such third
- 21 party access provisions as may be included in the licence;
- 22 (c) a wholesale customer, operating on its own account, may own
- 23 the natural gas in a gas processing plant, ethane extraction plant or other
- 24 plant requiring a gas processing licence, where the principal user of the
- 25 natural gas is the wholesale customer, subject to any third party access
- 26 provisions as may be included in the licence;
- 27 (d) the holder shall conduct its licenced activities safely and
- 28 reliably in compliance with any law in force and any prescribed health and
- 29 safety regulations, standards and operating procedures made pursuant to
- 30 this or any other Act;

Conditions
applicable to a
gas processing
licence

1 (e) the holder shall have due regard to the effect of its licenced
2 activities on the environment and comply with the requirements for
3 environmental protection, management and restoration under this Act and any
4 law in force; and

5 (f) the holder shall mark, maintain and secure the boundaries of its
6 facilities and associated infrastructure constructed under the terms of its
7 licence and any law in force.

Grant of a bulk
gas storage licence

8 **132.**-(1) Subject to sections 111 and 125 of this Act, the Authority
9 may upon approval of an application and payment of prescribed fees, grant and
10 issue a qualified person a bulk gas storage licence authorising the holder to
11 undertake the bulk storage of natural gas either for its own account or on behalf
12 of customers as stipulated in the licence.

13 (2) The Authority shall, in considering an application for a bulk gas
14 storage licence, take into account the economic case for a bulk gas storage
15 facility, including the potential demand for its use.

General duties
of a bulk gas
storage licensee

16 **133.** The holder of a bulk gas storage licence shall undertake the
17 activities contemplated by the Licence in a manner that complies with the
18 following general obligations-

19 (a) establish and make available to the public at its offices, the-

20 (i) procedure and terms for obtaining third party access or throughput
21 services, and

22 (ii) method of response to the request for its services;

23 (b) construct, operate and maintain its facilities in a safe, economical,
24 reliable, and environmentally sustainable manner taking into account any
25 strategic plans formulated by the Authority;

26 (c) shut down its facilities in emergencies and in order to carry out
27 maintenance or in response to curtailment directives issued by the Authority;

28 (d) grant to third parties the right to use or have access to capacity
29 within its facilities for the purpose of ensuring competitive gas supply;

30 (e) consult with and obtain from the Authority written permission

1 prior to any modification of technical and operational rule of practice
2 concerning the operation of its facilities;

3 (f) conduct its licenced activities in a non-discriminatory manner
4 pursuant to section 116 of this Act, where the Licence is issued on an open
5 access basis;

6 (g) manage its facilities as a reasonable and prudent operator; and

7 (h) abstain from activities, which in the opinion of the Authority
8 may prevent, restrict or distort competition.

9 **134.** In addition to conditions the Authority may impose pursuant
10 to section 114 of this Act, a bulk gas storage licence shall be deemed to be
11 granted subject to the conditions that the holder shall-

Conditions
applicable to a
bulk gas storage
licence

12 (a) conduct its licenced activities safely and reliably in compliance
13 with any law in force and prescribed health and safety regulations issued
14 pursuant to this or any other Act;

15 (b) have regard to the effect of its licenced activities on the
16 environment and comply with the requirements for environmental
17 protection, management, and restoration under this Act and any law in force;
18 and

19 (c) mark, maintain and secure the boundaries of its facilities and
20 associated infrastructure constructed under the terms of its licence and any
21 law in force.

22 **135.-(1)** Subject to sections 111 and 125 of this Act, the Authority
23 may upon approval of an application and payment of prescribed fees, grant
24 and issue a qualified person a gas transportation pipeline licence with the
25 exclusive right to own, construct, operate and maintain a gas transportation
26 pipeline within a route as defined in the Licence for its own account with
27 third party access provisions or as common carrier as stipulated in the
28 licence.

Grant of gas
transportation
pipeline licence

29 (2) The Authority shall, in considering an application for a gas
30 transportation pipeline licence, take into account the economic case for a gas

General duties
of a transportation
pipeline owner

- 1 transportation pipeline, including the potential demand for its use.
- 2 **136.** General duties of a transportation pipeline owner
- 3 The holder of a transportation pipeline licence shall undertake the activities
- 4 contemplated by the licence in a manner that complies with the following
- 5 general obligations-
- 6 (a) establish and make available to the public at its offices, the-
- 7 (i) procedure for obtaining and terminating transmission and
- 8 interconnection services for natural gas for the tariffs established by the
- 9 Authority, and
- 10 (ii) method of response to the request for its service;
- 11 (b) construct, operate and maintain its gas transportation pipeline in a
- 12 safe, economical, and reliable manner taking into account any strategic plans
- 13 formulated by the Authority;
- 14 (c) manage supplies and demand and meet on a reasonable
- 15 endeavours basis requests for transportation above contractual volumes;
- 16 (d) shut down its gas transportation pipeline in emergencies and in
- 17 order to carry out maintenance or in response to curtailment directives issued
- 18 by the Authority;
- 19 (e) provide access on a non-discriminatory basis pursuant to section
- 20 116 of this Act, where the Licence is granted on a common carrier basis;
- 21 (f) consult with and obtain from the Authority written permission
- 22 prior to any modification of technical and operational rule of practice
- 23 concerning the operation of its pipeline;
- 24 (g) manage its gas transportation pipeline as a reasonable and prudent
- 25 operator;
- 26 (h) where the pipeline is operated on a common carrier basis, ensure
- 27 development and operation of terms for access to the gas transportation
- 28 pipeline in conjunction with the natural gas shipping community and where
- 29 applicable comply with the relevant network code;
- 30 (i) where the pipeline is operated for its own account, operate its

1 facilities subject to third party access obligations under this Act and
2 regulations prescribed by the Authority; and

3 (j) abstain from activities, which in the opinion of the Authority
4 may prevent, restrict or distort competition.

5 **137.** A gas transportation pipeline licence shall, in addition to the
6 conditions that may be imposed by the Authority pursuant to section 114 of
7 this Act, be deemed to be granted subject to the condition that-

Conditions
applicable to a
gas transportation
pipeline licence

8 (a) the holder shall not supply natural gas to customers on its own
9 account where the licence is granted on a common carrier basis;

10 (b) a lessee, operating on its own account, may own the Natural
11 Gas in a gas transportation pipeline, for the purpose of-

12 (i) connecting marketable natural gas produced in a field to another
13 gas transportation pipeline or gas transportation network, and

14 (ii) transporting natural gas to a plant for conditioning or
15 processing natural gas from its fields in order to deliver marketable natural
16 gas for domestic or export purposes,

17 (c) subject to third party access provisions as may be included in
18 the licence;

19 (d) a wholesale customer, operating on its own account, may own
20 the natural gas in a gas transportation pipeline, where it is the principal user
21 of the natural gas, subject to any third party access provisions as may be
22 included in the licence;

23 (e) a wholesale gas supplier operating on its own account, may own
24 the natural gas in a gas transportation pipeline, for the purpose of connecting
25 a lessee or wholesale customer to or from a gas transportation network or gas
26 transportation pipeline, subject to such third party access provisions as may
27 be included in the licence;

28 (f) the holder shall conduct its licenced activities safely and
29 reliably in compliance with any law in force and prescribed health and safety
30 Regulations issued pursuant to this or any other Act;

1 (g) the holder shall have regard to the effect of its licenced activities
2 on the environment and comply with the requirements of environmental
3 protection, management and restoration under this Act and any law in force;

4 (h) the holder shall mark, maintain and secure the boundaries of the
5 pipelines and associated infrastructure constructed under the terms of its
6 licence and any law in force; and

7 (i) a pipeline transporting un-processed gas to a gas processing plant
8 or gas conditioning plant shall require a gas transportation pipeline licence and
9 the Commission shall-

10 (i) determine and advise the Authority on the characteristics of the gas
11 to be transported,

12 (ii) cooperate with the Authority in determining possible third party
13 access to the pipeline; and

14 (j) the gas transportation pipeline may, with the approval of the
15 Authority, be in whole or in part, a low-pressure pipeline at the request of the
16 licensee.

Grant of gas
transportation
network operator
licence

17 **138.**-(1) Subject to sections 111 and 125 of this Act, the Authority
18 may upon approval of an application and payment of prescribed fees, grant and
19 issue a qualified person a gas transportation network operator licence
20 authorising the conduct of activities specified in the licence, which shall
21 include-

22 (a) conveyance of natural gas through the gas transportation network;

23 (b) balancing the inputs and off takes from the gas transportation
24 network;

25 (c) providing access to shippers based on the gas network code
26 pursuant to section 160 of this Act to the gas transportation network; and

27 (d) charging for the use of the gas transportation network based on
28 tariffs established by the Authority.

29 (2) The Authority shall grant only one gas transportation network
30 operator licence within a geographically defined area to a single network

1 operator, provided that the Authority may at its discretion, issue licences to
2 other parties for the operation of isolated or dedicated gas transportation
3 pipelines and for connecting to the gas transportation network.

4 **139.** The gas transportation network operator shall exercise the
5 rights and obligations imposed on it in a manner that complies with the
6 following general obligations-

General duties
of a gas
transportation
network operator

7 (a) establish and make available to the public at its offices, the-

8 (i) procedure, terms and conditions for obtaining and terminating
9 access and interconnection services to the transportation network, and

10 (ii) method of response to the request for its service;

11 (b) operate an efficient and economical gas transportation network
12 for the safe and reliable conveyance of natural gas in such a manner that is
13 designed to meet all reasonable demands for natural gas;

14 (c) operate a nomination and balancing mechanism and an
15 equitable curtailment of natural gas transportation whenever technical or
16 operational expediencies requires;

17 (d) consult with and obtain from the Authority written permission
18 prior to any modification of technical and operational rule of practice
19 concerning the operation of its gas transportation network;

20 (e) ensure the development and operation of the network code and
21 terms for access into the gas transportation network in collaboration with the
22 Authority, natural gas shippers, all licensees and permit holders operating
23 essential infrastructure;

24 (f) ensure equitable and transparent access to the transportation
25 network;

26 (g) manage the gas transportation network as a reasonable and
27 prudent operator;

28 (h) abstain from activities, which in the opinion of the Authority
29 may prevent, restrict or distort competition; and

30 (i) enter into agreements with gas transportation pipeline owners,

1 gas distributors and wholesale customers for connection to and operation of the
2 gas transportation network.

powers of a
transportation
network operator

3 **140.** Subject to the provisions of this Act, the Authority may grant the
4 following special powers or authority to a gas transportation network operator
5 to facilitate the conduct of its licenced activities-

6 (a) the power to request for and obtain from the relevant licensees,
7 information required to operate the nominations and balancing mechanism, to
8 operate the network or to facilitate competition;

9 (b) the right to recover on the basis of an invoice, expenses reasonably
10 incurred in undertaking its licenced activities, subject to any restrictions or
11 conditions imposed by the Authority with respect to both the level and structure
12 of its charges; and

13 (c) to purchase natural gas for its own operations for purposes such as
14 testing and commissioning of facilities, compression and line fill, but shall not
15 supply natural gas to customers on its own account.

Conditions
applicable to a
gas transportation
network operator
licence

16 **141.**-(1) In addition to the conditions as may be imposed by the
17 Authority pursuant to section 114 of this Act, a transportation network operator
18 licence may include an obligation to develop market rules in accordance with
19 the provisions of this Act.

20 (2) A gas transportation network operator may be an owner of any or
21 all of a gas transportation pipelines in a gas transportation network.

22 (3) Where a third party is the owner of a gas transportation pipelines in
23 a gas transportation network, the owner shall be paid the tariffs determined by
24 the Authority for non-operating owners of the pipelines by the gas
25 transportation network operator.

26 (4) A gas transportation network operator shall not misuse its
27 monopoly position in the geographical area to charge franchise of other access
28 charges for providing access to the gas transport network, other than the
29 charges specifically permitted under this Act and regulations made under this
30 Act.

1 **142-(1)** Subject to sections 111 and 125 of this Act, the Authority
2 may upon approval of an application and payment of prescribed fees, grant
3 and issue a wholesale gas supply licence to a qualified person.

Grant of a
wholesale gas
supply licence

4 (2) A lessee producing natural gas is a qualified person for the
5 purpose of subsection (1) of this section and shall be entitled to apply for and
6 be issued with a wholesale gas supply licence by the Authority.

7 (3) A wholesale gas supply licence authorises the supplier to-

8 (a) purchase natural gas directly from any lessee or third party; and

9 (b) sell and deliver wholesale gas to wholesale customers and gas
10 distributors at any location in Nigeria.

11 **143.** A wholesale gas supplier shall undertake the activities
12 contemplated by the wholesale gas supply licence in a manner that complies
13 with the following general obligations, to-

General duties of
a wholesale gas
supplier

14 (a) provide a reliable supply of wholesale gas to wholesale
15 customers who have entered into a gas purchase and sale agreement with the
16 supplier; and

17 (b) abstain from activities, which in the opinion of the Authority
18 may prevent, restrict or distort competition.

19 **144.** Subject to the provisions of this Act, the Authority may grant
20 the following specific powers or authority to a wholesale gas supplier to
21 facilitate the conduct of its licenced activities the right to-

Rights of a
wholesale gas
supplier

22 (a) terminate wholesale gas supply to a wholesale customer in the
23 event of non-payment, following a notice period;

24 (b) recover from a customer, on the basis of an invoice and subject
25 to any conditions imposed by the Authority on the level and structure of a
26 licensee's charges and costs reasonably incurred in the supply of wholesale
27 gas, including the cost of natural gas incurred by the supplier, the cost of
28 transportation of natural gas; and

29 (c) enter a premises, in accordance with a metering code issued by
30 the Authority, to remove its meters for the purpose of reading the meters,

	1	testing and maintaining metering equipment and disconnecting customers.
Conditions applicable to a wholesale gas supply licence	2	145. -(1) In addition to conditions the Authority may impose pursuant
	3	to section 114 of this Act, a wholesale gas supply licence shall be deemed to be
	4	granted subject to the supplier-
	5	(a) requesting security or applying a credit scoring methodology
	6	approved by the Authority in deciding whether supply is economical;
	7	(b) supplying marketable natural gas to a wholesale customer with
	8	whom the supplier has entered into a gas purchase and sale agreement and who
	9	in order to connect to a gas transportation network or gas transportation
	10	pipeline is willing and able to-
	11	(i) pay for the connection,
	12	(ii) construct its own gas transportation pipeline pursuant to section
	13	137 (c) of this Act, or
	14	(iii) pay the respective Tariff to the Supplier for the gas transportation
15	pipeline owned by the supplier,	
16	subject to safety and network capacity constraints;	
17	(c) conducting its licenced activities safely and reliably in compliance	
18	with any law in force and prescribed health and safety regulations issued	
19	pursuant to this or any other Act; and	
20	(d) complying with customer protection measures in accordance	
21	with sections 164, 165 and 166 of this Act.	
	22	(2) A wholesale gas supplier shall undertake its licenced activities in a
	23	manner that complies with the conditions of the licence.
Grant of retail gas supply licence	24	146. -(1) Subject to sections 111 and 125 of this Act, the Authority
	25	may upon approval of an application and payment of prescribed fees, grant and
	26	issue a qualified person a retail gas supply licence authorising the holder to-
	27	(a) sell or retail marketable natural gas to customers based on being a
	28	wholesale customer or third party access to gas distribution systems of gas
	29	distributors; and
	30	(b) establish, construct and operate facilities to deliver compressed

1 natural gas and small scale facilities for liquefied natural gas, not requiring a
2 gas processing licence, for transportation by truck, railcar or marine vessel
3 to customers in compressed or liquified form, including customers using
4 LNG as marine bunker fuel.

5 (2) A lessee producing natural gas is a qualified person for the
6 purpose of subsection (1) of this section and shall be entitled to apply for and
7 be issued with a retail gas supply licence by the Authority.

8 (3) A retail gas supply licence authorises the gas retailer, to-

9 (a) purchase marketable natural gas directly from a lessee,
10 wholesale gas supplier or third party on a free market basis; and

11 (b) sell and deliver natural gas to customers at any location in
12 Nigeria.

13 **147.** In addition to conditions the Authority may impose pursuant
14 to section 114 of this Act or that may be prescribed by regulation, a retail gas
15 supply licence shall be deemed to be granted subject to the duty of the holder
16 to-

General duties
of gas retailer

17 (a) develop and maintain a safe, efficient, reliable and economical
18 service for the retailing of marketable natural gas;

19 (b) carry on its business in a manner that shall promote
20 competition and avoid monopoly in the natural gas market in Nigeria;

21 (c) construct, operate and maintain its gas compression and
22 liquefaction facilities in a safe, economical, and reliable manner taking into
23 account any strategic plans formulated by the Authority;

24 (d) shut down its gas compression and liquefaction facilities in
25 emergencies in order to carry out maintenance or respond to curtailment
26 directives issued by the Authority;

27 (e) conduct its activities in a safe and reliable standard in
28 compliance with prescribed environmental, health and safety-related
29 regulations issued pursuant to this or any other Act;

30 (f) publish the prices to be charged and to be paid by a person to

1 whom the gas retailer sells natural gas in a manner to ensure adequate publicity
2 unless the Authority direct otherwise; and

3 (g) comply with customer protection measures set out in sections
4 164, 165 and 166 of this Act.

Grant of gas
distribution licence

5 **148.**-(1) Subject to sections 111 and 125 of this Act or regulations
6 made under this Act, the Authority may upon approval of an application and
7 payment of prescribed fees, grant and issue a qualified person gas distribution
8 licence with rights to establish, construct, and operate a gas distribution system
9 and to distribute and sell its natural gas without discrimination to consumers in
10 a local distribution zone.

11 (2) Notwithstanding the rights of a gas retailer under this Act, the
12 holder of a gas distribution licence shall be entitled to sell natural gas to
13 customers that are not wholesale customers.

14 (3) The Authority shall, in considering an application for a gas
15 distribution licence, take into account the economic case for the licence,
16 including the potential demand for its use.

17 (4) The geographical limit of a local distribution zone shall be defined
18 in the relevant gas distribution licence.

19 (5) The rights and duties under a gas distribution licence shall be
20 exclusive to the gas distributor for the validity period of the distribution
21 Licence.

22 (6) A gas distribution licence may include provisions for providing
23 Third Party access to the gas distribution network to a gas retailer or gas
24 distributor on its own initiative, may permit access to a gas retailer to the gas
25 distribution network under terms and conditions agreed to by the parties.

26 (7) Subject to the provisions of subsection (6) of this section, the gas
27 distributor shall own the marketable natural gas in the gas distribution network.

General duties
of a gas distributor

28 **149.** A gas distributor shall undertake the activities contemplated by
29 the gas distribution licence in a manner that complies with the following
30 general obligations, to-

1 (a) develop, operate and maintain an economical gas distribution
2 network for the safe and reliable conveyance of natural gas;

3 (b) ensure a reliable and efficient distribution of natural gas to
4 customers on request, provided that it is economical to do so;

5 (c) distribute and sell natural gas on request to a customer who is
6 willing and able to pay for connection to the gas distribution network,
7 subject to safety and network capacity constraints;

8 (d) conduct licenced activities safely and reliably in compliance
9 with any law in force and any health and safety-related regulations issued by
10 the Authority pursuant to this or any other Act;

11 (e) connect all customers within its local distribution zone in
12 accordance with regulations if economically practicable to do so;

13 (f) offer and publish terms and conditions of access to its gas
14 distribution network as required and publish gas prices applicable to
15 different classes of customers, which have been approved by the Authority;

16 (g) comply with customer protection measures set out in sections
17 164, 165 and 166 of this Act;

18 (h) prepare a development plan for connecting customers within its
19 local distribution zone for the consideration of the Authority; and

20 (i) abstain from activities, which in the opinion of the Authority
21 may prevent, restrict or distort competition.

22 **150.** Subject to the provisions of this Act, the Authority may, in
23 order to facilitate the conduct of its licenced activities, grant the gas
24 distributor the right to-

Rights of the
gas distributor

25 (a) enter a premises to remove its meters for the purpose of reading
26 the meters, testing and maintaining metering equipment and disconnecting
27 customers; and

28 (b) recover, on the basis of an invoice, costs reasonably incurred in
29 the provision of appropriate infrastructure, subject to any conditions
30 imposed by the Authority to both the level and structure of a distributor's

	1	charge, provided that reasonably incurred costs shall include any amount paid
	2	to the Authority as a licence fee.
Conditions applicable to a gas distribution licence	3	151. In addition to conditions the Authority may impose pursuant to
	4	section 114 of this Act or that may be prescribed by regulation, a distribution
	5	Licence shall be deemed to be granted subject to the distributor-
	6	(a) conducting its licenced activities in a safe and reliable standard in
	7	compliance with prescribed management and health and safety related
	8	regulations issued pursuant to this or any other Act;
	9	(b) having regard to the effect of its licenced activities on the
	10	environment and complying with the requirements for environmental
	11	protection, management, and restoration under this Act and any law in force;
	12	and
	13	(c) marking, maintaining and securing the boundaries of the
	14	distribution pipelines constructed or other distribution infrastructure as
	15	prescribed.
Arrangement for gas distribution	16	152. A gas distributor shall consult stakeholders on proposed
	17	development projects within its local distribution zone and consider all
	18	representations received.
Domestic gas aggregation licence	19	153. -(1) Subject to sections 111 and 125 of this Act, the Authority
	20	may upon approval of an application and payment of prescribed fees, grant and
	21	issue a qualified person a domestic gas aggregation licence.
	22	(2) The duration of the domestic gas aggregation licence shall be for a
	23	period of 2 years effective from the date of the grant of the Licence.
	24	(3) The domestic gas aggregation licence may be renewed by the
	25	authority for further period of 2 years in each instance until the attainment of
	26	liquidity in the domestic gas market, whereupon gas aggregation shall cease
	27	and the domestic gas aggregation licence shall be terminated by the Authority.
	28	(4) The board of domestic gas aggregator shall determine the fees for
	29	the services of the domestic gas aggregator and the fees shall be paid by the
	30	producer clients and customer clients in order to ensure self-financing of the

1 domestic gas aggregator.

2 **154.** The domestic gas aggregator shall-

3 (a) support the implementation of the domestic gas delivery
4 obligation;

5 (b) implement a natural gas management model, through which the
6 demand and supply of natural gas for use in the strategic sectors shall be
7 monitored;

8 (c) operate a nomination and balancing mechanism for equitable
9 curtailment of natural gas deliveries in cooperation with the Authority,
10 whenever demand and supply expediencies requires;

11 (d) ensure transparency of dealing between natural gas suppliers
12 and wholesale customers of the strategic sectors;

13 (e) conduct its operations in a business-like and transparent
14 manner and shall not engage in any anti-competitive behaviour and
15 practices;

16 (f) abstain from activities, which in the opinion of the Authority
17 may prevent, restrict or distort competition;

18 (g) establish an escrow account into which customer clients shall
19 contribute their payments for the marketable natural gas received and from
20 which the domestic gas aggregator shall pay the producer clients for their
21 supplies of natural gas pursuant to the provisions of this Act; and

22 (h) do other things as are necessary or incidental to the carrying out
23 of its functions and duties under this Act.

24 **155.**-(1) The domestic gas aggregator shall be a not for profit
25 limited by guarantee company established under the Companies and Allied
26 Matters Act.

27 (2) For the purposes of section 153 of this Act, a qualified person
28 shall not be a person who is controlled by licensees or lessees of upstream
29 petroleum operations or by wholesale customers or is an affiliate of such
30 entities, provided that ownership of the aggregator may be by a combination

Functions of the
domestic gas
aggregator

Establishment
of the aggregator

	1	of licensees or lessees, wholesale customers and other interested parties, such
	2	as licensees of gas transportation pipelines and gas transportation networks.
Gas purchase orders	3	156. The domestic gas aggregator shall issue a gas purchase order to
	4	a producer client where a customer client requires a specific volume of
	5	marketable natural gas, which is included in the domestic gas demand
	6	requirement pursuant to section 173 of this Act.
Price conditions of gas purchase orders	7	157. The gas purchase order pursuant to section 156 of this Act shall
	8	be based on the prices for marketable natural gas established by the Authority
	9	pursuant to section 167 of this Act.
Wholesale customers	10	158. -(1) The Authority shall, following consultations with interested
	11	stakeholders, issue regulations-
	12	(a) defining the class or classes of customers that shall constitute
	13	eligible wholesale customers under this Act; and
	14	(b) specifying the qualifying criteria for the classification;
	15	provided that the regulations may be amended from time to time to facilitate
	16	the introduction of competition in supply and any amendment of the
	17	regulations resulting in a change of the class of customers shall not affect the
	18	rights and obligations of parties under natural gas supply contracts entered into
	19	prior to such amendment.
	20	(2) wholesale customers shall be entitled to secure marketable natural
	21	gas from any wholesale gas supplier or lessee, subject to section 173 (3) of this
	22	Act.
Trading and settlement of wholesale gas	23	159. -(1) The Authority shall develop arrangements for the safe and
	24	efficient trading of wholesale gas, where it determines that there is need for
	25	formal arrangements for the trading of wholesale gas.
	26	(2) The Authority shall, where required, make regulations pursuant
	27	to subsection (1) of this section for the trading and settlement of wholesale gas
	28	in consultation with industry participants and interested stakeholders.
Gas network code	29	160. -(1) The operation of a gas transportation network shall be in
	30	accordance with the existing network code issued by the Government.

1 (2) The Authority may in consultation with stakeholders in
2 midstream gas operations modify the network code or create other network
3 codes for common carrier operations.

4 (3) The Authority shall make copies of the gas network code
5 available to interested parties upon payment of prescribed fees.

6 **161.**-(1) A person shall be permitted access to an open access gas
7 transportation pipeline or a gas transportation network for the purpose of
8 having marketable natural gas transported to points of consumption subject
9 to compliance with the prescribed terms and conditions for access stated in
10 the gas network code.

Third party access
relating to
midstream and
downstream gas
operations

11 (2) The gas network code shall set out standard terms and
12 conditions for connection to, interconnection with access and use of the gas
13 transportation network.

14 (3) Where a gas transportation pipeline is isolated from the main
15 gas transportation network, the Authority shall develop separate terms of
16 access for the isolated gas transportation pipeline.

17 (4) The Authority may develop special terms for third party access
18 to a gas distribution network.

19 **162.**-(1) Where open access applies, open access to the gas
20 transportation pipeline or gas transportation network shall be-

Conditions for
the provision of
open access in
relation to gas
operations

21 (a) provided on a non-discriminatory basis between system users
22 with similar characteristics pursuant to section 116 of this Act;

23 (b) provided in respect of any available capacity, where the
24 capacity is not subject to a previous contractual commitment;

25 (c) provided in accordance with and governed by the terms and
26 conditions of the network code approved by the Authority, where
27 applicable;

28 (d) provided on the condition that the applicant for access is or
29 becomes a party to and undertakes to comply with the applicable network
30 code; and

- 1 (e) subject to the pricing principles set out in section 170 of this Act.
- 2 (2) connection agreements may be entered into between-
- 3 (a) gas transportation pipeline owners and gas transportation network
- 4 operator;
- 5 (b) a gas distributor and the gas transportation network operator,
- 6 where a gas distribution network connects to the main transportation network;
- 7 (c) a supplier and a transportation pipeline owner or transportation
- 8 network operator.
- 9 **163.** The Authority may mediate in disputes in respect of third party
- 10 access.
- 11 **164.-(1)** The Authority may, to protect the interests of customers,
- 12 issue regulations requiring suppliers, gas distributors and petroleum product
- 13 distributors to-
- 14 (a) publish their terms of supply or distribution including tariffs, other
- 15 than for negotiated tariffs pursuant to section 122(4) of this Act;
- 16 (b) establish or to facilitate the establishment of a forum at which
- 17 customers are able to express their views and raise concerns;
- 18 (c) formulate and adhere to standards of performance as are, in its
- 19 opinion, necessary to ensure the safety, reliability and quality of supply and
- 20 distribution services to customers and set penalties for failure to comply;
- 21 (d) prepare and submit reports to the Authority, at least on an annual
- 22 basis, indicating their performance levels and status of their operations in
- 23 respect of licenced activities at such times as the Authority may by regulation
- 24 or in their respective licences prescribe; and
- 25 (e) develop and adhere to customer service codes, setting out the
- 26 practices and procedures to be followed in the conduct of specified licenced
- 27 activities, which may include-
- 28 (i) the installation, testing, maintenance and reading of meters,
- 29 (ii) fault repairs and response to customer emergencies,
- 30 (iii) the connection and disconnection of customers,

Disputes in respect
of third party
access

Customer
protection

1 (iv) responding to customer complaints and complaint resolution,
2 (v) billing and invoicing,
3 (vi) the extension of payment and credit facilities,
4 (vii) the provision of information to customers and the use and
5 protection of customer information, and
6 (viii) the establishment of special services for economically or
7 socially disadvantaged customers.

8 (2) The customer service codes shall be approved by the Authority
9 prior to publication and may be reviewed at intervals as may be considered
10 necessary by the Authority.

11 (3) The customer service codes shall be made available to all
12 customers upon request and published on the website of the Authority.

13 (4) The Authority shall notify or by regulation require licensees to
14 notify customers of the customer service codes that shall be adhered to by
15 licensees.

16 (5) The Authority shall, in developing customer protection
17 regulations-

18 (a) consult with suppliers gas distributors, petroleum distributors
19 and interested stakeholders; and

20 (b) take into account existing procedures, practices and standards
21 issued by the Federal Competition and Consumer Protection Commission.

22 **165.** The Authority shall, at its discretion and at such time or times
23 as it deems appropriate, designate distributors of last resort and suppliers of
24 last resort to provide services to customers-

25 (a) where an existing gas distributor for a local distribution zone, a
26 petroleum product distributor or a supplier becomes insolvent, is unable to
27 provide licenced services or has had its licence suspended or revoked;

28 (b) where the gas distributor for a local distribution zone or
29 supplier refuses or fails to fulfil the terms of its licence to distribute or supply
30 natural gas or petroleum product to customers; and

Provision of
service to customers

1 (c) in such other circumstances as the Authority may deem
2 appropriate;
3 provided that, in each case, any reasonable additional costs associated with the
4 obligation to act as distributor or supplier of last resort shall be recoverable
5 through appropriate charging arrangements agreed with the Authority.

Transfer of
customers

6 **166.** Where the designation of a supplier or distributor of last resort
7 requires the transfer of customers from one licensee to another, the Authority
8 shall prepare, or require the applicable supplier or distributor of last resort to
9 prepare-

10 (a) procedures to secure the effective transfer of customers; and

11 (b) a statement of any costs reasonably incurred in undertaking the
12 transfer, which if approved by the Authority, shall be recoverable through
13 regulated charges.

Natural gas prices
for the strategic
sector, gas
distributors and
retailers

14 **167.**-(1) The Authority shall, in accordance with this section and for
15 each year, determine the domestic base price pursuant to the Third Schedule to
16 this Act, including the prices for the power sector, commercial sector and gas
17 based industries.

18 (2) The Authority shall continue to determine the prices referred to
19 under subsection (1) of this section, if in its opinion, the control of prices for
20 natural gas for the strategic sector is required.

21 (3) The price control and the corresponding role of the domestic gas
22 aggregator shall not be required, where the domestic market for natural gas is
23 largely characterized by free market based contracting for natural gas between
24 willing buyers and willing sellers and the transactions of the producer clients
25 and consumer clients represent less than 20% of the total transactions.

26 (4) The aggregate gas price for a month shall be the price calculated
27 based on the procedures established by the domestic gas aggregator on the
28 basis of the prices determined by the Authority pursuant to subsection (1) of
29 this section.

30 (5) The price of marketable natural gas applicable to the power sector

1 shall be the domestic base price at the marketable natural gas delivery point.

2 (6) The price of marketable natural gas applicable to the
3 commercial sector shall be the domestic base price at the marketable natural
4 gas delivery point plus \$ 0.50 per MMBtu.

5 (7) Gas distributors and gas retailers shall not be part of the
6 strategic sectors and shall negotiate the supply and pricing of their natural
7 gas directly, provided that the applicable price for gas distributors for the
8 marketable natural gas at the marketable gas delivery point shall not exceed
9 that of the commercial sector pursuant to subsection (6) of this section.

10 (8) The wholesale customers of the strategic sectors, gas
11 distributors and gas retailers shall pay for the transportation cost of the
12 marketable natural gas from the marketable natural gas delivery point to
13 their facilities.

14 (9) The wholesale customers of the strategic sectors shall, for the
15 purpose of transportation, have the option to-

16 (a) use the gas transportation network applicable to their
17 geographical areas; or

18 (b) obtain a gas transportation licence in order to transport their
19 natural gas connecting to the gas transportation network, another existing
20 gas transportation pipeline or directly to a marketable natural gas delivery
21 point.

22 (10) Each producer client shall, for any month, receive from the
23 escrow account of the domestic gas aggregator an amount that is equal to the
24 aggregate gas price multiplied by the customer client volume that was paid
25 for such producer client in such month by the customer client.

26 **168.-(1)** The gas price for the gas based industries shall be
27 determined by the pricing formula specified in the Fourth Schedule to this
28 Act.

Gas based
industries gas price

29 (2) The floor price for the gas based industries shall be \$ 0.90 per
30 MMBtu.

1 (3) The ceiling price shall be the domestic base price applicable for
2 any particular year.

3 (4) The Authority may by regulation adjust or modify the provisions
4 of this section and add other gas based industries.

Power to regulate
and review prices

5 **169.**-(1) Where the Authority determines that-

6 (a) a particular licenced activity is a monopoly service;

7 (b) competition has not yet developed in the market to such an extent
8 as to protect the interests of customers; or

9 (c) a particular licensee is a dominant provider,

10 the Authority shall regulate the prices charged by licensees in respect of the
11 activities, in a manner consistent with its functions under this Act and with the
12 pricing principles set out in section 170 of this Act.

13 (2) The Authority shall undertake periodic pricing methodology
14 reviews, provided that the pricing methodology review shall not affect
15 arrangements entered into or approvals given for the development of a gas
16 infrastructure or utilisation project prior to the effective date.

17 (3) The Authority shall consult with licensees, industry participants
18 and stakeholders before undertaking a pricing review or establishing a
19 methodology for regulating prices and revenues earned by licensees providing
20 monopoly or dominant services.

Pricing principles
in relation to gas

21 **170.** Subject to the provisions of this Chapter, the Authority shall, in
22 the exercise of its powers to regulate prices charged by Licensees, be guided by
23 the following principles-

24 (a) marketable natural gas prices shall be disaggregated into the
25 component elements of the supply chain including the costs of wholesale gas,
26 tariffs for gas processing, tariffs for transportation pipelines for natural gas,
27 distribution and supply;

28 (b) the prices charged for each licenced activity shall reflect the costs
29 incurred in the efficient provision of that activity;

30 (c) prices charged shall permit a reasonable return for licensees on

1 their investments; and

2 (d) prices shall not discriminate between customers with similar
3 characteristics, such as similar size or a similar consumption profile.

4 **171.** The Authority may issue regulations imposing public service
5 obligations on licensees in relation to matters including-

Public service
obligations related
to policy issues

6 (a) security of supply;

7 (b) economic development and the achievement of wider
8 economic policy objectives;

9 (c) environmental protection; and

10 (d) health and safety.

11 **172.-(1)** The Authority shall, by regulation, provide for the
12 recovery of any additional costs incurred in complying with the public
13 service obligations through a public service levy, which may be imposed on
14 customers, provided that it would, in the opinion of the authority, be in the
15 wider public interest.

Public service
levy

16 (2) The amount of, and mechanism for the collection and
17 remittance of, the public service levy imposed on each customer shall be set
18 out in the regulations contemplated by subsection (1) of this section.

19 **173.-(1)** The Authority shall, prior to the 1st day of March of each
20 calendar year, determine the domestic gas demand requirement and inform
21 the Commission of this requirement.

Domestic Gas
demand
Requirement

22 (2) Subject to subsection (3) of this section, the domestic gas
23 demand requirement shall be the total amount of marketable natural gas
24 required for all wholesale customers of the strategic sectors.

25 (3) Each wholesale customer of the strategic sectors shall have the
26 right to negotiate its own supply contracts directly with lessees or suppliers
27 and where the wholesale customer is of the view that the contracts are
28 satisfactory for its requirements, it shall inform the-

29 (a) Authority that there is no need to be a customer client of the
30 domestic gas aggregator; and

1 (b) Commission of the lessees from which the required marketable
2 natural gas has been obtained.

3 PART V

4 ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM PETROLEUM

5 LIQUIDS OPERATIONS

Activities
requiring a licence
for midstream
and downstream
petroleum liquids
operations

6 **174.**-(1) Except in accordance with an appropriate licence issued by
7 the Authority, a person shall not undertake the following activities with respect
8 to midstream petroleum liquids operations-

9 (a) establish, construct or operate a terminal or other facility for the
10 export or importation of crude oil or petroleum products;

11 (b) establish, construct or operate a crude oil refinery;

12 (c) establish, construct or operate a pipeline for the bulk
13 transportation of petroleum liquids;

14 (d) engage in bulk transportation of petroleum liquids by rail, barge
15 or other means within Nigeria;

16 (e) establish, construct or operate a facility for the bulk storage of
17 petroleum liquids;

18 (f) establish, construct or operate a petroleum liquids transportation
19 network;

20 (g) engage in the bulk sale of petroleum liquids, or

21 (h) undertake construction or operation of any facility for the
22 production of lubricants or petrochemicals based on petroleum products.

23 (2) Except in accordance with an appropriate licence or permit issued
24 by the Authority, a person shall not undertake the following activities with
25 respect to downstream petroleum products operations-

26 (a) construct or operate any facility for the distribution or sale of
27 petroleum products to retail customers;

28 (b) establish, construct or operate a depot for the storage of petroleum
29 products; or

1 (c) undertake distribution, marketing or retail trading of petroleum
2 products;

3 (3) The Authority may, by regulation, prescribe additional
4 activities to be undertaken only on the basis of a Licence or Permit and shall
5 have power to issue licences or permits for the activities in accordance with
6 this Act.

7 (4) Where a person engages in any of the activities set out in
8 subsection (1), (2) or (3) of this section without a licence or permit, the
9 Authority shall-

10 (a) seal the premises where the activity is undertaken;

11 (b) dismantle and seize the facilities by which the activities were
12 undertaken;

13 (c) confiscate equipment or materials employed by the person in
14 such activity; or

15 (d) impose penalties as prescribed by regulations under this Act.

16 (5) Notwithstanding any provision of this Act, a person who
17 engages in any of the activities set out in subsection (1), (2) or (3) of this
18 section without a Licence or Permit, commits an offence and is liable to
19 imprisonment for a term of-

20 (a) 1 year or to a fine prescribed by regulation, in the case of an
21 activity requiring a licence; or

22 (b) 6 months or to a fine prescribed by regulation, in the case of an
23 activity requiring a permit.

24 (6) A holder of a subsisting lease, licence or permit who is engaged
25 in activities in midstream or downstream petroleum liquids operations prior
26 to the effective date shall, within 24 months from the effective date, apply to
27 the Authority and the Authority may issue the appropriate licence or permit,
28 where applicable.

29 (7) The provisions of subsection (4) of this section shall not apply
30 to any person who has made an application contemplated under subsection

1 (6) of this section until the Authority has considered the application
2 given a decision.

3 (8) Where any person, in applying for a licence or permit, knowingly
4 makes a false or misleading statement, the Authority may-

5 (a) suspend or revoke the licence or permit; or;

6 (b) impose a fine on the licensee or permit holder on the basis of the
7 false or misleading information.

Special regulations
for midstream and
downstream
petroleum liquids
operations

8 **175.** In addition to any matter provided under section 113 of this Act,
9 the Authority may issue regulations with respect to midstream and downstream
10 petroleum liquids operations, which shall include-

11 (a) the operation of crude oil refineries, lube plants, petroleum liquids
12 transportation pipelines, bulk storage facilities for petroleum liquids and
13 terminals and outlets for retail trading of petroleum products;

14 (b) the establishment and operation of a wholesale market, to ensure
15 the continuity of supply of petroleum products to customers, that will apply to
16 the owners and operators of crude oil refineries, transportation pipelines and
17 other facilities or vessels for the bulk transportation of petroleum liquids, bulk
18 storage facilities for petroleum liquids and terminals and outlets for retail
19 trading of petroleum products; and

20 (c) matters ancillary to or consequential on the activities set out in
21 paragraphs (a) and (b) of this section.

Rights of way
relating to
midstream and
downstream
petroleum liquids
operations

22 **176.** Subject to applicable law and the terms and conditions
23 prescribed by the authority, a licensee or permit holder is entitled to a right of
24 way for the laying, operation and maintenance of petroleum liquids
25 transportation pipelines, communication lines, power lines and other similar
26 lines through or across the areas the licensee or permit holder may require for
27 carrying on midstream or downstream petroleum liquids operations under the
28 licence or permit.

Surface rights
reserved for the
authority for
midstream and
downstream
petroleum liquids
operations

29 **177.** The Authority may for the purpose of efficiency, grant rights of
30 way, easements or other rights over any surface or seabed areas subject to an

1 existing licence or permit, which may be necessary for the laying, operation
2 and maintenance of petroleum liquids transportation pipelines,
3 communication lines, power lines and other similar lines and any right of
4 way or other rights reserved shall continue for the benefit of any entity to
5 whom the authority may subsequently grant the same licence or permit.

6 **178.**-(1) The Authority may in consultation with licensees and
7 other stakeholders with respect to midstream petroleum liquids operations,
8 develop a network code governing the terms of access into facilities and
9 infrastructure used in midstream petroleum liquids operations.

Petroleum liquids
midstream network
code

10 (2) The network code may include the following matters-

11 (a) a connection and interconnection policy, standard terms for
12 connection to a open access petroleum liquids transportation pipeline or
13 petroleum liquids transportation network and a statement of the connection
14 charging methodology;

15 (b) a mechanism by which users reserve capacity in facilities and
16 infrastructure and at any time there is a greater demand for access than
17 available capacity, a mechanism for allocating capacity between users;

18 (c) the nomination;

19 (d) requirements for the provision of information to the petroleum
20 liquids transportation network operator about the volume, timing and flow-
21 rate of injections into and withdrawals from the petroleum liquids
22 transportation network;

23 (e) the structure of charges and the applicable tariffs charged for
24 using the petroleum liquids transportation network;

25 (f) the balancing of crude oil, condensates or petroleum products
26 being conveyed;

27 (g) registration arrangements;

28 (h) metering, allocation and settlement arrangements;

29 (i) governance arrangements; and

30 (j) the maintenance of a register of customers and Suppliers.

1 (3) The petroleum liquids midstream network code shall be published
2 on the website of the authority and physical copies shall be made available to
3 interested persons on payment of a prescribed fee.

Third party access
relating to midstream
and downstream
petroleum liquids
operations

4 **179.** Subject to section 162 of this Act, any person licenced under the
5 provisions of this Act to supply petroleum liquids shall be permitted third party
6 access to facilities and infrastructure used for midstream petroleum operation
7 by owners, operating on their own account, of such facilities and
8 infrastructure-

9 (a) in the manner prescribed by this act, the regulations, codes and
10 other guidelines issued by the authority under this act; and

11 (b) on commercially viable terms based on a cost reflective pricing
12 methodology.

Conditions for
the provision of
open access in
relation to
petroleum liquids
operations

13 **180.-(1)** Where open access applies, open access to the facilities and
14 infrastructure used with respect to midstream petroleum liquids operations
15 shall be-

16 (a) undertaken on a non-discriminatory basis between system users
17 with similar characteristics pursuant to section 116 of this Act;

18 (b) provided in respect of any available capacity, where the capacity is
19 not subject to a previous contractual commitment;

20 (c) provided in accordance with and governed by the terms and
21 conditions of the network code approved by the Authority, where applicable;

22 (d) provided on the condition that the applicant for access is or
23 becomes a party to and undertakes to comply with the applicable network code;
24 and

25 (e) subject to the pricing principles set out in section 207 of this Act,
26 provided that facilities and infrastructure which are specifically defined by the
27 Authority for the storage of national strategic stocks shall be exempt from the
28 provisions of this Act relating to open access.

29 (2) The Authority may mediate in disputes in respect of open access.

1	181. The Authority shall-	National strategic stocks
2	(a) establish, administer and ensure the storage and distribution of	
3	the national strategic stocks of petroleum products in accordance with	
4	regulations issued by the Authority;	
5	(b) determine and publish the amount to be charged as a levy for the	
6	financing of the national strategic stock, which shall form part of the retail	
7	price of each petroleum product, such levy to be determined as a percentage	
8	of the retail price and be deducted on wholesale basis; and	
9	(c) designate, in consultation with the appropriate authorities and	
10	national security agencies, the strategic locations across the country where	
11	the national strategic stocks shall be distributed and maintained.	
12	182. The Authority shall ensure that all companies with a Licence	Operating stock
13	for the bulk storage of petroleum products granted pursuant to section 174 of	
14	this Act maintain operating stocks in accordance with guidelines published	
15	by the Authority.	
16	183. -(1) Subject to sections 111 and 174 of this Act and upon the	Grant of a crude oil refining licence
17	approval of the Authority of an application and payment of a prescribed fee	
18	by a qualified person, the Minister may, on the recommendation of the	
19	Authority, grant and issue to that person a crude oil refining licence which	
20	shall permit the licensee to-	
21	(a) procure, construct, install and operate facilities to process crude	
22	oil on its own account into derivative chemicals and petroleum products;	
23	and	
24	(b) sell such chemicals and petroleum products at the exit of the	
25	refinery.	
26	(2) In considering an application for a crude oil refining licence,	
27	the Authority shall take into account the economic case for a refinery,	
28	including the potential demand for its use.	
29	184. The crude oil refiner shall undertake the activities	General duties of a crude oil refiner
30	contemplated by the Licence in a manner that best complies with the	

1 following general obligations, to-

2 (a) procure, construct, install, operate and maintain its refinery and
3 associated facilities in an economical, safe, reliable and environmentally
4 friendly manner;

5 (b) shut down its facilities in emergencies and in order to carry out
6 maintenance or in accordance with curtailment directives issued by the
7 Authority;

8 (c) manage its facilities as a reasonable and prudent operator;

9 (d) avoid any act or omission that may affect the compatibility of the
10 refinery with any facility or network that is likely to prejudice the public
11 interest or the integrity of network operations;

12 (e) produce petroleum products to a quality suitable for the
13 transportation system as specified in the Licence;

14 (f) produce petroleum products to a quality suitable for use in
15 accordance to the specifications approved by the Authority;

16 (g) to treat all customers in a non-discriminatory manner pursuant to
17 section 116 of this Act; and

18 (h) abstain from activities, which in the opinion of the Authority may
19 prevent, restrict or distort competition.

Access rights

20 **185.** A crude oil refiner shall have the right of access to facilities,
21 including harbours, jetties, petroleum bulk storage, transportation facilities
22 and pumping installations in accordance with the open access or third party
23 access requirements and the tariff methodology approved by the Authority.

Conditions
applicable to a
crude oil refining
licence

24 **186.** In addition to conditions as may be imposed by the Authority
25 pursuant to section 114 of this Act, a crude oil refining licence shall be deemed
26 to be granted subject to the conditions that the holder shall-

27 (a) conduct its licenced activities safely and reliably in compliance
28 with any law in force and prescribed health and safety related regulations,
29 standards and operating procedures issued pursuant to this Act;

30 (b) have regard to the effect of its licenced activities on the

1 environment and complying with the requirements for environmental
2 protection, management and restoration under this Act;

3 (c) mark, maintain and secure the boundaries of its facilities and
4 associated infrastructure constructed under the terms of its licence and any
5 law in force; and

6 (d) comply with any conditions precedent or other conditions as
7 the Authority may prescribe by regulation.

8 **187.**-(1) Subject to sections 111 and 174 of this Act, the Authority
9 may upon approval of an application and payment of prescribed fees, grant
10 and issue a qualified person bulk petroleum liquids storage licence
11 authorising the holder to undertake the bulk storage of petroleum liquids
12 whether for its own account or on behalf of customers as provided for in the
13 licence.

Grant of a bulk
petroleum liquids
storage licence

14 (2) In considering an application for a bulk petroleum liquids
15 storage licence, the Authority shall take into account the economic case for
16 bulk storage facility, including the potential demand for its use.

17 **188.** The holder of a bulk petroleum liquids storage licence shall
18 undertake the activities contemplated by the licence in a manner that best
19 complies with the following general obligations, to-

General duties
of a bulk storage
licensee

20 (a) establish and make available to the public at its offices, the-

21 (i) procedure for obtaining third party access and throughput and
22 terminating its services, and

23 (ii) method of response to the request for its service;

24 (b) procure, construct, install, operate and maintain its facilities in
25 a safe, economical, reliable and environmentally friendly manner taking
26 into account any strategic plans formulated by the Authority;

27 (c) shut down its facilities in emergencies and in order to carry out
28 maintenance or in response to curtailment directives issued by the
29 Authority;

30 (d) grant third party access to use or have access to spare capacity

1 within its facilities for the purpose of ensuring competitive supply of crude oil
2 and petroleum products, where the licensee operates on its own account;

3 (e) consult with the Authority and obtain written permission prior to
4 any modification of technical and operational rules of practice concerning the
5 operation of its facilities;

6 (f) conduct its licenced activities in a non-discriminatory manner
7 between all classes of customers pursuant to section 116 of this Act, where the
8 licence is for bulk storage for customers;

9 (g) manage its facilities as a reasonable and prudent operator; and

10 (h) abstain from activities, which in the opinion of the Authority may
11 prevent, restrict or distort competition.

Conditions
applicable to a
bulk petroleum
liquids storage
licence

12 **189.** In addition to conditions as may be imposed by the Authority
13 pursuant to section 114 of this Act, a bulk petroleum liquids storage licence
14 shall be deemed to be granted subject to the conditions that the holder shall-

15 (a) conduct its licenced activities safely and reliably in compliance
16 with any law in force and prescribed health and safety related regulations
17 issued pursuant to this Act;

18 (b) have regard to the effect of its licenced activities on the
19 environment and complying with the requirements for environmental
20 protection, management and restoration under this Act; and

21 (c) mark, maintain and secure the boundaries of its facilities and
22 associated infrastructure constructed under the terms of its licence and any law
23 in force.

Grant of
petroleum liquids
transportation
pipeline licence

24 **190.**-(1) Subject to sections 111 and 174 of this Act, the Authority
25 may upon approval of an application and payment of prescribed fees, grant and
26 issue a qualified person a petroleum liquids transportation pipeline licence
27 with the exclusive right to own, construct, operate and maintain a
28 transportation pipeline for the bulk transportation of petroleum liquids within a
29 route as defined in the licence for its own account with third party access
30 provisions or as common carrier as stipulated in the licence.

1 (2) In considering an application for a petroleum liquids
2 transportation pipeline licence, the Authority shall take into account the
3 economic case for a petroleum liquids transportation pipeline including the
4 potential demand for its use.

5 **191.** The holder of a petroleum liquids transportation pipeline
6 licence shall undertake the activities contemplated by the licence in a
7 manner that best complies with the following general obligations-

General duties
of a petroleum
liquids
transportation
pipeline owner

8 (a) establish and make available to the public at its offices, the-

9 (i) procedure for obtaining and terminating transmission and
10 interconnection services, and

11 (ii) method of response to the request for its service;

12 (b) construct, operate and maintain its petroleum liquids
13 transportation pipeline in a safe, economical, and reliable manner taking
14 into account any strategic plans formulated by the Authority;

15 (c) manage supply shortfalls and meet on a reasonable endeavours
16 basis requests for transportation above contractual volumes;

17 (d) shut down its petroleum liquids transportation pipeline in
18 emergencies and in order to carry out maintenance or in response to
19 curtailment directives issued by the Authority;

20 (e) provide access on a non-discriminatory basis pursuant to
21 section 116 of this Act, where the licence is granted on a common carrier
22 basis;

23 (f) consult with the Authority and obtain written permission prior
24 to any modification of technical and operational rules of practice concerning
25 the operation of its pipeline;

26 (g) manage its transportation pipeline as a reasonable and prudent
27 operator; and

28 (h) abstain from activities, which in the opinion of the Authority
29 may prevent, restrict or distort competition.

Conditions
applicable to a
petroleum liquids
transportation
pipeline licence

1 **192.** In addition to conditions as may be imposed by the Authority
2 pursuant to section 114 of this Act, a transportation pipeline licence shall be
3 deemed to be granted subject to the conditions that the holder shall-

4 (a) not own petroleum liquids in the pipeline on its own account,
5 where the licence is issued on a common carrier basis;

6 (b) a lessee, operating on its own account, may own the petroleum
7 liquids in a petroleum liquids transportation pipeline, for the purpose of
8 connecting petroleum liquids produced in a field to another petroleum liquids
9 transportation pipeline or petroleum liquids transportation network, subject to
10 third party access provisions as may be included in the licence;

11 (c) a crude oil refiner, operating on its own account, may own the
12 petroleum liquids in a petroleum liquids transportation pipeline for the purpose
13 of transporting petroleum liquids to its refinery or from its refinery to
14 petroleum product distributors and other wholesale customers, subject to third
15 party access provisions as may be included in the licence;

16 (d) a petroleum product distributor, operating on its own account,
17 may own the petroleum liquids in a petroleum liquids transportation pipeline,
18 where the principal user of the transportation pipeline is the petroleum product
19 distributor, subject to third party access provisions as may be included in the
20 licence;

21 (e) a wholesale petroleum liquids supplier, operating on its own
22 account, may own the petroleum liquids in a petroleum liquids transportation
23 pipeline, for the purpose of connecting to a lessee or wholesale customer to or
24 from a petroleum liquids transportation network or petroleum liquids
25 transportation pipeline, subject to third party access provisions as may be
26 included in the licence;

27 (f) conduct its licenced activities safely and reliably in compliance
28 with any law in force and prescribed health and safety related regulations
29 issued pursuant to this Act;

30 (g) have regard to the effect of its licenced activities on the

1 environment and comply with the requirements for environmental
2 protection, management, and restoration under this Act; and

3 (h) mark, maintain and secure the boundaries of the pipelines and
4 associated infrastructure constructed under the terms of its licence.

5 **193.**-(1) Subject to sections 111 and 174 of this Act, the Authority
6 may upon approval of an application and payment of prescribed fees, grant
7 and issue a qualified person a petroleum liquids transportation network
8 operator licence authorising the conduct of activities specified in the
9 Licence, which shall include -

Grant of
transportation
operator licence

10 (a) conveyance of petroleum liquids through the transportation
11 network;

12 (b) balancing the inputs and off takes from the transportation
13 network;

14 (c) providing open access to the transportation network; and

15 (d) charging for the use of the transportation network.

16 (2) The Authority shall grant only one petroleum liquids
17 transportation network operator licence for specified petroleum liquids
18 within a geographically defined area to a single network operator, provided
19 that the authority may, at its discretion, issue licences to other parties for the
20 operation of isolated or dedicated pipelines.

21 **194.** The petroleum liquids transportation network operator shall
22 exercise the rights and obligations imposed on it in a manner that best
23 complies with the following general obligations-

General duties
of a petroleum
liquids transportation
network operator

24 (a) establish and make available to the public at its offices, the-

25 (i) procedure, terms and conditions for obtaining and terminating
26 access and interconnection services to the transportation network, and

27 (ii) method of response to the request for its service;

28 (b) operate an efficient and economical transportation network for
29 the safe and reliable conveyance of specified petroleum liquids in a manner

1 that is designed to meet all reasonable demands for the specified petroleum
2 liquids;

3 (c) operate a nomination and balancing mechanism and an equitable
4 curtailment of transportation whenever technical or operational expediencies
5 requires;

6 (d) consult with the Authority and obtain written permission prior to
7 any modification of technical and operational rules of practice concerning the
8 operation of its transportation network;

9 (e) ensure the development and operation of a network code and terms
10 for access into the transportation network in collaboration with the Authority
11 and shippers and licensees and permit holders operating essential
12 infrastructure;

13 (f) ensure equitable and transparent access by third parties to the
14 transportation network in accordance with the network code;

15 (g) manage the transportation network as a reasonable and prudent
16 operator;

17 (h) abstain from activities, which in the opinion of the Authority may
18 prevent, restrict or distort competition; and

19 (i) enter into agreements with transportation pipeline owners,
20 distributors, and, wholesale customers for connection to, and operation of, the
21 transportation network.

Powers of a
petroleum liquids
transportation
network operator

22 **195.** Subject to the provisions of this Act, the Authority may grant the
23 following special powers or authority to a petroleum liquids transportation
24 network operator to facilitate the conduct of its licenced activities-

25 (a) the power to request and obtain from Licensees information
26 required to operate the nominations and balancing mechanism to operate the
27 network or to facilitate competition;

28 (b) the right to recover, on the basis of an invoice, expenses
29 reasonably incurred in undertaking its Licenced activities, subject to any
30 conditions imposed by the Authority with respect to the level and structure of

1 its charges; and

2 (c) to purchase petroleum liquids for its own operations for
3 purposes such as testing and commissioning of facilities, compression
4 purposes and line fill.

5 **196.**-(1) In addition to such conditions as may be imposed by the
6 Authority pursuant to section 114 of this Act, a petroleum liquids
7 transportation network operator licence may include an obligation to
8 develop market rules in accordance with the provisions of this Act.

Conditions
applicable to a
petroleum liquids
transportation
network operator
licence

9 (2) A petroleum liquids transportation network operator may be
10 owner of any or all of the petroleum liquids transportation pipelines in the
11 petroleum liquids transportation network.

12 (3) Where third parties are owners of certain petroleum liquids
13 transportation pipelines in the petroleum liquids transportation network, the
14 owners shall be paid by petroleum liquids transportation network operator
15 the tariffs determined for non-operating owners of the pipelines.

16 (4) A petroleum liquids transportation network operator shall not
17 misuse its monopoly position in the geographical area to charge franchise of
18 other access charges for providing access to the petroleum liquids transport
19 network other than the charges specifically permitted under this act and its
20 regulations.

21 **197.**-(1) Subject to sections 111 and 174 of this Act, the Authority
22 may upon approval of an application and payment of prescribed fees, grant
23 and issue a qualified person a wholesale petroleum liquids supply licence.

Grant of a wholesale
petroleum liquids
supply licence

24 (2) A lessee producing crude oil or condensates and a crude oil
25 refiner is a qualified person for the purpose of subsection (1) of this section
26 and shall be entitled to apply for and be issued with a wholesale petroleum
27 liquids supply licence by the Authority.

28 (3) A wholesale petroleum liquids supply licence authorises the
29 supplier to sell and deliver petroleum liquids to bulk customers in Nigeria or
30 for export.

General duties of a wholesale petroleum liquids supplier	1 2 3	198. A wholesale petroleum liquids supplier shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations, to-	
	4 5	(a) provide a reliable supply of petroleum liquids to purchasers on request, provided that it is economically feasible; and	
	6 7	(b) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.	
Rights of a wholesale petroleum liquids supplier	8 9 10 11	199. Subject to the provisions of this Act, the Authority may grant the following specific powers or authority to the holder of a wholesale petroleum liquids supply licence to facilitate the conduct of its licenced activities, the right to-	Commencement
	12 13	(a) terminate wholesale supply to a customer in the event of non-payment, following a notice period as prescribed by regulation;	
	14 15 16 17 18 19	(b) recover from a customer, on the basis of an invoice and subject to any conditions imposed by the Authority on the level and structure of a licensee's charges and costs reasonably incurred in the supply of petroleum liquids, provided that the sale of petroleum liquids to customers by the wholesale petroleum liquids supplier shall be subject to the provisions of this Chapter; and	
	20 21 22	(c) enter a premises, in accordance with a metering code issued by the Authority, to remove its meters for the purpose of reading the meters, testing and maintaining metering equipment and disconnecting customers.	
Conditions applicable to a wholesale petroleum liquids supply licence	23 24 25	200. -(1) In addition to conditions as may be imposed by the Authority pursuant to section 114 of this Act, a wholesale petroleum liquids supply licence shall be deemed to be granted subject to the supplier-	
	26 27	(a) ensuring a reliable and efficient supply of petroleum liquids to customers on request, provided that it is economically feasible;	
	28 29 30	(b) supplying petroleum liquids on request to a customer who is willing and able to pay for connection to the transportation network or transportation pipeline, subject to safety and network capacity constraints; and	

1 (c) conducting licenced activities safely, reliably and in an
2 environmentally friendly manner in compliance with any law in force and
3 any health and safety related regulations issued by the authority pursuant to
4 this act or any other Act.

5 (2) A wholesale petroleum liquids supplier shall undertake its
6 licenced activities in a manner that best complies with the covenants and
7 conditions of the licence and comply with customer protection measures
8 approved by the Authority.

9 **201.** Subject to sections 111 and 174 of this Act, the Authority may
10 upon approval of an application and payment of prescribed fees, grant and
11 issue a qualified person a petroleum product distribution licence.

Grant of licence
for distribution
of petroleum
products

12 **202.** In addition to conditions the Authority may imposed pursuant
13 to section 114 of this Act or that may be prescribed by regulation, a
14 petroleum product distribution licence shall be deemed to be granted subject
15 to the duty of the holder to-

General duties
of petroleum
product distributors

16 (a) develop and maintain a safe, efficient, reliable and economical
17 service for the distribution of petroleum products to individual customers
18 and petroleum product retailers;

19 (b) carry on its business in a manner that will promote competition
20 and avoid monopoly in the retail supply of petroleum products in Nigeria;

21 (c) conduct its licenced activities safely and reliably in compliance
22 with any law in force and prescribed environmental, health and safety
23 regulations issued pursuant to this or any other Act;

24 (d) publish the prices to be charged and to be paid by a person to
25 whom the distributor sells petroleum products in a manner to ensure
26 adequate publicity unless the Authority otherwise;

27 (e) avoid undue preference as between persons or any class of
28 persons or discriminate as between persons or any class of persons in
29 establishing prices; and

	1	(f) comply with customer protection measures approved by the
	2	Authority.
Grant of a licence to construct and operate a facility for retail supply and distribution of petroleum products	3	203. -(1) Subject to sections 111 and 174 of this Act, the Authority
	4	may upon approval of an application and payment of prescribed fees, grant and
	5	issue a qualified person a petroleum product retail licence authorising the
	6	holder to establish, construct and operate a facility to be employed for retail
	7	sale of petroleum products.
	8	(2) The Authority shall issue guidelines in respect of the process for
	9	the establishment, construction and operation of facilities to be employed by
	10	petroleum product retailers for retail sale of petroleum products.
Grant of a permit to construct and operate a facility for the production of petrochemicals	11	204. -(1) Subject to sections 111 and 174 of this Act, the Authority
	12	may upon approval of an application and payment of prescribed fees, grant and
	13	issue a qualified person a petrochemicals production licence authorising the
	14	holder to establish, construct and operate a facility for the production of
	15	petrochemicals and sell the petrochemicals produced.
	16	(2) The Authority shall issue guidelines in respect of petrochemicals
	17	production licences.
Pricing regime and power to regulate tariffs	18	205. -(1) Subject to the provisions of this Section, wholesale and retail
	19	prices of petroleum products shall be based on unrestricted free market pricing
	20	conditions.
	21	(2) Where the Authority determines that-
	22	(a) a particular licenced activity is a monopoly service;
	23	(b) competition has not yet developed in the market for any petroleum
	24	product to an extent as to protect the interests of customers; or
	25	(c) a particular licensee is a dominant provider of services,
	26	the Authority shall have the power to regulate the tariffs and prices charged by
	27	licensees in respect of the activities in a manner consistent with the Authority's
	28	duties under the this Act and with the pricing principles set out in section 207 of
	29	this Act.

1 (3) The Authority shall undertake periodic pricing methodology
2 reviews.

3 (4) The Authority shall consult with licensees, industry
4 participants and stakeholders before undertaking a pricing review or
5 establishing a methodology for regulating prices and tariffs by licensees
6 providing monopoly or dominant services.

7 **206.**-(1) The holder of a wholesale petroleum liquids supply
8 licence and a wholesale customer shall, subject to the provisions of this
9 Chapter, negotiate the wholesale prices directly between the parties on an
10 arm's length basis, provided that the transfer price shall be transparent and
11 reflect the transfer price between the parties.

Wholesale prices
for petroleum
products

12 (2) The Authority shall have a power to monitor bulk sale of
13 petroleum products and may publish market-based prices in order to ensure
14 that the transactions are undertaken in a manner that transfer pricing
15 between the supplier and the wholesale customer are undertaken at a
16 transparent arm's length basis.

17 (3) The supplier shall, within 14 days of the consummation of a
18 transaction relating to the bulk sale of petroleum products, provide the
19 authority with information relating to the transaction including, where
20 applicable, the cost incurred by the supplier in the production or supply of
21 the product and other information relevant to the price at which the product
22 is sold.

23 (4) A supplier who knowingly provides information, which is false
24 or misleading with respect to the information required in subsection (3) of
25 this section is liable to a fine stipulated by the Authority in regulations.

26 **207.** Subject to the provisions of this part, the Authority shall, in the
27 exercise of its powers to regulate prices charged by Licensees, be guided by
28 the following principles-

Pricing principles
in relation to
petroleum products

29 (a) prices of petroleum products shall be disaggregated into the
30 component elements of the supply chain, including the costs of wholesale

1 supply, transportation distribution and retail sales;

2 (b) the prices charged for each licenced activity shall reflect the costs
3 incurred for the efficient provision of that activity and the licensee shall
4 disclose all relevant commercial information related to its pricing to the
5 Authority and the Authority shall treat the information with utmost
6 confidentiality;

7 (c) there shall not be discrimination in prices charged between
8 customers with similar characteristics, such as similar size or a similar
9 consumption profile;

10 (d) ensure efficient charges relating to petroleum products supply
11 covering billing, metering and other services;

12 (e) ensure the avoidance of economic distortions and a competitive
13 market for the sale, distribution and marketing of petroleum products in
14 Nigeria; and

15 (f) allow the seller to recover reasonably and prudently incurred costs,
16 including a reasonable return on the capital invested in the business.

Publication of
prices

17 **208.** Licensees shall publish prices as required by the Authority in a
18 manner that ensures that the customers are able to identify and calculate the full
19 extent of charges for which they will become liable.

20 PART VI

21 OTHER MATTERS RELATED TO MIDSTREAM AND

22 DOWNSTREAM OPERATIONS

Public service
obligations

23 **209.** The Authority may issue regulations imposing public service
24 obligations on licensees or a class of licensees in relation to the maintenance of
25 strategic stock for which the Authority shall approve a tariff to be paid by the
26 consumers;

Competition and
Market Regulation

27 **210.** The Authority shall, subject to the provisions of the Federal
28 Competition and Consumer Protection Act, have the responsibility to-

29 (a) monitor the state of the markets regulated by the Authority;

30 (b) administer, monitor and ensure compliance with the provisions of

1 this Act and any law or regulation issued in respect of competition and
2 market regulation;

3 (c) monitor market behaviour including the development and
4 maintenance of competitive markets;

5 (d) arrest situations of abuse of dominant power and restrictive
6 business practices;

7 (e) assess whether the petroleum industry is operating efficiently
8 or the existing market arrangements may constitute barriers to entry into the
9 market for new market participants;

10 (f) determine whether there is any anti-competitive activity being
11 carried on and exercise its powers under this section to prevent the
12 continuance of the activity; and

13 (g) determine any pre-conditions and any transitional
14 arrangements required for any services to be offered competitively.

15 **211.**-(1) Subject to the provisions of the Federal Competition and
16 Consumer Protection Act, the Authority shall have the responsibility to
17 prevent anti-competitive behaviour with respect to midstream and
18 downstream petroleum operations and may take any or a combination of the
19 following actions-

Power to prevent
anti-competitive
behaviour

20 (a) monitor and determine whether any conduct by a licensee or
21 any other person operating or intending to operate in midstream and
22 downstream petroleum operations-

23 (i) has the purpose or effect of substantially lessening competition
24 in any segment of the midstream and downstream petroleum operations,

25 (ii) may likely result in anti-competitive or discriminatory
26 conduct, including an unlawful exercise of market power that may prevent
27 customers from obtaining the benefits of a properly functioning and
28 competitive market,

29 (iii) may amount to practices which reflect an apparent or probable
30 effect of crippling, excluding or deterring the entry of another person into

- 1 midstream and downstream petroleum operations, or
- 2 (iv) may likely be indicative of an abuse of dominant position in
- 3 respect of the provision of any service;
- 4 (b) consider how best to prevent or mitigate abuse of market power in
- 5 its decisions and determinations regarding matters including licence
- 6 applications, grant of licence, licence terms and conditions and the regulation
- 7 of prices for services in competitive markets; and
- 8 (c) where, in the opinion of the Authority there is or may be, anti-
- 9 competitive behaviour and in particular an abuse of market power, the
- 10 Authority shall-
- 11 (i) issue "cease and desist" orders as may be required,
- 12 (ii) require and compel the disclosure of information from licensees,
- 13 (iii) undertake inquiries and investigations, and
- 14 (iv) levy fines prescribed by regulations issued by the Authority,
- 15 which shall not exceed 5% of the annual turnover of the company for the
- 16 preceding year.
- 17 (2) Notwithstanding the provisions of this section, where the
- 18 Authority deems it to be in national interest or necessary to preserve or promote
- 19 the benefits of a functional and effective competitive market, the Authority
- 20 may, on the application by a licensee or other person with the ability to
- 21 influence the price of petroleum products-
- 22 (a) give written approval to the application upon such terms and
- 23 conditions and impose other requirements as it may deem appropriate; and
- 24 (b) issue directions to prevent or mitigate any conduct that shall or is
- 25 likely to lead to the unlawful exercise of market power that will prevent
- 26 customers from obtaining the benefits of a properly functioning and
- 27 competitive market.
- 28 (3) The Authority may at any time withdraw an approval granted
- 29 under subsection (2) of this section upon such terms and conditions as it may
- 30 deem appropriate.

1 **212.**-(1) The Authority may require the holder of a Licence to
2 maintain separation in management, accounting or legal entities of its
3 licenced or permitted activities, which may prohibit the holder of the
4 Licence from directly holding licences of another type.

Separation of
certain licenced
activities

5 (2) Licenced activities between a holder of a Licence and an
6 affiliate shall be undertaken in a manner that the transfer pricing between
7 both entities is undertaken on a transparent arm's length basis and in a
8 manner that reflects the pricing principles contained in sections 107 and 207
9 of this Act.

10 (3) A holder of a Licence shall not, without the prior written
11 consent of the Authority, directly or indirectly acquire an interest in,
12 purchase or merge with another holder of a licence or an affiliate of a holder
13 of a Licence.

14 **213.** A holder of a licence or permit shall not discriminate between
15 customers or classes of customers or their related undertakings or network
16 users in respect of access, tariffs, prices, conditions or standards of service
17 pursuant to the provisions of section 116 of this Act.

Non-discrimination
among customers

18 **214.** In the exercise of its powers under this Chapter, the Authority
19 may consider-

Considerations
for exercise of
the Authority's
powers

- 20 (a) the relevant economic market;
- 21 (b) global trends in the relevant economic market;
- 22 (c) the effect on the number of competitors in the market and their
23 respective market shares;
- 24 (d) the effect on barriers to entry into the market;
- 25 (e) the effect of any activity on the range of services in the market;
- 26 (f) the effect of the conduct on the cost and profit structures in the
27 market;
- 28 (g) the ability of any independent licensee or operator to make
29 price or Tariff regulating decisions; and
- 30 (h) any other matter which the Authority may deem relevant.

1 shall publish in at least two national newspapers with wide coverage and on
2 its website, notice of-

3 (a) the stakeholders' consultation;

4 (b) its invitation to lessees, licensees, permit holders and other
5 stakeholders to participate in the stakeholders' consultation;

6 (c) the venue and period during which the stakeholders'
7 consultation is to be held;

8 (d) the nature of the matter to which the stakeholders' consultation
9 relates;

10 (e) the matters upon which the Commission or Authority, as the
11 case may be, would require submissions;

12 (f) the form in which stakeholders are to make submissions on the
13 subject matter of the stakeholders' consultation;

14 (g) the period of notice for the commencement of the stakeholders'
15 consultation, which shall not be less than 21 days; and

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

17 (5) Notwithstanding the provisions of subsection (1) of this
18 section, the Commission or Authority may, in national interest and exigency
19 of the situation, issue a regulation without conducting a stakeholders'
20 consultation.

21 (6) A regulation made pursuant to subsection (5) of this section
22 shall be valid for not more than 1 year with effect from its commencement
23 date, except it is confirmed following a stakeholders' consultation
24 conducted in accordance with subsections (3) of this section.

25 (7) The Commission or Authority, as the case may be, shall fix a
26 date upon which the confirmed regulation under subsection (6) of this
27 section shall come into effect and cause the notice of that commencement
28 date to be published in at least two national newspapers with wide coverage
29 and on its website.

Contravention
and enforcement
of conditions of
leases, licences
or permits

1 **217.**-(1) Where it appears to the Commission or Authority that the
2 holder of a lease, licence or permit is contravening, has contravened or is likely
3 to contravene any of the conditions of the lease, licence or permit, the
4 Commission or Authority, as the case may be, may publish a notice in a
5 manner as it considers appropriate to draw the attention of other persons
6 affected or likely to be affected by the contravention or threatened
7 contravention of the lease, licence or permit-

8 (a) specifying the actual or potential contravention;

9 (b) directing the holder to do or not to do, the things specified;

10 (c) specifying the remedy and the timeframe for compliance; and

11 (d) notifying the holder of the Lease, Licence or Permit of its intention
12 to issue an Enforcement Order.

13 (2) The holder of the lease, licence or permit and any other interested
14 party shall be entitled to make representations against or in support of a notice
15 published pursuant to subsection (1) of this section on a date specified in the
16 notice.

17 (3) Where a holder of the lease, licence or permit fails to comply with
18 a notice published pursuant to subsection (1) of this section, the Commission or
19 Authority, as the case may be, may issue an enforcement order.

20 (4) The Commission or Authority may not issue an enforcement order
21 if the holder of the lease, licence or permit-

22 (a) is able to demonstrate to its satisfaction that it is not contravening
23 or about to contravene a condition of a lease, licence or permit; or

24 (b) has ceased to contravene a condition of the lease, licence or
25 permit,

26 provided that where the earlier contravention was deliberate, the Commission
27 or Authority, as the case may be, may, at its discretion, impose a penalty as
28 prescribed by Regulation.

29 (5) A holder of a lease, licence or permit who fails to comply with the
30 enforcement order under this section, commits an offence and the Commission

1 or Authority may suspend or revoke the lease, licence or permit of the liable
2 offender or impose any other penalty prescribed by regulations.

3 (6) The penalty issued pursuant to subsection (1) (b) of this section
4 may be reviewed in regulation, in order to reflect the effect of inflation.

5 (7) The Commission or Authority, as the case may be, may order
6 the sealing up of any premises whatsoever, including any facility or plant
7 engaged in petroleum operations, where there has been a contravention of
8 this Act or any regulation.

9 **218.** A person engaged in petroleum operations, which require a
10 lease, licence or permit by the Commission or Authority under this Act, shall
11 register its undertaking with the Commission or Authority, as the case may
12 be and provide information concerning the activities of the undertakings as
13 may be prescribed in regulations.

Mandatory
registration

14 **219.**-(1) The Commission and Authority shall establish, maintain
15 and make publicly available, a register of leases, licences, permits and
16 authorisations, issued, revoked, suspended, surrendered or withdrawn and
17 any modification or exemption granted in respect of any lease, licence,
18 permit or authorisation pursuant to this Act.

Register of
licences,
permits and
authorisation

19 (2) The officer registering the issuance of any instrument as
20 provided under subsection (1) of this section shall require an
21 acknowledgement of the receipt of a copy of such instrument from the
22 person receiving it in such form as may be prescribed by regulation.

23 **220.**-(1) A lease, licence, permit or authorisation and any
24 exemption granted under this Act shall be prepared in duplicate, one copy
25 shall be delivered to the holder of the lease, licence, permit or authorisation
26 and the other copy to be retained by the Commission or Authority which
27 shall be bound up in a book of the appropriate series within its register and
28 serially numbered.

Preparation of
licences, permits
and authorisations

29 (2) The register referred to in section 219 of this Act shall also be
30 kept in an electronic format and soft copies of individual leases, licences,

1 permits, authorisations or exemptions shall be forwarded to the holder of a
2 lease, licence, permit or authorisation.

3 (3) The Commission or Authority, as the case may be, shall cause a
4 licence, permit or authorisation to be prepared upon payment of the requisite
5 fees.

6 (4) The officer registering a lease, licence, permit or authorisation or
7 exemption under subsection (1) shall require an acknowledgement of the
8 receipt of the copy of the lease, licence, permit or authorisation or exemption
9 from the person accepting such lease, licence, permit or authorisation or
10 exemption in such form as may be prescribed by regulations.

Effective date
and authentication
of licences, permits
and authorisations

11 **221.**-(1) The lease, licence, permit or authorisation or any exemption
12 shall be authenticated under the seal of the Commission or Authority, as the
13 case may be and the validity of the lease, licence, permit or authorisation or any
14 exemption shall commence from the date of its issuance.

15 (2) The date of issuance of any lease, licence, permit or authorisation
16 or any exemption shall be inscribed on the lease, licence, permit or
17 authorisation or any exemption.

Register of
memorials

18 **222.** The Commission or Authority, as the case may be, shall enter in
19 the appropriate register a memorial of any extension, transfer, surrender,
20 revocation, exemption, relinquishment, change of address, change of name or
21 any other matter affecting the status of or any interest in any Lease, Licence,
22 Permit or Authorisation registered under this Chapter together with the date of
23 such entry.

Register of
interests

24 **223.** The Commission or Authority, as the case may be, shall
25 establish and maintain a register in which particulars of any interest or shares
26 transferred or assigned are recorded by the Commission or Authority and the
27 register shall be updated in relation to any change in the status of such interest
28 or shares transferred or assigned.

Effect of
registration

29 **224.** A lease, licence, permit or authorisation registered under this
30 Chapter shall, subject to the provisions of this Act, be conclusive evidence-

1 (a) that the rights described in the lease, licence, permit or
2 authorisation are vested in the person named as the holder of the lease,
3 licence, permit or authorisation; and

4 (b) of the conditions and other provisions to which the holder of the
5 lease, licence, permit or authorisation is subject under this Act.

6 **225.**-(1) The registry and the registers required pursuant to sections
7 219, 222 and 223 of this Act shall be readily accessible to the public during
8 the hours and upon the days designated by the Commission or Authority, as
9 the case may be.

Public access to
the registry

10 (2) The Commission and Authority shall maintain an up-to-date
11 electronic form of the registers required under sections 219, 222 and 223 of
12 this Act on its website, which may be accessed for free by any member of the
13 public.

14 (3) A member of the public shall, upon the payment of prescribed
15 fees, be entitled to obtain a certified true copy of any document or record
16 contained in the registers referred to in sections 219, 222 and 223 of this Act.

17 **226.**-(1) Any matter which requires the Commission's or
18 Authority's approval under this Act or under any regulation, shall be
19 approved or rejected within the time limit specified in this Act or in any
20 Regulation issued by the Commission or the Authority.

Default approvals

21 (2) Where no time limit has been specified under this Act or in any
22 applicable Regulation, the time limit referred to in subsection (1) of this
23 section shall be 60 days.

24 (3) The Commission or Authority shall reject an application within
25 the stipulated time limit with reasons and any rejected application shall be
26 tracked and accurate record of it kept.

27 (4) Default approvals shall be recorded in the appropriate register
28 by the Commission or Authority.

29 **227.**-(1) Where a director or employee of the Commission or
30 Authority, in the course of his duties, acquires information relating to the

Disclosure of
confidential or
other information

1 financial affairs of any person or to any commercial secret or where any other
2 person indirectly acquires such or other information required to be kept
3 confidential under the provisions of this Act from any director or employee of
4 the Commission or Authority, he shall not make use of such information for any
5 unauthorised or unofficial purpose nor disclose it to any other person except-

6 (a) for the purpose of legal proceedings under this Act or any other
7 law; and

8 (b) to the extent that it may be necessary to do so for the purpose of
9 this Act or any other law;

10 (2) A director or employee of the Commission or Authority shall not,
11 for personal gain, make use of any information acquired by him in the course of
12 his duties within a period of 5 years after the date on which he ceased to be a
13 director or employee.

14 (3) Any person who contravenes subsection (1) of this
15 section commits an offence and is liable on conviction to the forfeiture of any
16 proceeds accruing to him on account of the contravention and to a fine or other
17 sanctions prescribed in regulation.

Offences

18 **228.**-(1) A person shall not-

19 (a) obstruct or assault any officer of the Commission or Authority or
20 any person authorised by the Commission or Authority in the exercise of the
21 powers conferred on the Commission or Authority under this Act;

22 (b) refuse any officer of the Commission or Authority or any person
23 authorised by the Commission or Authority, as the case may be, access to any
24 premises, facilities or retail outlets or refuse to submit to a search of any
25 premises, facilities or retail outlets by any authorised officer or agent of the
26 Commission or Authority; or

27 (c) fail to comply with any lawful demand, notice or order of an
28 officer or authorised person of the Commission or Authority in the execution of
29 the officer's duties under this Act.

30 (2) A person shall not-

1 (a) engage in any petroleum operations without a valid lease,
2 licence or permit where such lease, licence or permit is required under this
3 act;

4 (b) unlawfully remove, destroy or damage any facility used for
5 petroleum operations;

6 (c) furnish a statement or incomplete information calculated to
7 mislead or wilfully delay or obstruct the Commission or Authority and its
8 officers in the exercise of their duties;

9 (d) obstruct or fail to cooperate with the Commission or Authority
10 in its investigation of any suspected crime or corrupt practice;

11 (e) act in breach of any relevant network code, where applicable to
12 such person or in violation of the provisions of this Act in relation to the
13 allocation of available capacity, access and payment of tariffs in respect of
14 the use of any facility or infrastructure; or

15 (f) use or permit its facility, infrastructure or equipment to be used
16 for or in relation to the Commission or Authority of any offence.

17 **229.**-(1) A person who violates the provisions of section 228 of this Act commits an offence and is liable on conviction to a fine prescribed in
18 regulations. Penalties

20 (2) Where an offence has been committed under the provisions of
21 section 228 (2) (b) of this Act, the person who committed the offence shall
22 discontinue the operations of the affected infrastructure, facility or
23 equipment until any damage, alteration, malfunction or loss has been
24 rectified and all safety issues have been resolved.

25 (3) The Commission or Authority, as the case may be, may by
26 regulation, where necessary, review the amount of the penalty stipulated in
27 subsection (1) of this section to reflect the effect of inflation.

28 **230.** A person who-

29 (a) fails or refuses to furnish, return or supply information to the
30 Commission or Authority or any other lawful authority at the time and in the

Refusal to furnish,
return or supply
information

- 1 manner prescribed;
- 2 (b) furnishes a false or incomplete return;
- 3 (c) supplies false or incomplete information;
- 4 (d) wilfully delays or obstructs the Commission or Authority, its
- 5 officers and agents, police officers and other law enforcement officers in the
- 6 exercise of the powers or duties conferred or imposed on the Commission or
- 7 Authority under this Act; or
- 8 (e) conceals, fails or refuses, without reasonable cause, to supply
- 9 information required by the Commission or Authority or any duly empowered
- 10 lawful authority at the time and in the manner prescribed or when required to do
- 11 so,
- 12 commits an offence and is liable to a fine or a term of imprisonment as may be
- 13 prescribed in regulation.
- 14 **231.**-(1) The Commission or Authority, as the case may be, may
- 15 assess a penalty in the prescribed amount against any person for prescribed
- 16 contraventions of this Act, regulations or an order made pursuant to this Act.
- 17 (2) Prior to assessing a penalty, the Commission or Authority, as the
- 18 case may be, shall provide notice to the person -
- 19 (a) setting out the facts and circumstances that makes the person liable
- 20 to a penalty;
- 21 (b) specifying the amount of the penalty that is considered appropriate
- 22 in the circumstances; and
- 23 (c) informing the person of the person's right to make representations
- 24 to the Authority or Commission, as the case may be.
- 25 (3) A Person to whom notice is sent pursuant to subsection (2) of this
- 26 section may make representations to the Commission or Authority, as the case
- 27 may be, in respect of whether or not a penalty should be assessed and the
- 28 amount of the penalty.
- 29 (4) Representations subsection (3) of this section shall be made

Power to issue
administrative
penalties

1 within 30 days after the person received the notice under subsection (2) of
2 this section.

3 (5) After considering any representations made pursuant to
4 subsection (3) of this section, the Authority or Commission, as the case may
5 be, may:

6 (a) assess a penalty and set a date by which the penalty is to be paid
7 in full; or

8 (b) determine that no penalty should be assessed.

9 (6) The Authority or Commission, as the case may be, shall serve a
10 copy of its decision pursuant to subsection (5) of this section on the person
11 who made the representations.

12 **232.**-(1) The decommissioning and abandonment of onshore and
13 offshore petroleum wells, installations, structures, utilities, plants and
14 pipelines for petroleum operations shall be conducted in accordance with-

Abandonment,
decommissioning
and disposal

15 (a) good international petroleum industry practice; and

16 (b) guidelines issued by the Commission or Authority, as the case
17 may be, provided that the guidelines shall meet the standards prescribed by
18 the international maritime organisation on offshore petroleum installations
19 and structures.

20 (2) A decommissioning and abandonment shall not take place
21 without the written approval of the Commission or Authority, as the case
22 may be.

23 (3) The Commission or Authority, as the case may be, shall by
24 written notice, require a lessee, licensee or permit holder to commence the
25 decommissioning and abandonment of a well, installation, structure, utility
26 and pipeline, where such decommissioning and abandonment is required
27 under good international petroleum industry practices or the guidelines.

28 (4) In production sharing contracts or any other contractual
29 arrangement pursuant to section 84(2) of this Act responsibilities and
30 liabilities relating to decommissioning and abandonment as specified in this

1 section and section 233 of this Act shall apply to the licensee or lessee as
2 contractor.

3 (5) A licensee or lessee may by written notice inform the Commission
4 or Authority, as the case may be, of its intention to decommission or abandon.

5 (6) Upon a notice in subsection (5) of this section, the lessee or
6 licensee, shall prior to any decommissioning and abandonment, submit to the
7 Commission or Authority, as the case may be, a programme setting out-

8 (a) estimate of the cost of the proposed measures;

9 (b) details of measures proposed to be taken in connection with the
10 shutdown of operations and decommissioning and abandonment of disused
11 installations, structures or other assets used in petroleum operations as the case
12 may be;

13 (c) clear descriptions of the methods to be employed to undertake the
14 work programme, which shall be in line with good international petroleum
15 industry practices and environmental development;

16 (d) steps to be taken to ensure maintenance and safeguard, where any
17 installation, structure or pipeline remained disused and in position or are to be
18 partly removed with respect to deep and ultra-deep water environment and
19 where the installation, structure or pipeline is partly removed, the licensee or
20 lessee shall remain liable for any residual liability arising from the installation,
21 structure or pipeline not removed; and

22 (e) assessment of the environmental and social impact of the
23 decommissioning and abandonment measures.

24 (7) Onshore installations and structures shall be completely removed
25 and the environment restored to its original condition, except for buried
26 transportation pipelines and gathering lines.

27 (8) Except for the abandonment of wells, upon the submission of a
28 decommissioning and abandonment programme by the licensee or lessee to the
29 Commission or Authority, as the case may be, consultations shall be made with
30 interested parties and other relevant public authorities and bodies.

1 (9) The programme referred to in subsection (6) of this section
2 shall not be approved unless relevant environmental, technical and
3 commercial regulations or standards are complied with.

4 (10) Prior to the approval of an application or programme for
5 decommissioning and abandonment, the Commission or Authority, as the
6 case may be, shall ensure that-

7 (a) considerations and recommendations are taken in the light of
8 individual circumstances;

9 (b) the potential for reuse of a transportation pipeline together with
10 other existing facility in connection with further hydrocarbon developments
11 is considered before decommissioning;

12 (c) all feasible decommissioning options have been considered and
13 a comparative assessment made;

14 (d) any removal or partial removal of an installation, structure or
15 transportation pipeline is to be performed in a manner that guarantees
16 sustainable environmental development; and

17 (e) any recommendation to leave an installation, structure or
18 gathering line in place is made with regard to its likely deterioration and to
19 the present, possible and future effects on the environment and in the case of
20 offshore installations and structures, consistent with the applicable good
21 international petroleum industry practices.

22 (11) The Commission or Authority, as the case may be, shall
23 enforce compliance by any holder of a current licence or lease or a holder of
24 an expired Licence or Lease and who was responsible for the applicable
25 decommissioning and abandonment plan with respect to a licence or lease
26 that has expired, to carry out its remaining or unfulfilled decommissioning
27 and abandonment obligations under this Act.

28 (12) In archiving and maintaining the database of installations,
29 structures and assets set out in subsection (14) of this section the
30 Commission or Authority, as the case may be, shall prescribe the manner and

1 method in which the data shall be submitted by operators.

2 (13) The Commission or Authority, as the case may be, may recall a
3 licensee or lessee responsible for a decommissioning and abandonment
4 programme with respect to a licence or lease that has expired or is surrendered
5 or a licensee or lessee that has transferred or divested its interest or equity, to
6 carry out an obligation under this Act.

7 (14) The Commission or Authority, as the case may be, shall ensure
8 that a list of the installations, structures and pipelines onshore and offshore
9 Nigeria used for petroleum operations and their current status is compiled and
10 made available or accessible to the public annually.

Decommissioning
and abandonment
fund

11 **233.**-(1) Each lessee and licensee shall set up and maintain a
12 decommissioning and abandonment fund, which shall be held by a financial
13 institution that is not an affiliate of the lessee or licensee.

14 (2) The decommissioning and abandonment fund shall only be used
15 to pay for decommissioning and abandonment costs.

16 (3) Where a lessee or a licensee fails to comply with the
17 decommissioning and abandonment plan, the decommissioning and
18 abandonment fund shall be accessed by the Commission or Authority, as the
19 case may be, to pay for the performance by a third party of such lessee's or
20 licensee's obligations pursuant to section 232 of this Act.

21 (4) The amounts to be contributed to the decommissioning and
22 abandonment fund shall be based on the following-

23 (a) with respect to upstream petroleum operations, on the
24 decommissioning and abandonment plan approved by the Commission in the
25 field development plan required by Section 79 (2) of this Act and where-

26 (i) no decommissioning and abandonment plan exists, and

27 (ii) a Field is in development or producing,

28 the lessee shall submit a decommissioning and abandonment plan based on the
29 criteria established in section 232 (6) of this Act within 1 year of the effective
30 date, which when approved by the Commission, shall form the basis of the

1 computation of the amount to be contributed by the lessee; and

2 (b) with respect to midstream petroleum operations, on the
3 decommissioning and abandonment plan submitted pursuant to section
4 111(3) of this Act and where no such plan exists, the licensee shall submit a
5 decommissioning and abandonment plan to the Authority based on the
6 criteria established in section 232 (6) of this Act within 1 year of the effective
7 date, which once approved by the Authority shall form the basis of the
8 computation of the amount to be contributed by the licensee.

9 (5) The decommissioning and abandonment plan shall establish
10 the yearly amount to be contributed to the respective decommissioning and
11 abandonment fund and the yearly amount shall be based on a reasonable
12 estimate by the licensee or lessee of the applicable decommissioning and
13 abandonment costs, projected forward on a nominal basis and divided by the
14 estimated life of the facilities and the reasonable cost estimate shall be
15 approved by the Commission or Authority, as the case may be.

16 (6) The estimated life of the facilities referred to in subsection (5)
17 of this section shall be based on the-

18 (a) estimated life of the Field, in case of facilities used for upstream
19 petroleum operations, and

20 (b) period of time for which the safe operations of the facilities
21 were designed, in case of facilities used for midstream petroleum
22 operations.

23 (7) The estimated yearly contribution pursuant to subsection (5) of
24 this section shall be reviewed every 10 years following the first submission.

25 (8) A decommissioning and abandonment fund shall be funded by
26 the applicable Licensee or lessee based on the yearly amount established in
27 subsection (5) of this section and as provided in regulation.

28 (9) A licensee or lessee shall-

29 (a) inform the Commission or Authority, as the case may be, of the
30 establishment of its decommissioning and abandonment fund not more than

1 3 months from the date of commencement of production for upstream
2 petroleum operations or the commissioning of the facilities for midstream
3 petroleum operations; and

4 (b) furnish the Commission or Authority, as the case may be, on an
5 annual basis with statements of accounts with respect to its decommissioning
6 and abandonment fund.

7 (10) The decommissioning and abandonment fund shall be used
8 exclusively for the purposes of decommissioning and abandonment of
9 structures and facilities as provided in this section.

10 (11) Where the licensee or lessee is party to a production sharing or
11 farm out agreement pursuant to section 84 (1) of this Act with one or more third
12 parties, a decommissioning and abandonment plan funded in whole or in part
13 by the applicable third parties shall be provided for in the applicable production
14 sharing or farm out agreement.

15 (12) From the effective date, contributions to the decommissioning
16 and abandonment Fund shall be eligible for cost recovery and shall be tax
17 deductible, provided that decommissioning and abandonment costs disbursed
18 from the decommissioning and abandonment fund shall not be eligible for cost
19 recovery or deductible for tax purposes.

20 (13) Where there is excess in the decommissioning and abandonment
21 fund after the decommissioning and abandonment has been carried out and
22 approved by the Commission or the Authority, as the case may be, the excess
23 shall be considered income for production sharing or tax purposes and the
24 amount after the withholding of profit oil and any tax shall be returned to the
25 licensee or lessee.

26 CHAPTER THREE

27 HOST COMMUNITIES DEVELOPMENT

Objectives and
regulations

28 **234.**-(1) The objectives of this Chapter are to-

29 (a) foster sustainable prosperity within host communities;

30 (b) provide direct social and economic benefits from petroleum

1 operations to host communities;

2 (c) enhance peaceful and harmonious co-existence between
3 licensees or lessees and host communities; and

4 (d) create a framework to support the development of host
5 communities.

6 (2) The Commission and Authority may make regulations with
7 respect to this Chapter on areas within their competence and jurisdiction as
8 specified in this Act.

9 **235.**-(1) Settlor shall incorporate a trust for the benefit of the host
10 communities for which the settlor is responsible ("host community
11 development trust").

Incorporation of
host communities
development
trusts

12 (2) Where there is a collectivity of settlors operating under a joint
13 operating agreement with respect to upstream petroleum operations, the
14 operator appointed under the agreement shall be responsible for compliance
15 with this Chapter on behalf of the Settlers.

16 (3) For settlors operating in shallow water and deep offshore, the
17 littoral communities and any other community determined by the settlors
18 shall be host communities for the purposes of this Act.

19 (4) The settlor shall for the purposes of setting up the trust, appoint
20 and authorise a body trustees (the " Board of Trustees"), which shall apply to
21 be registered by the Corporate Affairs Commission as a corporate body
22 under the Companies and Allied Matters Act in the manner provided under
23 this Chapter.

24 (5) The name of the corporate body to be registered by the Board
25 of Trustees shall contain the phrase "host communities development trust".

26 (6) The Commission or the Authority, as the case may be, shall-

27 (a) make regulations on the administration, guide and safeguard
28 the utilisation of the trust fund; and

29 (b) have the oversight responsibility for ensuring that the projects
30 proposed by the board of trustees are implemented.

1 (7) The Settlor shall undertake needs assessment that the
 2 metamorphose into the Community Development Plan for the purpose of
 3 determining the projects to be undertaken by the Host Communities
 4 Development Trust.

Timeframe for
 incorporation of
 host communities
 development trust

5 **236.** The host communities development trust shall be incorporated-
 6 (a) within 12 months from the effective date for existing oil mining
 7 leases;
 8 (b) within 12 months from the effective date for existing designated
 9 facilities;
 10 (c) within 12 months from the effective date for existing for new
 11 designated facilities under construction on the effective date;
 12 (d) prior to the application for field development plan for existing oil
 13 prospecting licences;
 14 (e) prior to the application for field development plan for petroleum
 15 prospecting licences and petroleum mining leases granted under this Act; and
 16 (f) prior to commencement of commercial operations for licensees of
 17 designated facilities granted under this Act.

Transfer of
 settlor's interest
 and obligations
 subject to host
 communities
 development
 trust obligation

18 **237.**-(1) Subject to the provisions of this Act, where the whole or part
 19 of an interest in a licence or lease governed by this Act is assigned, novated or
 20 otherwise transferred to another party, the legal and equitable interest, rights
 21 and obligations of the transferor in relation to any associated host community
 22 development plan and host community development trust, shall be deemed to
 23 attach to the property to be transferred to the transferee, the legal and equitable
 24 interests, rights and obligations of the transferor shall be deemed to become the
 25 interests, rights and obligations of the transferee.

26 (2) Where part of a licence or lease governed by this Act is
 27 surrendered pursuant to the provisions of this Act, the holder or holder nominee
 28 will continue to discharge its surviving obligations, notwithstanding that the
 29 area that is surrendered may be granted to a new lessee or licensee.

30 (3) Where any licence or lease governed by this Act is revoked,

1 terminated or expired, the holder will continue to discharge its surviving
2 obligations, notwithstanding that the area revoked, terminated or expired
3 may be granted to a new lessee or licensee.

4 **238.** Failure by any holder of a licence or lease governed by this Act Failure to
5 to comply with its obligations under this Chapter may be grounds for incorporate host
6 revocation of the applicable licence or lease. communities
development trust

7 **239.**-(1) The Constitution of the host communities development Objectives of host
8 trust shall allow the host communities development trust to manage and communities
9 supervise the administration of the annual contribution of the Settlor development trust
10 contemplated under this Chapter and any other sources of funding.

11 (2) The objectives of the host communities development trust shall
12 be specified in the constitution as set out in paragraphs (a) to (e) of
13 subsection (3) of this section.

14 (3) The objectives of the host community development trust shall
15 include, to-

16 (a) finance and execute projects for the benefit and sustainable
17 development of the host communities;

18 (b) undertake infrastructural development of the host communities
19 within the scope of funds available to the Board of Trustees for such
20 purposes;

21 (c) facilitate economic empowerment opportunities in the host
22 communities;

23 (d) advance and propagate educational development for the benefit
24 of members of the host communities;

25 (e) support healthcare development for the host communities;

26 (f) support local initiatives within the host communities, which
27 seek to enhance protection of the environment;

28 (g) support local initiatives within the host communities which
29 seek to enhance security;

30 (h) invest part of available fund for and on behalf of the host

1 communities; and

2 (i) assist in any other developmental purpose deemed beneficial to the
3 host communities as may be determined by the Board of Trustees.

4 (4) Notwithstanding the provisions of this Act relating to funding of
5 the trust fund, nothing shall preclude the host communities from their
6 entitlements under any other law.

Sources of funding
for petroleum host
communities
development
trust

7 **240.**-(1) The constitution of each host community development trust
8 shall establish a fund comprising of one or more accounts ("host community
9 development trust fund") to be funded pursuant to this section.

10 (2) Each settlor, where applicable through the operator, shall make an
11 annual contribution to the applicable host community development trust fund
12 of an amount equal to 2.5% of its actual operating expenditure in the
13 immediately preceding calendar year in respect of all petroleum operations
14 affecting the host communities for which the applicable host community
15 development trust was established.

16 (3) Each host community development trust may receive donations,
17 gifts, grants or honoraria that are provided to such host community
18 development trust for the attainment of its objectives.

19 (4) Profits and interest accruing to the reserve fund of a host
20 community development trust shall also be contributed to the applicable host
21 community development trust fund.

Matters on which
the funds may be
utilised

22 **241.** The constitution of each host community development trust shall
23 provide that the applicable host community development trust fund be used
24 exclusively for the implementation of the applicable host community
25 development plan.

The Board of
trustees,
composition,
management, etc.

26 **242.**-(1) The constitution of the host communities development trust
27 shall contain provisions requiring the Board of Trustees to be set up by the
28 settlor, who shall determine its membership and the criteria for their
29 appointment, provided that the membership of the Board of Trustees of the host
30 communities development trust shall be subject to the approval of the

1 Commission or the Authority, as the case may be.

2 (2) The settlor shall, in the determination of membership of the
3 Board of Trustees, include persons of high integrity and professional
4 standing, who may not necessarily come from any of the host communities.

5 (3) The settlor shall determine-

6 (a) the selection process, procedure for meeting, financial
7 regulations and administrative procedures of the Board of Trustees

8 (b) the remuneration, discipline, qualification, disqualification,
9 suspension and removal of members of the Board of Trustees; and

10 (c) other matters other than the above relating to the operation and
11 activities of the Board of Trustees.

12 (4) Each member of the Board of Trustees shall serve a term of 4
13 years in the first instance and may be reappointed for another term of 4 years
14 and no more.

15 (5) The Board of Trustees shall have a secretary, who shall be
16 appointed by the settlor to keep the books of the Board.

17 **243.** The Board of Trustees shall be responsible for the general
18 management of the host communities development trust and shall be
19 responsible for-

Duties and
functions of the
Board of Trustees

20 (a) determining the criteria, process and proportion of the host
21 communities development trust fund to be allotted to specific development
22 programs;

23 (b) approving the projects for which the host communities
24 development trust fund shall be utilised;

25 (c) providing general oversight of the projects for which the host
26 communities development trust fund shall be utilised;

27 (d) approving the appointment of fund managers for purposes of
28 managing the reserve fund;

29 (e) set up the management committee of the host communities
30 development trust and appoint its members; and

	1	(f) determining the allocation of funds to host communities based on
	2	the matrix provided by the settlor.
Allocation of funds	3	244. The Board of Trustees shall in each year and pursuant to section
	4	240 of this Act allocate from the host communities development trust fund, a
	5	sum equivalent-
	6	(a) 75% to the capital fund out of which the Board of Trustees shall
	7	make disbursements for projects in each of the host community as may be
	8	determined by the management committee in furtherance of the objectives set
	9	out in section 234 of this Act, provided that any sums not utilised in a given
	10	financial year shall be rolled over and utilized in subsequent year;
	11	(b) 20% to the reserve fund, which sums shall be invested for the
	12	utilisation of the host community development trust whenever there is a
	13	cessation in the contribution payable by the settlor; and
	14	(c) to an amount not exceeding 5% to be utilised solely for
	15	administrative cost of running the trust and special projects, which shall be
	16	entrusted by the Board of Trustee to the settlor, provided that at the end of each
	17	financial year, the settlor shall render a full account of the utilisation of the fund
	18	to the Board of Trustees and where any portion of the Fund is not utilised in a
	19	given year, it shall be returned to the capital fund.
Matrix for distribution of trust fund	20	245. -(1) The settlor shall provide to the Board of Trustees a matrix for
	21	distribution of the trust fund to the host communities.
	22	(2) The Board of Trustees shall utilize the matrix provided under
	23	subsection (1) of this section for distribution of the funds in the host
	24	communities development trust fund to each of its host communities.
Engagement of fund managers	25	246. -(1) The Board of Trustees shall engage a Fund Manager to
	26	invest the reserve fund as the fund accrues.
	27	(2) The Board of Trustees shall manage the interest and profits
	28	accruable from the investment of the reserve fund and allocate the gain in
	29	accordance with section 244 of this Act.

1 **247.**-(1) The constitution of the host communities development
2 trust shall contain provisions requiring the Board of Trustees to set up a
3 management committee for the host communities development trust. Management
committee,
composition,
powers, etc.

4 (2) The membership of the management committee shall
5 comprise-

6 (a) one representative of each host community, who shall be
7 nominated by the host community as a non-executive member; and

8 (b) executive members, selected by the board of trustees, who shall
9 be Nigerians of high integrity and professional standing, who may not
10 necessarily be from any of the host communities and the number of
11 executive members shall be determined by the settlor.

12 (3) A person appointed under paragraphs (a) and (b) of subsection
13 (2) of this section, shall serve a term of 4 years in the first instance and may
14 be reappointed for another term of 4 years and no more.

15 (4) The Board of Trustees shall in accordance with the host
16 communities development trust determine-

17 (a) the selection process, procedure for meetings, financial
18 regulations and administrative procedures of the management committee;

19 (b) the remuneration, discipline, qualification, disqualification,
20 suspension and removal of members of the management committee; and

21 (c) any other matter relating to the operations and activities of the
22 management committee.

23 (5) The management committee shall have a secretary, who shall
24 be appointed by the settlor to keep the books of the committee.

25 **248.** The management committee shall be responsible for the
26 general administration of the host communities development trust on an ad
27 hoc basis and be responsible for the- Duties and
functions of the
management
committee

28 (a) preparation of the budget of the host communities development
29 trust and submit it to the Board of Trustees for approval;

30 (b) development and management of the contracting process for

1 project award on behalf of the host communities development trust subject to
2 approval of the Board;

3 (c) determination of project award winners and contractors to execute
4 projects on behalf of the host communities development trust through a
5 transparent process subject to approval of the Board;

6 (d) supervision of projects execution;

7 (e) nomination of fund managers for appointment by the Board of
8 Trustees for approval, to manage the reserve fund;

9 (f) reporting on the activities of the management committee,
10 contractors and other service providers to the Board of Trustees; and

11 (g) undertaking of any other function and duty that may be assigned to
12 it by the Board of Trustees to enhance the performance of the host communities
13 development trust.

Host community
advisory committee,
composition, etc.

14 **249.**-(1) The constitution of the host communities development trust
15 shall contain provisions mandating the management committee to require each
16 host community to set up an advisory committee ("Host Community Advisory
17 Committee").

18 (2) The management committee shall in accordance with the
19 constitution of the host community development trust, determine-

20 (a) the selection process, procedure for meetings, financial
21 regulations and administrative procedures of the host community advisory
22 committee;

23 (b) the remuneration, discipline, qualification, disqualification,
24 suspension and removal of members of the host community advisory
25 committee; and

26 (c) any other matter relating to the operations and activities of host
27 community advisory committee.

28 (3) Decisions of the management committee with respect to
29 subsection (2) of this section shall be subject to the approval of the Board.

- 1 **250.** The host community advisory committee shall perform the
2 following functions- Duties and
functions of the
host community
advisory committee
- 3 (a) nominate member to represent the host communities on the
4 management committee;
- 5 (b) articulate community development projects to be transmitted to
6 the management committee;
- 7 (c) monitor and report progress of projects being executed in the
8 community to the management committee;
- 9 (d) advise the management committee on activities that may lead
10 to improvement of security of infrastructure and enhancement of peace-
11 building within the community and the entire area of operation; and
- 12 (e) take responsibility for first line protection of facilities and
13 ensure that petroleum operations are uninterrupted by members of their
14 community failing which, benefits from the trust to the host community
15 shall be disallowed.
- 16 **251.**-(1) The settlor shall after the grant of any licence or lease Host community
needs assessment
17 issued pursuant to this Act, conduct a needs assessment ("Host Community
18 Needs Assessment") in accordance with this Act and regulations made
19 pursuant to this Act.
- 20 (2) Each host community needs assessment shall, from a social,
21 environmental, and economic perspective-
- 22 (a) determine the specific needs of each affected host community;
- 23 (b) ascertain the effect that the proposed petroleum operations
24 might have on the host community; and
- 25 (c) provide a strategy for addressing the needs and effects
26 identified.
- 27 (3) Each host community needs assessment shall show that the
28 settlor has-
- 29 (a) engaged with each affected host community to understand the
30 issues and needs of such host community;

1 (b) consulted with and considered the reasonable concerns of women,
2 youth and community leaders; and

3 (c) engaged with each affected host community in developing a
4 strategy to address the needs and effects identified in the applicable Host
5 community needs assessment.

6 (4) The settlor shall develop a host community development plan and
7 shall submit to the Commission or Authority, as the case may be, based on the
8 findings of the host community needs assessment, in order to undertake its
9 oversight function preparatory to the establishment of the trust.

Contents of host
community
development
plans

10 **252.** The host community development plan shall-

11 (a) specify the community development initiatives required to
12 respond to the findings and strategy identified in the host community needs
13 assessment;

14 (b) determine and specify the projects to implement the specified
15 initiatives;

16 (c) provide a detailed timeline for projects;

17 (d) determine and prepare the budget of the host community
18 development plan;

19 (e) set out the reasons and objectives of each project as supported by
20 the host community needs assessment;

21 (f) conform with the Nigerian content requirements provided in the
22 Nigerian Oil and Gas Industry Content Development Act; and

23 (g) provide for ongoing review and reporting to the Commission.

Financial year
of the host
communities
development
trust

24 **253.** The financial year of the host communities development trust
25 shall commence on the 1st day of January and end on the 31st December of
26 each year or any other date set for this purpose by the Board of Trustees.

Accounts and
audit

27 **254.** The constitution of the host communities development trust shall
28 contain provisions requiring the Board of Trustees to-

29 (a) keep account of the financial activities of the host communities
30 development trust; and

1 (b) appoint auditors to audit the accounts of the host communities
2 development trust annually.

3 **255.** The constitution of the host communities development trust Mid-year and
4 shall contain provisions requiring the- annual reports

5 (a) management committee to submit a mid-year report of its
6 activities to the Board of Trustees not later than 31st of August of the
7 particular year;

8 (b) management committee to submit an annual report
9 accompanied by its audited account to the Board of Trustees not later than
10 28th of February of the succeeding year;

11 (c) Board of Trustees to submit an annual report of the activities of
12 the host communities development trust accompanied by its audited account
13 to the settlor not later than 31st of March of the particular year; and

14 (d) settlor to submit an annual report of the activities of the host
15 community development trust accompanied by its audited account to the
16 Commission or Authority, as the case may be, not later than 31st of May of
17 the particular year.

18 **256.** The funds of the host communities development trust created Exemption from
19 pursuant to this Act shall be exempted from taxation. income tax

20 **257.**-(1) Any payment made by the settlor pursuant to section Deduction of
21 240(2) of this Act, shall be deductible for the purposes of hydrocarbon tax payment for
22 and companies income tax as applicable. petroleum host
community
development

23 (2) Where in any year, an act of vandalism, sabotage or other civil
24 unrest occurs that causes damage to petroleum and designated facilities or
25 disrupts production activities within the host community, the community
26 shall forfeit its entitlement to the extent of the cost of repairs of the damage
27 that resulted from the activity with respect to the provisions of this Act
28 within that financial year.

29 (3) The basis for computation of the trust fund in any year shall
30 always exclude the cost of repairs of damaged facilities attributable to any

1 act of vandalism, sabotage or other civil unrest.

2 CHAPTER FOUR

3 PETROLEUM INDUSTRY FISCAL FRAMEWORK

4 PART I

5 OBJECTIVES AND ADMINISTRATION

Objectives

6 **258.** The objectives of this Chapter are to-

7 (a) establish a progressive fiscal framework that encourages
8 investment in the Nigerian petroleum industry, balancing rewards with risk and
9 enhancing revenues to the Federal Government of Nigeria;

10 (b) provide a forward-looking fiscal framework that is based on core
11 principles of clarity, dynamism and fiscal rules of general application;

12 (c) establish a fiscal framework that expands the revenue base of the
13 Federal Government, while ensuring a fair return for investors;

14 (d) simplify the administration of petroleum tax; and

15 (e) promote equity and transparency in the petroleum industry fiscal
16 regime.

Administration

17 **259.** From the commencement of this Act, the administration and
18 collection of Government revenue in the petroleum industry shall be the
19 function of the Federal Inland Revenue Service (the Service) and the
20 Commission as follows-

21 (a) the Service shall be responsible for the assessment and collection
22 of-

23 (i) hydrocarbon tax and enforcement of the provisions of this Act as it
24 relates to hydrocarbon tax assessment and revenue collection, and

25 (ii) companies income tax and tertiary education tax in accordance
26 with this Act as it relates to taxable petroleum operations;

27 (b) The Commission shall be responsible for the determination and
28 collection of-

29 (i) rents and royalties and its enforcement under this act; and

30 (ii) related payments or production shares, where the model contract

1 includes provisions related to production sharing, profit sharing or risk
2 service provisions.

3 PART II

4 HYDROCARBON TAX

5 **260.**-(1) This part applies to companies engaged in upstream Application of
this Part
6 petroleum operations in the onshore, shallow water and deep offshore;
7 provided that the hydrocarbon tax under this part shall not apply to-

8 (a) associated and non-associated natural gas; and

9 (b) condensates and natural gas liquids produced from non-
10 associated gas in fields or gas processing plants, provided the related
11 volumes are determined at the measurement points or at the exit of the gas
12 processing plant, regardless of whether the condensates or natural gas
13 liquids are subsequently comingled with crude oil.

14 (2) Hydrocarbon tax shall apply to crude oil, condensates and
15 natural gas liquids produced from associated gas.

16 (3) The costs of production of associated gas, upstream of the
17 measurement point shall be allocated to crude oil for the purposes of
18 calculating hydrocarbon tax, provided that costs solely attributable to
19 production of associated gas shall not be allocated to crude oil, but may be
20 claimed under the Companies Income Tax Act (CITA).

21 (4) This Part shall not apply to a frontier acreage until it is
22 reclassified pursuant to the provisions of subsection (3) of section 68 of this
23 Act.

24 (5) For the purpose of determining royalties, condensates shall be
25 treated as crude oil and natural gas liquids as natural gas.

26 (6) Upstream petroleum operations shall be subject to CITA.

27 **261.** There shall be levied upon the profits of any company Charge of
hydrocarbon tax
28 engaged in upstream petroleum operations in relation to crude oil a tax to be
29 known as hydrocarbon tax, which shall be charged and assessed upon its
30 profits related to such operations and payable during each accounting period

1 in accordance with the provisions of this Act, provided that for production
2 sharing contract executed prior to the commencement of this Act and converted
3 pursuant to section 92 of this Act, hydrocarbon tax shall be charged and
4 assessed separately on the profits from each and every petroleum mining lease
5 and payable during each accounting period in accordance with the provisions
6 of this Act.

Ascertainment
of crude oil
revenue, adjusted
profit, assessable
profits and
chargeable profits

7 **262.**-(1) Subject to the provisions of this Act, in relation to any
8 accounting period, the crude oil revenue of a company for that period shall be
9 the value of any chargeable oil adjusted to the measurement points, based on
10 the-

11 (a) proceeds of all chargeable oil sold; and

12 (b) value of all chargeable oil disposed.

13 (2) For the purpose of subsection (1) of this section, the value of any
14 chargeable oil disposed of, shall be regarded as the aggregate of the value of
15 that crude oil determined for royalties for all fields in accordance with the
16 provisions of this Act or any applicable law.

17 (3) The adjusted profits of an accounting period shall be the profits of
18 that period after the deductions allowed by section 263 (1) of this Act.

19 (4) The assessable profit of an accounting period shall be the adjusted
20 profit of that period after any deduction allowed by section 265 of this Act.

21 (5) The chargeable profits of an accounting period shall be the
22 assessable profits of that period after the deduction allowed by section 266 of
23 this Act.

Allowable
deductions

24 **263.**-(1) In computing the adjusted profit of a company in upstream
25 petroleum operations related to crude oil for any accounting period, there shall
26 be deducted expenses wholly, reasonably, exclusively and necessarily incurred
27 during that period for the following, including but without otherwise
28 expanding or limiting the generality of the foregoing -

29 (a) rents incurred by the company for the period pursuant to a
30 petroleum mining lease or petroleum prospecting licence;

1 (b) all Royalties the liability for which was incurred and were paid
2 by the company during that period in respect of crude oil and associated gas
3 and where a petroleum mining lease includes payments to the Federation
4 Account related to production sharing, profit sharing, risk service contracts
5 or other contractual features under a Model Contract and the company has
6 incurred liability for such payments in kind or in cash;

7 (c) operating expenses for upstream petroleum operations
8 including expenses directly incurred for repair of premises, plant,
9 machinery or fixtures employed for the purpose of carrying on production
10 activities or for the renewal, repair or alteration of production implement,
11 utensils or articles so employed;

12 (d) an expenditure, tangible or intangible directly incurred in
13 connection with the drilling of the first exploration well and the first two
14 appraisal wells in the same field, whether the wells are productive or not,
15 provided that subsequent exploration wells, appraisal wells and other wells
16 shall be treated as qualifying drilling expenditure under the Fifth Schedule
17 to this Act and where a deduction may be given under this section in respect
18 of any such expenditure, that expenditure shall not be treated as qualifying
19 drilling expenditure for the purpose of the Fifth Schedule to this Act;

20 (e) any contribution to a pension, provident or other society,
21 scheme or fund for production staff which may be approved, with or without
22 retrospective effect, by the National Pension Commission subject to such
23 general conditions or particular conditions in the case of the society, scheme
24 or fund as the Service may prescribe, provided that any sum received by or
25 the value of any benefit obtained by the company, from any approved
26 pension, provident or other society, scheme or fund, in the accounting period
27 of that company shall, for the purpose of section 262(1) of this Act, be
28 treated as income of the company for that accounting period;

29 (f) any amount contributed to a fund, scheme or arrangement
30 approved by the Commission for the purpose of decommissioning and

1 abandonment, provided that the surplus or residue of the fund shall be subject
2 to tax under this Act at the end of life of the field, where such surplus is returned
3 to the lessee;

4 (g) sums incurred by way of interest on any money borrowed by the
5 company, where the Commission is satisfied that the interest was payable on
6 capital employed for upstream petroleum operations and that the respective
7 interest rates reflect market conditions;

8 (h) all sums the liability of which was incurred by the company to the
9 Federal Government or any State or Local Government Council by way of
10 duty, customs duty, excise duty, stamp duties, taxes, fees or like charges; and

11 (i) any amount contributed to any fund, scheme or arrangement
12 approved by the Commission pursuant to the establishment of Host
13 Community Development Trusts under Chapter Three of this Act,
14 Environmental Remediation Fund and Niger Delta Development Commission
15 and other similar contributions.

16 (2) Where a deduction has been allowed to a company under this
17 section in respect of a liability of the company and the liability or part of the
18 liability is waived, released or recovered, the amount of the deduction or the
19 part of the liability corresponding to the part of the liability shall, for the
20 purpose of section 262(1) of this Act, be treated as income of the company of its
21 accounting period, in which such waiver or release was made or given.

Deductions not
allowed

22 **264.** Subject to the express provisions of this Act, for the purpose of
23 ascertaining the adjusted profit of a company in the accounting period from its
24 upstream petroleum operations applicable to crude oil, no deduction shall be
25 allowed in respect of-

26 (a) disbursements or expenses not being money wholly, reasonably,
27 exclusively and necessarily incurred for the purpose of those operations;

28 (b) expenditure for the purchase of information relating to the
29 existence and extent of petroleum deposits;

30 (c) expenditure incurred as a penalty, natural gas flare fees or

- 1 imposition relating to natural gas flare;
- 2 (d) financial or bank charges, arbitration and litigation costs, bad
3 debts and interest on borrowing other than pursuant to section 263(1)(g) of
4 this Act;
- 5 (e) head office, costs incurred outside Nigeria or affiliate cost;
- 6 (f) production bonuses, signature bonuses paid for the acquisition
7 of, or of rights in or over, petroleum deposits, bonuses or fees paid for
8 renewing petroleum mining lease or petroleum prospecting licence or
9 marginal field or fees paid for assigning rights to another party;
- 10 (g) tax inputted into a contract or an agreement on a net tax basis
11 and paid by a company on behalf of the vendor or contractor;
- 12 (h) capital withdrawn or sum employed or intended to be employed
13 as capital;
- 14 (i) capital employed in improvements as distinct from repairs;
- 15 (j) sum recoverable under an insurance or contract of indemnity,
16 except an amount that is not recovered under the scheme;
- 17 (k) rent of or cost of repairs to any premises or part of premises not
18 incurred for the purpose of those operations;
- 19 (l) amounts incurred in respect of tertiary education tax, companies
20 income tax, any income tax, profits tax or other similar taxes, whether
21 charged within Nigeria or elsewhere;
- 22 (m) the depreciation of any premises, buildings, structures, works
23 of a permanent nature, plant, machinery or fixtures;
- 24 (n) payment to provident, savings widows' and orphans' or other
25 society, scheme or fund, except such payments as are allowed under section
26 263(1)(e) of this Act; and
- 27 (o) costs pursuant to paragraph 2(2)(c) of the Sixth Schedule to this
28 Act.
- 29 **265.-(1)** The assessable profits for each company or petroleum
30 mining lease for any accounting period shall be the amount of the adjusted

1 profit of that period after the deduction of the amount of any loss incurred by
2 that company during any previous accounting period.

3 (2) A deduction under subsection (1) of this section shall be made so
4 far as possible from the amount, if any, of the adjusted profit of the first
5 accounting period after that in which the loss was incurred, and, so far as it
6 cannot be so made, then from the amount of the adjusted profit of the next
7 succeeding accounting period and so on until such loss is fully deducted.

Chargeable
profits and
allowances t

8 **266.**-(1) The chargeable profits of any company for any accounting
9 period shall be the amount of the assessable profits of that period after the
10 deduction of any amount to be allowed in accordance with the provisions of
11 this section, namely-

12 (a) the aggregate amount of capital allowances due to the company
13 under the provisions of the Fifth Schedule to this Act for the accounting period;

14 (b) the aggregate amount of all production allowances due to the
15 company under the provisions of the Sixth Schedule to this Act for the
16 accounting period; and

17 (c) in the case of acquisition costs of petroleum rights, the value of the
18 rights and the value of the assets acquired shall be reported separately to the
19 Service, provided that the value of the rights shall be eligible for annual
20 allowance of 10% per annum and the value of the assets shall be depreciated
21 based on the applicable depreciation rates for the respective assets, and there
22 shall be a retention of 1% in the last year until the asset is disposed of.

23 (2) In determining the chargeable profit, the total cost shall not exceed
24 the cost-price ratio as determined in the Sixth Schedule.

25 PART III

26 ASCERTAINMENT OF CHARGEABLE TAX

Chargeable Tax

27 **267.** The chargeable tax for any accounting period of a company shall
28 be a percentage of the chargeable profit for that period aggregated and it shall
29 be-

30 (a) 42.5% of the profit from crude oil for onshore areas for petroleum

1 mining Leases selected pursuant to sections 93(6)(b) and 93(7)(b) of this
2 Act;

3 (b) 37.5% of the profit from crude oil for shallow water areas for
4 petroleum mining leases selected pursuant to sections 93(6)(b) and 93(7)(b)
5 of this Act;

6 (c) 22.5% of profit from crude oil for onshore areas for new
7 licences and leases granted after the commencement of this Act and for
8 marginal fields in onshore areas;

9 (d) 20.0% of profit from crude oil for shallow water areas for new
10 licences and leases granted after the commencement of this Act and for
11 marginal fields in shallow water areas;

12 (e) 5% of the profit from crude oil from deep offshore areas for
13 petroleum mining leases selected pursuant to sections 93(6)(b) and 93(7)(b)
14 of this Act; and

15 (f) 10% of profit from crude oil for deep offshore areas for new
16 licences and leases granted after the commencement of this Act.

17 **268.**-(1) Where, for any accounting period of a company, the
18 amount of the chargeable tax for that period, calculated in accordance with
19 the provisions of this Act other than this Section, is less than the amount
20 mentioned in subsection (2) of this Section, the company shall be liable to
21 pay an additional amount of chargeable tax for that period equal to the
22 difference between those two amounts.

23 (2) The amount referred to in subsection (1) of this section is, for
24 any accounting period of a company, the amount which the chargeable tax
25 for crude oil for that period, calculated in accordance with the provisions of
26 this Act, would come to, in the case of crude oil exported from Nigeria by the
27 company, the reference in section 262(1)(a) of this Act to the proceeds of
28 sale were a reference to the amount obtained by multiplying the number of
29 barrels of that crude oil determined at the measurement point by the fiscal oil
30 price per barrel.

Additional
Chargeable Tax
payable in certain
circumstances

1 (3) For the purpose of subsection (2) of this section the relevant sum
2 per barrel of crude oil or condensate by a company is the fiscal oil price
3 applicable to that crude oil as may be advised by the Commission.

4 (4) The whole of any additional chargeable tax for crude oil and
5 associated gas payable by a company by virtue of this section for any
6 accounting period shall be payable concurrently with the final instalment of the
7 chargeable tax payable for that period.

8 (5) Every fiscal oil price per barrel established shall bear a fair and
9 reasonable relationship-

10 (a) to the established fiscal oil price of Nigerian crude oil streams of
11 comparable quality and specific gravity; or

12 (b) where there are no such established official selling prices for such
13 Nigerian crude oil streams to the official selling prices at main international
14 trading centers for crude oil of comparable quality and gravity, due regard
15 being had in either case to freight differentials and other relevant factors.

16 (6) Where any crude oil, which in relation to a particular company is
17 its chargeable oil, is exported from Nigeria by another company, that crude oil
18 shall for the purpose of this section be deemed to be exported from Nigeria by
19 that particular company.

20 PART IV

21 ASCERTAINMENT OF TOTAL PROFITS AND CONSOLIDATION FOR

22 TAX PURPOSES

Artificial
transactions, etc.

23 **269.**-(1) Where the Service is of the opinion that any disposition is not
24 given effect to or that any transaction which reduces or would reduce the
25 amount of any tax payable is artificial or fictitious, the Service may disregard
26 any such disposition or direct that such adjustments shall be made with respect
27 to the Companies' liability to tax as the Service considers appropriate to
28 counteract the reduction of liability to tax effected or reduction which would
29 otherwise be effected, by the transaction and the companies concerned shall be
30 assessed accordingly.

1 (2) In subsection (1) of this section, the expression "disposition"
2 includes any trust, grant, covenant, agreement or arrangement.

3 (3) For the purpose of this section, the following transactions shall
4 be deemed to be artificial or fictitious, namely, transactions between persons
5 one of whom has control over the other or between persons both of whom
6 are controlled by some other person which, in the opinion of the Service,
7 were not made on terms which might be expected to have been made by
8 independent Persons engaged in the same or similar activities dealing with
9 one another at arm's length.

10 (4) A company in respect of which any direction is made under this
11 section, shall have a right of appeal in like manner as though for the purpose
12 of Part III of this Chapter such direction was an assessment.

13 (5) Subject to the provisions of this Act, the provisions of the
14 Income Tax (Transfer Pricing) Regulations 2018 shall apply.

15 **270.**-(1) Subject to the provisions of this section, the assessable
16 profits of any company for any accounting period shall be the amount of the
17 adjusted profit of that period after the deduction of the amount of any Loss
18 incurred by that company during any previous accounting period.

Assessable Profits
and adjusted Losses

19 (2) A deduction under subsection (1) of this section shall be made
20 where possible from the amount, if any, of the adjusted profit of the first
21 accounting period after that in which the loss was incurred, and where it
22 cannot be so made, then from the amount of the adjusted profit of the next
23 succeeding accounting period and so on.

24 (3) Within 5 months after the end of any accounting period of a
25 company, or within such further time as the Service may permit in writing,
26 the company may elect in writing that a deduction or any part to be made
27 under this section shall be deferred to and be made in the succeeding
28 accounting period, and may so elect in any succeeding accounting period.

29 **271.**-(1) Without prejudice to section 275 of this Act, where a trade
30 or business of upstream petroleum operations carried on in Nigeria by a

Trade or business
sold or transferred

1 company is sold or transferred to another company for the purposes of better
2 organization of that trade or business or the transfer of its management and any
3 asset employed in that trade or business is sold or transferred, then, if the
4 Service is satisfied that one of those companies has control over the other or
5 that both companies are controlled by some other person or are members of a
6 recognized group of companies and have been so for a consecutive period of at
7 least 3 years prior to the date of reorganization, the provisions set out in
8 subsection (2) of this section shall have effect.

9 (2) Where subsection (1) of this section applies, the Service may in its
10 discretion if, on or before the date on which the trade or business is so sold or
11 transferred, the first sale of or bulk disposal of chargeable oil by or on behalf of
12 the company selling or transferring the trade or business has occurred, but the
13 first sale of or bulk disposal of chargeable oil by or behalf of the company
14 acquiring that trade or business has not occurred, direct that-

15 (a) the first accounting period of the company acquiring that trade or
16 business shall commence on the date on which the sale or transfer of the trade
17 or business takes place and end on 31st December of that same year, and the
18 definition of accounting period in section 318 of this Act shall be construed
19 accordingly

20 (b) for the purpose of the Fifth Schedule to this Act, the asset sold or
21 transferred to the company acquiring that trade or business by the company
22 selling or transferring the trade or business shall be deemed to have been sold
23 for an amount equal to the residue of the qualifying expenditure on the asset on
24 the day following the day on which the sale or transfer occurred; and

25 (c) the company acquiring the asset so sold or transferred shall be
26 deemed to have received all allowances given to the company selling or
27 transferring the trade or business in respect of the asset under the Fifth
28 Schedule to this Act and any allowances deemed to have been received by that
29 company under the provisions of this paragraph, provided that the Service in its
30 discretion may-

1 (i) require the company selling or transferring the trade or business
2 or the company acquiring that trade or business, to guarantee or give
3 security to the satisfaction of the Service for payment in full of tax due or to
4 become due from the company selling or transferring the trade or business;
5 and

6 (ii) impose such conditions as it deems fit on either of the
7 companies or on both of them.

8 (3) In the event of failure by the company or companies selling to
9 fulfil the guarantee or conditions, the Service may revoke the direction and
10 may make the additional assessments or repayment of tax as may be
11 necessary to give effect to the revocation.

12 (4) Where the acquiring company makes a subsequent disposal of
13 the assets thereby acquired within the succeeding 3 years after the date of
14 acquisition, any concession enjoyed under this subsection shall be rescinded
15 and the company shall be treated as if it did not qualify for the concession as
16 at the date of the initial reorganization.

17 (5) Where a trade or business of petroleum operations carried on in
18 Nigeria by a company incorporated under any law in force in Nigeria is sold
19 or transferred to another company and any asset employed in that trade or
20 business is so sold or transferred, and the Service is satisfied that the
21 companies are not connected and that none has control over the other or both
22 are not controlled by another company, the-

23 (a) acquisition cost of the rights and assets or the cost incurred by
24 the acquiring party shall not be eligible as qualifying capital expenditure
25 under the Fifth Schedule to this Act for the purpose of the Hydrocarbon Tax
26 but shall be eligible for qualifying capital expenditure under the companies
27 Income Tax at an annual allowance rate of 10% per annum; and

28 (b) accounting period of the new trade or business shall be as
29 provided in subsection (2) of this section.

30 (6) For the purpose of subsection (2) (a) of this section, the

1 accounting period of the company acquiring that trade or business shall
2 commence on the date on which the sale or transfer of the trade or business to
3 the company takes place or on such date within the calendar month in which the
4 sale or transfer takes place as may be elected by the company with the approval
5 of the Service and end on 31st December of that same year and the definition of
6 "Accounting Period" under this Act shall be construed accordingly.

7 (7) A merger, take-over, transfer or restructuring of the trade or
8 business carried on by a company shall not take place without the approval and
9 having obtained direction of the Service to any tax that may be due and payable
10 under the Capital Gains Tax Act.

11 (8) Reference to a 'trade or business' in this section shall include
12 references to any part of the trade or business.

Consolidation
of costs and taxes

13 **272.**-(1) A company engaged in upstream petroleum operations
14 across terrains shall be allowed to consolidate costs for the purpose of
15 companies income tax.

16 (2) A company engaged in upstream petroleum operations related to
17 crude oil across terrains shall be allowed to consolidate costs and taxes for the
18 purposes of hydrocarbon tax only across assets in which it holds Licences and
19 leases in accordance with the six categories of chargeable tax stipulated in
20 section 267 of this Act.

21 (3) In respect of a company in existence prior to the commencement
22 of this Act, the amount of any loss incurred during any accounting period by a
23 company selling or transferring its trade or business whether to a connected or
24 unrelated party, being a loss which has not been allowed against any assessable
25 profit of any accounting period of that company shall not be allowed against
26 any assessable profit of the company acquiring that trade or business.

27 (4) A company that is a contractor in a contract pursuant to section
28 84(2) of this Act shall be allowed to consolidate its Losses and revenues across
29 petroleum prospecting licences and petroleum mining leases granted after the
30 commencement of this Act, for the purposes of subsections (1) and (2) of this

1 section with respect to the various tax classes under section 267 of this Act.

2 PART V

3 PERSONS CHARGEABLE

4 **273.**-(1) Any person, other than a company, who engages in Partnerships, etc.
5 upstream petroleum operations either on his own account or jointly with any
6 other person or in partnership with any other person with a view to sharing
7 the profits arising from the operations, commits an offence.

8 (2) Where the person referred to in subsections (1) of this section
9 has benefitted from any profits on upstream petroleum operations, the
10 person shall be subject to hydrocarbon tax and companies income tax under
11 this Act on the profits and shall pay a penalty provided under section 297 of
12 this Act.

13 (3) Where two or more companies are engaged in upstream
14 petroleum operations either in partnership, in a joint venture or in concert
15 under any scheme or arrangement, tax shall be charged and assessed on them
16 in accordance with subsection (4) of this section.

17 (4) The apportionment of any profits, outgoings, expenses,
18 liabilities, deductions, qualifying expenditure and the tax chargeable upon
19 each company shall be in line with the equity interest of the parties under a
20 jointly executed agreement that will be made available to the Service and
21 where no jointly executed agreement is made available, the Commission
22 shall advise the Service the approved equity interest of the parties and it shall
23 be binding on the parties.

24 (5) Subject to the provisions of this Act, where two or more
25 companies are engaged in upstream petroleum operations either in
26 partnership, in a joint venture or in concert under any scheme or
27 arrangement, the Service may make regulation, in compliance with section
28 61 of the Federal Inland Revenue Service (Establishment) Act, for the
29 ascertainment of tax to be charged or assessed upon each company so
30 engaged.

1 (6) Regulations made under subsection (5) of this section may make
2 provisions-

3 (a) with respect to apportionment of any Profits, outgoings, expenses,
4 liabilities, deductions, qualifying expenditure and tax chargeable upon each
5 company;

6 (b) for the computation of any tax as if the partnership, joint venture,
7 scheme or arrangement were carried on by one company and apportion that tax
8 between the companies concerned;

9 (c) to accept other basis of ascertaining the tax chargeable upon each
10 of the companies; and

11 (d) which have regard to any circumstances whereby the operations
12 are partly carried on for any company by an operating Company whose
13 expenses are reimbursed by those Companies.

14 (7) Regulations made under this section may be of general application
15 for the purpose of this Section and this Part or for a class of arrangement or for a
16 particular application to a specific partnership, joint venture, scheme or
17 arrangement.

18 (8) The effect of any regulation made under this section shall not
19 impose a greater burden of tax upon any company so engaged in any
20 partnership, joint venture, scheme or arrangement than would have been
21 imposed upon that company under this Part. if all things enjoyed, done or
22 suffered by such partnership, joint venture, scheme or arrangement had been
23 enjoyed, done or suffered by that company in the proportion in which it enjoys,
24 does or suffers those things under or by virtue of that partnership, joint venture,
25 scheme or arrangement.

Company wound
up, etc.

26 **274.**-(1) Where a company is being wound up or where in respect of a
27 company a receiver has been appointed by any Court, by the holders of any
28 debentures issued by the company or otherwise, the company may be assessed
29 and charged to tax in the name of the liquidator of the company, the receiver or
30 any agent in Nigeria of the liquidator or receiver and may be so assessed and

1 charged to tax for any accounting period whether before, during or after the
2 date of the appointment of the liquidator or receiver with respect to
3 companies income tax and hydrocarbon tax.

4 (2) Any liquidator, receiver or agent under subsection (1) of this
5 section shall be answerable for doing the acts required to be done by virtue
6 of this Act for the assessment and charge to tax of the company and for
7 payment of such tax.

8 (3) A liquidator or receiver under subsection (1) of this section shall
9 not distribute any asset of the Company to the shareholders or debenture
10 holders unless he has made provision for the payment in full of any tax
11 which may be found payable by the company or by the liquidator, receiver or
12 agent on behalf of the company.

13 **275.** Where a company which is or was engaged in petroleum
14 operations transfers a substantial part of its assets to any person without
15 having paid any companies income tax or hydrocarbon tax, assessed or
16 chargeable upon the company, for any accounting period ending prior to
17 such transfer and in the opinion of the Service one reason for such transfer
18 by the company was to avoid payment of such tax then that tax as charged
19 upon the company may be sued for and recovered from that person in a
20 manner similar to a suit for any other tax under section 294 of this Act.

Avoidance by
transfer

21 **276.** Every person answerable under this Act for the payment of
22 companies income tax or hydrocarbon tax on behalf of a company may
23 retain out of any money in or coming to his hands or within his control on
24 behalf of such company so much as shall be sufficient to pay the tax and shall
25 be indemnified against any person for payments made by him in accordance
26 with the provisions of this Act.

Indemnification
of representative

27 PART VI

28 APPLICABILITY, ACCOUNTS AND PARTICULARS

29 **277.-(1)** Every company engaged in upstream petroleum
30 operations related to crude oil shall for each accounting period of the

Preparation and
delivery of accounts
and particulars

1 company make up accounts of its profits or losses and prepare the following
2 particulars for the purpose of determining hydrocarbon Tax-

- 3 (a) a statement of accounts of its profits or losses;
- 4 (b) computations of its actual adjusted profit or loss and actual
5 assessable profits of that period;
- 6 (c) in connection with the Fifth Schedule to this Act, a schedule
7 showing-
 - 8 (i) the residues at the end of that period in respect of its assets,
 - 9 (ii) all qualifying petroleum expenditure incurred by it in that period,
 - 10 (iii) the values of any of its assets disposed of in that period, and
 - 11 (iv) the allowances due to it under that schedule for that period;
- 12 (d) in connection with the Sixth Schedule to this Act, a schedule
13 showing total production allowance from each and every field of its upstream
14 petroleum operations related to crude oil;
- 15 (e) a computation of its actual chargeable profits of that period;
- 16 (f) a statement of amounts repaid, refunded, waived or released to it,
17 referred to in section 263(2) of this Act, during that period;
- 18 (g) a computation of its chargeable tax for that period and where
19 associated gas is being sold or otherwise delivered through the measurement
20 point the methodology used to determine the chargeable tax;
- 21 (h) duly completed self-assessment form attested to by the principal
22 officer of the company; and
- 23 (i) evidence of payment of the final instalment.

24 (2) Every company engaged in upstream petroleum operations
25 related to crude oil shall, with respect to any accounting period of the company
26 and within 5 months after the expiration of that period or within 5 months after
27 the effective date of this Act, whichever is later, deliver to the Service a copy of
28 its accounts, bearing an auditor's certificate, of that period, in accordance with
29 the provisions of subsection (1) of this section and copies of the particulars
30 referred to in subsection (1) of this section relating to that period with the copy

1 of the delivered company accounts and each copy of those particulars, shall,
2 where the copies are -

3 (a) not estimates, contain a declaration signed by authorised officer
4 of the company or by its liquidator, receiver or the agent of the liquidator or
5 receiver, that the same is true and complete; and

6 (b) estimates, contain a declaration, similarly signed, that the
7 estimate was made to the best of the ability of the person signing same.

8 (3) Notwithstanding the provisions of this section, every company
9 which is yet to commence bulk sales or disposal of chargeable oil, shall file
10 with the Service its audited accounts and returns-

11 (a) within 18 months from the date of its incorporation, in the case
12 of a newly incorporated company; and

13 (b) within 5 months after any period ending on 31st December of
14 the following year, in the case of any other company, provided that where
15 there is an interval between 31st December of the preceding year and the
16 date on which the company commences the bulk sale or disposal of
17 chargeable oil, natural gas or condensate, the interval shall be deemed to
18 form part of the preceding period.

19 (4) A company which fails to comply with the provisions of
20 subsection (2) or (3) of this section is liable to pay as penalty for late filing-

21 (a) N10,000,000 on the first day the failure occurs;

22 (b) N2,000,000 for each and every subsequent day in which the
23 failure continues; or

24 (c) other sum as may be prescribed by the Minister of Finance by
25 Order published in the gazette.

26 **278.** The Service may give notice in writing to any company
27 engaged in upstream petroleum operations related to crude oil as the Service
28 may deem necessary requiring the company to furnish further information,
29 within reasonable time as may be specified, in relation to any matter referred
30 to in section 277 of this Act or any other matter which the Service may

Power of the
Service to request
further information

1 consider necessary for the purposes of this Act.

Power to call
for returns, books,
etc.

2 **279.**-(1) For the purpose of obtaining full information in respect of
3 any company's upstream petroleum operations related to crude oil, the Service
4 may give notice to a company requiring it within a period not less than 21 days
5 from the date of service of the notice, to complete and deliver to the Service any
6 information called for in such notice and in addition or alternatively requiring
7 an authorised representative of such company or its liquidator, receiver or the
8 agent of such liquidator or receiver, to attend before the Service or its
9 authorised representative on the date or dates as may be specified in the notice
10 and to produce for examination any books, documents, accounts and
11 particulars which the Service may deem necessary.

12 (2) Where a company assessable to hydrocarbon tax under the
13 provisions of this Act fails or refuses to keep books or accounts which, in the
14 opinion of the Service are adequate for the purpose of ascertaining the tax, the
15 Service may by notice in writing require it to keep such records, books and
16 accounts as the Service considers to be adequate in a form and in a language as
17 the Service may direct and the company shall the keep records, books and
18 accounts as directed.

19 (3) An appeal shall lie from any direction of the Service made under
20 this section to the Tax Appeal Tribunal.

Returns of
estimated tax

21 **280.**-(1) Not later than 2 months after the commencement of each
22 accounting period of any company engaged in upstream petroleum operations
23 related to crude oil, the company shall submit to the Service an estimated return
24 of its profits or losses for that accounting period for the purpose of hydrocarbon
25 tax, which shall include-

26 (a) computations of its estimated adjusted profit or loss and of its
27 estimated assessable profits of that period;

28 (b) in connection with the Fifth Schedule to this Act, a schedule
29 showing-

- 1 (i) the estimated residues at the end of that period in respect of its
2 assets,
- 3 (ii) all estimated qualifying petroleum expenditure incurred by it in
4 that period,
- 5 (iii) the values of any of its assets, estimated by references to the
6 provisions of that Schedule, to be disposed of in that period, and
- 7 (iv) the allowances due to it under that schedule for that period;
- 8 (c) in connection with the Sixth Schedule to this Act, a schedule
9 showing estimated total production allowance from all its upstream
10 petroleum operations related to crude oil on field by field basis;
- 11 (d) a computation of its estimated chargeable profits of that period;
12 and
- 13 (e) a computation of its estimated tax for that period.
- 14 (2) Where, at any time during the accounting period, there is a
15 change in price, cost and volume, the company shall submit further returns
16 containing its revised estimated tax for such period.
- 17 (3) Where the further returns provided for under subsection 2 of
18 this section is not made, the Service shall impose interest at the prevailing
19 LIBOR or any other successor rate plus 10% points for the differential of the
20 revised tax over the estimated tax paid by the company.
- 21 (4) Every return made by a company engaged in upstream
22 petroleum operations related to crude oil in fulfilment of the provisions of
23 this Section shall be subject to review and validation by the Service.
- 24 (5) Where a company does not provide the estimates pursuant to
25 subsection 1 and 2 of this section, the Service shall have the right to
26 determine such estimates on the best of judgment basis and impose same on
27 the company.
- 28 (6) A company which fails to comply with the provisions of
29 subsection (1) of this section is liable to pay as penalty for late filing-
- 30 (a) N10,000,000 on the first day the failure occurs;

1 (b) N2,000,000 for each and every subsequent day in which the
2 failure continues; or

3 (c) other sum as may be prescribed by the Minister of Finance by
4 Order published in the gazette.

Extension of
periods for
making returns

5 **281.** Where it is shown by any company to the satisfaction of the
6 Service that for some good reason, the company is not able to comply with the
7 provisions of section 277 of this Act within the time limited by that section or
8 any notice given to it under sections 278 or 279 of this Act, within the time
9 limited by any such notice, the Service may grant in writing such extension of
10 that time as the Service may consider necessary.

Assessment of
Tax Payable

11 **282.**-(1) The Service shall proceed to assess a company with the
12 hydrocarbon tax for any accounting period of the company immediately after
13 the expiration of the time allowed to such company for the delivery of self-
14 assessment provided for in section 277 of this Act.

15 (2) Where a company has delivered a self-assessment for any
16 accounting period of the company, the Service may-

17 (a) accept the self-assessment; or

18 (b) refuse to accept the self-assessment and proceed as provided in
19 subsection (3) of this Section upon any failure as mentioned and the like
20 consequences shall ensue.

21 (3) Where, for any accounting period, a company files a self-
22 assessment which was rejected by the Service or has failed to file self-
23 assessment as provided in section 277 of this Act within the time limited by that
24 section or has failed to comply with any notice given to it under sections 278 or
25 279 of this Act within the time specified in such notice or within any extended
26 time provided in section 281 of this Act, and the Service is of the opinion that
27 the company is liable to pay hydrocarbon tax, the Service may estimate the
28 amount of the tax to be paid by the company for that accounting period and
29 make an assessment accordingly, provided that-

30 (a) the assessment shall not affect any liability otherwise incurred by

1 such company by reason of its failure or neglect to deliver the accounts and
2 particulars or to comply with the notices; and

3 (b) nothing in this subsection shall affect the right of the Service to
4 make any additional assessment under the provisions of section 283 of this
5 Act.

6 **283.**-(1) Where the Service discovers or is of the opinion at any
7 time that, with respect to any company liable to hydrocarbon tax, tax has not
8 been charged and assessed upon the company or has been charged and
9 assessed upon the company at an amount less than that which ought to have
10 been assessed and charged for any accounting period of the company, the
11 Service may within 6 years after the expiration of that accounting period-

Additional
assessments

12 (a) assess the company, as often as may be necessary, with tax for
13 that accounting period at such amount or additional amount as in the opinion
14 of the Service ought to have been charged and assessed; and

15 (b) may make any consequential revision of the tax charged or to be
16 charged for any subsequent accounting period of the company.

17 (2) Where a revision under subsection (1) of this section results in a
18 greater amount of tax to be charged than has been charged or would
19 otherwise be charged, an additional assessment or an assessment for any
20 such subsequent accounting period shall be made and the provisions of this
21 Act as to notice of assessment, objection, appeal and other proceedings
22 under this Act shall apply to any such assessment or additional assessment
23 and to the tax charged.

24 (3) For the purpose of computing under subsection (1) of this
25 section the amount or the additional amount of tax for any accounting period
26 of a company which ought to have been charged, all relevant facts consistent
27 with section 289(4) of this Act shall be taken into account even though it is
28 not known when any previous assessment or additional assessment on the
29 company for that accounting period was made or could have been made.

30 (4) Notwithstanding the provisions of this section, where any form

1 of fraud, willful default or neglect has been committed by or on behalf of any
2 company in connection with hydrocarbon tax imposed under this Act, the
3 Service may, at any time and as often as may be necessary, assess the company
4 on such amount as may be necessary for the purpose of recovering any loss of
5 tax attributable to fraud, willful default or neglect.

Making of
assessment, etc.

6 **284.**-(1) Assessments of hydrocarbon tax shall be made in such form
7 and in such manner as the Service shall authorize and shall contain the -

8 (a) names and addresses of the companies assessed to tax or of the
9 persons in whose names any companies have been assessed to tax, provided
10 that the names of the represented companies are indicated; and

11 (b) particular accounting period and the amount of the chargeable
12 profits and chargeable tax for that period, in the case of each company for each
13 of its accounting periods.

14 (2) When any assessment is to be amended or revised, a form of
15 amended or revised assessment shall be made in a manner similar to that in
16 which the original of that assessment was made under subsection (1) of this
17 section showing the amended or revised amount of the chargeable profits and
18 chargeable tax.

19 (3) A copy of each assessment and of each amended or revised
20 assessment shall be filed in a list which shall constitute the assessment list for
21 the purpose of this Act.

Notices of
assessment, etc.

22 **285.**-(1) The Service shall cause to be served personally on or sent by
23 courier to a company which is liable to hydrocarbon tax under this Act, by way
24 of an additional assessment or an assessment by the Service, a notice of
25 assessment stating the-

26 (a) accounting period and the amount of its chargeable profits and
27 chargeable tax assessed and charged upon the company;

28 (b) place at which payment of the tax should be made; and

29 (c) rights of the company under subsection (2) of this section.

30 (2) Where any person in whose name an assessment was made in

1 accordance with the provisions of this Act disputes the assessment, the
2 person may apply to the Service by notice of objection in writing, to review
3 and revise the assessment made on him and the application shall be made
4 within 30 days from the date of service of the notice of the assessment,
5 stating the amount of chargeable-

6 (a) profits of the company of the accounting period in respect of
7 which the assessment is made; and

8 (b) tax and the tax which such person claims should be stated on the
9 notice of assessment.

10 (3) The Service, upon being satisfied that due to absence from
11 Nigeria, sickness or other reasonable cause, the person in whose name the
12 assessment was made was prevented from making the application within
13 such period of 30 days, shall extend the period as may be reasonable in the
14 circumstances.

15 (4) After receipt of a notice of objection referred to in subsection
16 (2) of this section, the Service may within such time and place as it shall
17 specify, require-

18 (a) the person giving the notice of objection to furnish such
19 particulars as the Service may deem necessary; and

20 (b) any other person, by notice, to give evidence orally or in writing
21 in respect of any matter necessary for the ascertainment of the hydrocarbon
22 tax payable and the Service may further require that where such evidence is
23 given -

24 (i) orally, it shall be given on oath, and

25 (ii) in writing, it shall be given by affidavit.

26 (5) In the event of any person assessed who has objected to an
27 assessment made upon him agreeing with the Service as to the amount of tax
28 liable to be assessed, the assessment shall be amended accordingly and
29 notice of the tax payable shall be served upon the person.

30 (6) Where an applicant for revision under subsection (2) of this

1 section fails to agree with the Service on the amount of the hydrocarbon tax, the
2 Service shall give such applicant notice of refusal to amend the assessment as
3 desired by the applicant or may revise the assessment to such amount as the
4 Service may determine and give the applicant notice of the revised assessment
5 and tax payable, together with notice of refusal to any subsequent request to
6 amend the revision and, where necessary, any reference in this Act to an
7 assessment or additional assessment shall be treated as a reference to an
8 assessment or additional assessment as revised under the provisions of this
9 subsection.

Errors and defects
in assessment and
notice

10 **286.**-(1) An assessment, warrant or other proceeding purporting to be
11 made in accordance with the provisions of this Act shall not be quashed or
12 deemed to be void or voidable for want of form or be affected by reason of a
13 mistake, defect or omission, if the-

14 (a) substance and effect of the assessment is in conformity with the
15 provisions of this Act; and

16 (b) company assessed or intended to be assessed or affected is
17 designated according to common intent and understanding.

18 (2) An assessment shall not be invalidated or affected-

19 (a) by reason of a mistake as to-

20 (i) the name or a company liable or of a person in whose name a
21 company is assessed; or

22 (ii) the amount of the tax;

23 (b) by reason of any variance between the assessment and the notice
24 thereof, if in cases of assessment, the notice thereof be duly served on the
25 company intended to be assessed or on the person in whose name the
26 assessment was to be made on a company, and such notice contains, in
27 substance and effect, the particulars on which the assessment is made.

Tax computation

28 **287.** Notwithstanding anything to the contrary in any law-

29 (a) all hydrocarbon tax computation made under this Act shall be in
30 the currency in which the transaction was effected; and

1 (b) any assessment made under section 284 of this Act shall be in
2 the currency in which the computation giving rise to the assessment was
3 made.

4 PART VII

5 APPEALS

6 **288.** Any Company or tax payer, who does not agree with an
7 assessment made pursuant to section 285(6) of this Act, may appeal against
8 the assessment to the Tax Appeal Tribunal established under the provisions
9 of section 59 of the Federal Inland Revenue Service (Establishment) Act.

Appeals to Tax
Appeal Tribunal

10 **289.**-(1) Where-

Assessment to be
final and conclusive

11 (a) no valid objection or appeal has been lodged within the time
12 limited by section 285 of this Act or the rules of the relevant tribunal or court,
13 as the case may be, against an assessment as regards the amount of the
14 hydrocarbon tax assessed;

15 (b) the amount of the tax has been agreed to under section 285(5) of
16 this Act; or

17 (c) the amount of the tax has been determined on objection or
18 revision under section 285(6) of this Act or on appeal,
19 the assessment as made, agreed to, revised or determined on appeal, as the
20 case may be, shall be final and conclusive for all purposes of this Act as
21 regards the amount of such tax.

22 (2) Where the full amount of the tax in respect of the final and
23 conclusive assessment under subsection (1) of this section is not paid within
24 the appropriate period or periods prescribed in this Act, the provisions
25 relating to the recovery of tax and to any penalty under section 292 of this
26 Act, shall apply to the collection and recovery, subject only to the set-off of
27 the amount of any tax repayable under any claim, made under any provision
28 of this Act, which has been agreed to by the Service or determined on an
29 appeal against a refusal to admit any such claim.

30 (3) Where an assessment has become final and conclusive, any tax

1 overpaid shall be repaid or treated as credit in favour of the assessed party.

2 (4) Nothing in section 285 of this Act or in this Chapter shall prevent
3 the Service from making any assessment or additional assessment to
4 Hydrocarbon Tax for any accounting period which does not involve re-opening
5 any issue on the same facts which has been determined for that accounting
6 period, under section 285(5) and (6) of this Act by agreement or otherwise or on
7 appeal.

8 PART VIII

9 COLLECTION, RECOVERY AND REPAYMENT OF TAX

Procedure in cases
where objection
or appeal is
pending

10 **290.** Collection of hydrocarbon tax shall, in cases where notice of an
11 objection or an appeal has been given, remain in abeyance and any pending
12 proceedings for any payment in instalment shall be stayed until the objection or
13 appeal is determined but the Service may in any such case, enforce payment of
14 that portion of the tax which is not in dispute by an application to the Tribunal
15 or Court, as the case may be.

Time within
which payment
is to be made

16 **291.**-(1) Subject to the provisions of section 290 of this Act,
17 hydrocarbon tax for any accounting period shall be payable in equal monthly
18 instalments together with a final instalment as provided in subsection (4) of this
19 section.

20 (2) The first monthly payment shall be due and payable not later than
21 the third month of the accounting period and shall be in an amount equal to one-
22 twelfth or where the accounting period is less than a year, in an amount equal to
23 equal monthly proportion, of the amount of tax estimated to be chargeable for
24 such accounting period in accordance with section 280 (1) of this Act.

25 (3) Each of the remainder of monthly payments to be made
26 subsequent to the payment under subsection (2) of this section shall be due and
27 payable not later than the last day of the month in issue and shall be in an
28 amount equal to the amount of tax estimated to be chargeable for such period
29 by reference to the latest returns submitted by the company in accordance with
30 section 280 (2) of this Act less so much as has already been paid for such

1 accounting period divided by the number of such of the monthly payments
2 remaining to be made in respect of such accounting period.

3 (4) A final instalment of tax shall be due and payable on or before
4 the due date of filing of the self-assessment of tax for such accounting period
5 and shall be the amount of the tax assessed for that accounting period less so
6 much as has already been paid under subsections (2) and (3) of this section.

7 (5) Any instalments on account of tax estimated to be chargeable
8 shall be treated as hydrocarbon tax charged and assessed for the purposes of
9 sections 292 and 294 of this Act.

10 **292.**-(1) Where any hydrocarbon tax or any instalment of tax due
11 and payable is not paid within the appropriate time limit prescribed in
12 section 291 of this Act-

Penalty for
non-payment of
tax and
enforcement of
payment

13 (a) a sum equal to 10% of the amount of the tax payable shall be
14 added and the provisions of the Act relating to the collection and recovery of
15 tax shall apply to the collection and recovery of such sum;

16 (b) the tax due shall incur interest at the prevailing LIBOR or any
17 successor rate, plus 10% from the date when the tax becomes payable until it
18 is paid and the provisions of this Act relating to collection and recovery of
19 tax shall apply to the collection and recovery of the interest;

20 (c) the Service shall serve a demand notice upon the company or
21 person in whose name a tax is chargeable and if payment is not made within
22 1 month from the date of the service of the demand notice, the Service may
23 proceed to enforce payment under this Act; and

24 (d) an addition imposed under this subsection shall not be deemed
25 to be part of the tax paid for the purpose of claiming relief under any of the
26 provisions of this Act.

27 (2) Any person who without lawful justification or excuse fails to
28 pay Hydrocarbon Tax within the period of one month prescribed in
29 subsection (1) (c) of this section, commits an offence under this Act and the
30 provisions of subsections 1(a) to (c) of this section shall apply.

1 (3) The Service may, for any good cause shown, remit the whole or
2 any part of the additional 10% penalty and interest on the tax due under
3 subsection (1) of this section.

Collection of tax
after determination
of objection or
appeal

4 **293.**-(1) Where payment of hydrocarbon tax in whole or in part has
5 been held in abeyance pending the result of a notice of objection or of appeal,
6 the tax outstanding under the assessment as determined on such objection or
7 appeal, as the case may be, shall be payable within one month from the date of
8 service on the company assessed or on the person in whose name the company
9 is assessed, of the notification of the tax payable by the Service or the Tribunal.

10 (2) Where such balance is not paid within one month, the provisions
11 of section 292 of this Act shall apply.

Suit for tax by
the Service

12 **294.**-(1) hydrocarbon tax may be sued for and recovered in a court of
13 competent jurisdiction at the place at which payment shall be made by the
14 Service.

15 (2) In any suit under subsection (1) of this section the production of a
16 certificate signed by any person duly authorized by the Service giving the name
17 and address of the defendant and the amount of tax due by the defendant shall
18 be sufficient evidence of the amount due.

Relief in respect
of error or mistake

19 **295.**-(1) Where a person who has paid hydrocarbon tax for an
20 accounting period alleges that any assessment made upon him or in his name
21 for that period, was excessive by reason of some error or mistake in the
22 accounts, particulars or other written information supplied by him to the
23 Service for the purpose of the assessment, that person may, not later than 6
24 years after the end of the accounting period in respect of which the assessment
25 was made make an application in writing to the Service-

26 (a) for a relief; or

27 (b) to set-off the credit against the liability of a similar tax payable to
28 the Service.

29 (2) On receiving an application under subsection (1) of this section,
30 the Service shall inquire into it and subject to the provisions of this section shall

1 by way of repayment of tax give such relief or approve the set-off in respect
2 of the error or mistake as appears to the Service to be reasonable and just.

3 (3) A relief shall not be given under this section in respect of an
4 error or mistake as to the basis on which the liability of the applicant ought to
5 have been computed where the accounts, particulars or information was in
6 fact made or given on the basis or in accordance with the practice of the
7 Service generally prevailing at the time when the accounts, particulars or
8 information was made or given.

9 (4) In determining any application under this section, the Service
10 shall have regard to all the relevant circumstances of the case and in
11 particular shall consider whether the granting of relief would result in the
12 exclusion from charge to tax of any part of the chargeable profits of the
13 applicant and for this purpose, the Service may take into consideration the
14 liability of the applicant and assessments made upon him in respect of other
15 years.

16 **296.**-(1) Except as otherwise expressly provided in this Act, a Repayment of
17 claim for the repayment of any hydrocarbon tax overpaid shall not be tax
18 allowed unless it is made in writing within 6 years next after the end of the
19 accounting period to which it relates.

20 (2) The Service shall cause to be refunded or set-off at the option of
21 the applicant upon presentation of relevant documents evidencing the tax to
22 be refunded.

23 (3) Any tax claimed based on this Section, which is proven not to be
24 due, shall attract a penalty at the prevailing LIBOR or any other successor
25 rate plus 10% from the date the payment or set-off was made up to the date
26 the refund is made by the applicant.

27 PART IX

28 OFFENCES AND PENALTIES

29 **297.**-(1) A person who fails to comply with the provisions of this Penalty for
30 Chapter or any regulation made under this Act for which no other penalty is defaults

1 specifically provided, shall be liable to an administrative penalty of
2 N10,000,000, and where the default continues beyond a period stipulated by
3 this Act or regulation, the person shall be liable to a further administrative
4 penalty of N2,000,000 or such other sum as may by order be prescribed by the
5 Minister of Finance, for each day the default continues.

6 (2) Notwithstanding the provisions of subsection (1) of this section, a
7 person who is found guilty of an offence under this Chapter or in a regulation
8 made under this Act for which no other penalty is specifically provided, shall,
9 upon conviction, be liable to a fine of N10,000,000 or other sum as may be
10 prescribed by the Minister of Finance by an order and where the offence
11 continues beyond a period stipulated by this Act or regulation, the person shall
12 be liable to an additional fine of N2,000,000 or such other sum as may by order
13 be prescribed by the Minister of Finance, for each day the default continues or
14 to imprisonment for 6 months.

15 (3) A person who-

16 (a) fails to comply with the requirements of a notice served on him
17 under this Chapter;

18 (b) fails to comply with the provisions of section 277 of this Act;

19 (c) without sufficient cause fails to attend in answer to a notice or
20 summons served on him under this Chapter or having attended fails to answer
21 any question lawfully put to him; or

22 (d) fails to submit any return required to be submitted under sections
23 277 or 281 of this Act,
24 commits an offence.

25 (4) Any violation in respect of which a penalty is provided for in
26 subsection (1) of this section shall be deemed to occur in Nigeria.

Penalty for
making incorrect
accounts, etc.

27 **298.**-(1) A person who without reasonable excuse-

28 (a) makes up or causes to be made up any incorrect accounts by
29 omitting or understating any profits or overstating any Losses of which he is
30 required under this Act to make up accounts;

1 (b) prepares or causes to be prepared any incorrect schedule or
2 statement required to be prepared under section 277 of this Act by
3 overstating any expenditure or overstating any royalties or other sums or by
4 omitting or understating any amounts repaid, refunded, waived or released;

5 (c) gives or causes to be given any false or misleading information
6 in relation to any matter or thing affecting his liability to hydrocarbon tax,
7 is liable to an administrative penalty of the sum of N15,000,000 or 1% of the
8 amount of tax which has been undercharged in consequence of such
9 incorrect account, schedule, statement or information or would have been so
10 undercharged if the account, schedule, statement or information had
11 been accepted as correct, and shall still be liable for the appropriate tax
12 which would have been charged.

13 (2) Notwithstanding the provisions of subsection (1) (c) of this
14 section, a person who gives or causes to be given any false or misleading
15 information in relation to any matter or thing affecting his liability to
16 hydrocarbon tax commits an offence and upon conviction is liable to a fine
17 of N15,000,000 or 1% of the amount of tax which has been undercharged in
18 consequence of such incorrect account, schedule, statement or information,
19 or would have been so undercharged if the account, schedule, statement or
20 information had been accepted as correct and shall still be liable for the
21 appropriate tax which would have been charged.

22 (3) The Service may compound any offence under this Act by
23 accepting a sum of money not exceeding the maximum fine specified for the
24 offence and shall issue an official receipt for any money so received.

25 **299.**-(1) A person who-

26 (a) for the purpose of obtaining any deduction, refund, rebate,
27 reduction or repayment in respect of hydrocarbon tax for himself or for any
28 other person or who in any return, account, particulars or statement made or
29 furnished with reference to tax, knowingly makes any false statement or
30 false representation or forges or fraudulently alters or uses or fraudulently

False statements
and returns

1 lends or allows to be used by any other person any receipt or token evidencing
2 payment of the tax under this Act; or

3 (b) aids, abets, assists, counsels, incites or induces any other person-

4 (i) to make or deliver any false return or statement under this Act,

5 (ii) to keep or prepare any false accounts or particulars affecting tax,

6 (iii) unlawfully refuses or neglects to pay tax;

7 commits an offence and is liable on conviction to a fine of N15,000,000 or 1%
8 of the amount of tax for which the person assessable is liable under this Act for
9 the accounting period in respect of or during which the offence was committed,
10 or to imprisonment for 6 months or to both the fine and imprisonment and shall
11 still be liable for the appropriate hydrocarbon tax which would have been
12 assessed and charged.

13 (2) Notwithstanding the provisions of subsection (1) of this section,
14 any person who does any of the acts or makes the omissions contained in
15 subsection (1) of this section, may be liable to an administrative penalty of
16 N15,000,000 or 1% of the amount of hydrocarbon tax for which the person
17 assessable is liable under this Act for the accounting period in respect of or
18 during which the act or omission occurred and shall still be liable for
19 appropriate tax which would have been assessed and charged.

Penalties for
offences by
authorised and
unauthorised
persons

20 **300.**-(1) A person who-

21 (a) being a member of the Service charged with the administration of
22 this Act or any assistant employed in connection with the assessment and
23 collection of the hydrocarbon tax who-

24 (i) demands from any person an amount in excess of the authorised
25 assessment of the tax payable,

26 (ii) withholds for his own use or otherwise any portion of the amount
27 of tax collected,

28 (iii) renders a false return, whether verbal or in writing of the amounts
29 of tax collected or received by him,

30 (iv) defrauds any person, embezzles any money or otherwise uses his

1 position to deal wrongfully with the Service or any other individual; or

2 (b) not being authorised under this Act, collects or attempts to
3 collect the tax under this Act, commits an offence and is liable on conviction
4 to a fine equivalent to 200% of the sum in question or to imprisonment for a
5 term not exceeding 3 years or to both such fine and imprisonment.

6 **301.** The institution of proceedings for or the imposition of a
7 penalty, fine or term of imprisonment under this Act shall not relieve any
8 person of liability to payment of any hydrocarbon tax for which he is or may
9 become liable.

Tax to be payable
notwithstanding
any proceedings
for penalties

10 PART X

11 APPLICATION OF COMPANIES INCOME TAX TO PETROLEUM OPERATIONS

12 **302.**-(1) Without prejudice to Companies Income Tax Act and any
13 other applicable law, the provisions of this Act shall apply and any company,
14 concessionaire, licensee, lessee, contractor or subcontractor involved in the
15 upstream, midstream or downstream petroleum operations under this Act,
16 shall also be subject to income tax under this Act.

General requirement
of companies
engaged in petroleum
operations to pay
companies income
tax

17 (2) Income Tax applicable to a Company engaged in upstream,
18 midstream and downstream petroleum operations shall be determined
19 separately for-

20 (a) upstream petroleum operations, provided that such operations
21 can be consolidated with wholesale gas and wholesale petroleum liquids
22 supply operations as defined under this Act;

23 (b) midstream petroleum operations; and

24 (c) downstream petroleum operations.

25 (3) Subject to subsection (2)(a) of this section, a person intending
26 to be involved in more than one stream shall register and use a separate
27 company for each stream of petroleum operations under this Act.

28 (4) In determining the Companies Income Tax, the hydrocarbon
29 tax under this Act shall not be deductible.

30 (5) All companies engaged in domestic midstream petroleum

1 operations, downstream gas operations and large-scale gas utilization
2 industries as defined in this Act, shall be entitled to benefit from the incentives
3 provided under section 39 of the Companies Income Tax Act.

4 (6) Natural gas transferred or disposed from the upstream to the
5 midstream or downstream shall be subject to tax under the Companies Income
6 Tax Act.

7 (7) Natural gas liquids and liquid petroleum gases derived from
8 natural gas shall be subject to income tax.

9 (8) Acquisition costs of petroleum rights shall be eligible for annual
10 allowance at the rate of 10% with a retention value of 1% in the last year until
11 the asset is disposed.

12 (9) Capital allowances for other assets shall be granted as follows-

13 (a) upstream petroleum operations assets shall be in accordance with
14 the Fifth Schedule of this Act; and

15 (b) midstream and downstream Operations shall be in accordance
16 with the Second Schedule to the Companies Income Tax Act.

17 (10) Section 24 of the Companies Income Tax Act shall be read in
18 conjunction with the following provisions of this Act-

19 (a) all rents and royalties the liability for which was incurred by the
20 company during that period in respect of crude oil sold, condensate sold and
21 natural gas sold or delivered or disposed of in any other commercial manner
22 and where a petroleum mining lease includes payments to the Federation
23 Account related to production sharing, profit sharing, risk service contracts or
24 other contractual features and the company has incurred liability for such
25 payments and such payments were made;

26 (b) any amount contributed to any fund, scheme or arrangement
27 approved by the Commission or Authority for the purpose of providing for-

28 (i) abandonment and decommissioning, or

29 (ii) petroleum host communities' development trust,

1 provided that the surplus or residue of such funds shall be subject to tax
2 under this Act; and

3 (c) other deductions as may be prescribed by the Minister of
4 Finance by Order published in the Gazette.

5 (11) Section 27 of the Companies Income Tax Act shall be read in
6 conjunction with the following provisions of this Act-

7 (a) any expenditure for the purchase of information relating to the
8 existence and extent of Petroleum deposits;

9 (b) any expenditure incurred as a penalty including natural gas
10 flare fees or any such imposition relating to natural gas flare;

11 (c) production bonuses, signature bonuses paid for the acquisition
12 of, or of rights in or over, petroleum deposits; signature bonuses or fees paid
13 for renewing petroleum mining lease or petroleum prospecting licence or
14 fees paid for assigning rights to another party including for marginal fields;
15 and

16 (d) any tax inputted into a contract or an agreement on a net tax
17 basis and paid by a company on behalf of the vendor or contractor.

18 (12) Any company involved in upstream petroleum operations
19 shall apply the accounting periods established for hydrocarbon tax on an
20 actual year basis for its company's income tax in accordance with the
21 provisions of sections 277, 280 and 291 of this Act.

22 (13) Any company involved in upstream petroleum operations that
23 is in default of subsection 12 of this section in relation to filing of companies
24 income tax returns, shall be liable to pay penalty for late filing as follows-

25 (a) N10,000,000 on the first day the failure occurs;

26 (b) N2,000,000 for each and every subsequent day in which the
27 failure continues; or

28 (c) other sum as may be prescribed by the Minister of Finance by
29 Order published in the Gazette

30 (14) Offences and penalties specified under Part IX of this Chapter

1 shall be applicable to companies income tax of upstream petroleum
2 companies.

3 (15) The tax due from a company involved in upstream petroleum
4 operations shall-

5 (a) in the case of Naira remittances, carry interest at the prevailing
6 NIBOR plus 10% from the date when the tax becomes payable until it is paid;
7 and

8 (b) in the case of foreign currency remittances, incur interest at the
9 prevailing LIBOR or any successor rate plus 10% from the date when the tax
10 becomes payable until it is paid,

11 the provisions of this Act relating to collection and recovery of tax shall apply
12 to the collection and recovery of the interest.

13 PART XI

14 GENERAL PROVISIONS

General
Application of
this Part and
other matters

15 **303.**-(1) The provisions of this Act shall not apply to holders of an oil
16 prospecting licence or oil mining lease who do not enter into a conversion
17 contract until the termination or expiration of the respective oil prospecting
18 licence or oil mining lease but any renewal of an oil mining lease shall be based
19 on this Act.

20 (2) The fiscal provisions of this Act are the base terms that are
21 applicable and the Commission may under section 74(2) of this Act conduct a
22 licensing round whereby the bid parameter is a higher royalty, profit oil share
23 or other fiscal feature in order to ensure that the Government receives the full
24 market value for each block.

Regulations,
rules and forms

25 **304.**-(1) Where matters relate to hydrocarbon tax and companies
26 income tax, the Minister of Finance may make regulations for the carrying out
27 of the provisions of this Act and the Service may make rules and specify the
28 form of returns, claims, statements and notices under this Act.

29 (2) Where matters relate to fees, rents, royalties and payments to
30 Government other than taxes and duties, the Commission may make

1 regulations and rules generally for the carrying out of the provisions of this
2 Act.

3 **305.** Fiscal stabilization clauses contained in any Production
4 Sharing Contract or other contract entered into after the commencement of
5 this Act shall not be applicable to certain fiscal provisions, regardless of
6 whether these changes affect the contractor favorably or unfavorably, if
7 changes are being made in a manner that is not discriminatory to the
8 petroleum industry or the contractor, with respect to-

Fiscal
stabilization

9 (a) generally applicable taxes, such as withholding taxes,
10 companies income tax, tertiary education tax and VAT;

11 (b) levies, taxes or payments to comply with modern principles in
12 respect of environment, labor laws, health and safety; and

13 (c) new taxes, levies or duties to implement Nigeria's
14 commitments with respect to climate change under the United Nations
15 Framework Convention on Climate Change and other related international
16 agreements.

17 **306.** All production of petroleum, including production tests shall
18 be subject to Royalties as provided in the Seventh Schedule to this Act.

Royalty

19 CHAPTER FIVE

20 MISCELLANEOUS PROVISIONS

21 **307.-(1)** The provisions of the Public Officers Protection Act shall
22 apply in relation to any suit instituted against the Commission or the
23 Authority, the Commission Chief Executive or the Authority Chief
24 Executive, any commissioner or director, officer or employee of the
25 Commission or the Authority.

Legal proceedings,
etc.

26 (2) No action, claim, proceeding or suit shall lie or be commenced
27 against the Commission or the Authority, the Commission Chief Executive
28 or Authority Chief Executive, any commissioner or director or any other
29 employee or officer of the Commission or the Authority, for any act done,
30 attempted to be done or omitted to be done pursuant to this Act or any other

1 law or enactment or of any public duty or authority in respect of any alleged
2 neglect or default in the execution of this Act or any other law or enactment,
3 duty or authority or be instituted in any court unless it is commenced within 3
4 months after the accrual of any cause of action in respect of any such act,
5 neglect or default and provided such act or omission was not done in good faith.

Pre-Action
Notice

6 **308.**-(1) A suit shall not be commenced against the Commission or the
7 Authority or any officer of the Commission or the Authority, before the
8 expiration of a period of 1 month after a written notice of the intention to
9 commence the suit has been served on the Commission or the Authority.

10 (2) The notice referred to in subsection (1) of this section shall state
11 the cause of action, the particulars of claim, the name and address of the
12 claimant and the reliefs sought.

13 (3) A notice, summons or other document required or authorised to be
14 served on the Commission or the Authority pursuant to this Act or any other
15 law or enactment, may be served by delivering it to the office of the
16 Commission Chief Executive or the Authority Chief Executive.

17 (4) An order for execution or attachment of any property of the
18 Commission or the Authority shall not be issued unless a 3 months' notice of
19 the intention to commence execution process has been given to the
20 Commission or the Authority.

Consequential
Amendments

21 **309.** Subject to the provisions of the Constitution, upon the coming
22 into force of this Act, where the provisions of any other enactment or law are
23 inconsistent with the provisions of this Act, the provisions of this Act shall
24 prevail and the provisions of that other enactment or law shall, to the extent of
25 that inconsistency, be void in relation to matters provided for in this Act.
26 Deemed modified

Repeals

27 **310.**-(1) From the effective date of this Act the following enactments
28 and Regulations are repealed -

29 (a) Associated Gas Reinjection Act, 1979 CAP A25 Laws of the
30 Federation 2004, and its Amendments;

1 (b) Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 Laws
2 of the Federation of Nigeria 2004;

3 (c) Motor Spirits (Returns) Act, CAP M20 Laws of the Federation
4 of Nigeria 2004;

5 (d) Nigerian National Petroleum Corporation (Projects) Act No. 94
6 of 1993, CAP N124 Laws of the Federation of Nigeria 2004;

7 (e) Nigerian National Petroleum Corporation Act (NNPC) 1977
8 No, 33 CAP N123 Laws of the Federation of Nigeria as amended, when
9 NNPC ceases to exist pursuant to section 54(3) of this Act;

10 (f) Petroleum Products Pricing Regulatory Agency
11 (Establishment) Act 2003;

12 (g) Petroleum Equalisation Fund (Management Board etc.) Act
13 No. 9 of 1975, CAP P11 Laws of the Federation of Nigeria 2004;

14 (h) Petroleum Equalisation Fund (Management Board, etc.) Act,
15 1975;

16 (i) Petroleum Profit Tax Act Cap P13 LFN 2004, and

17 (j) Deep Offshore and Inland Basin Production Sharing Contract
18 Act 2019, as amended.

19 (2) The provisions of the Pre-Shipment Inspection of Oil Export
20 Act, 1996 shall be amended accordingly.

21 (3) With respect to the Petroleum Equalisation Fund, as of the
22 Effective Date-

23 (a) the collection of net surplus revenues from oil marketing
24 companies shall cease, except for the collection of unpaid net surplus
25 revenues earned prior to the effective date; and

26 (b) the payment for reimbursements to oil marketing companies
27 shall cease, except for possible remaining payment obligations incurred
28 prior to the effective date.

29 (4) An amount remaining in the Fund after the completion of the
30 transactions under paragraphs (a) and (b) of this subsection shall be

1 transferred to the Midstream Gas Infrastructure Fund; and

2 (5) Where the Fund is insufficient to make the payments pursuant to
3 paragraph (b) of this subsection the Authority may prorate the amounts payable
4 based on the ratio between the Funds remaining and the outstanding payables,
5 provided that where the Fund is in a deficit, the proration shall be zero, and oil
6 marketing companies shall have no claim as to further outstanding amounts.

Saving provisions

7 **311.**-(1) Any Act, subsidiary legislation or regulation, guideline,
8 directive and order made pursuant to any principal legislation repealed or
9 amended by this Act, shall, in so far as it is not inconsistent with this Act,
10 continue in force mutatis mutandis as if they had been issued by the
11 Commission or Authority under this Act until revoked or replaced by an
12 amendment to this Act or by subsidiary legislation made under this Act and
13 shall be deemed for all purposes to have been made under this Act.

14 (2) Any oil prospecting licence or oil mining lease granted under the
15 Petroleum Act, 1969 that is subsisting as at the effective date of this Act shall
16 continue to have effect, subject to the following terms and conditions-

17 (a) with respect to renegotiated production sharing contracts, the
18 following conditions shall apply-

19 (i) where negotiations of the contracts are continuing upon the
20 effective date of this Act, such contracts shall be signed within 1 year of the
21 effective date and in the event of failure to complete the negotiations within 1
22 year of the effective date, such contract shall be deemed to conform to the
23 provisions of this Act at the expiration of the lease,

24 (ii) where the contracts were or are signed by NNPC, the leases shall
25 be assigned to NNPC Limited without prior approval of the contractor and
26 NNPC Limited shall continue its role as concessionaire under such Leases,
27 NNPC shall by written notice notify the contractor of such assignment,

28 (iii) the renegotiated production sharing contracts, shall not feature
29 any investment tax credits and shall feature a cost oil limit of not more than
30 60% of the total oil production and for the purpose of determining the profit oil

1 share based on cumulative production, the production from the total
2 production of all production areas selected under section 93 of the Act shall
3 be used,

4 (iv) the contracts and leases shall continue to be subject to the
5 legislation pursuant to subsection (9) of this section, provided that such
6 Leases shall be subject to section 93 of this Act and in this respect the
7 conversion date for the purpose of the interpretation of section 93 of this Act
8 shall be the signing date of such renegotiated production sharing contracts,
9 and

10 (v) upon expiration or terminations, the Leases and renegotiated
11 production sharing contracts can only be renewed on the basis of the
12 provisions of this Act;

13 (b) with respect to other oil prospecting licences and oil mining
14 leases that do not wish to convert pursuant to section 92(6), the provisions of
15 section 303(2) of this Act and the provisions of subsection (9) of this section
16 shall apply and the domestic gas price shall be \$2.50 per MMBtu instead of
17 the prices established in Schedule Three of this Act.

18 (c) contractors of NNPC of oil prospecting licences and oil mining
19 leases shall be subject to the provisions of sections 232 and 233 of this Act.

20 (3) Any other licence, lease, certificate, authority or permit which
21 was issued by the Department of Petroleum Resources, Petroleum Products
22 Pricing and Regulatory Agency or Petroleum Equalisation Fund, as the case
23 may be and which had effect immediately before the effective date shall
24 continue to have effect, mutatis mutandis, for the remainder of its period of
25 validity as if it had been issued by the Commission or Authority.

26 (4) Any tariff, price, levy, or surcharge which was payable to the
27 Department of Petroleum Resources, Petroleum Products Pricing and
28 Regulatory Agency or Petroleum Equalisation Fund prior to the effective
29 date shall continue in force until the expiration of the term of the said tariff,
30 price, levy, or surcharge, or until alternative provisions are made pursuant to

1 the provisions of this Act or any regulations made under it, whichever is earlier.

2 (5) Any licence, permit or other right granted in respect of
3 commercial activities pertaining to midstream petroleum operations or
4 downstream petroleum operations, including refineries, pipelines, storage,
5 transportation, distribution and retail under any law in force at the time in
6 Nigeria, shall, in accordance with the provisions of this Act, apply to the
7 regulatory institutions for the issuance of the appropriate licence, and pending
8 the issuance of the said appropriate licence or permit within 24 months of the
9 effective date and the existing licence, permit or right shall continue in force as
10 if it had been issued under the provisions of this Act.

11 (6) Any other permit or other right in respect of any sector of the
12 Petroleum Industry to which subsections (2), (3) and (4) of this section does not
13 apply and that has been granted by the Department of Petroleum Resources,
14 Petroleum Pricing and Product Regulatory Agency or Petroleum Equalisation
15 Fund, as the case may be, and which is still in existence on the effective date,
16 shall continue in force for the remainder of its duration as if it had been issued
17 under the provisions of this Act.

18 (7) Any tariff, price, levy, or surcharge, which was payable to the
19 Department of Petroleum Resources, Petroleum Pricing and Product
20 Regulatory Agency or Petroleum Equalisation Fund prior to the effective date
21 shall continue in force until the expiration of the term of the said tariff, price,
22 levy or surcharge or until alternative provisions are made pursuant to the
23 provisions of this Act or any regulations, whichever is earlier, provided that any
24 payments under Chapter Two of this Act shall be applicable.

25 (8) Within 3 months from the effective date, the Minister of Petroleum
26 on the advice of the Commission or the Authority, may make any further
27 transitional and savings provisions that are necessary or desirable, provided
28 that such provisions are consistent with the transitional and savings provisions
29 in this Act.

30 (9) Notwithstanding the provisions of section 310 of this Act, the

1 following laws shall be saved until the termination or expiration of all oil
2 prospecting licences and oil mining leases pursuant to subsection (2)(b) of
3 this section:

4 (a) Petroleum Act, CAP P10, Laws of the Federation of Nigeria,
5 2004;

6 (b) Petroleum Profit Tax Act, 1958;

7 (c) Oil Pipelines Act, CAP 07 Laws of the Federation of Nigeria
8 2004 and any subsidiary legislation shall, in so far as it is not inconsistent
9 with this Act, remain in operation until it is repealed or revoked and shall be
10 deemed for all purposes to have been made under this Act;

11 (d) Deep Offshore and Inland Basin Production Sharing Contracts
12 Act (1999) and its Amendment; and

13 (e) any other law or Regulations that are consistent with the
14 principles of section 92(6) of this Act.

15 (10) Within 24 months from the effective date, existing Lessees
16 and Licence and Permit holders engaged in activities in midstream or
17 downstream petroleum operations prior to the effective date shall apply and
18 the Authority shall, where applicable, issue the appropriate licence or
19 permit.

20 **312.-(1)** The Commission shall be vested with all assets, funds,
21 resources and other movable and immovable properties which immediately
22 before the effective date were held by the Petroleum Inspectorate or the
23 Department of Petroleum Resources.

Transfer of assets
and liabilities to
the Commission

24 (2) The rights, interests, obligations and liabilities of the Petroleum
25 Inspectorate and Department of Petroleum Resources existing immediately
26 before the effective date under any contract or instrument or law or in equity
27 are hereby assigned to and vested in the Commission.

28 (3) Any contract or instrument covered by subsection (2) of this
29 section shall be of the same force and effect against or in favour of the
30 Commission and shall be enforceable as fully and effectively as if instead of

1 the Petroleum Inspectorate or Department of Petroleum Resources the
2 Commission had been named therein or had been a party thereto.

3 (4) The Commission shall be subject to all the obligations and
4 liabilities to which the Petroleum Inspectorate and Department of Petroleum
5 Resources were subject immediately before the effective date and all other
6 persons shall as from the effective date have the same rights, powers and
7 remedies against the Commission as they had against the Petroleum
8 Inspectorate or Department of Petroleum Resources immediately before the
9 effective date.

Transfer of assets
and liabilities to
the Authority

10 **313.**-(1) The Authority shall be vested with all assets, funds,
11 resources and other movable and immovable properties, which immediately
12 before the effective date were held by the Department of Petroleum Resources,
13 the Petroleum Pricing and Product Regulatory Agency, and the Petroleum
14 Equalisation Fund (Management Board).

15 (2) The rights, interests, obligations and liabilities of the Department
16 of Petroleum Resources, the Petroleum Pricing and Product Regulatory
17 Agency, and the Petroleum Equalisation Fund (Management Board) existing
18 immediately before the effective date under any contract or instrument or law
19 or in equity are hereby assigned to and vested in the Authority.

20 (3) Any contract or instrument covered by subsection (2) of this
21 section shall be of the same force and effect against or in favour of the
22 Authority and shall be enforceable as fully and effectively as if instead of the
23 Department of Petroleum Resources, the Petroleum Pricing and Product
24 Regulatory Agency, and the Petroleum Equalisation Fund (Management
25 Board) had been named therein or had been a party thereto.

26 (4) The Authority shall be subject to all the obligations and liabilities
27 to which the Department of Petroleum Resources, the Petroleum Pricing and
28 Product Regulatory Agency, and the Petroleum Equalisation Fund
29 (Management Board) were subject immediately before the Effective Date
30 and all other persons shall as from the Effective Date have the same rights,

1 powers and remedies against the Authority as they had against the
2 Department of Petroleum Resources, the Petroleum Pricing and Product
3 Regulatory Agency, and the Petroleum Equalisation Fund (Management
4 Board) immediately before the Effective Date.

5 **314.**-(1) From the effective date, employees in the relevant
6 divisions in the Petroleum Inspectorate or the Department of Petroleum
7 Resources shall be employees of the Commission on terms no less
8 favourable to those in effect immediately prior to such transfer, and all years
9 of service with the Petroleum Inspectorate or the Department of Petroleum
10 Resources, as applicable, shall be deemed to be years of service qualifying
11 for employment-related entitlements under any applicable law.

Transfer of
employees and
conditions of
service

12 (2) The Commission shall assume and continue to fulfil all
13 statutory obligations in respect of pension schemes to which the Petroleum
14 Inspectorate or the Department of Petroleum Resources, as applicable, was
15 obliged in respect of its employees, prior to the effective date.

16 (3) From the effective date, employees of each of the Department
17 of Petroleum Resources, the Petroleum Pricing and Product Regulatory
18 Agency, and the Petroleum Equalisation Fund (Management Board), shall
19 be employees of the Authority on terms no less favourable to those in effect
20 immediately prior to the Effective Date, and all years of service with the
21 Department of Petroleum Resources, the Petroleum Pricing and Product
22 Regulatory Agency or the Petroleum Equalisation Fund (Management
23 Board), as applicable, shall be deemed to be years of service qualifying for
24 employment-related entitlements under any applicable law.

25 (4) The Authority shall assume and continue to fulfil all statutory
26 obligations in respect of pension schemes to which the Department of
27 Petroleum Resources, the Petroleum Pricing and Product Regulatory
28 Agency and the Petroleum Equalisation Fund (Management Board), as
29 applicable, was obliged in respect of its employees, prior to the effective
30 date.

Movement of
staff of the
institutions

1 **315.** As part of the implementation process of sections 313 and 57 of
2 this Act, the Minister may within 24 months of the effective date cause an inter-
3 agency transfer of any staff of the institutions listed below to the Commission,
4 the Authority or NNPC Limited based on skills and competence requirements
5 of the new institutions, if the skills and competence of the said staff are most
6 suitable in any of the successor institutions during the implementation process-
7 (a) Department of Petroleum Resources;
8 (b) Nigerian National Petroleum Corporation or any of its
9 subsidiaries;
10 (c) Petroleum Equalisation Fund;
11 (d) Petroleum Inspectorate; and
12 (e) Petroleum Products Pricing and Regulatory Authority.

Transfer of
Existing Host
Community
Development
Projects and Host
Community
Development
Schemes

13 **316.**-(1) Every settlor shall transfer any existing host community
14 development project or scheme to a host community development trust
15 established pursuant to the provisions of this Act.
16 (2) Every applicable settlor shall notify the Commission or Authority,
17 as the case may be, upon completion of any transfer pursuant to subsection (1)
18 of this section to any one or more host community development trusts of any of
19 its existing host community development projects or schemes.
20 (3) Any financial contribution made by a settlor from the effective
21 date until the date falling 12 months after the effective date to any ongoing host
22 community development project or scheme in accordance with their terms
23 shall be deemed to constitute a contribution made by such holder or holder
24 nominee pursuant to section 240(2) of this Act.

Transitional and
Savings Provisions
relating to
Chapter Four

25 **317.**-(1) Anything made or done, or having effect as if made or done,
26 before the effective date of this Act under or pursuant to any provision of the
27 Petroleum Act, the Petroleum Profit Tax Act and the Deep Offshore and Inland
28 Basin Production Sharing Contract Act by the Service and having any
29 continuing or resulting effect with respect to the taxation of the profits of a
30 company or any matter connected therewith, shall be treated and for all

1 purposes shall have effect as if it were made or done by the Service under the
2 corresponding provisions of this Act.

3 (2) All rules, orders, notices or other subsidiary legislation made
4 under the Petroleum Act, the Petroleum Profits Tax Act, and the Deep
5 Offshore and Inland Basin Production Sharing Contract Act shall continue
6 to have effect as if made under the corresponding provisions of this Act.

7 (3) All references in any other enactment to provisions of the
8 Petroleum Act, the Petroleum Profits Tax Act and the Deep Offshore and
9 Inland Basin Production Sharing Contract Act shall be construed as
10 references to the corresponding provisions of this Act.

11 (4) With respect to petroleum mining leases selected pursuant to
12 section 93 (5)(b) and 93(6)(b) of this Act, any capital allowances existing at
13 the effective date for the related oil mining leases shall be carried over to the
14 selected petroleum mining leases, provided the allowances relate to
15 upstream petroleum operations and do not include investment tax
16 allowances and investment tax credits.

17 (5) Subject to the provisions of Section 303(1) of this Act, the
18 provisions of Parts II and X of Chapter Four of this Act shall apply upon the
19 commencement of the first Accounting Period following the Effective Date.

20 **318.** In this Act unless the context otherwise requires-

Interpretation

21 "accounting date" means the date on which a company usually prepares its
22 accounting statement.

23 "accounting period" in relation to a company engaged in petroleum
24 operations, means-

25 (a) a period of one year commencing on 1st January and ending on
26 31st December of the same year; or

27 (b) any shorter period commencing on the day the company first
28 makes a sale or bulk disposal of chargeable oil, domestic, export or both, and
29 ending on 31st December of the same year; or

30 (c) any period of less than a year being a period commencing on 1st

1 January of any year and ending on the date in the same year when the company
2 ceases to be engaged in petroleum operations;

3 In the event of any dispute with respect to the date of the first sale of chargeable
4 oil above or with respect to the date on which the company ceases to be
5 engaged in petroleum operations, the Commission shall determine the same
6 and no appeal shall lie;

7 "Act" means the Petroleum Industry Act;

8 "adjusted profit" means adjusted profit as stated in sections 262 and 272 of this
9 Act.

10 "advisory committee" has the meaning given to it in section 230 of this Act.

11 "affiliate" means the relationship that exists between two Persons when one
12 controls or is controlled by, an entity which controls, the other Person, where
13 'control' means the direct or indirect ownership of more than 50% of the voting
14 rights in a company, partnership or legal entity;

15 "aggregate gas price" means the gas price determined pursuant to section 167
16 (4) of this Act;

17 "area of operation" means the territory which hosts a Lessee's or licensee's
18 operational or designated facilities and any other ancillary facilities related to
19 upstream and midstream petroleum operations;

20 "assessable profit" means Assessable Profit as stated in sections 262 and 272 of
21 this Act;

22 "associated gas" means-

23 (a) natural gas, commonly known as gas-cap gas, which overlies and
24 is in contact with crude oil in a reservoir; and

25 (b) solution gas dissolved in crude oil in a reservoir and emerging
26 from the fluid as pressure drops.

27 "authorisation" means approval issued by the Commission or Authority for an
28 activity in the petroleum industry;

29 "Authority" means the "The Nigerian Midstream and Downstream Petroleum
30 Regulatory Authority" as provided for in this Act;

1 "Authority Chief Executive" means the executive pursuant to section
2 34(2)(c) of this Act;

3 "Authority Fund" means the fund established pursuant to section 47 of this
4 Act;

5 "barrel" means a barrel of 42 United States gallons;

6 "board" means the Governing Board of the Commission, Authority, NNPC
7 Limited or an Incorporated Joint Venture Company;

8 "board of trustees" means the governing board of the trust established
9 pursuant to section 242 of this Act;

10 "bulk gas storage licence" means a licence granted pursuant to section 132
11 of this Act;

12 "capital fund" means the fund available to the Board of Trustees of a host
13 community development trust for community development projects and
14 other matters on behalf of the holder or holders as provided for in this Act;

15 "chargeable oil" means chargeable oil as defined in section 262 of this Act

16 "chargeable profit" means chargeable profit as stated in section 262 of this
17 Act.

18 "chargeable tax" means chargeable tax as stated in section 267 of this Act.

19 "chargeable volume" in relation to a company engaged in upstream
20 petroleum operations means the chargeable volume as set out in paragraph 7
21 of the Seventh Schedule;

22 "Chief Executive" means the Commission Chief Executive or the Authority
23 Chief Executive;

24 "commercial discovery" means a discovery of crude oil, natural gas or
25 condensates within a petroleum prospecting licence which can be
26 economically developed in the opinion of the licensee after consideration of
27 all relevant economic factors normally applied for the evaluation and
28 development of crude oil, natural gas or condensate;

29 "Commission" means the Nigerian Upstream Petroleum Regulatory
30 Commission established under this Act;

1 "Commission Chief Executive" means the executive pursuant to section
2 11(2)(c) of this Act;

3 "Commission Fund" means the fund established pursuant to section 24 of this
4 Act;

5 "company" means in this Act, any company or corporation, other than a
6 corporation sole, incorporated under the Companies and Allied Matters Act;

7 "Companies and Allied Matters Act" means the Companies and Allied Matters
8 Act CAP C20, Laws of the Federation of Nigeria, 2004;

9 "condensate" means to a portion of natural gas of such composition that are in
10 the gaseous phase at temperature and pressure of the reservoirs, but that, when
11 produced, are in the liquid phase at surface pressure and temperature;

12 "connection agreement" means an agreement setting out the terms on which
13 individual, physical connections to the transportation pipeline, transportation
14 network or gas distribution network will be effected and matters such as the
15 configuration, pressure, technical parameters and cost of the connection;

16 "Constitution" means the Constitution of the Federal Republic of Nigeria 1999
17 (as Altered);

18 "conversion contract" means a contract pursuant to the provisions of section 92
19 of this Act;

20 "conversion date" means the date pursuant to the provisions of section 92 of
21 this Act;

22 "Corporate Affairs Commission" means the Corporate Affairs Commission of
23 Nigeria;

24 "Corrupt Practices Law" means-

25 (a) the laws of the Government in respect of bribery, kickbacks and
26 corrupt business practices;

27 (b) the Foreign Corrupt Practices Act of 1977 of the United States of
28 America (Pub. L. No. 95-213 §§ 101-104 et. seq.), as amended;

29 (c) the OECD Convention on Combating Bribery of Foreign Public
30 Officials in International Business Transactions, signed in Paris on 17

1 December 1997, which entered into force on 15 February 1999, and the
2 Convention's Commentaries;

3 (d) the United Kingdom Bribery Act 2010; and

4 (e) any other law of general application relating to bribery,
5 kickbacks or corrupt business practices.

6 "Council" means the Council established pursuant to section 52(3) and (4)
7 of this Act;

8 "crude oil" means petroleum, which is in liquid conditions upon production
9 from a reservoir either in its natural state or after the extraction of water, sand
10 or other foreign substance from it, but before any such oil has been refined or
11 otherwise treated, other than oil extracted by destructive distillation from
12 coal, bituminous shales or other stratified deposits;

13 "crude oil refiner" means the holder of a crude oil refining licence pursuant
14 to section 183 of this Act;

15 "customary court" means a customary court established by the applicable
16 laws of a State of the Federation or the Federal Capital Territory;

17 "customer client" means a wholesale customer of the strategic sector who is
18 a client of the domestic gas aggregator making use of the escrow account
19 mechanism;

20 "customer client volume" is the volume of natural gas that is paid for by a
21 customer client for the benefit of a specific producer client into the escrow
22 account of the domestic gas aggregator in any one month;

23 "customer protection" means the standards, practices and service
24 protections for customers including, those relating to pricing, service
25 quality and standards, billing practices, performance reporting and any
26 regulations of the Commission and Authority that provide such protections;

27 "decommissioning and abandonment" means the approved process of
28 cessation of operations of crude oil and natural gas wells, installations,
29 plants and structures, including shutting down an installation's operations
30 and production, total or partial removal of installations and structures where

1 applicable, chemicals, radioactive and all such other materials handling,
2 removal and disposal of debris and removed items, environmental restoration
3 of the area after removal of installations, plants and structures; and
4 "decommission" has a corresponding meaning;
5 "decommissioning and abandonment fund" has the meaning given to it in
6 section 232 of this Act;
7 "decommissioning and abandonment plan" is the plan to be submitted in the
8 Field development plan pursuant to section 79(2) for upstream petroleum
9 operations and pursuant to section 111(3) of this Act for midstream petroleum
10 operations;
11 "deep offshore" means any area within the territorial waters, continental shelf
12 or exclusive economic zone offshore of Nigeria having a water depth in excess
13 of 200 meters;
14 "deep rights" are petroleum rights vested in the Government after
15 relinquishment pursuant to section 88(5)(b) of this Act;
16 "Department of Petroleum Resources" means the Department of Petroleum
17 Resources of the Ministry of Petroleum Resources;
18 "designated facilities" means petroleum terminals, crude oil and natural gas
19 transportation pipelines, bulk storage tank farms, refineries, and gas
20 processing plants in midstream petroleum operations and petrochemical
21 plants;
22 "distribution pipeline" means a low-pressure pipeline for the purpose of
23 conveying natural gas or petroleum products to customers;
24 "domestic crude oil supply obligation" means the obligations of an upstream
25 crude oil producer to dedicate a specific volume of crude oil towards the
26 domestic refineries as stipulated in section 109 of this Act;
27 "domestic gas aggregator" means a licensee of a domestic gas aggregation
28 licence;
29 "domestic gas aggregation licence" means a licence granted pursuant to section
30 153 of this Act;

1 "domestic gas demand requirement" means an aggregate of the volume of
2 natural gas required to meet the natural gas demand for strategic sectors
3 within the domestic economy for a specified period pursuant to section 173
4 of this Act;

5 "domestic gas delivery obligation" means the obligations of a Lessee
6 producing natural gas to dedicate and deliver to a transfer point a specific
7 volume of natural gas towards meeting the domestic gas demand
8 requirement, as stipulated in section 110 of this Act;

9 "downstream gas operations" means all activities entered into for the
10 purpose of , distribution and supply of natural gas to retail customers, city
11 gate reception terminals for natural gas; stations for the distribution,
12 marketing and retailing of natural gas;

13 "downstream petroleum products operations" means all activities entered
14 into for the purpose of distribution and supply of petroleum products to retail
15 customers, tank farms for distribution of petroleum products; and stations
16 for the distribution, marketing and retailing of petroleum products;

17 "downstream petroleum operations" means downstream gas operations and
18 downstream petroleum products operations;

19 "effective date" means the date on which this Act comes into force;

20 "enforcement order" means an order issued by the Commission or the
21 Authority;

22 "exploration well" means a well that in the opinion of the Commission is
23 aimed at discovering petroleum in a separate field in which petroleum has
24 not been previously discovered;

25 "domestic base price" means the price determined pursuant the Third
26 Schedule to this Act;

27 "Federal High Court" means the Federal High Court established by section
28 249 of the Constitution of the Federal Republic of Nigeria, 1999 (as
29 Altered);

30 "Federation Account" means the Federation Account stated in section 162 of

1 the Constitution of the Federal Republic of Nigeria, 1999 (as Altered);
2 "field" includes an area consisting of a single reservoir or multiple reservoirs all
3 grouped on, or related to, the same geological structural feature, stratigraphic
4 condition, a combination of both and refers to the underground productive
5 formations or their vertical projection to the surface;
6 "fiscal gas price" means the price in US \$/MMBtu determined at the
7 measurement point for natural gas pursuant to applicable regulations.
8 "fiscal oil price" means the price pursuant to applicable regulations for crude
9 oil and condensate in US \$/barrel determined at the measurement point in such
10 a manner that the price is equal to the price for which comparable crude oil and
11 condensate of similar quality could be sold on similar terms at similar times by
12 parties under no compulsion to buy or sell and whereby none of such parties
13 exerts or is in a position to exert influence on the other party having regard to all
14 relevant facts;
15 "Fiscal Responsibility Act" means the Fiscal Responsibility Act, 2007;
16 "force majeure" includes delays or inability to perform any obligations under
17 this Act, (other than a payment obligation), due to any event beyond the
18 reasonable control of a person. The event may be, but is not limited to, any act,
19 event, happening, or occurrence due to natural causes; and acts or perils of
20 navigation, fire, hostilities, war (declared or undeclared), blockade, labour
21 disturbances, strikes, riots, insurrection, civil commotion, quarantine
22 restrictions, epidemics, storms, floods, earthquakes, accidents, blowouts or
23 lightning. An event of force majeure shall not include changes in the laws of
24 Nigeria or any political subdivision thereof or any acts or orders of
25 Government, any minister, ministry, department, sub-division, agency,
26 authority, council, committee, or other constituent element thereof, or any
27 corporation owned and/or controlled by any of the foregoing, where operations
28 are delayed, curtailed or prevented by force majeure, then the time for carrying
29 out the obligation and duties thereby affected, and rights and obligations
30 hereunder, shall be extended for a period equal to the period thus involved

1 provided that such period shall not exceed three years in total after which
2 each party can terminate the respective licence or lease;
3 "frontier acreages" means any or all onshore acreages in an area defined as a
4 frontier in a regulation issued by the Commission;
5 "frontier basin" means basins defined as frontier in a Regulation issued by
6 the Commission;
7 "frontier exploration fund" means the fund established in subsection (3) of
8 section 9 of this Act;
9 "fund manager" means a person or company appointed by the board of
10 trustees to manage and invest the reserve fund established under the
11 provisions of Chapter Three of this Act for the benefit of the trust;
12 "gas distribution licence" means a licence for the distribution of natural gas
13 through a low-pressure pipeline system in a specific geographical area
14 pursuant to section 148 of this Act;
15 "gas distribution network" means a set of interconnected distribution
16 pipelines for natural gas;
17 "gas distributor" is the holder of a gas distribution licence;
18 "gas processing licence" means a licence granted pursuant to section 129 of
19 this Act;
20 "gas retailer" means a holder of a Retail Gas Supply Licence pursuant to
21 section 146 of this Act;
22 "gas transportation network" means a gas transportation network pursuant
23 to section 138 of this Act;
24 "gas transportation network operator licence" means a licence to operate a
25 gas transportation network pursuant to section 138 of this Act;
26 "gas transportation network operator" means the holder of a gas
27 transportation network operator licence;
28 "gas transportation pipeline" means a gas transportation pipeline pursuant to
29 section 135 of this Act;
30 "gas transportation pipeline licence" means a Licence for a Gas

- 1 Transportation Pipeline granted pursuant to section 135 of this Act;
- 2 "Gazette" means the Official Gazette of the Federal Government of Nigeria;
- 3 "good international petroleum industry practices" means those uses and
4 practices that are, at the time in question, generally accepted in the
5 international petroleum industry as being good, safe, economical,
6 environmentally sound and efficient in petroleum operations. They should
7 reflect standards of service and technology that are either state-of-the-art or
8 otherwise appropriate to the operations in question and should be applied using
9 standards in all matters that are no less rigorous than those in use by petroleum
10 companies in global operations;
- 11 "Government" means the Federal Government of Nigeria;
- 12 "host community" means any community situated in or appurtenant to the Area
13 of Operation of a Settlor, and any other community as a Settlor may determine
14 pursuant to Chapter Three of this Act;
- 15 "host community development plan" has the meaning given to it in section 252
16 of this Act;
- 17 "host community development trust" has the meaning given to it in subsection
18 (1) of section 235 of this Act;
- 19 "host community development trust fund" means the fund established pursuant
20 to section 235(1) of this Act;
- 21 "host community needs assessment" has the meaning given to it in section
22 252(1) of this Act;
- 23 "large-scale gas utilisation industries" means-
- 24 (a) large-scale industries that use natural gas as a feedstock such as
25 gas-to-liquid plants, petrochemical industries and fertilizer plants; and
- 26 (b) mini-LNG plants, power plants and such other industries as
27 defined in regulations.
- 28 "Land Use Act" means the Land Use Act, CAP L5, Laws of the Federation of
29 Nigeria 2004;
- 30 "lease" means a petroleum mining lease;

- 1 "lessee" means a holder of a lease;
- 2 "LIBOR" means| London Interbank Offered Rate;
- 3 "Licence" means a licence issued by the Commission or Authority in respect
4 of any applicable upstream, midstream or downstream petroleum
5 operations;
- 6 "licensee" means a holder of a licence;
- 7 "liquefied natural gas" or "LNG" means natural gas in liquid form through
8 condensation at close to atmospheric pressure and at a temperature of
9 approximately minus 162 degrees celsius;
- 10 "liquefied petroleum gas" or "LPG" means mixtures of propane and butane
11 and small concentrations of other gases which are gaseous under room
12 temperature and pressure but are liquified by applying pressure;
- 13 "licensing round guidelines" means guidelines that are established by the
14 Commission to govern the process of issuing Licences or leases during a
15 licensing round;
- 16 "local distribution zone" means an authorised area as specified in
17 regulations, within which one gas distributor may operate;
- 18 "loss" means a loss ascertained in like manner as an Adjusted Profit;
- 19 "marginal field" means a field or discovery which has been declared a
20 marginal field prior to 1st January 2020;
- 21 "management committee" means the committee set up pursuant to section
22 247 of this Act;
- 23 "marketable natural gas" means a mixture mainly of methane and other
24 hydrocarbons, where necessary through the processing of the raw natural
25 gas for the removal or partial removal of some of its constituents, and which
26 meets specifications determined by the Authority for distribution to
27 wholesale customers and retail customers-
- 28 (a) for use as a domestic, commercial and industrial fuel; and
29 (b) as feedstock or industrial raw material;
- 30 "marketable natural gas delivery point" means a point where marketable

1 natural gas is made available to customers, at the exit of a gas processing plant
2 or gas conditioning plant or at a measurement point, or such other location
3 immediately downstream of a facility in which such natural gas has been
4 produced, processed, conditioned or treated in order to produce marketable
5 natural gas;

6 "measurement point" means-

7 (a) a point determined in the field development plan pursuant to
8 section 79(2) of this Act, where petroleum is being measured and its value is
9 determined for royalty purposes,

10 (b) where the point has not been determined, a point directly
11 downstream of the flow station in the petroleum mining lease, and

12 (c) where measurements take place outside the petroleum mining lease, a
13 deemed measurement point in the petroleum mining lease based on a
14 calculation procedure approved by the Commission adjusting from the point(s)
15 where petroleum is being measured;

16 "midstream gas infrastructure fund" means the fund established pursuant to
17 section 52 of this Act:

18 "midstream gas operations" means activities downstream of the measurement
19 points of petroleum mining leases, whether or not related to the petroleum
20 mining lease, with respect to the construction and operation of natural gas
21 transport or transmission pipelines, including the related compressor stations;
22 construction and operations of facilities to compress, transport and deliver
23 compressed natural gas ("CNG"); construction and operations of gas
24 processing facilities and central processing facilities, producing ethane,
25 propane, butane and natural gas liquids and marketable natural gas;
26 construction and operation of underground or above ground facilities for the
27 storage of natural gas; ethane extraction plants; construction and operation of
28 gas to liquids ("GTL") plants; construction and operation of lubricant,
29 petrochemical and fertilizer plants, construction and operation of liquefied
30 natural gas ("LNG") plants, and related LNG terminals as well as storage and

1 transport of LNG; acquisition, operation or chartering of LNG tankers for
2 coastal and marine transportation; purchase and sale, trading, bartering,
3 aggregating and marketing of natural gas transported by pipelines,
4 compressed natural gas, liquified natural gas, methane, ethane, propane,
5 butane, natural gas Liquids and liquids from GTL plants with respect to
6 wholesale customers and gas distributors and related administration and
7 overhead;

8 "midstream petroleum liquids operations" means activities downstream of
9 the measurement point(s) of petroleum mining leases, whether or not related
10 to the petroleum mining lease, with respect to the construction and operation
11 of facilities for upgrading of heavy oil; construction and operation of
12 lubricant, petrochemical and fertilizer plants, construction and operation of
13 petroleum liquids transport pipelines, including the related pumping
14 stations; acquisition, operation, leasing, rental or chartering of barges,
15 coastal or ocean-going tankers, railcars and trucks for the transport of
16 petroleum liquids; construction, leasing and operation of tank farms and
17 other storage facilities and export terminals for petroleum liquids;
18 construction and operation of refineries, purchase and sale, trading,
19 bartering, marketing of petroleum liquids and related administration and
20 overhead;

21 "midstream petroleum operations" means midstream petroleum liquids
22 operations and midstream gas operations;

23 "Minister of Petroleum" or "Minister" means the Minister of Petroleum
24 Resources or any person designated by the President as having
25 responsibility for overseeing the Petroleum Industry;

26 "Ministry of Environment" means the Federal Ministry in charge of
27 environmental matters;

28 "Ministry of Finance" means the Federal Ministry in charge of finance
29 matters;

30 "MMBtu" means millions of British thermal units;

1 "Ministry of Finance Incorporated" means the corporation sole established by
2 the Ministry of Finance Incorporated Act CAP M15 Laws of the Federation of
3 Nigeria, 2004;

4 "model contract" means a contract pursuant to section 84(2) and (3) of this Act;
5 "model lease" means a standard petroleum mining lease with terms and
6 conditions adopted for a specific licensing round and may contain contractual
7 provisions in a model contract attached to the lease;

8 "model licence" means a standard Petroleum prospecting licence with terms
9 and conditions adopted for a specific licensing round and may contain
10 contractual provisions in a model contract attached to the licence;

11 "National Data Repository" means national petroleum data bank as defined in
12 the National Data Repository Regulation, 2007 and its amendment;

13 "National Salaries, Incomes and Wages Commission" means the National
14 Salaries, Incomes and Wages Commission established by section 1 of the
15 National Salaries, Incomes and Wages Commission Act CAPN72, Laws of the
16 Federation of Nigeria, 2004;

17 "national strategic stock" means the reserve of petroleum products kept in
18 certain storage depots and facilities by the Government or on behalf of the
19 Government to provide for emergency;

20 "Natural Gas" means all gaseous hydrocarbons, and all substances contained in
21 it and as exist in natural state in strata, associated or not with crude oil, and are
22 in a gaseous state upon production from a reservoir and excludes condensates.

23 "Natural Gas Liquids" or "NGL" means hydrocarbons liquefied at the surface
24 in separators, field facilities or in gas processing plants, and include but are not
25 limited to, ethane, propane, butanes, pentanes, and natural gasoline.

26 "NIBOR" means Nigerian Interbank Offered Rate;

27 "Nigeria" means the territory of the Federal Republic of Nigeria inclusive of its
28 land borders, territorial waters, continental shelf and exclusive economic zone;

29 "Nigerian National Petroleum Corporation" or "NNPC" means the Nigerian
30 National Petroleum Corporation established by section 1 of the Nigerian

1 National Petroleum Corporation Act CAP N123, Laws of the Federation of
2 Nigeria, 2004;

3 "NNPC limited" means Nigerian National Petroleum Company Limited, a
4 company to be incorporated under the Companies and Allied Matters Act
5 pursuant to the provisions of this Act;

6 "non-associated gas" means natural gas that is found in a reservoir which
7 does not contain significant quantities of crude oil;

8 "oil mining lease" means an oil mining lease granted pursuant to the
9 Petroleum Act, 1969, prior to the effective date of this Act;

10 "oil prospecting licence" means an oil prospecting licence granted pursuant
11 to the Petroleum Act, 1969, prior to the effective date of this Act;

12 "onshore" means any land areas above the high-water mark, other than
13 Frontier Acreages;

14 "parcel" shall be a parcel pursuant to section 69(4) of this Act;

15 "Pensions Reforms Act" means the Pensions Reforms Act 2014;

16 "permit" means an official certificate of permission to undertake an activity
17 issued by the Commission or Authority;

18 "person" means any individual, company or other juristic person;

19 "petroleum" means hydrocarbons and associated substances as exist in its
20 natural state in strata, and includes crude oil, natural gas, condensate and
21 mixtures of any of them, but does not include bitumen and coal;

22 "petroleum exploration licence" means a Licence pursuant to section 71 of
23 this Act;

24 "petroleum exploration operations" or "PEL" means any geological,
25 geophysical, geochemical and other surveys and any interpretation of data
26 relating thereto, and the drilling of such shot holes, core holes and
27 stratigraphic tests, related to the exploration for crude oil and natural gas, but
28 not including exploration wells;

29 "Petroleum Equalisation Fund" means the fund established under the
30 Petroleum Equalisation Fund (Management Board etc.) Act No. 9 of 1975,

- 1 CAPP11 Laws of the Federation of Nigeria 2004;
- 2 "petroleum industry" means the industries involved in upstream, midstream
3 and downstream petroleum operations in Nigeria;
- 4 "Petroleum Inspectorate" means the Petroleum Inspectorate established under
5 section 10 of the Nigerian National Petroleum Corporation Act CAP N123,
6 Laws of the Federation of Nigeria, 2004;
- 7 "petroleum liquids" means crude oil, condensates, liquid petroleum products
8 and Liquefied Petroleum Gas;
- 9 "petroleum liquids transportation pipeline licence" means a licence for a
10 petroleum liquids transportation pipeline granted pursuant to section 190 of
11 this Act;
- 12 "petroleum liquids transportation network operator licence" means a licence to
13 operate a petroleum liquids transportation network pursuant to section 193 of
14 this Act;
- 15 "petroleum liquids transportation network operator" means the holder of a
16 petroleum liquids transportation network operator licence;
- 17 "petroleum liquids transportation network" means a network pursuant to
18 section 193 of this Act;
- 19 "petroleum liquids transportation pipeline" means a pipeline pursuant to
20 section 190 of this Act;
- 21 "petroleum mining lease" means a Lease pursuant to section 81 of this Act;
- 22 "petroleum operations" means upstream, midstream and downstream
23 petroleum operations;
- 24 "Petroleum Pricing and Product Regulatory Agency" means the Petroleum
25 Pricing and Product Regulatory Agency established under section 1 of the
26 Petroleum Pricing and Product Regulatory Agency (Establishment) Act CAP
27 P43, Laws of the Federation of Nigeria, 2004;
- 28 "petroleum product distribution licence" means a licence for the distribution of
29 petroleum products pursuant to section 201 of this Act;
- 30 "petroleum product distributor" is the holder of a petroleum product

- 1 distribution licence;
- 2 "petroleum product retailer" means a holder of a petroleum product retail
3 licence;
- 4 "petroleum product retail licence" means a permit to retail petroleum
5 products to final customers pursuant to section 203 of this Act;
- 6 "petroleum products" means materials derived from crude oil and natural
7 gas processing such as ethane, propane, butanes, pentanes, liquefied
8 petroleum gas, natural gas liquids, asphalts, gasoline, diesel, gas oil, jet fuel,
9 transportation fuels, fuel oils for heating and electricity generation and such
10 other derivatives;
- 11 "Petroleum prospecting licence" or "PPL" means a licence pursuant to
12 section 72 of this Act;
- 13 "pipeline" means all parts of any tubular infrastructure through which
14 petroleum is conveyed, including pipes, valves, pumping and compressor
15 stations and other equipment appurtenant to pipes;
- 16 "President" means the President of the Federal Republic of Nigeria;
- 17 "producer client" means a Lessee who is a client of the domestic gas
18 aggregator making use of the escrow account mechanism;
- 19 "production sharing contract" means any agreement for the exploration,
20 development and production of petroleum on terms under which the
21 financial risk-bearing party shall recover costs and receives a share of the
22 profits based on a share of production as established in the contract from the
23 applicable area;
- 24 "Public Procurement Act" means Public Procurement Act 2007;
- 25 "public service obligations" means specific obligations imposed by the
26 Authority on licensees in relation to security of supply, social service,
27 economic development, environmental protection or the use of indigenous
28 materials;
- 29 "qualified person" in respect of the issuance of a licence, lease or permit to

1 any person with respect to upstream, midstream and downstream petroleum
2 operations is such a person as is designated by regulation;
3 "regulation" means rule or order having force of law issued by the Minister,
4 Minister of Finance, the Commission or the Authority in accordance with the
5 provisions of this Act;
6 "Rent" means the annual charge made in respect of a Licence or Lease granted
7 under this Act;
8 "renegotiated production sharing contract" means a production sharing
9 contract for which court cases or arbitration cases were outstanding, and was or
10 is being renegotiated after the effective date of this Act with the objective of
11 settling the outstanding court cases or arbitration cases;
12 "reserve fund" has the meaning given to it in section 244 of this Act;
13 "reservoir" means a subsurface rock formation containing an individual and
14 separate natural accumulation of producible Petroleum characterised by a
15 single natural pressure system;
16 "retail gas supply licence" means a Licence granted pursuant to section 146 of
17 this Act;
18 "retention period" means the period not exceeding 10 years, in the first
19 instance, granted by the Commission to the holder of a petroleum licence to
20 retain rights to develop an area over which a significant gas discovery has been
21 made;
22 "retention area" means the area approved by the Commission for a significant
23 gas discovery under this Act;
24 "royalties" means the royalties specified in the Seventh schedule;
25 "shallow water" means areas in the offshore of Nigeria up to and including a
26 water depth of 200 meters;
27 "Service" means the Federal Inland Revenue Service;
28 "settlor" is a holder of an interest in a petroleum prospecting licence or
29 petroleum mining lease or a holder of an interest in a licence for midstream
30 petroleum operations, whose area of operations is located in or appurtenant to

- 1 any community or communities;
- 2 "signature bonuses" means payments made with respect to the acquisition of
3 petroleum prospecting licences or petroleum mining leases;
- 4 "significant gas discovery" means a discovery of natural gas that is
5 substantial in terms of reserves and is potentially commercial, but cannot be
6 declared commercial for one or more of the following reasons-
- 7 (a) no markets for natural gas within Nigeria;
- 8 (b) export markets need to be identified and developed;
- 9 (c) no pipeline, processing or liquefaction capacity is available in
10 existing systems where commercial conditions indicate that the best option
11 for development is based on the future expansion of such systems or the use
12 of such systems when capacity will become available in the future; or
- 13 (d) where the natural gas discovery would only be commercial
14 when jointly developed with other existing natural gas discoveries or
15 potential future natural gas discoveries;
- 16 "special investigation unit" means a unit established either under section 27
17 or section 50 of this Act;
- 18 "strategic sectors" means in relation to marketable natural gas purchases,
19 Wholesale Customers of the following sectors the-
- 20 (a) power sector,
- 21 (b) gas based industries, consisting of industries using gas as a feed
22 stock or industrial raw material, and
- 23 (c) commercial sector, consisting of industries, as may be
24 determined by the Authority, which use gas as an energy source;
- 25 "standard cubic foot" means, in relation to natural gas, the quantity of dry
26 ideal natural gas at a temperature of sixty (60) degrees Fahrenheit and a
27 pressure of fourteen decimal six nine six (14.696) pounds per square inch
28 absolute contained in a volume of one (1) cubic foot;
- 29 "supplier" means the holder of a wholesale gas supply licence, a wholesale
30 petroleum liquids supply licence or a retail gas supply licence;

1 "tariff" means the price charged for the provision of a particular service, or
2 group of services, with respect to midstream and downstream petroleum
3 operations;

4 "terrain" refers to the area of any PEL, PPL or PML;

5 "terminal" means a terminal for Petroleum Liquids, pumping or booster
6 station, or other installation or structure associated with a terminal, including
7 its storage facilities, other than a terminal situated within "a port or any
8 approaches thereto" within the meaning of the Nigerian Ports Authority Act;

9 "third party access" means the legal requirement for owners of certain
10 infrastructure facilities to grant access to those facilities to parties other than
11 themselves or their own customers, for uncommitted capacity, including
12 competitors in the provision of the relevant services, on terms stipulated in this
13 Act or regulations;

14 "transportation fuels" means fuels used for transport on land, on water and in
15 the air, such as gasoline, aviation gasoline, diesel, jet fuel, marine bunker fuel,
16 LNG, CNG and other fossil fuel based products, as well as hydrogen, bio-
17 diesel, bio-jet fuel, ethanol and other fuels used for transport purposes;

18 "transportation network" means a system of interconnected transportation
19 pipelines and other facilities required to transport natural gas or petroleum
20 liquids;

21 "transportation pipeline" means a pipeline used for the bulk conveyance of
22 petroleum liquids and for natural gas under high-pressure;

23 "transportation pipeline owner" means the holder of a gas transportation
24 pipeline licence or a petroleum liquids transportation pipeline licence;

25 "upstream petroleum operations" means the winning or obtaining of petroleum
26 in Nigeria by or on behalf of a company on its own account for commercial
27 purposes; petroleum exploration operations; all activities upstream of the
28 measurement points, related to the winning of petroleum through wells or
29 mining from petroleum reservoirs, drilling, fracking, completing, treatment
30 and operation of wells producing Petroleum; construction and operation of

1 gathering lines and manifolds for crude oil, natural gas and water;
2 construction and operation of high and low pressure separators;
3 construction and operation of facilities to treat crude oil and natural gas;
4 flaring of natural gas; compression and reinjection of natural gas in
5 reservoirs; construction and operation of facilities for the production of
6 electricity or heat from natural gas or other fuels as energy source for the
7 winning of petroleum; injection or re-injection of water into the reservoirs;
8 construction and operation of pipelines and other facilities for the discharge
9 of water; construction and operation of fixed or floating platforms or other
10 vessels required for the winning of Petroleum; construction and operation of
11 fixed or floating storage facilities of crude oil in the licence area;
12 transportation to and from the licence area of personnel, goods and
13 equipment; metering of well stream fluids; metering of petroleum at the
14 measurement point(s) prior to transportation; sale and marketing of Crude
15 Oil, natural gas or condensates or any of them at the measurement point(s)
16 and such other activities which by regulation are considered upstream
17 petroleum operations; and related administration and overhead; provided,
18 however, that where field facilities or fixed or floating platforms or vessels
19 provide for fully integrated upstream and midstream petroleum operations,
20 the Commission may consider the entire operations as upstream Petroleum
21 operations;

22 "UTM" means the Universal Transverse Mercator, a conformal projection
23 which uses a two-dimensional Cartesian coordinate system to give locations
24 on the surface of the Earth;

25 "wholesale customer" means a class of customers designated in regulations
26 with respect to-

27 (a) natural gas, the right to contract for and purchase a supply of
28 wholesale gas, with a capability to connect individually and economically to
29 a transportation pipeline or transportation network and shall include gas
30 distributors, and

1 (b) crude oil or petroleum products, it shall be a customer of a yearly
2 volume defined by regulation and shall include petroleum product distributors;
3 "wholesale gas" means natural gas sold by a supplier to wholesale customers;
4 "wholesale gas supplier" means the holder of a wholesale gas supply licence;
5 "wholesale gas supply licence" means a licence for the supply to wholesale
6 customers of natural gas pursuant to section 142 of this Act;
7 "wholesale petroleum liquids supply licence" means a licence for the supply to
8 wholesale customers of petroleum liquids pursuant to section 197 of this Act;
9 "wholesale petroleum liquids supplier" means a holder of a wholesale
10 petroleum liquids supply licence.

Short title

11 **319.** This Bill may be cited as the Petroleum Industry Bill, 2020.

12 FIRST SCHEDULE

13 *[section 3 (3)]*

14 *Rights of Pre-Emption*

15 1. The Minister shall have the right to require the holder of any
16 Licence or Lease granted under this Act (referred to in this Schedule as "the
17 licensee or lessee") to-

18 (a) provide for the Federal Government, to the extent of any refinery
19 or petroleum products storage capacity he may have in Nigeria, petroleum
20 products complying with specification given by the Minister; or

21 (b) deliver to any person holding a Licence to operate a refinery, such
22 quantity and quality of crude oil as may be specified by the Minister to the
23 extent that the licensee or lessee has crude oil of that quantity and quality.

24 2. The licensee or lessee shall use his best endeavours to increase so
25 far as possible with his existing facilities, the supply of petroleum or petroleum
26 products, or both, for the Federal Government to the extent required by the
27 Minister.

28 3. The licensee or lessee shall, with all reasonable expedition and so
29 as to avoid demurrage on the vessels conveying the same, use his best
30 endeavours to deliver all petroleum or petroleum products purchases by the

1 Minister under the right of pre-emption in such quantities, and at such places
2 of shipment or storage in Nigeria, as may be determined by the Minister.

3 4. Where a vessel employed to carry petroleum or petroleum
4 products pursuant to paragraph 3 of this Schedule is detained on demurrage
5 at the port of loading, the licensee or lessee shall pay the amount due for
6 demurrage according to the terms of the charter-party or the rates of loading
7 previously agreed to by the licensee or lessee, unless the delay is due to
8 causes beyond the control of the licensee or lessee.

9 5. Any dispute which may arise as to whether a delay is due to
10 causes beyond the control of the licensee or lessee shall be settled by
11 agreement between the Minister and the licensee or lessee or, in default of
12 agreement, by arbitration.

13 6. The price to be paid for petroleum or petroleum products taken
14 by the Minister in exercise of the right of pre-emption shall be-

15 (a) the reasonable value at the point of delivery, less discount to be
16 agreed by both parties; or

17 (b) where no such agreement has been entered into prior to the
18 exercise of the right of pre-emption, a fair price at the port of delivery to be
19 settled by agreement between the Minister and the Licensee or Lessee or, in
20 default of agreement, by arbitration.

21 7. To assist in arriving at a fair price for the purposes of paragraph
22 6(b) of this Schedule, the licensee or lessee shall, if the Minister so requires-

23 (a) furnish for the confidential information of the Minister
24 particulars of quantities, descriptions and prices of petroleum or petroleum
25 products sold to other customers and of charters or contracts entered into for
26 their carriage; and

27 (b) exhibit original or authenticated copies of the relevant contracts
28 or charter-parties.

29 8. The Minister may take control of any works, plants or premises
30 of the licensee or lessee and if he does so, the licensee or lessee and his

1 servants or agents shall conform to and obey all directions issued by the
2 Minister or on his behalf.

3 9. Reasonable compensation shall be paid to the licensee or lessee for
4 any loss or damage caused to him by reason of the exercise by the Minister of
5 the powers conferred by paragraph 8 of this Schedule.

6 10. Any compensation payable under paragraph 9 of this Schedule
7 shall be settled by agreement between the Minister and the licensee or lessee or,
8 in default of agreement, by arbitration.

9 11. Any arbitration under the First Schedule shall take place after the
10 Petroleum or Petroleum Products have been delivered.

11 SECOND SCHEDULE

12 *[sections 54(7) and 65(1)]*

13 PRINCIPLES OF NEGOTIATING INCORPORATED JOINT VENTURES

14 *General Provisions*

15 1.-(1) An incorporated joint venture company may be created for an
16 existing joint operating agreement. Each incorporated joint venture company
17 shall be formed under the Companies and Allied Matters Act. NNPC Limited
18 shall enter into negotiations with the other parties to such existing joint
19 operating agreements with a view to, among other things-

20 (a) agreeing and executing a shareholders' agreement in respect of the
21 applicable incorporated joint venture company;

22 (b) agreeing the provisions of the memorandum and articles of
23 association of the applicable incorporated joint venture company; and

24 (c) incorporating the applicable incorporated joint venture company.

25 (2) Prior to the incorporation of each incorporated joint venture
26 company, the parties to each applicable joint operating agreement shall
27 continue to carry out their obligations under such joint operating agreement in
28 the ordinary course of business.

29 (3) Each incorporated joint venture company shall be owned by the
30 parties to the applicable existing joint operating agreement in the same

1 proportion as their existing participating interests set forth in such joint
2 operating agreement, or in such other proportion as the parties thereto shall
3 mutually agree.

4 (4) Upon and following the incorporation of an incorporated joint
5 venture company-

6 (a) it can carry out upstream, midstream and downstream
7 petroleum operations subject to the appropriate fiscal regime as specified in
8 the this Act;

9 (b) it shall be deemed to be the sole licensee or lessee (as
10 applicable) of each petroleum prospecting licence or petroleum mining
11 lease held jointly pursuant to the applicable existing joint operating
12 agreement immediately prior to its incorporation;

13 (c) it shall at all times be the operator of petroleum operations
14 under each petroleum prospecting licence and petroleum mining lease that it
15 holds;

16 (d) it may contract for specific petroleum services but may not
17 enter into any contract or group of contracts which would have the effect of
18 transferring, directly or indirectly, any of the functions as operator except
19 with the approval of the Commission, in the case of upstream petroleum
20 operations, or the Authority, in the case of midstream and downstream
21 petroleum operations;

22 (e) it shall by publication on its website make public reasonable
23 details relating to its incorporation and constitutional documents; and

24 (f) it may render any services related to its operations (other than
25 financial and insurance services), to any other incorporated joint venture
26 company, NNPC Limited, or any other third party under such conditions as
27 it may deem necessary or desirable.

28 *Special Provisions Relating to Incorporated Joint Venture Companies*

29 2.-(1) No incorporated joint venture company shall be subject to

1 the provisions of the Fiscal Responsibility Act and the Public Procurement Act.

2 (2) Once incorporated, the following provisions shall apply to each
3 Incorporated joint venture company-

4 (a) prior to any sale of shares in an Incorporated joint venture
5 company by any shareholder (other than NNPC Limited) of such Incorporated
6 joint venture company, such shareholder shall first offer such shares for sale to
7 NNPC Limited at fair market value and on commercially reasonable terms.

8 (b) each incorporated joint venture company shall have its head office
9 and main operational offices in Nigeria.

10 *Organisation of Incorporated Joint Venture Companies*

11 3.-(1) Each incorporated joint venture company shall have a board of
12 directors to be appointed by the shareholders of the incorporated joint venture
13 company.

14 (2) The board of directors of each incorporated joint venture
15 company shall be made up of persons:

16 (a) who have distinguished themselves in their various capacities; and

17 (b) who are able to exercise independence and objectivity with
18 respect to the affairs of the incorporated joint venture company.

19 (3) The powers of the Board of directors of each incorporated joint
20 venture company shall be established in the articles of association of such
21 incorporated joint venture company; provided, that the Board of directors of
22 such incorporated joint venture company shall have the power to approve the
23 annual work program and budget of such incorporated joint venture company
24 and any revisions thereof.

25 (4) The Board of directors of each incorporated joint venture
26 company may create committees and subcommittees.

27 (5) Decisions of the Board of directors of each incorporated joint
28 venture company shall be guided by commercial and technical considerations
29 that represent good international petroleum industry practices.

1 *Special provisions relating to rents, royalties, taxes and other levies payable*
2 *by an incorporated joint venture company*

3 5.-(1) Each incorporated joint venture company shall be subject to
4 this Act on payment of rents, royalties and taxes.

5 (2) The initial capitalisation of each incorporated joint venture
6 company and the transactions required to create such incorporated joint
7 venture company shall not create any additional tax liabilities for any of the
8 holders of shares in the incorporated joint venture company; provided that all
9 assets, interests and liabilities previously held jointly pursuant to the applicable
10 joint operating agreement are transferred to the incorporated joint venture
11 company at their net book value.

12 *Special right of shareholders in an incorporated joint venture company to*
13 *purchase petroleum and any petroleum derivatives*

14 6.-(1) Each direct holder of shares in an incorporated joint venture
15 company shall have the right to purchase from the incorporated joint venture
16 company:

17 (a) at open market prices, a percentage of the crude oil, natural gas and
18 condensates produced by such incorporated joint venture company equal to its
19 shareholding interest in such incorporated joint venture company; and

20 (b) at open market prices, a percentage of the petroleum products
21 produced by such incorporated joint venture company equal to its percentage
22 ownership interest in the incorporated joint venture company.

23 (2) Where the direct holders of shares in an incorporated joint venture
24 company do not purchase all crude oil, natural gas, condensates and petroleum
25 products that they are entitled to pursuant to subsection (1) of this section, such
26 incorporated joint venture company may sell the remaining balance to any
27 Person at open market prices and on arm's length terms.

28 (3) Any income received by an incorporated joint venture company as
29 a result of the export of Petroleum may be held in bank accounts abroad and
30 may be used by such incorporated joint venture company to pay its obligations

1 outside Nigeria, subject to any obligations of such incorporated joint
2 venture company under this Act and any other applicable enactments.

3 (4) The transfer overseas of any funds by an incorporated joint
4 venture company shall be subject to the Regulations and policies of the
5 Central Bank of Nigeria.

6 *Pro-rata dividend distribution*

7 7.-(1) Each incorporated joint venture company shall pay
8 dividends and other distributions pro rata among the number of issued
9 shares held directly by its shareholders.

10 (2) Each dividend payment or other distribution shall be subject to
11 any withholding tax applicable under the Companies Income Tax Act.

12 *Dividend Policy*

13 8. The board of directors of each incorporated joint venture
14 company shall establish and from time to time amend the dividend
15 distribution policy of such incorporated joint venture company. Such
16 dividend distribution policy shall be premised on the prudent and
17 commercially reasonable management of the finances and operations of the
18 incorporated joint venture company.

19 *Special Provisions Relating to Financing of Operations*

20 9.-(1) Each incorporated joint venture company shall finance any
21 exploration for new prospects, development of new Fields, or any other
22 investments in accordance with the applicable approved annual work
23 program and budget for such incorporated joint venture from the cash flows
24 of the incorporated joint venture company and any borrowings by such
25 incorporated joint venture company, in each case as approved by its Board
26 of directors.

27 (2) Where the cash flow, together with any borrowings, of an
28 incorporated joint venture company is insufficient to finance the work
29 program in respect of any exploration for new prospects, development of
30 new Fields, or any other investments approved by the Board of directors of

1 such incorporated joint venture company, the shareholders of such
2 incorporated joint venture company shall consult as to the manner in which
3 further financing can be raised.

4 THIRD SCHEDULE

5 *[section 167(c)]*

6 DOMESTIC BASE PRICE AND PRICING FRAMEWORK

7 (1) The domestic base price as of January 1, 2021 shall be \$ 3.20 per
8 MMBtu

9 (2) The domestic base price shall be increased every year by \$ 0.05
10 per MMBtu until 2037, when a price of \$ 4.00 per MMBtu will apply for that
11 year and future years.

12 (3) The Authority, may, by regulations, change the domestic base
13 price pursuant to paragraph (1) and the yearly increase pursuant to paragraph
14 (2) to reflect changed market conditions and supply frameworks. The
15 objective is to establish a fully functioning free market in natural gas for
16 domestic supplies. This is to be achieved through the voluntary supplies
17 pursuant to subsection 110(2). Where insufficient voluntary supplies are
18 occurring, the Authority may increase the domestic base price and, or the
19 yearly increases. At the same time, the Authority shall monitor the gas prices in
20 other major emerging countries and ensure that Nigeria continuous to have a
21 price level for natural gas that is less than the average of these emerging
22 countries in order to promote the non-oil sectors in the Nigerian economy.

Fourth Schedule

[sections 168(1) and 266(1)(d)]

PRICING FORMULA FOR GAS PRICE FOR THE GAS BASED INDUSTRIES

The gas price for the gas based industries shall be determined by the following pricing formula:

$$CP = NRP * (1 + EPF) \leq EPP$$

Where -

CP is the applicable gas price in \$/Mmbtu

NRP is the National Reference Price which is \$1.00/MMbtu

EPF is the End Product Factor which is described by the following formula (CMPP - PRP)/PRP

CMPP is the Average Current Month End Product Price in \$/MT

PRP = Product Reference Price in \$/MT i.e. dollar per metric tonne which varies depending on the industry

End Product	NRP (\$/mmbtu) Net of transport Tariff \$/Kcf	PRP (\$/MT)
Ammonia	1.00	250
Urea	1.00	250
Methanol	1.00	250
Polypropylene (LDPPE/HDPPE)	1.00	250
Low Sulphur Diesel (GTL)	1.00	325

1 FIFTH SCHEDULE

2 *[sections 263(1)(d), 271 (2)(b), (2)(c)(5)(a), 277(1)(c) and 280(1)(b)]*

3 CAPITAL ALLOWANCES

4 *Interpretation*5 1. For the purposes of this schedule, unless the context otherwise
6 requires-7 (a) "Concession" includes a petroleum exploration licence,
8 petroleum prospecting licence, petroleum mining lease, any right, title or
9 interest in or to Petroleum in the ground and any option of acquiring any such
10 right, title or interest;11 (b) "Lease" includes an agreement for a lease where the term to be
12 covered by the lease has begun, any tenancy and any agreement for the letting
13 or hiring out of an asset, but does not include a mortgage, and all cognate
14 expressions including "LEASEHOLD INTEREST" shall be construed
15 accordingly and where,-16 (i) with the consent of the lessor, a lessee of any asset remains in
17 possession after the termination of the lease without a new lease being granted,
18 that lease shall be deemed for the purposes of this schedule to continue so long
19 as the lessee remains in possession; and20 (ii) on the termination of a lease of any asset, a new lease of that asset
21 is granted to the lessee, the provisions of this schedule shall have effect as if the
22 second lease were a continuation of the first lease;23 (c) Qualifying expenditure means, subject to the express provisions
24 of this schedule, expenditure incurred for the purpose of hydrocarbon tax in an
25 accounting period, which is capital expenditure, refers to as-26 (i) "qualifying plant expenditure" incurred on plant, machinery and
27 fixtures directly for upstream petroleum operations applicable to crude oil for
28 petroleum mining leases or petroleum prospecting licence;29 (ii) "qualifying pipeline and storage expenditure" including floating
30 production systems incurred directly or gathering pipelines for upstream

1 petroleum operations applicable to crude oil for petroleum mining leases or
2 petroleum prospecting licences;

3 (iii) "qualifying building expenditure" other than expenditure,
4 which is included in subparagraphs c(i), c(ii) or c(iv) of this "Interpretation",
5 incurred directly on the construction of buildings, structures or works of a
6 permanent nature for upstream petroleum operations applicable to crude oil
7 for petroleum mining leases or petroleum prospecting licences; or

8 (iv) "qualifying drilling expenditure", tangible and intangible,
9 other than expenditure which is included in subparagraphs c(i) or c(ii) of this
10 "Interpretation", incurred directly in connection with upstream petroleum
11 operations for petroleum mining leases or petroleum prospecting licence; in
12 view of-

13 (1) searching for or discovering and testing petroleum deposits, or
14 winning access, or

15 (2) the construction of any works or buildings which are likely to
16 be of little or no value when the upstream petroleum operations for which
17 they were constructed cease to be carried on, provided that, for the purposes
18 of these definitions, qualifying expenditure shall not include any sum which
19 may be deducted under the provisions of Section 263 of this Act and have
20 benefited from capital allowances prior to the acquisition of the asset by
21 another entity.

22 (d) For the purposes of interpretation of qualifying expenditure,
23 where expenditure is incurred by a company before its first accounting
24 period and such expenditure would have fallen to be treated as qualifying
25 expenditure (ascertained without the qualification contained in the
26 foregoing proviso) if it had been incurred by the company on the first day of
27 its first accounting period and that expenditure is incurred in respect of an
28 asset,-

29 (a) owned by the company then such expenditure shall be deemed
30 to be qualifying expenditure incurred by it on that day; or

1 (b) which has been disposed of by the company before the beginning
2 of its first accounting period, then any Loss suffered by the company on the
3 disposal of such asset shall not be allowed on commencement of accounting
4 period. Any profit realized by the company on such disposal shall be liable to
5 capital gains tax in the same period accordingly.

6 *Provisions relating to pre-production expenditure*

7 2. For the purposes of this Schedule, where-

8 (a) expenditure has been incurred before its first accounting period
9 and the expenditure would have been treated as a qualifying expenditure in any
10 of the classes of qualifying expenditures stated in subparagraphs 1c(i)-(iv)
11 above, then it shall be so classified and capital allowances claimed
12 accordingly; and

13 (b) Where the expenditure before the first accounting date should
14 have been treated as allowable deduction in an accounting period, it shall be so
15 allowed but fully amortized over a period of five (5) years with a 1% retention
16 value.

17 *Owner and meaning of relevant interest*

18 3.-(1) For the purposes of this Schedule, where an asset consists of a
19 building, structure or works, the owner shall be taken to be the owner of the
20 relevant interest in such building, structure or works.

21 (2) Subject to the provisions of this paragraph, in this Schedule, the
22 expressions "the relevant interest" means, in relation to any expenditure
23 incurred on the construction of a building, structure or works, the interest in
24 such building, structure or works to which the company which incurred the
25 expenditure was entitled when it incurred the expenditure.

26 (3) Where a Company incurs qualifying building expenditure or
27 qualifying drilling expenditure on the construction of a building, structure or
28 works, the company is entitled to two or more interests therein, and one of
29 those interests is an interest which is reversionary on all the others, that interest
30 shall be the relevant interest for the purposes of this Schedule.

1 (4) Where the owner of the relevant interest does not have statutory
2 title to the asset, that is, it is not the licensee or lessee to the asset, the
3 qualifying capital expenditure and the capital allowances accruing
4 therefrom, for the purposes of this Schedule, shall be to the benefits of the
5 holder of the licence or lease.

6 *Sale of Buildings, etc.*

7 4. Where capital expenditure has been incurred on the construction
8 of a building, structure or works and the relevant interest is sold, the
9 company which buys that interest shall be deemed, for the purposes of this
10 Schedule, to have incurred, on the date when the purchase price became
11 payable, capital expenditure on the construction equal to the price paid by it
12 for such interest or to the original cost of construction, whichever is the less
13 and the capital expenditure shall not be eligible for capital allowance
14 deduction under the hydrocarbon tax, provided that where such relevant
15 interest is sold before the building, structure or works has been used; the
16 foregoing provisions of this paragraph shall have effect with respect to sale
17 and the original cost of construction shall be taken to be the amount of the
18 purchase price on such sale.

19 *Annual Allowance*

20 5.-(1) Subject to the provisions of this Schedule, where in any
21 accounting period, a company owning any asset has incurred in respect of
22 the asset qualifying expenditure wholly, reasonably, exclusively and
23 necessarily for the purposes of upstream petroleum operations applicable to
24 crude oil carried on by it, there shall be due to that company as from the
25 accounting period in which the expenditure was incurred, an allowance "an
26 annual allowance" at the appropriate rate percent specified in the table to
27 this Schedule.

28 (2) Notwithstanding the provisions of sub-paragraph (1) of this
29 paragraph, there shall be retained in the books, in respect of each asset 1
30 percent of the initial cost of the asset which may only be written off in

1 accordance with sub-paragraph (3) of this paragraph.

2 (3) Any asset or part of it in respect of which capital allowances have
3 been granted, may only be disposed of on the authority of a certificate of
4 disposal issued by the Commission or any person authorized by it.

5 *Asset to be in use at end of accounting period*

6 6. An annual allowance in respect of qualifying expenditure incurred
7 in respect of any asset shall only be due to a company for any accounting period
8 if at the end of the accounting period it was the owner of that asset and costs
9 were incurred for the purposes of the upstream petroleum operations
10 applicable to crude oil carried on by it.

11 *Balancing allowances*

12 7. Subject to the provisions of this schedule, where in any accounting
13 period of a company, the company owning any asset in respect of which it has
14 incurred qualifying expenditure wholly and exclusively for the purposes of
15 upstream petroleum operations applicable to crude oil carried on by it, disposes
16 of that asset, an allowance "a balancing allowance" shall be due to that
17 company for that accounting period of the excess of the residue of that
18 expenditure, at the date such asset is disposed of, over the value of that asset at
19 that date, provided that a balancing allowance shall only be due in respect of
20 such asset if immediately prior to its disposal it was in use by such company for
21 the purposes of the upstream petroleum operations applicable to crude oil for
22 which such qualifying expenditure was incurred.

23 *Balancing charges.*

24 8. Subject to the provisions of this schedule, where in any accounting
25 period of a company, the company owning any asset in respect of which it has
26 incurred qualifying expenditure wholly and exclusively for the purposes of
27 upstream petroleum operations applicable to crude oil carried on by it, disposes
28 of that asset, the excess "a balancing charge" of the value of that asset, at the
29 date of its disposal, over the residue of that expenditure at that date shall, for the
30 purposes of section 262(1)(a) of this Act, be treated as income of the company

1 of that accounting period, provided that a balancing charge in respect of such
2 asset shall only be so treated if immediately prior to the disposal of that asset
3 it was in use by such company for the purposes of the upstream petroleum
4 operations applicable to crude oil for which the qualifying expenditure was
5 incurred and shall not exceed the total of annual allowances due under the
6 provisions of this schedule, in respect of such asset.

7 *Residue*

8 9. The residue of qualifying expenditure, in respect of any asset, at
9 any date, shall be taken to be the total qualifying expenditure incurred on or
10 before that date, by the owner, in respect of that asset, less the total of any
11 annual allowances due to such owner, in respect of that asset, before that
12 date.

13 *Meaning of "disposed of"*

14 10. Subject to any express provision to the contrary, for the
15 purposes of this schedule-

16 (a) a building, structure or works of a permanent nature is disposed
17 of if any of the following events occur-

18 (i) the relevant interest is sold, or

19 (ii) that interest, being an interest depending on the duration of a
20 concession, comes to an end at the end of that concession, or

21 (iii) that interest, being a Leasehold interest, comes to an end and
22 the possession of the building, structure or works of a permanent nature
23 reverts to the holder of the reversionary interest, or

24 (iv) the building, structure or works of a permanent nature are
25 demolished or destroyed or, without being demolished or destroyed, cease
26 altogether to be used for the purposes of upstream petroleum operations
27 applicable to crude oil carried on by the owner;

28 (b) plant, machinery or fixtures are disposed of if they are sold,
29 discarded or cease altogether to be used for the purposes of upstream
30 petroleum operations applicable to crude oil carried on by the owner;

1 (c) assets in respect of which qualifying drilling expenditure is
2 incurred are disposed of if they are sold or if they cease to be used for the
3 purposes of the upstream petroleum operations applicable to crude oil of the
4 company incurring the expenditure either on the company ceasing to carry on
5 the operations or on such company receiving insurance or compensation
6 monies therefrom.

7 *Value of an asset or interest in a petroleum prospecting licence or*
8 *petroleum mining lease*

9 11.-(1) The value of an asset or interest in a petroleum prospecting
10 licence or petroleum mining lease at the date of its disposal shall be the net
11 proceeds of the sale or of the relevant interest, or, where it was disposed of
12 without being sold, the amount which, in the opinion of the service, the asset or
13 the relevant interest, as the case may be, would have fetched if sold in the open
14 market at that date, less the amount of any expenses which the owner might
15 reasonably be expected to incur if the asset were so sold.

16 (2) For the purpose of this paragraph, where an asset is disposed of in
17 the circumstances that insurance or compensation money are received by the
18 owner, the asset or the relevant interest, as the case may be, shall be treated as
19 having been sold and as though the net proceeds of the insurance or
20 compensation money were the net proceeds of the sale.

21 *Apportionment*

22 12.-(1) Any reference in this schedule to the disposal, sale or purchase
23 of any asset or interest includes a reference to the disposal, sale or purchase of
24 that asset, as the case maybe, together with any other asset, whether or not
25 qualifying expenditure has been incurred on such last-mentioned asset, and,
26 where an asset is disposed of, sold, or purchased together with another asset, so
27 much of the value of the assets as, on a just apportionment, is properly
28 attributable to the first mentioned asset shall, for the purposes of this Schedule,
29 be deemed to be the value of, or the price paid for that asset, as the case may be.

30 (2) For the purposes of this sub-paragraph, all the assets or interest

1 which are purchased or disposed of in pursuance of one bargain shall be
2 deemed to be purchased or disposed of together, notwithstanding that
3 separate prices are or purport to be agreed for each of those assets or that
4 there are or purport to be separate purchases or disposals of those assets.

5 (3) The provisions of sub-paragraph (1) of this paragraph shall
6 apply, with modifications, to the sale or purchase of the relevant interest in
7 any asset together with any other asset or relevant interest in that other asset
8 provided that the provisions for apportionment in sub-paragraphs (1) and (2)
9 above shall not apply in the sale or disposal of concessions or interest in a
10 part of the asset.

11 *Part of an asset*

12 13. Any reference in this schedule to any asset shall be construed
13 whenever necessary as including a reference to a part of any asset (including
14 an undivided part of that asset in the case of joint interests) and when so
15 construed, any necessary apportionment shall be made in a manner, which in
16 the opinion of the Service, is just and reasonable.

17 *Exclusion of certain expenditure*

18 14. Subject to the express provisions of this schedule, where any
19 company has incurred expenditure which is allowed to be deducted under
20 any provision (other than a provision of this Schedule) of this Act, such
21 expenditure shall not be treated as qualifying expenditure.

22 *Asset used or expenditure incurred partly for the purpose of*

23 *Petroleum operations*

24 15.-(1) The following provisions of this paragraph shall apply
25 where either or both of the following conditions apply with respect to any
26 asset-

27 (a) the owner of the asset has incurred in respect of the asset a
28 qualifying expenditure partly for the purposes of upstream petroleum
29 operations applicable to crude oil carried on by him and partly for other
30 purposes;

1 (b) the asset in respect of which the owner has incurred qualifying
2 expenditure is used partly for the purposes of upstream petroleum operations
3 applicable to crude oil carried on by such owner and partly for other purposes.

4 (2) Any allowances which would be due or any balancing charges
5 which would be treated as income if both expenditure were incurred wholly
6 and exclusively for the purposes of the upstream petroleum operations
7 applicable to crude oil and if the asset were used wholly and exclusively for the
8 purposes of such operations, shall be computed in accordance with the
9 provisions of this schedule.

10 (3) So much of the allowances and charges computed in accordance
11 with provisions of sub-paragraph (2) of this paragraph shall be due or shall be
12 so treated, as the case may be, as in the opinion of the Service is just and
13 reasonable having regard to all circumstances and to the provisions of this
14 Schedule.

15 *Disposal without change of ownership*

16 16. Where an asset in respect of which qualifying expenditure has
17 been incurred by the owner has been disposed of in circumstances that the
18 owner remains the owner, then, for the purposes of determining whether and,
19 if so, in what amount, any annual or balancing allowance or balancing charge
20 shall be made to or on such owner in respect of his use of that asset after the date
21 of the disposal-

22 (a) qualifying expenditure incurred by the owner in respect of the
23 asset prior to the date of the disposal shall be left out of account;

24 (b) the owner shall be deemed to have bought such asset immediately
25 after the disposal for a price equal to the residue of the qualifying expenditure at
26 the date of the disposal, increased by the amount of any balancing charge or
27 decreased by the amount of any balancing allowance made as a result of the
28 disposal.

29 Capital allowances shall be for the computation of Hydrocarbon Tax and not
30 for cost recovery purposes in Production Sharing Contracts, which shall have

their own provisions under the Model Contract.

Capital allowance rates

17. Qualifying expenditure shall be subject to the rates below:

Qualifying Capital Expenditure	1st Year	2nd Year	3rd Year	4th Year	5th Year
Qualifying Plant Expenditure	20%	20%	20%	20%	19%
Qualifying Pipeline Expenditure	20%	20%	20%	20%	19%
Qualifying Building Expenditure	20%	20%	20%	20%	19%
Qualifying Drilling Expenditure	20%	20%	20%	20%	19%

Exploration expenditure and the first two appraisal wells expenditure in the same field are to be treated as deductible costs 100% in the year incurred, while for additional exploration expenditures and appraisal expenditures in the same field relating to pre-production period are to be amortized and deducted on commencement of accounting period at an annual allowance of 20 per cent (20%) in the first to fourth year and 19% in the fifth year with a 1% retention value.

SIXTH SCHEDULE

[sections (254)(o), 277(1)(d) and 280(1)(c)]

PRODUCTION ALLOWANCES AND COST PRICE RATIO LIMIT

Production Allowance

1.-(1) There shall be a production allowance for crude oil production by Leases which are converted oil mining leases based on a conversion contract and their renewals, which shall be the lower of US \$ 2.50 per barrel and 20% of the fiscal oil price.

(2) There shall be a production allowance per field for crude oil production by a company for leases granted after the commencement of this Act and determined as follows-

(a) for onshore areas - the lower of US\$ 8.00 per Barrel and 20% of the fiscal oil price per barrel up to a cumulative maximum production of 50 million Barrels from commencement of production and the lower of US\$ 4.00 per barrel and 20% of the fiscal oil price thereafter;

(b) for shallow water areas - the lower of US\$8.00 per barrel and 20% of the fiscal oil price, up to a cumulative maximum production of 100 million barrels from commencement of production and the lower of \$4.00 per barrel and 20% of the fiscal oil price thereafter;

(c) for deep offshore areas and frontier basins - the lower of US\$ 8.00 per barrel and 20% of the fiscal oil price, up to a cumulative maximum production of 500 million barrels from the

1 commencement of production and the lower of US \$4.00 per barrel and 20% of
2 the fiscal oil price thereafter.

3 (3) The detailed procedures for determining the production
4 allowances shall be established in regulations.

5 *Cost Price Ratio (CPR) Limit*

6 2.-(1) All costs prescribed under Section 263 and the First Schedule to
7 this Act in an accounting period the sum of which is eligible for deduction
8 under the hydrocarbon tax shall be subject to a cost price ratio limit of 65% of
9 gross revenues determined at the measurement points.

10 (2) Where, as a result of sub-paragraph (1) of this paragraph, any
11 excess costs incurred has not been allowed for deduction for that year of
12 assessment, then-

13 (a) the costs may be allowed for deduction for the purposes of
14 ascertaining the profits of the company for subsequent years of assessment
15 provided that-

16 (i) the total costs to be deducted shall not exceed the actual costs
17 incurred, and

18 (ii) in carrying costs forward, capital allowances shall be carried
19 forward with priority over operating costs;

20 (b) the total costs to be allowed as deduction in those subsequent years
21 shall be such an amount that if added to the sum of the total costs to be allowed
22 as deduction under subparagraph (1) of this paragraph shall not exceed the
23 specified cost price ratio limit of 65%; and

24 (c) where pursuant to paragraph 2(2)(b) to this schedule, any costs
25 exceed the cost price ratio limit upon the termination of upstream petroleum
26 operations related to crude oil, such costs shall be not deductible for purposes
27 of calculation of the hydrocarbon tax.

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SEVENTH SCHEDULE

[section 306]

PETROLEUM FEES, RENTS AND ROYALTY

Part I - Fees

Fees payable for licences and leases

1. The Commission shall through Regulations publish the rates or fees payable in respect of the following-

- (a) application for a petroleum exploration licences;
- (b) application for a renewal of a petroleum mining lease;
- (c) application to assign an interest or sublet a petroleum exploration licence, petroleum prospecting licence or petroleum mining lease;
- (d) application to terminate or effect a partial or full surrender of a petroleum exploration licence, petroleum prospecting licence or petroleum mining lease;
- (e) application for permit to operate a drilling rig;
- (f) application for grant of field development plan approval and the related petroleum mining lease;
- (g) application for the approval of the drilling of a well;
- (h) permit to export samples for analysis;
- (i) application to withdraw any of the applications above; and
- (j) application for other fees as may be deemed necessary by the Commission.

Part II - Rents and bonuses

Rents for Licences

2. Every petroleum prospecting licence and petroleum mining lease shall be subject to rent as prescribed in the relevant regulation and the rent shall be an amount per hectare per year.

Payment of fees before grant of licence or lease

3.-(1) A petroleum prospecting licence and petroleum mining lease

1 shall not be granted without prior payment of the applicable fees, applicable
2 signature bonuses, and the rent applicable to the first year.

3 (2) A petroleum mining lease shall not be renewed without prior
4 payments of the renewal bonus pursuant to this Act.

5 *Penalty for default in payment of rent*

6 4. Failure to pay the rent as prescribed in the relevant regulation shall
7 result in a penalty as prescribed in the said regulation or any other enactment,
8 provided that where no penalty is prescribed in the said regulation, there shall
9 be an application of an interest rate of LIBOR or any other successor rate plus
10 10% to the outstanding payment in dollars and where the payment of the
11 applicable rent is not made within three months, revocation of such licence or
12 lease under this Act shall be initiated.

13 *Verification and payment account*

14 5. Any rents imposed under this section shall be paid into the
15 Federation Account and verified by the Commission.

16 **Part III - Royalties**

17 *All Petroleum production subject to Royalties*

18 6. All production of petroleum, including production tests, shall be
19 subject to royalties on a non-discriminatory basis with respect to all licensee
20 and lessees and shall be paid into the Federation Account and verified by the
21 Commission. For royalty purposes condensates shall be treated as crude oil
22 and natural gas liquids shall be treated as natural gas.

23 *Measurement Point for the determination of production volumes*

24 7.-(1) The royalties shall be determined on a monthly basis at the
25 measurement point(s). Where there is production from production tests under
26 a petroleum prospecting licence, the Commission shall determine
27 measurement point for such production. Where there is no measurement
28 equipment at a possible measurement point in the field at the commencement
29 of this Act, or where logistical conditions make the installation of measurement
30 equipment at a possible measurement point impractical or uneconomic in the

1 opinion of the Commission, the Commission may approve procedures for
2 determining the chargeable volumes at a deemed measurement point in the
3 field based on measurements at the point of sale, export terminal or other
4 point downstream of such deemed measurement point pursuant to the
5 regulations or guidelines. The measurement of crude oil, condensates and
6 natural gas liquids shall be in barrels and of natural gas in standard cubic
7 feet. Where so justified, the Commission may approve reporting of
8 production of natural gas liquids in metric tons.

9 (2) The chargeable volume for royalty purposes shall be calculated
10 by ascertaining the quantity of natural gas, crude oil, condensates and
11 natural gas liquids produced in the relevant month from each field operated
12 by the licensee or lessee pursuant to the regulations or guidelines.

13 (3) Where natural gas liquids are extracted in a gas processing plant
14 downstream of the measurement point, the rich natural gas volumes, still
15 including the natural gas liquids, shall be measured at the measurement
16 point and be the basis for royalty calculations. The value of such rich natural
17 gas shall be the value of the marketable natural gas plus the natural gas
18 liquids at the exit of the gas processing plant, less the gas processing costs
19 and less the transport cost between the measurement point and the gas
20 processing plant based on tariffs established by the Authority.

21 (4) Natural gas liquids and liquid petroleum gases shall have the
22 same royalty rates as the natural gas from which these products are derived.

23 (5) The chargeable volume shall be measured at standard
24 temperatures and pressures as defined by regulation or guidelines and
25 production shall not include any-

26 (a) volumes burned, flared or vented with the approval of the
27 Commission;

28 (b) volumes re-injected by the lessee into reservoirs for the purpose
29 of improving or enhancing production of crude oil or for conservation of
30 natural gas;

1 (c) volumes used in the upstream petroleum operations for the
2 production of electricity or heat for exclusive use in the operations of the
3 lessee; and

4 (d) water or sediments.

5 (6) The obligation to install the necessary measurement equipment
6 shall be that of the licensee or lessee and shall be certified by the Commission.
7 The measurement procedures and equipment for measurement at and prior to
8 the measurement point shall be established in regulations or guidelines.

9 *Determination of price for royalty*

10 8.-(1) The royalties applicable to crude oil and condensates shall be
11 based on the fiscal oil price determined for the field at the measurement
12 point(s) under applicable regulations or guidelines. This price shall be
13 determined by the Commission on the basis of information supplied by the
14 lessees and from non-confidential independent publications making such
15 adjustments for quality and transport costs as appropriate to prices of
16 comparable crude oils and condensates sold in the international market, as
17 determined by the Commission, for which appropriate information is available
18 and with the objective to approximate as reasonably as possible the average fair
19 market value of the month of the crude oil and condensates for such month for
20 such field.

21 (2) The fiscal oil price for each field shall consider any quality
22 differentials related to international crude oils and condensates and shall be an
23 export parity price taking into consideration the transportation costs within
24 Nigeria as determined by the Authority to export terminals.

25 (3) The royalties applicable to natural gas shall be based on the fiscal
26 gas price determined for the field at the measurement point under to applicable
27 regulations or guidelines. This price shall be determined by the Commission,
28 taking into consideration submissions by the lessees, and shall be based on the
29 netback value at the measurement point based on the composition of the natural
30 gas in terms of marketable natural gas, ethane, propane, butane, pentanes and

1 other natural gas liquids as may be derived by processing of the natural gas.
2 The net back procedure shall take into consideration the type of natural gas
3 markets to which the natural gas from the field is being sold, such as export
4 markets, domestic wholesale markets, markets based on the aggregate gas
5 price or other natural gas pricing framework as permitted under this Act. The
6 procedure shall take into consideration conditioning costs, processing costs
7 and transportation costs within Nigeria as determined by the Authority from
8 the measurement point to the market, where the sales point is downstream of
9 the measurement Point. Where natural gas liquids are produced in the field,
10 the total gross value of the liquids shall be taken into account in the
11 determination of the total gross value of the natural gas for purposes of the
12 fiscal gas price.

13 *Royalties in kind or cash*

14 9.-(1) The Commission shall receive the royalty in kind or in cash
15 at its discretion and the payment shall be subject to notice periods and
16 procedures as provided for in regulations or guidelines. Where royalties are
17 paid in cash the payments shall be based on the fiscal oil price and fiscal gas
18 price.

19 (2) The Licensee or Lessee shall pay royalties to the Commission
20 within a period that is not more than one month after the end of every month
21 during which the petroleum is produced or as the Commission may direct:

22 (a) with respect crude oil and condensates the royalties shall be
23 based on the royalties based on production pursuant to paragraph 10 of this
24 Schedule plus the royalties based on price pursuant to paragraph 11 of this
25 Schedule;

26 (b) With respect to natural gas and natural gas liquids the royalties
27 shall be based on the royalties based on production pursuant to paragraph 10
28 of this Schedule.

29 *Royalties based on production*

30 10.-(1) For the purposes of Paragraph 9 of this Schedule, royalties

1 based on production shall be calculated on a field basis.

2 (2) The royalty shall be at a rate per centum of the chargeable volume
3 of the crude oil and condensates produced from the field area in the relevant
4 month on terrain basis as follows in-

5 (a) onshore areas 18 per cent

6 (b) shallow water (up to 200m water depth) 16 per cent

7 (c) deep offshore (greater than 200m water depth) 10 per cent

8 (d) frontier basins 7.5 per cent

9 (3) For deep offshore fields with a production during a month of not
10 more than 15,000 bopd, the royalty rate shall be 7.5%. Production above
11 15,000 bopd shall be at the royalty rate specified in subparagraph (2) of this
12 paragraph.

13 (4) Royalties for onshore fields and shallow water fields, including
14 marginal fields, with crude oil and condensate production not more than
15 10,000 bopd during a month shall be at a rate per centum of the chargeable
16 volume of the crude oil and condensates produced from the field area per
17 production day during a month on trached basis as follows -

18 (a) for the first 5,000 bopd 5 per cent

19 (b) for the next 5,000 bopd 7.5 per cent

20 Provided that fields with crude oil and condensate production more than
21 10,000 bopd during a month shall be charged royalty rates specified under
22 subparagraph (2) of this Paragraph.

23 With respect to paragraphs (3) and (4), where a single Field covers two or more
24 petroleum mining leases, the royalty shall be determined based on the total
25 production from the field.

26 (5) Royalty based on production for natural gas and natural gas
27 liquids shall be at a rate per centum of the chargeable volume in the relevant
28 area on Terrain basis as follows in-

29 (a) onshore areas 7.5per cent;

30 (b) deep offshore areas 5 percent;

1 (c) shallow water 5 percent; and
2 (d) frontier basins 5 percent.
3 Royalty rate for natural gas produced and utilized in-country shall be 5 per
4 cent of the chargeable volume.

5 (6) Where a field is located partially in onshore and in shallow
6 water or partially in shallow water and deep offshore areas, the weighted
7 average royalty shall be calculated as per regulations.

8 *Royalty by price*

9 11. There shall be payable, in addition to the royalty set out in
10 paragraph 10 of this Schedule, for onshore, shallow water and deep offshore
11 a royalty by price with respect to crude oil and condensates at the rates set
12 out below-

13 (a) Below \$ 50 per barrel 0 per cent
14 (b) At \$ 100 per barrel 5 per cent
15 (c) Above \$ 150 per barrel 10 per cent
16 (d) Between \$ 50 and \$ 100 per barrel and between \$ 100 and \$ 150
17 per barrel the royalty by price shall be determined based on linear
18 interpolation. (As an example if in 2020 the price is \$ 75/bbl, the royalty by
19 price shall be 2.5%);

20 (e) The price levels mentioned in (a), (b),(c) and (d) shall apply to
21 the year 2020. At the beginning of 2021 and of each succeeding calendar
22 year these price levels shall be increased by 2% relative to the values of the
23 previous year.

24 (3) There shall be no royalty by price for frontier acreages.

25 (4) Royalty derived from "royalty by price" shall be for the credit
26 of Nigerian Sovereign Investment Authority.

27 *Penalty for non-payment and outstanding payments of Royalties and*
28 *enforcement of payment*

29 12. Where any royalty due and payable under this Act is not paid
30 within two months after the month in which the royalty is due, then it

1 qualifies to be a debt which shall attract the following-

2 (a) a sum equal to 10 per cent of the amount of the royalty payable
3 which shall be added to the royalty;

4 (b) in the case of foreign currency transactions, the outstanding
5 payments due shall incur interest at the prevailing LIBOR or any other
6 successor rate plus 10 percent (point basis); or

7 (c) in the case of Naira transactions, the outstanding payments due
8 shall incur interest at the prevailing NIBOR plus 10 percent (point basis);

9 (d) N10,000,000 or US Dollar equivalent on the first day the failure to
10 pay the royalty occurs; and

11 (e) N2,000,000 or US Dollar equivalent for each day in which the
12 failure continues.

13 *Revocation, seizure and distraint*

14 13. Where any fee, rent or royalty due under this Act is unpaid within
15 three months after the month when it becomes due (whether legally demanded
16 or not), the Commission may, in addition to any other remedies which may be
17 available:

18 (a) initiate revocation of such licence or lease pursuant to this Act; and

19 (b) enter into any land, property or premises possessed or occupied by
20 the licensee or lessee in connection with the licence or lease; and-

21 (i) seize and distraint and sell as landlords may do for rents in arrear
22 any petroleum, petroleum products, engines, machinery, tools, implements or
23 other effects belonging to the licensee or lease which may be found in or upon
24 the land, property or premises; and

25 (ii) out of money arising from the sale of the distress, retain and pay
26 off the arrears of the fee, rent or royalty and also the costs and expenses
27 incidental to the distress and sale, rendering the surplus (if any) to the licensee
28 or lessee.

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Part IV - Supplemental

Production Sharing, Profit Sharing and Risk Service Contracts

14.-(1) Where the Commission decides to grant a petroleum prospecting licence or petroleum mining lease under contractual terms pursuant to Section 84 of this Act, the Commission shall prepare the related model contract, which stipulates the fiscal and other provisions related to such contract, to be attached to such licence or lease. The contracts shall be administered by the Commission and the Government revenues related to the contracts shall be paid to the Federation Account and verified by the Commission.

(2) The model contract shall contain as a minimum, the provisions related to fees, rents, royalties, hydrocarbon tax and companies income tax stipulated in this Act.

(3) A model licence related to frontier acreages shall not contain contractual provisions pursuant to Section 84 of this Act and shall only contain the minimum provisions related to fees, rents, royalties under paragraph 10 of this Schedule and companies income tax stipulated in this Act and upon the renewal of any petroleum mining leases, hydrocarbon tax and royalty based on price under paragraph 11 of this Schedule based on onshore conditions shall apply.

(4) For new acreage any production sharing contract shall have a cost limit of 70% based on total oil production, and where applicable condensates and natural gas liquids derived from associated gas, measured at the measurement point. Furthermore, the minimum profit oil scale to Government in a production sharing contract shall be based on cumulative production per field as follows-

(a) up to and including 50 million barrels - 5%;

(b) over 50 million barrels and up to and including 100 million barrels - 10%;

1 (c) over 100 million barrels and up to and including 350 million
2 barrels - 15%;

3 (d) over 250 million barrels up to and including 750 million barrels -
4 25%;

5 (e) over 750 million barrels ad up to and including 1500 million
6 barrels - 35%;

7 (f) over 1500 million barrels 45%.

8 (5) There shall be no production sharing for associated or non-
9 associated natural gas, to which only the rents, royalties and companies income
10 tax applies under this Act. Capital and operating costs related to making
11 associated natural gas available at the measurement point(s) can be recovered
12 from cost oil.

13 (6) The contractors shall be the licensees or lessees and shall thereby
14 be entitled to the capital allowances under the Fifth Schedule.

15 (7) The profit oil for crude oil under conversion contracts or for new
16 acreages shall be determined as the total volume of crude oil, where applicable,
17 condensates and natural gas liquids derived from associated gas, less the
18 royalties and less the cost oil as defined in the model contract.

19 (8) For production sharing purposes, the adjusted profit of a company
20 for hydrocarbon tax shall be determined pursuant to Section 263(1)(b), which
21 means that royalties and the value of profit oil delivered in kind or cash from all
22 fields to the Federation Account shall be deductible for the purposes of
23 determining the adjusted profits. The calculation shall be consolidated as per
24 the six groups under Section 267, subject to the provisions of Section 261 and
25 the capital allowances under the Fifth Schedule shall be applied.

26 (9) For a production sharing contract subject to a conversion contract
under this Act, the cost limit shall be 60%.

EXPLANATORY MEMORANDUM

This Bill seeks to provide Legal, Governance, Regulatory and Fiscal Framework for the Nigerian Petroleum Industry, the development of Host Communities.