

Oil Regulation 2021

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Oil Regulation 2021

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Lexology Getting The Deal Through is delighted to publish the eighteenth edition of *Oil Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ecuador and United Arab Emirates.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Bob Palmer of Mayer Brown International LLP, for his continued assistance with this volume.



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GENERAL

Key commercial aspects

- 1 | Describe, in general terms, the key commercial aspects of the oil sector in your country.

Nigeria has 36.89 billion barrels of crude oil reserves and is the 11th largest oil producer globally. These reserves are located in the offshore deepwater acreages and several smaller, mostly ageing, onshore and shallow water fields. The total crude oil and condensate production for the year 2019 as reported by the Nigerian National Petroleum Corporation (NNPC) stood at 735,244,080 barrels, giving a daily average of 2.01 million barrels.

The crude oil industry in Nigeria is export-focused. Upstream operations are carried out by joint ventures between international oil companies and NNPC, as well as by a number of independents. Crude oil refining activity is very limited owing to the dilapidation of the state-owned refineries. Consequently, local demand for petroleum products is satisfied by imports. NNPC undertakes these imports through crude oil swaps (ie, sale of crude oil to foreign refineries), in exchange for refined petroleum products. The retailing of petroleum products is carried out by several firms that store, transport and retail the imported refined products.

Energy mix

- 2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

According to the International Energy Agency's Africa Energy Outlook for 2019, 80 per cent of power generation in Nigeria is fuelled by natural gas, and the rest by hydro and diesel. Nigeria is the largest user of oil-fired back-up generators on the continent. However, there is a gradual utilisation of solar power in the country.

According to the NNPC's August 2020 financial and operations report, a total volume of 47.59 million barrels of crude oil and condensate was lifted in July 2020. Of this volume, 8.54 million barrels (about 17 per cent) were allotted for crude oil swaps to meet domestic consumption requirements through direct-sales-direct-purchase transactions with foreign refineries. There was no crude oil allocated for processing by the domestic refineries. Thus, for July 2020 and the preceding months, no portion of Nigeria's petroleum products requirements was satisfied by local refining.

Government policy

- 3 | Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Nigeria has issued a National Petroleum policy, which was approved by the cabinet on 19 July 2017. The policy articulates the vision of the government for the petroleum sector and sets policy goals, strategies and an implementation plan for the introduction of an appropriate institutional, legal, regulatory and commercial framework to resolve the barriers currently affecting investment in the sector.

Registering a licence

- 4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The Department of Petroleum Resources (DPR), a department of the Ministry of Petroleum Resources, manages the licensing regime for the crude oil industry in Nigeria. The DPR keeps records of information on all matters pertaining to the history, ownership and operatorship, and status of oil and gas assets. These records are not electronic and a written application must be made to the Licence/Leases Management Department of the DPR, accompanied by written authorisation from the licence or lease holder, authorising the provision of information on the asset to the applicant along with evidence of payment of the required statutory fees for making the enquiries.

Legal system

- 5 | Describe the general legal system in your country.

Nigeria is a common law jurisdiction. Received English law, common law and principles of equity pre-1900 are cornerstones of Nigeria's legal system. These are, however, subject to laws enacted by Nigeria's legislature and decisions of its courts as well as local customary and Islamic laws. As with all other private rights, contractual and property rights are enforced through adjudication in courts of law or through other dispute resolution processes agreed in contractual arrangements between parties, such as mediation and arbitration.

Domestic judgments of Nigerian courts that could be monetary, declaratory or injunctive are enforced in accordance with the terms stipulated by the judgment or in accordance with the legal framework designed to support the enforcement of judgments contained in the Sheriffs and Civil Process Act, which provides for various methods of enforcement including a writ of *fiery facias*, garnishee proceedings, a charging order, a writ of sequestration or order of committal on judgment debtor summons. Nigerian rules on enforcement of foreign judgments and awards require that a judgment creditor seeking to enforce a foreign judgment must apply to register the foreign judgment or award by instituting an action in a High Court of Nigeria based on

the foreign judgment to enforce the payment by the judgment debtor of the amount of the judgment debt and costs. Such judgments or awards must satisfy certain conditions precedent in order to be eligible for registration and enforcement. Once the foreign judgment is registered at the High Court, it becomes immediately enforceable as if it is a judgment of that court. The ease of enforcement of these judgments and awards is dependent on compliance with such conditions and processes. For arbitral awards specifically, Nigeria is a signatory to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958. This convention has been domesticated into Nigerian law.

The Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences Commission (ICPC) are the agencies of the federal government that administer Nigeria's anti-corruption and anti-bribery regime. The ICPC is charged with prohibiting corrupt practices and related offences by investigating complaints, reviewing practices, systems and procedures of public bodies to discourage corrupt practices and educating the public on and against bribery and corruption and related offences. The EFCC is empowered by legislation to investigate and prosecute economic and financial crimes. In practice, it is the agency of choice for prosecuting high-profile offenders.

REGULATION OVERVIEW

Legal framework for oil regulation

6 | Describe the key laws and regulations that make up the principal legal framework regulating oil and gas activities.

The Constitution of the Federal Republic of Nigeria 1999 vests in the federal government ownership and control of all minerals, mineral oils and natural gas in, under or on any land in Nigeria and its territorial waters and exclusive economic zone.

The Petroleum Act along with the Regulations made pursuant thereto is the principal statute that governs petroleum operations. It provides the framework for the licensing of oil and gas companies to engage in activities connected with the exploration, production, transportation, storage, refining and marketing of crude oil. The Petroleum Act reaffirms the exclusive ownership and control of all petroleum by the federal government.

The Petroleum Profits Tax Act provides a regime for the taxation of income derived from petroleum operations.

The Deep Offshore and Inland Basin Production Sharing Contracts Act provides fiscal incentives to oil and gas companies operating in the deep offshore and inland basin areas under production-sharing contracts between the Nigerian National Petroleum Corporation (NNPC) or other companies holding oil prospecting licenses or oil mining leases and various petroleum exploration and production companies.

The Oil Pipelines Act and the Oil and Gas Pipelines Regulations provide the legal and regulatory framework for the establishment, operation and maintenance of pipelines that are incidental and supplementary to oil and gas operations in Nigeria.

The Nigerian National Petroleum Corporation Act establishes Nigeria's national oil company, the Nigerian National Petroleum Corporation, empowering it to directly participate in petroleum operations on behalf of the government and implement the state's objectives in the sector.

The Nigerian Oil and Gas Industry Content Development Act is Nigeria's local content law. It aims to enhance the development of indigenous capacity across the Nigerian oil and gas industry by setting minimum Nigerian content prescriptions for the supply of goods and services to the oil and gas industry and requires that first consideration be provided to companies incorporated in Nigeria in the award of oil blocks and licences.

The National Domestic Gas Pricing and Supply Regulations 2008 imposes supply obligations on gas producers in Nigeria to the domestic gas market, to stimulate the development of the domestic gas market.

The National Oil Spill Detection and Response Agency (Establishment) Act establishes the National Oil Spill Detection and Response Agency, which coordinates and implements the National Oil spill Contingency Plan for Nigeria.

Expropriation of licensee interest

7 | Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Save for the Constitution, which allows for the compulsory acquisition of private property by the federal government in the public interest and subject to the payment of compensation, no other legislation allows the expropriation of oil licences or leases by the federal government of Nigeria.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

The Minister of Petroleum Resources may revoke any oil prospecting licence or oil mining lease if the licensee or lessee is a national of a foreign country where Nigerian nationals in the opinion of the Minister, are not entitled to participate in the petroleum industry of that foreign country on reciprocal terms prevalent in Nigeria.

The Minister of Petroleum Resources can also revoke any oil prospecting licence or oil mining lease, if, in his or her opinion, the concerned licensee or lessee has failed to:

- conduct its operations continuously and in a business-like manner in accordance with the approved basic work programme for the field and good oil field practice;
- adhere to the provisions of the Petroleum Act or any other regulatory procedures;
- comply with its obligations as stated in the license or lease;
- pay due and outstanding royalties, whether or not demanded for by the Minister of Petroleum Resources within the time stated or in accordance with Petroleum Act; or
- make available such reporting on its operations as the Minister may lawfully require.

The licensee or lessee shall become liable for all liabilities suffered before the actual date of such cancellation.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The Minister of Petroleum Resources is responsible for policy formulation and supervision of the petroleum sector through the Ministry of Petroleum Resources. The Minister exercises regulatory control over the petroleum industry through the Department of Petroleum Resources (DPR). The DPR performs all the technical work required by the Minister to grant all licences for petroleum operations in Nigeria, and supervises upstream and downstream operations, including granting various permits and approvals required for day-to-day operations.

The Nigerian Content Development and Monitoring Board, established by the Nigerian Oil and Gas Industry Content Development Act, supervises, coordinates, administers and monitors the implementation

and development of Nigerian involvement in the oil and gas industry on behalf of the Minister. Other agencies involved in the regulation of the oil and gas industry include the Federal Ministry of Environment and the National Oil Spill Detection and Response Agency.

The Petroleum Products and Pricing Regulatory Agency regulates the pricing and distribution of petroleum products.

The NNPC is the state oil company and does not exercise any direct regulatory powers.

The Minister may suspend petroleum operations in any area under a licence or lease granted under the Petroleum Act to prevent danger to life or property, or where operations are not being conducted in accordance with good oil field practice in the opinion of the Minister or which in the opinion of the Minister result in or would likely result in a contravention of the provisions of the Petroleum Act or the Regulations made pursuant thereto. The Minister may also revoke the licence or lease granted under the Petroleum Act in the circumstances discussed above.

Government statistics

10 | What government body maintains oil production, export and import statistics?

Nigeria does not import crude oil but it imports petroleum products. The Petroleum Products and Pricing Regulatory Agency and the National Bureau of Statistics maintain and provide petroleum products imports statistics.

NATURAL RESOURCES

Title

11 | Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

Nigeria's Constitution and the Petroleum Act vest the federal government with title over oil reservoirs present in the land, the territorial waters and Exclusive Economic Zones of Nigeria. Under Nigeria's Constitution and its substantive land titles legislation (Land Use Act), Nigerian citizens have the right to acquire and own land anywhere in Nigeria, but that right is subject to the federal government's overriding authority to compulsorily acquire the lands held by citizens for overriding public purposes, with activities related to the mining and transportation of oil, being one of such public purposes. The citizen whose land is compulsorily acquired by the government in this manner, is entitled to appropriate compensation.

Surface rights are occupancy rights held by citizens, while subsurface mineral rights are held by the federal government and leased out to companies to exploit the minerals. Surface rights must pave the way for the exercise of subsurface mineral rights.

Title to crude oil extracted from the reservoir is transferred from the federal government to the licensee or lessee of the relevant acreage (concessionaires) at the point of production from the oil field.

Exploration and production – general

12 | What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Exploration and production of crude oil are undertaken onshore, in the swamp and shallow water areas of the Niger Delta and offshore the coast of Nigeria.

Concessionaires' are prohibited from conducting petroleum extraction activities over sacred land or affecting venerated objects. There is a similar restriction, albeit subject to regulatory permission, to refrain from affecting public places, townships, cultivated areas, roads tramways, dams, forest reserves, cash crops, fishing rights, among others.

Exploration and production – rights

13 | How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

Rights to explore and produce crude oil are granted by federal government under a typical licensing regime. The licences are oil exploration licence (OEL), the oil prospecting licence (OPL), the oil mining lease (OML) and a production-sharing agreement with the state oil company (the Nigerian National Petroleum Corporation (NNPC)). The OEL grants the holder a non-exclusive right to prospect for oil (OPL) over a 1,000 square mile area, while the OPL grants the holder an exclusive right to explore and prospect for oil within a 5,000 square mile area. The OPL also entitles the grantee to carry away and dispose of oil produced. The holder of an OPL is entitled to the grant of an OML where oil is discovered in commercial quantities (at least 10,000 barrels of oil per day OML grants a concessionaire the right to search for, win, work, carry away and dispose of petroleum (including gas). Where the holder of an OML fails to develop a field within its concession area for a period of not less than 10 years, the federal government has the authority to excise that field from the OML area and grant a licence to another party for the development of the field (marginal field licence).

The NNPC also holds title to OMLs in the offshore and frontier acreages and grants rights to third parties to work these acreages through production-sharing contracts (PSCs). Under these PSCs, the concessionaire contracts to search for, win, work, carry away and dispose of oil produced at its sole cost and risk, and upon success, share the produced crude oil between NNPC and the concessionaire.

Prospective concessionaires apply for exploration licences and production-sharing contracts through bidding rounds conducted by the Department of Petroleum Resources. The applications are required to include the following information:

- surveys and maps relating to the acreage;
- details of financial status and technical competence;
- annual reports of oil production activities for the preceding three years;
- evidence of ability to market any petroleum produced;
- proposed work programme and minimum work obligations;
- planned expenditure to develop the acreage;
- proposed date of commencement of operations; and
- recruitment and training plans for Nigerians.

There are no specified fees for applications to the NNPC for grant of PSCs; whereas, for OPLs and OMLs, the following application fees apply:

- application for an OPL: US\$10,000 application fee and US\$10,000 processing fee;
- application to convert an OPL to an OML: US\$1 million application fee; and
- application for an existing OML: US\$1.5 million application fee.

There is no specific time frame for response to these applications. Typically, the OPLs, OMLs, marginal fields licences and PSCs are granted through competitive bid rounds.

The terms of OPLs and OMLs are statutory and non-negotiable. Some of the commercial terms of the PSC can be negotiated with the NNPC because they are not codified, although most of the terms are largely standardised for each round of PSC awards.

Government participation

14 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The NNPC on behalf of the federal government has the right to participate in an OPL or OML at the time of award or renewal of the OPL or OML, or on application for conversion of an OPL to an OML. The maximum participation by the NNPC is five-sixth of the interest of the applicant (rounded up to the nearest whole percentage point). There are no mandatory carry requirements in favour of the NNPC. The NNPC is, however, required to negotiate with the concessionaire, regarding the determination of unrecovered proven development costs, in respect of the participating interest acquired by NNPC. The determined proven costs will be paid to the concessionaire from the federal government's share of future production from the acreage.

The NNPC does not have any right to participate in the operatorship of an OPL or OML. The petroleum joint ventures between NNPC and third parties could, however, potentially provide for such a right in favour of the NNPC. In such instances where the existing operator divests its interest in such OPL or OML to a transferee, the NNPC would become the default operator in preference to such transferee.

Royalties and tax stabilisation

15 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are any tax stabilisation measures in place?

Royalties

Royalties are payable to the federal government in respect of any quantity of petroleum produced in Nigeria. The royalties are imposed as a percentage of the actual oil produced and must be paid within 60 days after production, otherwise a 10 per cent surcharge applies for late payment. There are two types of royalty rates:

- royalties based on the location of oil production (production-based royalties); and
- royalties based on the price of oil (price-based royalties).

Production-based royalties are fixed while price-based royalties relate to deep offshore leases and are a supplementary royalty rate that only apply where the price of oil at the time of sale exceeds certain set thresholds.

Production-based royalties		Price-based royalties	
Production areas	per cent of production	Price of oil per barrel (US\$)	per cent Royalty
Onshore	20 per cent	\$0 - \$20	0 per cent
Offshore – up to 100 metres water depth	18.50 per cent	\$20 - \$60	2.5 per cent
Offshore – up to 200 metres water depth	16.50 per cent	\$60 - \$100	4 per cent
Areas greater 200 metres water depth (Deep Offshore)	10 per cent	\$100 - \$150	8 per cent
Frontier areas and inland basins	7.5 per cent	Above \$150	10 per cent

Concession rentals

Holders of OPLs and OMLs are required to pay annual concession rentals to the federal government during the tenure of the awards:

- OPLs: US\$100 per square mile; and
- OMLs: US\$200 per square kilometre for the first 10 years then \$150 per square kilometre for the rest of the duration of the OML.

Bonuses

Signature bonuses and renewal bonuses are paid to the federal government on the award and renewal of OPLs, OMLs and marginal fields licences. The bonuses are largely determined as a percentage of the net present value of the awarded asset.

Only PSCs have stabilisation clauses that protect the PSC contractor from the impact of future taxes. These clauses grant the contractor a right to request amendments to the PSC contract to restore the contractor's economic position before the tax changes occurred.

Licence duration

16 What is the customary duration of oil leases, concessions or licences?

OPLs have a maximum duration of five years (onshore) and 10 years (deep offshore) including all renewals. The tenure of an OPL will come to an end upon the earlier to occur of:

- the discovery of oil in commercial quantities and conversion to an OML; or
- the expiration of the maximum five-year period (onshore) or 10-year period (deep offshore).

OMLs have a 20-year duration and can be renewed for further periods of 20 years. Marginal field licences have a duration of five years and where the DPR considers that there are sufficient efforts to progress work on the field in accordance with the approved work programme, it may renew the licence for a further term. PSCs are typically for 25-30-year duration (ie, a combination of the OPL and OML durations).

Extent of offshore regulation

17 For offshore production, how far seaward does the regulatory regime extend?

Regulation of oil exploration and production activities extends to the economic zone.

Onshore offshore regimes

18 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

Both the onshore and offshore regimes are largely the same, except for some certain differences:

- higher royalty rates apply onshore when compared with royalty rates for the offshore;
- the duration of the OPL is five years for the onshore and 10 years for the deep offshore; and
- the onshore is predominantly exploited under direct concessions, while the offshore is predominantly exploited under PSCs.

The regulatory regime is written more for the exploration, production, processing storage and transportation of oil, and less so for gas. OPLs and OMLs authorise the exploitation of petroleum generally. However, the fiscal regime for gas is more beneficial and was specifically introduced in order to incentivise gas development: lesser royalties, lower

tax rate, tax incentives (eg, tax holidays and allowances). There is also a specific regulatory regime for the prevention and utilisation of gas flares.

Authorised E&P entities

19 | Which entities may perform exploration and production activities? Describe any registration requirements. What criteria and procedures apply in selecting such entities?

Local and foreign companies are entitled to perform exploration and production activities. However, all licence holders must be companies registered in Nigeria. The process for registration of companies takes a few days to a few weeks after all the incorporation forms have been duly submitted to the Corporate Affairs Commission.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The federal government regulates operators in the oil industry through the DPR. The DPR has a mandate to approve all technical activities by operators, including their field development plans, annual work programmes, environmental compliance, measurements of petroleum, transportation and sale of crude oil, among others. The operators are required to submit reports and operational data to the DPR and constantly engage the DPR on all operational issues in line with the extant regulations, guidelines and directives of the DPR.

The right of operatorship of a licence (OPL or OML) is inherent in the licence granted to the holder. However, where the asset is jointly held, the operatorship of the asset is subject to the joint operating agreement (JOA) between the parties. The revocation of the licence will dispense with the operatorship, otherwise the operatorship may only be revoked in accordance with the JOA. The licence may be revoked where:

- the concessionaire is not conducting operations continuously in line with the approved work programmes and good oilfield practice;
- the concessionaire defies the regulations, DPR's directives, or fails to fulfil its special licence conditions; and
- the concessionaire fails to pay the applicable rent and royalties or to furnish reports on its operations as required by the regulations.

Joint ventures

21 | What is the legal regime for joint ventures?

Joint ventures in the oil and gas industry may be incorporated or unincorporated. For incorporated joint ventures, the same legal regime for regular companies operating in Nigeria will apply. Regarding unincorporated joint ventures, which are preferred in the oil industry, there is no legislation that regulates their formation and operation. There has been no judicial pronouncement yet that declares an upstream oil and gas joint venture as a partnership; as such, the partnership laws will not apply to these joint ventures. In the absence of any regulating legislation, joint ventures are created and operated under contract law.

Reservoir unitisation

22 | How does reservoir unitisation apply to domestic and cross-border reservoirs?

The Petroleum (Drilling and Production) Regulations gives the Minister of Petroleum Resources the power to require licensees or lessees over asset areas that comprise a single geological petroleum reservoir, to prepare a scheme for development of the unit area which ensures the maximum ultimate recovery of petroleum, for the Minister's approval. In the event that the development scheme is not provided to the Minister

or is not acceptable, the Minister is given the power to prepare the development scheme in a manner which in his or her opinion is fair and equitable to the parties.

Pursuant to an approved development plan, licensees or lessees may enter into a unit tract participation agreement that provides for the parties' equity interest in the unitised area and, subsequently or in parallel, enter into a unit operating agreement to govern petroleum operations in respect of the unitised field.

In Nigeria, unitisation also applies to reservoirs that straddle across national borders. There is a precedent in Nigeria: a petroleum reservoir straddles the border between Nigeria and Sao Tome and Principe. Both countries entered into a Treaty for the Joint Exploration of Oil and Other Resources existing on the Existing Exclusive Economic Zone of the two States that, inter alia, determines each country's entitlement to crude oil and also establishes a joint development authority to develop and manage the unitised petroleum resources.

Licensee liability

23 | Is there any limit on a party's liability under a licence, contract or concession?

Licences, contracts or concessions granted by the government to a party (Concessionaire) in Nigeria generally do not provide any limitation on liability; neither is any limitation of liability in favour of Concessionaires provided in any law.

Conversely, the Petroleum Act secures an indemnity in favour of the Federal Government of Nigeria, its agencies and officers from all Concessionaires, against third-party liability arising from government actions taken pursuant to the Act.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

A licensee or lessee is usually required to demonstrate financial capability to meet the terms and conditions for issuance of the licence or lease. The financial capability of any parent, whether the immediate or ultimate parent, may then be relevant in determining whether this requirement has been met. Otherwise, neither a parental guarantee or a security deposit for work commitment are required to be provided.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

25 | Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services, capital or personnel?

Companies operating in Nigeria's oil and gas sector are required to comply with the requirements of the Nigerian Oil and Gas Industry Content Development Act 2010 (the Act). Local content is assessed, inter alia, in relation to minimum Nigerian content thresholds for goods, services, capital or personnel used in projects. The Act makes it more advantageous for a participant in the sector to operate as a 'Nigerian company' with 51 per cent shareholding by Nigerians, with such companies having the privilege of first consideration in the award of contracts and being the only companies eligible to provide services in land and swamp areas. Liability for non-compliance with the requirements of the Act following conviction is a fine of 5 per cent of the project sum for the project in relation to which an offence is committed or cancellation of the project.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

All Nigerian companies, regardless of its sector of operations, are required to pay a 2 per cent education tax on their assessable profits to the tax authority. Lessees are also required to pay a 3 per cent Niger Delta Development Commission levy assessable based on the total annual budget, as well as deduct and remit 1 per cent of contracts awarded for projects to the Nigerian Content Development Fund.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The consent of the Minister of Petroleum Resources is required for the transfer of interest in a licence, lease, concession or production-sharing agreement (PSA). The Department of Petroleum Resources, a department in the Ministry of Petroleum Resources, undertakes the evaluation of a request for the Minister's consent and may then recommend to the Minister that consent be granted to the proposed transfer. The Minister's consent is also required for a change of control of a licensee or lessee.

Joint operating agreements for joint ventures with the Nigerian National Petroleum Company (NNPC) usually include pre-emptive rights for transfers to third parties. Also, PSAs with the NNPC usually include a restriction on contractors transfer of rights and interests in the contract without the prior consent of the NNPC.

Approval to change operator

28 | Is government consent required for a change of operator?

The consent of the government is generally not required for the change of operator. The Department of Petroleum Resources Guidelines and Procedures for Obtaining Minister's Consent to the Assignment of Interest in Oil and Gas Assets, however, precludes the operator of an asset where the NNPC is a joint venture partner or concessionaire from transferring the right of operatorship.

Transfer fees

29 | Are there any specific fees or taxes levied by the government on a transfer or change of control?

Unless waived by the Minister of Petroleum Resources, the Petroleum Act empowers the Minister to prescribe an application fee and a premium of 5 to 10 per cent of the transaction purse, for the grant of consent to transfer an interest in a licence or lease. The consent fee is usually stipulated on the notification of consent of the Minister of Petroleum Resources. The payment of the fee is a condition precedent to the effectiveness of the consent.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Title to facilities and equipment used for petroleum operations are retained by licensees or lessees, subject to the power of the Minister under the Petroleum (Drilling and Production) Regulations issued pursuant to the Petroleum Act, to take any such facilities and equipment at a written down price upon termination of the licence or lease.

Production-sharing contracts with the Nigerian National Petroleum Corporation (NNPC) also typically provide that 50 per cent ownership of such title and equipment vests in the NNPC upon purchase with the outstanding 50 per cent vesting in the NNPC following the contractor's recovery of the cost.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The Petroleum (Drilling and Production) Regulations requires that licensees or lessees obtain the permission of the Department of Petroleum Resources (DPR) for abandonment operations. Abandonment operations are to be carried out strictly in accordance with an abandonment programme approved by the DPR. Upon termination of a licence or lease, the licensees or lessees are also required to deliver productive boreholes or wells in good condition fit for further working unless directed by the DPR to securely plug such boreholes or wells and, as far as is possible, to restore the licence or lease area to its original condition. The DPR Procedure Guide for the Construction and Maintenance of Fixed Offshore Platforms requires that the operator of a field submit a disposal plan for the offshore field facilities to the DPR five years prior to the end of the economic life of the field as agreed by such operator and the DPR.

The Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, issued by the DPR, also provides guidelines for the abandonment and decommissioning of oil and gas facilities. In addition, several treaties to which Nigeria is a party impose decommissioning and disposal obligations in relation to oil and gas facilities within its territorial waters.

Decommissioning is also dealt with in contracts such as production sharing contracts, joint operating agreements and marginal fields farmout agreements, with parties obligated in certain cases to set aside funds for such activities.

With respect to pipelines, the Oil Pipelines Act requires that a licence holder, within three months after termination of its licence and after giving the Minister of Petroleum Resources three weeks' notice, must remove any pipeline and ancillary installation and restore the land area to its original condition unless the Minister elects to purchase such pipeline or installation.

Security deposits for decommissioning

- 32 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

There is no law or regulation that requires the provision of a security deposit in respect of future decommissioning liabilities. Contracts, such as production-sharing contracts, joint operating agreements and marginal fields farmout agreements, typically require the accumulation of funds or payment of an assessed amount into an interest-bearing account. Utilisation of such funds for decommissioning operations typically takes place following termination of a licence or lease.

TRANSPORTATION

Regulation

- 33 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The transportation of crude oil within and outside Nigeria is regulated by a number of laws, such as:

- the Oil Pipelines Act, Oil and Gas Pipeline Regulations and Department of Petroleum Resources (DPR) Guidelines and Procedure for the Construction, Operation and Maintenance of Oil and Gas Pipelines and their Ancillary Facilities regulate the construction, operation and maintenance of pipelines transporting crude oil and crude oil products;
- the Minister of Petroleum Resources is empowered under the Oil Pipelines Act to grant permits to survey routes for pipelines and oil pipeline licences to successful applicants that gives an overriding right to enter upon, take possession of or use a strip of land of a width not exceeding 200 feet or of such other width or widths as is specified in the licence to construct, maintain and operate an oil pipeline and ancillary installations;
- the Petroleum Act and Petroleum (Drilling and Production) Regulations issued pursuant to the Act prohibit the storage of petroleum products without a licence granted by the Minister with storage facilities approved by the DPR;
- the Oil Terminal Dues Act requires that terminals used for the export of crude oil are licensed by the Minister and provides for the payment of dues by vessels lifting crude oil from such terminals;
- the Pre-shipment Inspection of Exports Act provides for the inspection of all exports from Nigeria to, inter alia, ascertain the quantity and quality of the exports, and requires that proceeds from such exports are paid into foreign currency domiciliary accounts held by the exporter in Nigeria. Other than the requirements of this Act, exporters of crude oil are required to obtain an Export Clearance Permit Certificate from the Federal Ministry of Industry, Trade and Investment as well as an Export Permit from the Department of Petroleum Resources; and
- the Coastal and Inland Shipping (Cabotage) Act, which requires that only locally owned vessels may engage in the transportation of goods within Nigeria's inland waterways and coastal regions.

COST RECOVERY

Determining recoverable costs

- 34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Recoverable costs are determined in accordance with the accounting provisions of the relevant production sharing contract and are typically expenses incurred wholly, exclusively, and necessarily for the benefit of the relevant petroleum operations. For the Offshore Deepwater production-sharing contract (PSCs) in Nigeria, the Nigerian National Petroleum Corporation (NNPC), which is the grantor of the PSCs on behalf of the federal government, typically screens and verifies costs expended by the PSC contractor to ensure the claimed costs are not 'gold-plated' before agreeing to their recoverability. There tends to be friction between the NNPC and the PSC contractor on this issue and in some cases, disputes on cost recovery have been referred to arbitration.

The PSC contractor's costs are recovered from an in-kind allocation of a portion of the volumes of crude oil produced from the relevant field (cost oil). The maximum volumes of cost oil that can be recovered from the total crude oil volumes produced from the field is typically agreed in the relevant PSCs, to ensure that the parties have some profit oil to share even during the recovery period.

PSCs specify the amounts that may be recovered as head office overhead costs.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

- 35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

Environmental impact assessments are required to be undertaken and approved by the Federal Ministry of Environment before construction of most oil and gas facilities and annual environmental compliance monitoring exercises are conducted by the regulator, for the duration of the operations, to ensure that the development and subsequent operation of the projects or activities do not adversely affect the environment. Failure to comply with these rules constitutes a crime and is punishable with fines.

As the primary regulator charged with ensuring safe operation of all oil industry activities, the Department of Petroleum Resources (DPR) has issued elaborate safety standards and guidelines in the Environmental Guidelines and Standards for the Petroleum Industry to foster safe upstream operations in all aspects of the oil industry from the upstream to the downstream. The Mineral Oils (Safety) Regulations, Petroleum Regulations, Petroleum Refining Regulations and Petroleum (Drilling and Production) Regulations all provide safety standards and requirements for all oil operational activities. Operators are required to provide sundry safety reports to the DPR in respect of their activities and failure to observe the various environmental and safety rules, in most cases, constitutes a crime.

The biggest environmental threat from petroleum operations in Nigeria is oil spills. Nigeria has a specific regulator: the National Oil Spill Detection and Response Agency, which is a coordinating agency for the implementation of the National Oil Spill Contingency Plan, to combat oil spills with support from private sector operators and public

agencies. Polluters are required to report an oil spill within 24 hours of their occurrence otherwise be liable to pay daily penalties for failure to report.

LABOUR

Local and foreign workers

36 | Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The local content regime requires that Nigerians are given first consideration for employment for project developments in the oil and gas industry and, where there is a technical know-how gap, an employment and training plan must be put in place to equip Nigerians to take advantage of employment opportunities. All operating companies in the oil and gas industry are mandated to employ only Nigerians in their junior and intermediate personnel cadres. For projects whose total budget exceed US\$100 million, the number of Nigerians to be employed in each cadre can be agreed with the local content regulator Nigerian Content Development & Monitoring Board (NCDMB).

All operators are required to contribute 1 per cent of their payroll to an Industrial Training Fund.

For every position not held by a Nigerian, a succession plan for a maximum period of four years must be in place to 'Nigerianise' the position. Five per cent of the managerial positions are, however, reserved for foreigners to cater for investor interests.

For foreigners to work in the oil and gas industry, the companies employing them must obtain expatriate quota approval for the relevant position first from the NCDMB and then from the Federal Minister of Interior/Internal Affairs. Thereafter they must apply for and obtain a Subject To Regularisation Visas to travel to Nigeria and subsequently apply for an Expatriate Residence Permit.

Non-compliance with the local content rules is a crime and the offender is liable upon conviction to pay a fine of 5 per cent of the value of the project sum or cancellation of the project.

TAXATION

Tax regimes

37 | What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The profits of companies engaged in petroleum operations (ie, the winning, obtaining or transportation of petroleum) are subject to tax under the Petroleum Profits Tax Act (Cap P13 LFN 2004) at the rate of 85 per cent of chargeable profits. However, a reduced rate of 67.5 per cent applies during the first five years of production during which the operator is expected to amortise its capital expenditure. Companies engaged in deep offshore operations (ie, operations at water depth of over 200 square kilometres) enjoy a reduced rate of 50 per cent of chargeable profits.

Profits accruing from midstream and downstream activities, which includes, marketing and distribution activities are subject to tax under the Companies Income Tax Act at the rate of 30 per cent of chargeable profits.

Other taxes and levies include:

- education tax at 2 per cent of assessable profits;
- Industrial Training Fund levy at 1 per cent of annual payroll;
- Nigerian Content Development and Monitoring Board levy on contracts entered into by oil companies at 1 per cent of contract sum;
- Niger Delta Development Commission levy at 3 per cent of annual budget;

- capital gains tax at 10 per cent of chargeable gains;
- VAT at 7.5 per cent (not applicable to oil and gas exports); and
- dividend distributions from petroleum income are also subject to 10 per cent withholding tax.

The Federal Inland Revenue Service exercises tax authority.

COMMODITY PRICE CONTROLS

Crude oil mining

38 | Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There are no stated consequences for failure to abide by the market-based price set by the pricing agency.

COMPETITION

Competition enforcers

39 | What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Federal Competition and Consumer Protection Commission (FCCPC) is vested with the authority to punish anticompetitive practices in Nigeria by the Federal Competition and Consumer Protection Act 2018.

Obtaining clearance

40 | What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

For proposed mergers where the combined turnover of the acquiring and target entities is 1 billion naira and above, or the turnover of the target entity only is 500 million naira and above, a merger notification is required to be made to the FCCPC. The FCCPC will within 60 days or such further period after a merger notification is submitted, determine whether the proposed merger would substantially prevent or lessen competition. Proceeding to implement a merger without the FCCPC's approval is a crime and, on conviction, the offender will be liable for a fine not exceeding the value of 10 per cent of the turnover of the undertaking.

DATA

Seismic data

41 | Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

Title to seismic data is held by the oil prospecting licence (OPL) or oil mining lease (OML) holder. With respect to production-sharing contracts, the government entity typically has title to all data resulting from petroleum operations.

The National Data Repository Regulations 2020 mandates holders of OPLs and OMLs to submit data on their fields and production operations to the data repository located within the Department of Petroleum Resources (DPR). The obligation on field owners to surrender the data

is imposed pursuant to the Petroleum Act and its Regulations. The Repository offers paid access to the data to third parties, provided the confidentiality period for the relevant data set has elapsed. The confidentiality periods depend on the type of data in question and range between 24 hours to 10 years.

Under the Flare Gas Prevention of Waste Pollution Regulations 2018, the DPR may request 'flare gas data', which includes substantial subsurface information and, under these regulations, the regulator is empowered to grant data access permits to third parties.

INTERNATIONAL

Treaties

42 | To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Nigeria is a member of OPEC and its crude oil production output is occasionally curtailed to comply with production quotas imposed on member countries to artificially adjust the price of crude oil in the global market.

Nigeria is a signatory to the New York Convention 1958 and has domesticated the convention in its local laws.

Foreign ownership

43 | Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence?

Foreign companies or individuals may acquire oil-related interests in Nigeria provided they register a company in Nigeria for this purpose. Other than with respect to marginal fields, where participation by foreign investors is limited to 49 per cent, there is no limitation on the acquisition of oil-related interests by foreign investors.

Cross-border sales

44 | Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Exporters of crude oil or crude oil products are required to maintain a bank account in Nigeria into which proceeds from cross-border crude sales are to be paid. There are no domestic supply obligations with respect to crude oil or crude oil products.

UPDATE AND TRENDS

Current trends

45 | What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

The Petroleum Industry Bill (PIB), Nigeria's petroleum reform legislation, is once again journeying through the legislature and the popular projection is that it will be passed into law in 2021. The PIB will reform the legal, institutional and regulatory regime for the petroleum industry. It proposes a more robust acreage management system that addresses the current redundancies in the development of the countries reserves. Also, it creates a distinct midstream segment and reforms the existing fiscal regime for the petroleum sector.

One of Africa's largest crude oil refinery projects is being developed and, when it comes onstream, will likely rid the country of its current wasteful dependence on the importation of petroleum products.



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Coronavirus

46 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In response to the covid-19 pandemic, the federal government of Nigeria has developed the Nigeria Economic Sustainability Plan (NESP) 2020. The major purpose of the NESP is to cushion the effects of the covid-19 pandemic and recalibrate the Nigerian economy to a post-covid reality. The NESP provides for various stimulus packages to certain strategic sectors of the economy and vulnerable segments of the population.

In view of the depressed demand for crude oil, brought about by the pandemic, the NESP has listed various measures to safeguard oil revenues. These include deregulation of the petroleum products market, achieving a reduction in the average cost of production of crude oil and ensuring enhanced fiscal discipline by the national oil company.

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