

OIL REGULATION

Nigeria



Oil Regulation

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Quick reference guide enabling side-by-side comparison of local insights into oil industry issues worldwide, including commercial, policy, regulatory, licensing and legal system overview; expropriation provisions; license revocation and amendment mechanisms; state participation; royalties, taxes and tax stabilisation; joint ventures; reservoir unitisation; guarantees and security deposits; transfer to third parties; title to facilities and equipment; decommissioning and abandonment; transportation; cost recovery; health and safety; environmental; labour; tax; commodity price controls; competition; seismic data; treaty, foreign ownership and cross-border sale considerations; and recent trends.

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GENERAL

Key commercial aspects

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

Nigeria has 36.91 billion barrels of crude oil reserves and is the 11th largest oil producer globally. These reserves are located in the offshore deep-water acreages and several smaller, mostly ageing, onshore and shallow water fields. The total crude oil and condensate production for the year 2020 as reported by the Nigerian National Petroleum Corporation, now renamed the Nigerian National Petroleum Company Limited (NNPC), stood at 644,362,369 barrels, giving a daily average of 1.76 mbpd (million barrels per day).

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 several independents. Crude oil refining activity is very limited due to the dilapidation of state-owned refineries. Consequently, local demand for petroleum products is satisfied by imports. The NNPC undertakes these imports through crude oil swaps (ie, sale of crude oil to foreign refineries), in exchange for refined petroleum products. Retailing of petroleum products is carried out by several firms who store, transport and retail the imported refined products.

Law stated - 01 April 2022

Energy mix

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 backup generators on the continent. However, there is a gradual utilisation of solar power in the country.

Nigeria largely depends on imports to meet its petroleum products needs, because almost 97 per cent of its 460,000 bpd (barrels per day) local refining capacity has been non-operational for a number of years. Most of the existing refining capacity is state-owned while there are quite a number of private owned refineries currently being developed that will add an additional processing capacity of about 750,000 bpd by 2023 to reduce the country's dependence on imports. The importation and retailing of petroleum motor spirit (PMS) is regulated, while other petroleum products are deregulated. For PMS, the NNPC solely imports PMS using 'crude oil swaps' through direct-sales-direct-purchase (DSDP) transactions with foreign refineries. In other words, Nigeria sells most of the volumes of crude oil production that NNPC is entitled to as a result of its direct participation in the oil and gas sector, in exchange for importation of PMS under DSDP arrangements.

Law stated - 01 April 2022

Government policy

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 its Federal Executive Council 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.

Law stated - 01 April 2022

Registering a licence

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

Nigeria has a newly passed petroleum sector reform law called the Petroleum Industry Act 2021 (PIA), which was legislated in August 2021. One of the innovations of the PIA is the requirement that the newly constituted independent regulator – Nigerian Upstream Petroleum Regulatory Commission (NUPRC) – creates and maintains a registry of all petroleum assets, where information on all matters pertaining to the history, ownership, operatorship and status of oil and gas licences and leases will be publicly accessible (including online). This innovation is yet to be implemented, but the expectation is that steps are already being taken by the NUPRC to implement this reform.

Law stated - 01 April 2022

Legal system

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. There are also customary and Islamic laws that apply in limited circumstances. 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 (SCPA), and the Judgments (Enforcement) Rules made thereunder, which provides for various methods of enforcement including a writ of fieri facias, garnishee proceedings, a charging order, a writ of sequestration or an 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.

Law stated - 01 April 2022

REGULATION OVERVIEW

Legal framework for oil regulation

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 sector in Nigeria is in a transitory state. The erstwhile regulatory regime comprised of four key principal pieces of legislation ('Outgoing Laws'):

1. the Petroleum Act 1969, which was the principal law for the sector for several decades, governing the licensing and conduct of petroleum operation activities including exploration, production, transportation, storage, refining and marketing of crude oil;
2. the Petroleum Profit Tax Act, which created the fiscal regime for the taxation of petroleum activities;
3. the Deep Offshore and Inland Basin Production Sharing Contracts Act, which regulated the operation and taxation of production sharing contracts in respect of more operationally challenging petroleum concessions; and
4. the Oil Pipelines Act, which governs the licensing and operation of petroleum pipelines.

The regulatory purview of the above Outgoing Laws have now been consolidated and updated by new reform legislation passed into law in August 2021, namely the Petroleum Industry Act (PIA). The PIA does not immediately repeal or substitute the Outgoing Laws, but assumes regulatory prerogative over new petroleum licences as well as existing licences, which voluntarily opt to be governed by the PIA by converting to the new regime or when those licences are to be renewed. Thus, both regimes will co-exist until all the pre-existing licences governed by the Outgoing Laws are converted or renewed to bring them under the PIA regime.

Another key piece of legislation relevant to the sector is the Nigerian Oil and Gas Industry Content Development Act, which 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 given to companies incorporated in Nigeria in the award of oil blocks, licences and contracts in the sector.

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

Law stated - 01 April 2022

Expropriation of licensee interest

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.

Law stated - 01 April 2022

Revocation or amendment of licences

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

Under the Petroleum Act regime, 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 licence 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.

In respect of the PIA and petroleum prospecting licences and petroleum mining leases granted under the PIA, the Minister of Petroleum Resources may upon receipt of the written recommendation of the Commission revoke such licence/lease where the licensee or lessee:

- fails to conduct petroleum operations in accordance with good international petroleum industry practices, the provisions of the Act and other relevant legislation;
- interrupts production for a period over 180 consecutive days without justification as provided for in the applicable licence, lease or approved field development plan, except in the event of force majeure where there is an acceptable justification for interruption;
- fails to fulfil the terms and conditions of the applicable licence or lease of the field development plan;
- fails to pay to the government, as they become due, rents, royalties, taxes or other payments or production shares;
- fails to furnish any reports or data on operations as required by law after having been advised in writing by the commission of such failure;
- assigns, novates, or otherwise transfers any interest in the applicable licence or lease without seeking consent from the Minister of Petroleum Resources;
- has obtained an interest in the applicable licence or lease based on false representation or contrary to corrupt practices and money laundering laws;
- is declared by a court of competent jurisdiction to be insolvent, bankrupt or is liquidated, except when such

- declaration is part of a solvent plan or scheme or reorganisation, amalgamation or arrangement;
- has failed to comply with environmental obligations required by applicable law or by the provisions of the applicable licence or lease;
 - is owned wholly in part, directly or indirectly or is controlled by a former or serving public official or member of the government, who obtained his interest in the applicable licence or lease other than as permitted by applicable law;
 - does not submit and advance a field development plan and work commitment as mandated under the Act;
 - fails to abide by any expert determination, arbitration award or judgment arising from the dispute resolution provisions set forth in a licence or lease;
 - fails to comply with crude oil supply or domestic gas delivery obligations under the Act; or
 - fails to comply with host communities obligations under the Act.

In respect of the PIA regarding midstream and downstream petroleum operations, a licence or permit may be revoked where:

- the holder becomes insolvent, bankrupt, enters into an agreement or composition with its creditors or takes advantage of any enactment for the benefit of the debtors or goes into liquidation, except in the situation where it is part of a scheme for an arrangement or amalgamation;
- upon the transformation or dissolution of the company or corporation, except where it is for the purpose of amalgamation or reconstruction, provided that the prior written consent of the Authority has been obtained;
- a holder of a licence or permit fails to commence activity within the timeframe prescribed in the licence or permit;
- the holder of a licence or permit fails to comply with applicable laws and regulations on the terms and conditions of its licence or permit;
- the holder interrupts midstream or downstream petroleum operations for a period of more than 180 consecutive days without justification as provided for in the licence or permit, except in the event of force majeure where there is an acceptable justification for interruption;
- the holder assigns or transfers any interest in the licence or permit without obtaining the prior written consent of the Authority;
- the holder has acquired the licence or permit based on false representation or contrary to corrupt practices and money laundering laws;
- the holder has failed to comply with environmental obligations as required by law or the provisions of the licence or permit;
- the holder is owned wholly or in part, directly or indirectly or is controlled by a former or serving public official or member of the government, who obtained his interest in the applicable licence or lease other than as permitted by applicable law; and
- the holder fails to abide by any expert determination, arbitration award or judgment arising from the dispute resolution provisions set forth in the licence or the Act.

Law stated - 01 April 2022

Regulators

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 (the Minister) is responsible for policy formulation and supervision of the petroleum sector through the Ministry of Petroleum Resources.

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC), is the main regulator for oil exploration and production activities in Nigeria. It is the sole technical and commercial regulator of the upstream segment of the petroleum industry.

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.

The Federal Ministry of Environment regulates the process for obtaining environmental impact assessments (EIAs). As a consequence, upstream oil exploration and production activities that are required to obtain EIAs will have to obtain them from the Federal Ministry of Environment before commencing such projects.

NOSDRA is the agency responsible for the implementation of the NOSCP and it regulates the actions of operators where oil spills occur during oil exploration and production.

Under the PIA, the Minister may upon recommendation of the Commission, suspend petroleum operations in any area under a licence or lease to prevent danger to life or property, or where, in the Minister's opinion, operations are not being conducted in accordance with good oil field practice or will result in a contravention of the provisions of the PIA or its subsidiary legislation. The Minister may also revoke the licence or lease granted under the PIA in the circumstances discussed above.

Law stated - 01 April 2022

Government statistics

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

The NUPRC and the Nigerian Midstream and Downstream Petroleum Regulatory Authority are both mandated by the PIA to keep records of all upstream, midstream, and downstream petroleum activities as applicable, which will include statistics on oil production, export and import statistics. The National Bureau of Statistics also maintain and provide petroleum products import statistics.

Law stated - 01 April 2022

NATURAL RESOURCES

Title

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?

The Nigerian Constitution and the Petroleum Industry Act 2021 (PIA) vests 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 rights 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.

Law stated - 01 April 2022

Exploration and production – general

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.

Law stated - 01 April 2022

Exploration and production – rights

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 types of licences granted are petroleum exploration licences (PELs), petroleum prospecting licences (PPLs), petroleum mining leases (PMLs) and a production sharing agreement with the state oil company (the Nigerian National Petroleum Corporation Limited (NNPC)). A PEL grants the holder a non-exclusive right to undertake petroleum exploration operations within the area provided for in the licence. A PPL grants the holder an exclusive right to explore and prospect for oil within a: (i) 350 square kilometre area for onshore or shallow water acreages; (ii) 1,000 square kilometre area for deep offshore acreages; and (iii) 1,500 square kilometre area for frontier acreages. A PPL also entitles the grantee to carry away and dispose of oil produced. The holder of a PPL is entitled to the grant of a PML where a 'commercial discovery' is made (ie, discovery of oil or gas in commercial quantities). A PML grants a concessionaire the right to search for, win, work, carry away and dispose of petroleum (including gas). The holder of a PML is, however, obligated to relinquish the areas of the PML which are not producing 10 years after the PML was granted.

PPLs, PMLs, and production sharing agreements are granted through fair and transparent competitive bid rounds conducted by the NUPRC and are based on any of the following model contracts:

- concessions: traditional licencing model, which may include an incorporated or unincorporated joint venture with NNPC;
- production sharing contract (PSC): the awardee bears all the operating and financial risks and shares any resulting production with the government;
- profit sharing contract: similar to PSC, except that the government receives cash instead of actual production;
- risk service contract: the awardee bears the financial risk and recovers its costs and margin from the payment of a fixed fee in cash or kind.

The Minister of Petroleum Resources may upon the recommendation of the NUPRC grant the licences. The Minister

must inform the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) of his or her decision within 90 days of the application for the licence or lease, and where he or she fails to do so, the application is deemed granted.

The PIA codifies some mandatory terms for the concession contracts, which will be non-negotiable, whereas the commercial bid by the awardees will determine some of the commercial inputs of the model agreements. These model agreements are yet to be issued by the NUPRC, so it is yet to be seen the extent to which they can be negotiated.

Law stated - 01 April 2022

Government participation

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?

Where a PPL or PML is granted based on a concession agreement, the PIA provides the government the right to participate in the licence through the NNPC at the time of award or renewal of the PPL or PML, or on application for conversion of a PPL to a PML.

NNPC's participation will be a maximum of 60 per cent carried interest with no requirement for an upfront payment by the government. The carried interest shall be refunded from cash or kind from future petroleum production.

Where the NNPC participates on behalf of the government in a PPL or PML, it does not as a consequence of such participation have any right to the operatorship of such PPL or PML. The petroleum joint venture agreements between the 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 PPL or PML to a transferee, the NNPC would become the default operator in preference to such transferee.

Law stated - 01 April 2022

Royalties and tax stabilisation

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. There are two types of royalties in the upstream petroleum sector:

- 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 only apply in addition to the production based-royalties, where the price of crude oil is trading above US\$50 per barrel.

Production-based royalties	Price-based royalties
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Production areas	Per cent of production	Price of oil per barrel (US\$)	Per cent royalty
Onshore	15 per cent	\$0 - \$50	0 per cent
Offshore – up to 200 metres water depth	12.5 per cent	At \$100	5 per cent
Offshore – up to 200 metres water depth	7.5 per cent	Above \$150	10 per cent
Frontier basins	7.5 per cent	Where the price is in between \$50 to \$100 and \$100 to \$150, the royalty rate shall be derived by Linear interpolation.	

Non-payment of the royalty within two months after the month in which it was due will attract:

- an additional sum of 10 per cent of the royalty due plus interest. For foreign currency transactions and Naira transactions, interest shall be at LIBOR rate plus 10 per cent point basis;
- 10 million naira or US\$ equivalent on the first day of failure to pay and 2 million naira or US\$ equivalent for each subsequent day.

Concession rentals

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

- PPLs: US\$100 per square mile; and
- PMLs: US\$200 per square kilometre for the first 10 years then \$150 per square kilometre for the rest of the duration of the oil mining lease.

Bonuses

Signature bonuses and renewal bonuses are paid to the federal government on the award and renewal of PPLs and PMLs. 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.

Law stated - 01 April 2022

Licence duration

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

PPLs have a maximum duration of six years (onshore and shallow waters) and 10 years (deep offshore and frontier) including all renewals. The tenure of a PPL will come to an end upon the earlier of:

- the discovery of oil or gas in commercial quantities and conversion to a PML; or
- the expiration of the maximum six-year period (onshore) or 10-year period (deep offshore).

PMLs have a 20-year duration and can be renewed. PSCs typically have a 25- to 30-year duration (ie, a combination of the PPL and PML durations).

Law stated - 01 April 2022

Extent of offshore regulation

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

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

Law stated - 01 April 2022

Onshore offshore regimes

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 certain differences, that is:

- higher royalty rates apply onshore when compared with royalty rates for the offshore;
- the duration of the PPL is six 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.

PPLs and PMLs authorise the exploitation of petroleum products, 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 (tax holidays and allowances etc). Flaring of natural gas is expressly prohibited except in the case of an emergency, exemption or as an acceptable safety practice. Defaulters commit an offence and are liable to a fine.

Law stated - 01 April 2022

Authorised E&P entities

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.

Law stated - 01 April 2022

Regulatory powers over operators

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

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

The right of operatorship of a licence (PPL or PML) 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, the NUPRC'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.

Law stated - 01 April 2022

Joint ventures

What is the legal regime for joint ventures?

Joint ventures in the oil and gas industry may be incorporated or unincorporated. Generally, incorporated joint ventures between private interests have the same legal regime as regular companies operating in Nigeria.

With respect to NNPC joint ventures (ie, unincorporated joint ventures for state participation in the oil and gas industry between the national oil company (NNPC) and international oil companies), the PIA envisages that these NNPC joint ventures may be voluntarily incorporated (NNPC IJVs), and if they are, the PIA provides some model principles for establishing incorporated joint venture companies with NNPC.

To the extent that the NNPC would be the majority shareholder of these NNPC IJVs holding circa 60 per cent of the company's shares, the application of some of the typical rules governing state companies have been suspended to avoid inefficiencies in the operations of these NNPC IJVs, for example, the NNPC IJVs will be exempt from the Fiscal Responsibility Act and the Public Procurement Act.

The initial capitalisation of an NNPC IJV and transactions required to create the NNPC IJV are exempt from any additional tax liabilities, provided that all assets, interests and liabilities previously held under the JOA are transferred to the NNPC IJV at net book value. NNPC IJVs are required to have their head offices and main operational offices in Nigeria and where desirous of having several streams of operations, the NNPC IJV parties have to incorporate separate companies. The PIA also provides for a right of first refusal in favour of the NNPC in the event of a sale by any shareholder of its shares in an NNPC IJV; so prior consent of NNPC is required for any change in control in respect of any holder of shares, as well as for transfer or creation of security over the shares in an NNPC IJV.

With regards to 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.

Law stated - 01 April 2022

Reservoir unitisation

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

The PIA gives the NUPRC the power to require licensees or lessees to conduct petroleum operations over asset areas that comprise a single geological petroleum reservoir on the basis of a unitised development. This is to ensure the optimum recovery of petroleum.

The licensees or lessees may be directed to enter into a unit agreement to develop the petroleum reservoir. Where the licensees or lessees are unable to enter into an agreement, the NUPRC may require the licensees to jointly appoint a consultant to develop terms and conditions that are fair and equitable to the licensees/lessees and the government. Where the licensees fail to appoint a consultant within two months, the NUPRC shall appoint the respective consultant and the remuneration of the consultant shall be paid by the licensees or lessees.

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.

Law stated - 01 April 2022

Licensee liability

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.

Law stated - 01 April 2022

Guarantees and security deposits

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.

The PIA provides that the model licence or lease in any bid round must reflect certain conditions including details of guarantees to be provided by the licensee or lessee regarding the performance of its licence or lease obligations.

A PPL is required to contain a requirement that the licensee commits to a work programme and other conditions determined by the NUPRC. A similar commitment to execute the field development plan is also required when a PPL

holder declares a commercial discovery. In both instances, the commitment is required to be supported by a bank guarantee, letter of credit or performance bond for an amount determined by the NUPRC and issued by a bank acceptable to the NUPRC. Furthermore, holders of crude oil refining licences are also required to provide payment guarantees for payment for crude oil purchased from mining lessees pursuant to the lessees' domestic crude oil supply obligations.

Law stated - 01 April 2022

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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 the 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.

Law stated - 01 April 2022

Social programmes

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

Under the Petroleum Industry Act 2021, every petroleum prospecting licence and petroleum mining lease holder is required to incorporate a host community development trust for the benefit of their host communities. PPL and PML holders are also mandated to contribute to the trust an amount equal to 3 per cent of their actual annual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host community.

Oil producing companies are required to pay a 3 per cent Niger Delta Development Commission levy assessable based on their total annual budget, as well as deduct and remit 1 per cent of contracts awarded for projects to the Nigerian Content Development Fund.

All Nigerian companies, regardless of their sector of operations, are required to pay a 2 per cent education tax on their assessable profits to the tax authority

Law stated - 01 April 2022

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

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) and also for transfer of shares in Nigerian National Petroleum Company incorporated joint ventures (NNPC IJVs) as well as change of control of a licensee or lessee.

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) is required to evaluate applications for consent within 60 days of receipt of the application and make recommendations to the Minister. The Minister is also required to act within 60 days of receipt of the NUPRC's recommendations, and, if after 60 working days there is no response from the Minister, the application for consent will be deemed granted. The transfer of interests requires the payment of a prescribed fee which is based on a percentage of the value of the transaction and which is not tax-deductible.

NNPC IJVs provide for a right of first refusal in favour of the non-transferring shareholder(s). Joint operating agreements for unincorporated 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.

Law stated - 01 April 2022

Approval to change operator

Is government consent required for a change of operator?

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

Law stated - 01 April 2022

Transfer fees

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

The transfer of interests under the Petroleum Industry Act 2021 requires the payment of a fee based on a percentage of the value of the transaction and which is not tax-deductible. The fee will be prescribed by the NUPRC via regulations.

Law stated - 01 April 2022

TITLE TO FACILITIES AND EQUIPMENT

Title holder

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

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?

A licensee or lessee is required to submit for approval a programme setting out the estimated cost of the decommissioning or abandonment, proposed shutdown measures, a clear description of methods to be employed, maintenance and safeguard measures for equipment to be partly removed and an environmental and social impact of the action. In approving the programme, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) must ensure that it considers: recommendations, the potential reuse of transportation pipelines and other facilities with regard given to deterioration and possible effects on the environment, and feasible decommissioning options.

The NUPRC or the NMDPRA can enforce compliance by (or recall) any holder of a current licence or lease or a holder of an expired or surrendered, transferred or divested equity in a licence or lease and who was responsible for the applicable decommissioning and abandonment plan concerning the erstwhile licence or lease, to carry out its remaining or unfulfilled decommissioning and abandonment obligations under the Petroleum Industry Act 2021 (PIA). However, a new entity may acquire all such abandonment and decommissioning obligations with the approval of the NUPRC or NMDPRA and the erstwhile licensee or lessee will have no further responsibility.

Where a lessee or licensee fails to comply with the decommissioning and abandonment plan, such lessee or licensee will be notified and given time to rectify. Upon the lessee or licensee's failure, the NUPRC will access the fund to pay for the performance of the programme by a third party.

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 farm-out agreements, with parties obligated in certain cases to set aside funds for such activities.

Law stated - 01 April 2022

Security deposits for decommissioning

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

Every lessee and licensee under the PIA is mandated to set up, maintain, and manage a decommissioning and abandonment fund held by a financial institution that's not affiliated with the lessee or licensee, in the form of an escrow account accessible by the NUPRC. The fund will exclusively be used to pay for decommissioning and abandonment costs. A licensee or lessee is required to furnish the NUPRC or NMDPRA on an annual basis with statements of accounts concerning its decommissioning and abandonment fund.

The decommissioning and abandonment plan will establish the yearly amount (which will be reviewed every 10 years) to be contributed to the respective decommissioning and abandonment fund and the yearly amount will be based on a reasonable estimate by the licensee or lessee of the applicable decommissioning and abandonment costs, projected forward on a nominal basis and divided by the estimated life of the facilities and the reasonable cost estimate is to be

approved by the NUPRC or the NMDPRA, as the case may be.

The PIA also provides that contributions to the decommissioning and abandonment fund shall be eligible for cost recovery and will be tax-deductible. However, decommissioning and abandonment costs disbursed from the decommissioning and abandonment fund will not be eligible for cost recovery or deductible for tax purposes.

Before the PIA was passed, petroleum upstream contracts, such as production sharing contracts, joint operating agreements and marginal fields farm-out agreements, typically required the accumulation of funds or payment of an assessed amount into an interest-bearing account. With the passage of the PIA, the expectation is that most of these contractual arrangements will be collapsed into the newly structured decommissioning and abandonment fund.

Law stated - 01 April 2022

TRANSPORTATION

Regulation

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 Petroleum Industry Act 2021 (PIA) is the principal legislation that governs the transportation of crude oil within and outside Nigeria. Certain additional laws are applicable in this regard such as:

- the Oil Pipelines Act, which is preserved by the PIA only to the extent that it is consistent with the PIA and until the expiration or termination of all oil prospecting licences and oil mining leases;
- the Oil Terminal Dues Act, which 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, which 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.

Under the PIA, the Nigerian Midstream and Downstream Petroleum Regulatory Authority may grant a qualified person a petroleum liquids transportation pipeline licence with an exclusive right to own, construct, operate and maintain a transportation pipeline within a route defined in the licence for its own account with third party access provisions or as a carrier. The PIA also provides for the grant of a petroleum liquids transportation network operator licence.

Law stated - 01 April 2022

COST RECOVERY

Determining recoverable costs

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.

Not every cost head agreed to be recoverable under the PSCs will be tax deductible, for example, head office costs, production and signature bonuses are not tax deductible under the Petroleum Industry Act 2021, but mostly remain cost recoverable under the subsisting PSCs with the NNPC.

Law stated - 01 April 2022

HEALTH, SAFETY AND ENVIRONMENT

Requirements

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 (EIAs) 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.

In addition to the Federal Ministry of Environment's regulation and monitoring of the EIA process, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) as the primary regulator for the upstream oil-related facility is also charged with ensuring safe operation of all oil industry activities.

Under the Petroleum Industry Act 2021, upstream petroleum companies are required to submit environmental management plans in respect of projects which require EIAs, to the NUPRC for approval. The plan sets out the strategy for protection of the environment from impacts of the petroleum activities and remediation plans in the event that incidents occur that pollute the environment. Petroleum upstream companies are also required to make prescribed financial contributions to the environmental remediation fund established by the NUPRC to serve as a default fund, which the NUPRC will make recourse to, to rehabilitate the environment from the impact of petroleum operations where the operating company fails to do so. The NUPRC determines the amount of the financial contribution based on the size of the operations and the level of environmental risks that exist. The upstream company is required to assess its environmental liability annually and increase its financial contribution to the satisfaction of the NUPRC.

There are elaborate safety standards and guidelines for petroleum upstream operations 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. Also, the Mineral Oils (Safety) Regulations, the Petroleum Regulations, the Petroleum Refining Regulations and the 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 NUPRC 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.

Law stated - 01 April 2022

LABOUR

Local and foreign workers

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 – the 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 visa 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.

Law stated - 01 April 2022

TAXATION

Tax regimes

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

The Petroleum Industry Act 2021 (PIA) introduces changes to the fiscal regime for the petroleum sector. The erstwhile petroleum profit tax which was levied at 85 per cent of profit from petroleum operations has been replaced by two taxes: a hydrocarbon tax with a maximum rate of 30 per cent and the companies income tax which applies generally to all companies in Nigeria at a rate of 30%.

The new hydrocarbon tax is directly levied on income generated from petroleum produced from onshore and shallow

water fields and applies specifically to only crude oil, condensates and natural gas liquids (NGLs) produced from upstream oil fields. It does not apply to production of natural gas, NGLs or condensates produced from non-associated gas wells or processing plants, as well as any petroleum production from frontier or deep offshore acreages which are only taxed companies income tax. While petroleum prospecting licences (PPLs) are tax at 15 per cent, petroleum mining leases (PMLs) are taxed at 30 per cent. Production allowances have been introduced as a relief against hydrocarbon taxes and a new cost price limit of 65 per cent has been introduced to cap cost recovery.

Companies income tax now applies to upstream crude oil production operations, and it applies in addition to the hydrocarbon tax (ie, they are not deductible against one another). The companies income tax rate of 30 per cent (20 per cent for companies with a turnover of between 25 million naira to 100 million naira), applies to all other upstream petroleum operations (across all terrains), as well as midstream and downstream petroleum operations.

Production terrain-based royalties apply at a rate of between 5 per cent to 15 per cent and price-based royalties apply in addition to production terrain-based royalties where the price of crude oil exceeds \$50 per barrel.

However, upstream companies that do not convert their existing oil prospecting licences to the PIA's PPLs or oil mining leases to the PIA's PMLs will continue to be subject to the Petroleum Profit Tax Act regime at the 85 per cent rate.

Profits accruing from midstream and downstream activities, which include 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 a company's 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 a upstream company's annual budget;
- capital gains tax at 10 per cent of chargeable gains on the disposal of an asset;
- 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 over the petroleum sector.

Law stated - 01 April 2022

COMMODITY PRICE CONTROLS

Crude oil mining

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?

Crude oil sale prices are not regulated in Nigeria. All crude oil products prices are deregulated, except for petroleum motor spirit (PMS), whose price is still regulated and subsidised by the government, even though the Petroleum Industry Act 2021 deregulates the pricing of PMS and leaves the pricing to be determined by free-market pricing conditions. The expectation is that the deregulation of PMS like the other crude oil products will be implemented by the government as soon as is practical, given the political sensitivity of removal of subsidies.

All PMS retailers are mandated by the government, through the Nigerian Upstream Petroleum Regulatory Commission to sell PMS at the subsidised prices and non-compliance is punished by closing down the operations of such defaulters until they comply with the relevant directives.

COMPETITION**Competition enforcers**

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 is vested with the authority to punish anti-competitive practices in Nigeria by the Federal Competition and Consumer Protection Act 2018 (FCCPA).

The Petroleum Industry Act 2021 also grants the NMDPRA some powers to regulate competition in the petroleum sector subject to the FCCPA. For instance, where the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) finds that a licensed activity (eg, gas distribution and retailing) is a monopoly service, the NMDPRA will regulate the prices charged in respect of the activity, in a manner that will avoid abuse of dominant position in the market. The NMDPRA in its licensing and regulation of midstream and downstream activities, will require licensees to unbundle their businesses into separate legal entities that will ensure arms-length dealings between related entities and will also require operators of facilities to grant non-discriminatory access to, and pricing of services for, all classes of customers to prevent anti-competitive behaviour.

Law stated - 01 April 2022

Obtaining clearance

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 Federal Competition and Consumer Protection Commission (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.

Law stated - 01 April 2022

DATA**Seismic data**

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 any data and its interpretation relating to upstream petroleum operations belongs to the Government of the Federation of Nigeria and is administered by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC).

The Petroleum Industry Act 2021 (PIA) and the National Data Repository Regulations 2020 mandate holders of petroleum prospecting licences and petroleum mining leases to submit data on their fields and production operations to the data repository located within the NUPRC. The obligation of field owners to surrender the data is imposed

pursuant to the PIA. 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 NUPRC 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.

Law stated - 01 April 2022

INTERNATIONAL

Treaties

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

Nigeria is a member of the Organization of the Petroleum Exporting Countries 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.

Generally, Nigeria's regulatory policy is affected by international treaties or other multinational agreements. A good example is the Paris Agreement of 2015 on climate change, decarbonisation and the global push to achieving a reduction of the increase in global warming to below 2 ° C. Nigeria as a signatory to the Paris Agreement ratified it in 2017 and proceeded to issue the Nigerian Climate Change Policy (revised) in 2021 and then went one step further to pass a new law – the Nigerian Climate Change Act in 2021 in order to facilitate Nigeria's achievement of its commitments under the Paris Agreement.

Law stated - 01 April 2022

Foreign ownership

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.

Law stated - 01 April 2022

Cross-border sales

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?

The Petroleum Industry Act 2021 makes provisions for domestic crude oil (and condensates) supply obligations whereby an upstream crude oil producer is required to dedicate a specific volume of crude oil to the domestic market on a willing supplier and willing buyer basis. An oil producer's licence or lease may be revoked for failure to comply with

their domestic crude oil supply obligations.

Exporters of crude oil or crude oil products are required to maintain a bank account in Nigeria into which proceeds from cross-border crude oil sales are to be paid.

Law stated - 01 April 2022

UPDATE AND TRENDS

Current trends

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?

After almost two decades of attempting to pass reform legislation for the petroleum sector, the Petroleum Industry Act 2021 (PIA) was signed into law in August 2021. The PIA thus ushers in a new era of much needed reforms to the petroleum sector and will hopefully restore certainty to the regulatory environment and attract further investments in the sector.

The PIA has brought far-reaching institutional, regulatory, and operational reforms to bring the Nigerian petroleum industry into conformance with current global industry practice and governance systems. The PIA provides for a more robust acreage management system that addresses the current redundancies in the development of the country's petroleum reserves. It also reforms the existing fiscal regime for the petroleum sector.

Stakeholders in the sector are conducting an impact analysis of the PIA on their operations and coming to terms with the changes introduced. The new regulators have also begun actions to aid the industry's transition into the new legal framework, particularly through stakeholder engagements for the issuance of several regulations.

A licensing round for marginal fields which began in 2020 has been concluded with about 50 new awards granted to indigenous companies for development. These new petroleum assets require investments to monetise the reserves and majority of the funding is expected to come from foreign investors.

Shell and Exxon Mobil are currently divesting their onshore leases in their Nigerian portfolios to local independents and this change of guard is indicative of Nigeria's maturity as a petroleum province. These local independents will require foreign investments to be able to operate and develop the assets they are acquiring.

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.

Law stated - 01 April 2022

Jurisdictions

	Argentina	Martelli Abogados
	Brazil	Campos Mello Advogados
	Denmark	Bech-Bruun
	Ecuador	Robalino
	Egypt	Soliman, Hashish & Partners
	Faroe Islands	Bech-Bruun
	Ghana	Kimathi & Partners Corporate Attorneys
	Greenland	Bech-Bruun
	Iraq	DWF LLP
	Italy	CMS Italy
	Japan	TMI Associates
	Mexico	Dentons López
	Myanmar	Myanmar Legal MHM Limited
	Nigeria	ENR Advisory
	Norway	Kvale Advokatfirma
	Oman	Al Busaidy Mansoor Jamal & Co
	Peru	CMS Peru
	Thailand	Chandler MHM Limited
	United Arab Emirates	Devine & Severova FZ LLC
	United Kingdom	Mayer Brown