

PAPER ON COMPLIANCE IN NIGERIA WITH SPECIAL FOCUS ON THE NIGERIAN POWER AND ENERGY INDUSTRIES

From time immemorial, compliance to laws and regulations has always been an aspect of corporate life. The failure of commercial institutions such as Lehman Brothers emphasized across the world, the need for corporate compliance with legal and regulatory standards imposed on these companies. In Nigeria, the failure of banks such as Oceanic and Intercontinental banks highlighted the need to protect innocent shareholders and the general public as a whole. Implementation and enforcement of compliance with certain laws, codes and regulations seeks to ensure protection of the aforementioned parties.

Compliance in simple terms is conformity with a set of rules or regulations determined by the law or any governing body. In business terms, it involves ensuring that any business or action conducted by a company is within legal parameters. Compliance is divided into two main headings; Legal Compliance, which denotes a set of laws, principles and precedents applicable to a particular organization or business enterprise. There is also Regulatory Compliance, which relates to various codes, regulations and circulars issued by regulatory authorities governing the conduct of business.

Businesses operating in Nigeria are increasingly being regulated as the Government strives to promote good corporate governance and best practices. To ascertain that a business is on the right side of the law and compliant, there are certain regulatory requirements, which must be obtained. The list of key regulators in the Nigerian corporate space appears to be endless. This paper shall be considering a few of these regulators as well as a small number of their regulatory requirements.

1. The Corporate Affairs Commission (CAC)

The primary law governing businesses entities in Nigeria is the Companies and Allied Matters Act (CAMA) which provides for the CAC, the regulatory body charged with the responsibility of implementing the provisions of the CAMA and responsible for monitoring the affairs of companies in Nigeria. The following are some of the regulations set out by the CAMA and which must be complied with before and during the existence of a business entity.

- a. All business entities must be registered locally. This includes foreign owned companies. Or companies with merely foreign participation. Some types of companies may be exempted from being registered locally. A notable example of such are Engineering consultants and technical experts engaged in specialist projects under contracts with the governments of the Federation.
- b. The authorized mode of investment by foreigners in Nigeria is through the use of a registered limited liability company.¹
- c. In registering a limited liability company, the foreign company will have to conduct a name search at the CAC, to ensure that the preferred name is not prohibited or has not been approved for another company.

¹ KPMG, A Guide To The Nigerian Power Sector (September, 2016)

- d. The following documents are required by the Corporate Affairs Commission before a company may be registered in Nigeria.
 - 1. Memorandum of Association
 - 2. Articles of Association
 - 3. Statement of Share Capital
 - 4. Declaration of Compliance with the CAMA
 - 5. Notice of situation of registered office of the company
 - 6. Return on Allotment of Shares
 - 7. Particulars of First Directors.
- e. The CAMA also requires that companies comply with its regulations as they relate to the filing of annual returns, annual audited accounts e.t.c to prevent being struck off the company's register. Annual Returns (AR) are statutory filing which must be made to the Corporate Affairs Commission. They include Audited accounts signed and approved by the shareholders and board of directors of a company, details of shareholdings for the year, debentures or loans etc. AR must be filed within 42 days after a company has had its Annual General Meeting (AGM). Non compliance with this regulation could mean a company being struck off the register of companies in Nigeria.

Steps Involved In Registering a Business In Nigeria

- a. Search, availability and reservation of a proposed company name. This will be done at the CAC.
- b. Preparation of a Joint-Venture Agreement between prospective shareholders, (except in instances where the proposed company will be 100% owned by alien shareholders). The Joint-Venture may specify mode of subscription by parties, manner of Board Composition, mutually protective quorum for meetings, specific actions which would necessitate shareholder's approval by special or other resolutions.
- c. Prepare Memorandum and Articles of Association which will be submitted along with the statement of authorized share capital of the company
- d. Make payment and obtain evidence of stamp duty payable in respect of the share capital from the tax agency.
- e. Obtain particulars of first directors of the company
- f. Provide notice of registered address of the company
- g. Notice of appointment of company secretary
- h. Declaration sworn by a lawyer confirming that all matters preliminary to the registration are in compliance with the regulation
- i. Valid means of identification of the Directors of the proposed company

2. Nigerian Investment Promotion Commission

The NIPC is an investment promotion Agency of the Federal Government. The agency is responsible for monitoring and registering foreign investments in Nigeria. The NIPC requires all businesses with foreign participation be registered under it. These registered, foreign owned companies, which have foreign investments, may take

advantage of the package of incentives provided by the NIPC to attract investors. These incentives usually come in the form of tax reliefs. An interesting example of such reliefs, exempts profit made on goods exported from Nigeria, from tax provided that said profit is used exclusively for the purchase of raw materials, plants, equipments and spare parts.

3. Federal Inland Revenue Service (FIRS)

From the point of registration, companies are expected to adhere strictly with the provisions of various tax legislations. The Federal Inland Revenue Service has as a basic requirement for all companies existing in Nigeria, the Tax Clearance Certificate which must be obtained before filing the companies audited accounts. Companies are expected to remit Companies Income Tax and Personal Income Tax to the relevant tax authorities. , Value Added Tax and Withholding Tax are indirect taxes deducted by companies on behalf of the tax authorities. These taxes must be remitted monthly to the relevant authority and failure to do so as and when due attracts stiff penalties. These CIT is levied at 33% on all companies with the exception of petroleum companies in Nigeria.

4. National Office for Technology Acquisitions and Promotion(NOTAP)

The use of and management of foreign technology must be approved by NOTAP. NOTAP requires that the agreements for the use of such technology be in writing.

5. Standards Organisation of Nigeria (SON)

This organisation was established to ensure that all products consumed by Nigerians meet minimum standards and are duly registered. The SON enforces standardization processes across industries in Nigeria. Certificates are issued in respect of products categorised as regulated products after gaining approval from SON. Before goods are imported goods are cleared at the Nigerian ports, importers must have evidence of SON approval and registration in the form of product certificate and conformity assessment certificate. Regulated products include: electrical and electronic products, motor vehicle tyres, automotive glass e.tc

6. The Financial Reporting Council of Nigeria (FRC)

It is the regulatory body charged with the responsibility of setting accounting standards across the country. They oversee the standardization of and preparation of financial reports as prescribed by the Act setting them up.

Other Regulators which are industry specific include:

1. The National Electricity Regulation Commission which regulates the affairs of companies in the power sector.
2. National Insurance Commission, which regulates the affairs of Insurance companies in Nigeria.
3. Department of Petroleum Resources and a host of other regulatory organisations, amongst others.

OVERVIEW OF THE NIGERIAN POWER SECTOR

Electricity is an indispensable infrastructure. Its importance to, and effect on the economic growth and national development of a nation cannot be overemphasized.

According to the African Progress Report of 2015², about 90 million Nigerians have been reported to have no access to electricity. The country currently generates about 5,300 MW of electricity for a countrywide demand of over 17,520MW. In trying to bridge the deficit of electricity demand and supply, the government has set a target to increase the country's generation to over 10,000 MW by 2019³. To achieve this feat, the country will require investments in power generation industry of at least 3.5 Billion USD. ⁴

In order to attract this magnitude of investments, the power sector has undergone a series of transformations and reforms, key among which is the enactment of the Electricity Power Sector Reform Act of 2005. This act laid a solid foundation for the federal government reform and privatization.

POWER SECTOR REGULATION IN NIGERIA

As stated in the last paragraph, The Electricity Power Sector Reform Act was enacted to provide the general legislative background upon which the reformed power sector is built. The reform saw the liberalization and commercialization of the national utility company, leading to the unbundling of the erstwhile National Electric Power Authority (NEPA), which became Power Holding Company of Nigeria (PHCN) consisting of 18 new successor companies including 6 generation companies, 1 transmission company and 11 distribution companies. ⁵

This act established three institutions; The National Electricity Regulatory Commission, The Rural Electrification Agency and the Power Consumer Assistance Fund to oversee the Nigerian Power Industry. Apart from the aforementioned regulatory institutions, there are a number of other bodies involved in the regulation of the players in the sector and this paper shall consider them briefly.

REGULATORY AGENCIES

Players in the Power Sector must adhere to the regulations as set out by the bodies regulating the sector. Below are some of the agencies tasked with the responsibility of overseeing the power sector.

1. The Federal Ministry of Power

² <http://www.africaprogresspanel.org/publications/policy-papers/2015-africa-progress-report/>

³ <http://www.nigeriaelectricityhub.com/2017/06/23/what-does-it-take-to-solve-nigerias-power-crisis/>

⁴ <http://www.power.gov.ng/Press%20Release/NIGERIAN%20POWER%20SECTOR%20INVESTMENT%20OPPORTUNITIES%20AND%20GUIDELINES.pdf>

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<http://www.power.gov.ng/Press%20Release/NIGERIAN%20POWER%20SECTOR%20INVESTMENT%20OPPORTUNITIES%20AND%20GUIDELINES.pdf>

The ministry is a part of the government and has as its main function, the formulation of policies to ensure that the entire nation has access to adequate and reliable power supply.

2. Nigerian Electricity Regulatory Commission

Responsibility for the regulation of the bulk of the issues pertaining to the power sector has been put in the hands of the Nigerian Electricity Regulatory Commission (NERC). Some of the NERC's functions include amongst others,

- a) The licensing and regulation of persons engaged in the generation, transmission system operation, distribution and trading of electricity.
- b) Approval of market rules and monitoring the operations in the power market.
- c) Creating appropriate operating codes of safety, security, reliability and quality standards.
- d) Establishment of electricity tariffs, and enforcement of performance standards and protection of consumer rights.⁶

3. Energy Commission of Nigeria

This commission has as its main function the planning and coordination of energy field policies as stipulated by the Federal Ministry of Power. The commission also monitors the execution of these policies by serving as a center for providing solutions to technical issues that may arise from the implementation of federal policies.

4. Rural Electrification Agency.

Created by the Electric Power Sector Reform Act (EPSRA), this agency has the sole duty of promoting, supporting and providing electricity access to rural and semi urban areas of Nigeria.

5. Presidential Task Force on Power

The Nigerian government realized that the large number of regulatory bodies in the sector could lead to bottle necks thereby discouraging the power sector investment in the sector. The PTFP was thus formed to coordinate the activities of the various agencies, thereby removing legal and regulatory obstacles. Another of its responsibilities is to monitor the planning and execution of various short term projects in generation, transmission and distribution of power.

KEY INSTITUTIONS IN THE NIGERAN POWER SECTOR

1. Niger Delta Power Holding Company (NDPHC)

Jointly owned by the three tiers of the Nigerian government, this institution is responsible for implementing the National Integrated Power Project (NIPP). NIPP is a brainchild of the Federal government and it was established to be to be a public sector funded initiative to increase Nigeria's electricity generation capacity and provide infrastructure required to deliver the newly generated power to the

⁶ Ibid

average Nigerian. The NDPHC owns all ten power generating stations operating as NIPP projects and they jointly generate a total of about 5,455 MW.

2. Nigerian Bulk Electricity Trading Plc (NBET)

This government institution was created by the EPSRA, to be an electricity trading licensee. Its main focus is to purchase electrical power and ancillary services from independent power producers and successor companies, and to subsequently resell the acquired power to distribution companies and eligible consumers.⁷

The NBET plays a key role in the Nigerian power sector and its reformation process. Its function is to drive private sector investment in power generation activities by executing Power Purchasing Agreements with the private investors.

GENERAL REQUIREMENTS FOR INVESTORS IN THE NIGERIAN POWER INDUSTRY

The following steps are required for investors in the Power Sector:

1. Investors should identify the type of Generation that is, gas fired (thermal), Coal fired Plant, Renewable Energy, including small, medium, and large Hydro, Solar, Wind.
2. Investors must acquire the necessary land for location of their Plant (Site Location)
3. Investors must perform Environmental Impact Assessment (EIA) studies and be fully certified by the Federal Ministry of Environment for environmental Compliance and during the period it is expected that the issues of land acquisition and ownership, Community related issues would have been solved.
4. Investors will perform Power evacuation studies in liaison with the Transmission Company of Nigeria (TCN) to ensure that there is adequate Power evacuation infrastructure. The investor proposing to connect to the National grid operated by the Transmission Company of Nigeria (TCN), either through a new substation, a modification of an existing substation, or in an existing substation has to apply to the Transmission Service Provider (TSP) of TCN. If these requirements for the new connection fall outside, or the timing does not align with the approved Long Term Transmission plan of TCN, the cost for such work shall be borne by the investor.
5. Investors will be required to firm up and prepare their Business plan, to include Capital investment, Operation & Maintenance cost including fuel costs, etc. and come up with a total financial model for their plant.
6. Investors can now engage the Nigeria Electricity Regulatory Commission (NERC), for the issuance of a license. Licenses can be for grid operation or off-grid depending on the off taker involved. The License is required for Generation from 1MW and above.

⁷ KPMG's Guide to the Nigerian Power Sector

7. Investors will commence a Power Purchase Agreement (PPA) negotiation with an identified off-taker, or the Nigerian Bulk Electricity Trading Company (NBET) where a total package on a PPA will be negotiated and signed. To do so, an Investors has to meet the following criteria a. For grid-connected generation, PPA with Nigerian Bulk Electricity Trader is required b. For Independent Electricity Distribution Network (IEDN), NERC License is required. c. For embedded generation where the power to be generated is within the network of a particular distribution company, PPA has to be signed with the Distribution Company, with eligible customers or with captive customers, as the specifics of the project dictates.

8. Submission of Outline Business Case (OBC) to Infrastructure Concession Regulatory Commission (ICRC) through the Federal Ministry of Power (FMP) for Unsolicited proposal, while for Solicited proposal FMP to appoint a Transaction Adviser (TA) who will prepare the OBC of the project in-question for onward submission to ICRC for issuance of Certificate of compliance for Federal Executive Councils approval for competitive bidding for Public Private Partnership (PPP).

9. In case an Investor is interested in Engineering Procurement Contracts (EPC) the Ministry's procurement process is in accordance with the Public Procurement Act 2007 through open competitive bidding. Hence, Investor may wish to tender for projects of interest when next the Ministry advertises for procurement in the Federal Tenders Journal and other National Dailies.

10. Investor to be driven by the principle of "closeness to fuel" in order to drive the energy mix and achieve accessibility and sustainability ie. „Gas" as fuel for southern base Power plants, Coal" as fuel for North Central and parts of South East; while „Solar" and „Hydro" for many parts of the North and North Central. This does not exclude the use of other fuel for powering electricity in any part of the Country.

11. Investors must build their plant, and Commission it in line with the licensing conditions.

12. In line with the provisions of the NEMSA Act 2015 and Statutory Regulations, it is mandatory that All Electrical Installations in Power Plants/Stations, Transmission Networks/Systems, Distribution Networks/Systems, and other Allied Industries and Workplaces where Electricity is used; as well as All Electric Meters and Instruments to be deployed in NESI, are duly Inspected, Tested and Certified fit and safe by electrical inspectors of NEMSA and NEMSA National Meter Test Stations before they can be put to use in Nigeria.⁸

NIGERIAN POWER INDUSTRY GUIDELINES

This industry has several guidelines to regulate its operations. These guidelines govern the separate entities in the industry and the value chain as a whole. Below is a list of some of these guidelines.

⁸<http://www.power.gov.ng/Press%20Release/NIGERIAN%20POWER%20SECTOR%20INVESTMENT%20OPPORTUNITIES%20AND%20GUIDELINES.pdf>

1. Multi Year Tariff Order

The MYTO is a methodology established by the NERC to determine electricity tariff in the Nigerian Electricity Supply Industry. It is used to set wholesale and retail prices for electricity in the industry by employing a unified way to determine total industry revenue requirement that is tied to measurable performance improvements and standards.⁹

MYTO provides a 15 year tariff plan for industry players. It undergoes limited reforms annually in a limited number of parameters which includes inflation, interest rates, exchange rates and generation capacity. A more extensive review of the MYTO is done every five (5) years with industry stakeholders.

One of MYTO's key objectives is to establish certainty and stability of the pricing framework which encourages an efficient level of investment. This gives investors the confidence to invest into the sector as they are assured of a reasonable rate of return on capital.

2. Grid Code

This Code contains the day to day operating procedures and principles governing the development, maintenance and operation of an effective well co-ordinated and economic transmission system for the electricity sector in Nigeria.

3. Metering Code

The metering code offers guidelines for the deployment of modern meter systems used to measure and record energy production and utilization. The metering code makes provision for the ownership of metering stations by the different types of energy users. Owners of these stations shall be responsible for installation and maintenance of metering equipment unless otherwise agreed.

LEGISLATIVE AND FISCAL PROVISIONS RELATNG TO THE NIGERIAN POWER SECTOR

The key legislations and regulations applicable to companies operating in this sector are as follows:

1. The Electric Power Sector Reform Act (EPSRA)

The EPSRA is the foundation for the power sector restructure in Nigeria. It enabled private companies to participate in the generation, transmission and distribution of electricity. The Act amongst other things provides for the unbundling of the Power Holding Company of Nigeria through the formation of several companies to take over the assets, liabilities, functions and staff of the PHCN. The Act also provides for the development of a competitive electricity market and provides for the basis for determination of tariffs, customer rights and obligations.

⁹ <http://www.nercng.org/index.php/home/myto>

2. **Regulations for the Investment in Electricity Networks, 2015**
These Regulations provide the procedure for investing in electricity networks in Nigeria. It has as its main objective, the creation of incentives to encourage players to make appropriate and sustainable investments in capacity expansion.
3. **Nigerian Electricity Supply and Installation Standards Regulations 2015.**
These Regulations are a compendia of standards for design, construction and commissioning of electrical infrastructure in the Nigerian electricity supply industry.
4. **Regulations on National Content Development for the Power Sector 2014**
This regulation promotes the deliberate utilization of Nigerian human and material resources in the industry to build capabilities in Nigeria and support increased investment in the industry.
5. **NERC Regulations for the Procurement of Generation Capacity 2014**
These Regulations provide for the processes to be used by a Buyer in procuring additional electricity generation capacity.
6. **NERC (Embedded Generation) Regulations 2012**
These Regulations provide a legal regulatory framework for the issuance of licences to qualified operators to engage in Embedded Generation of electricity in Nigeria and to ensure compliance with set standards.
7. **NERC(Independent Electricity Distribution Networks) Regulation 2012**
These Regulations provide a legal and regulatory framework for the issuance of licences to qualified operators to engage in electricity distribution, independent of the already existing PHCN successor distribution companies and to ensure compliance with set standards.

Compliance in the Nigeria Oil & Gas Sector

The Nigerian Oil & Gas industry includes all companies engaged in the upstream, midstream and downstream of the oil and gas sector. It also includes companies primarily engaged in the production of liquid hydrocarbons from oil and gas field gases.

The oil & gas business is dominated by the exploration, production, marketing, refining and/or transportation of oil and gas products, coal and other consumable fuels on one hand; and construction or provision of oil rigs, drilling equipment and other energy related services and equipment, on the other hand.

The industry is also composed of establishments engaged in performing geophysical, geological, and other exploration services for oil and gas. Also included in the industry are companies that are engaged in drilling (spudding, drilling in, re-drilling, and directional drilling), completing and equipping wells; in the operation of separators, emulsion breakers, distilling equipment, and field gathering lines for crude oil and natural gas; and in all other

activities in the preparation of oil and gas, up to the point of shipment from the producing property.

Additionally, Companies engaged in the wholesale distribution of crude petroleum and petroleum products, including liquefied petroleum gas, from bulk liquid storage facilities are also included in the oil and gas industry.

Legal Framework of Operations in Oil Companies in Nigeria

The legal framework regulating the oil sector in Nigeria is based on several laws. The key legislations governing the oil sector in Nigeria includes the:

The Constitution: vests control of all minerals, mineral oils and gas in, under or on any land in Nigeria and its territorial waters and exclusive economic zone in the government, to be managed in the manner prescribed by the National Assembly.

The Oil Pipelines Act and the Oil and Gas Pipelines Regulations: provides 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 Oil Pipelines Act regulates the construction and operation of oil and gas transportation in Nigeria. Detailed regulations for the design, construction and operation of oil and gas pipelines are set out in the Oil and Gas Pipelines Regulations 1995. The Oil Pipelines Act and Regulations are implemented in accordance with the guidelines issued by the Department of Petroleum Resources.¹⁰

A permit to survey is necessary before entering (including with the required equipment and vehicles) any land covered by the permit to:

- Survey.
- Dig and bore holes.
- Perform any other acts necessary for ascertaining the suitability of the land for establishing an oil pipeline.

A holder of a permit to survey must give the land owner at least 14 days' prior notice before entering to survey.

Once a permit to survey is obtained, an oil pipeline licence can be applied for. An oil pipeline licence will grant the licensee the right to enter and take possession of, or use land to construct, maintain or operate an oil pipeline or ancillary installations. Any person can lodge objections verbally or in writing (within a specified period) to the Minister of Petroleum Resources if their land or their interest in the land may be adversely affected by granting an oil pipeline licence.

The Deep Offshore and Inland Basin Production Sharing Contracts Act: This Act prescribes fiscal incentives for companies operating in the deep offshore and inland basin areas of Nigeria under production sharing contracts. Under the act, companies conducting petroleum operations under production sharing contracts with the Nigerian National Petroleum

¹⁰ <https://uk.practicallaw.thomsonreuters.com/5-523>

Corporation in deep offshore and inland basin terrains enjoy a reduced tax rate of 50% while marginal field operators enjoy a reduced tax rate of 55%.¹¹ The act also provides that the chargeable tax on petroleum operations in the contract area under the production sharing contracts is to be split between the Corporation or the holder and the contractor in the same ratio as the split of profit oil.¹²

Petroleum Act (Laws of the Federation of Nigeria (LFN)) 2004 (as amended): This is the principal statute that governs petroleum operations, including exploration, production and use. It vests ownership and control of all petroleum exclusively in the government and the exercise of the powers consequent on this title in the minister of petroleum resources. Qualified persons wishing to carry out any form of petroleum operations can do so only on the basis of authorization granted by the minister. The Petroleum Act and its subsidiary legislation, including the Petroleum (Drilling and Production) Regulations, the Petroleum Regulations and the Petroleum Refining Regulations, govern petroleum operations in Nigeria including, but not limited to, exploration, development, production, storage, transportation, refining and marketing.

Petroleum Industry Bill (PIB): The PIB is a proposed bill which seeks to establish the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry, and also to establish guidelines for the operation of the upstream and downstream sectors, and for purposes connected with the same. It addresses the reforms to the institutional framework of the petroleum industry and its purport is to establish the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry. The bill is an omnibus bill sub-divided into four bills which are: Petroleum Industry Governance Bill (PIGB), Petroleum Fiscal Bill, Petroleum Host Community Bill, and Petroleum Administrative Bill. On 17th January 2018, The House of Representatives passed the Petroleum Industry Governance Bill, one of the four bills which seeks to incorporate the reforms proposed under the Petroleum Industry Bill.¹³ The objectives of the PIGB are as follows;

- a. the establishment of an independent regulatory commission – the Nigerian Petroleum Regulatory Commission, which incorporates the current Department of Petroleum Resources and the Petroleum Product Pricing Regulatory Agency;
- b. the unbundling of NNPC into two limited liability companies, with one holding joint venture assets in the upstream sector and the other holding the production sharing contract assets;
- c. Governance and accountability arrangements with respect to the new institutions created.

The Petroleum Industry Governance Bill deals mainly with the governance and institutional framework for the petroleum industry, and seeks to establish clarity between policymaking, regulation and commercial activities, and the authorities or bodies that are charged with those respective functions. It also seeks to engender value addition, transparency, accountability and a re-orientation towards optimal profit creation for national petroleum assets.

¹¹ Section 4 (2) Deep Offshore and Inland Basin Production Sharing Contracts Act

¹² Section 12 Ibid

¹³<http://www.petroleumindustrybill.com/2018/01/19/house-passes-the-pigb/#more-852>

The discretionary functions to grant, renew extend or revoke petroleum exploration and production licences and leases, formerly wheeled by the Minister, is, by virtue of the Governance Bill, conferred on the Nigeria Petroleum Regulatory Commission (NPRC)

Although the President is yet to sign the bill into law, it is believed, as assured by the National Assembly that the three other bills would be passed into law latest by June 2018.

Petroleum Profits Tax Act 2007 (PPTA): This Act is the taxation imposed on the profits from the winning of petroleum in the course of petroleum operations in an accounting period. Petroleum profits tax is levied on the profits of the accounting period.

Under PPTA the revenue from the petroleum won and sold is reduced by tax depreciation (capital allowances) and genuine business expenses (allowable deductions) and the resulting profit is taxed at the applicable PPT rate. The companies involved in the marketing and sale of petroleum products are not included in this definition – they are taxed under the Companies Income Tax Act (CITA) of 2004.

The PPT rate is 65.75% for a company in its first five accounting periods of production and sales. Thereafter, the PPT rate is 85%. (PSC = 50%). A Company that is not producing and selling petroleum under a continuous program of production and sales is not liable to PPT.

In addition to PPT, upstream companies also pay Royalties to the Federal Government of Nigeria. The Royalty rates range from 20% (onshore) to 0% (offshore) of the crude oil or gas revenues for onshore activity to offshore activities.

The Nigerian National Petroleum Corporation Act: establishes the Nigerian National Petroleum Corporation, which participates in petroleum operations on behalf of the government.

The Nigerian Oil and Gas Industry Content Development Act: aims to enhance the development of indigenous capacity across the Nigerian oil and gas industry. It sets minimum Nigerian content prescriptions for various services and requires that first consideration be provided to companies incorporated in Nigeria (i.e. with 51% of equity owned by Nigerian parties) in the award of oil blocks and licenses. Nigerian companies with the relevant equipment and capacity to execute work on land and swamp-operating areas must be given exclusive consideration to bid for work in such areas.

National Oil Spill Detection and Response Agency Act 2006: The Act establishes the National Oil Spill Detection and Response Agency (NOSDRA) and prescribes its responsibility for preparedness, detection, and response to all oil spillages in Nigeria.

Petroleum (Drilling and Production) Regulations: This implements the provisions of the Petroleum Act with respect to (applications for) oil exploration licenses and oil prospecting licences and relative operations of bore holing and oil extraction. The regulation sets out the requirements and documents to accompany an application for OPL or OML. It also sets out rights and obligations of licenses and lessees. The following are the requirements for obtaining an oil exploration licence under the Petroleum (Drilling & Production) Regulations

Every application for an oil exploration license, oil prospecting license or oil mining lease shall be made to the Minister in writing on the appropriate form. The application will be submitted in company of the following documents;

- (a) Evidence of payment of prescribed fee
- (b) ten copies of a map on a scale or scales specified by the Director of Petroleum Resources upon which is delineated in red the boundaries of the area in respect of which the application is made;
- (c) an adequate survey description of the boundaries of that area (at least one boundary corner being tied, in the case of an application for an oil mining lease, to an official survey control beacon, or an existing survey mark itself previously tied to an official survey grid) or, where the area has been blocked out or delineated and described by or on behalf of the Minister, a reference to the particulars of identification used by him or on his behalf;
- (d) evidence of the financial status and technical competence of the applicant;
- (e) details of the work which the applicant is prepared to undertake or a programme for carrying out any minimum working obligations imposed; details of the annual expenditure which the applicant is prepared to make on each area applied for; the date on which he is prepared to begin operations after the grant of the oil exploration license, oil prospecting license or oil mining lease to which the application relates;
- (f) details of a specific scheme for the recruitment and training of Nigerians;
- (g) evidence of the applicant's ability to market any petroleum produced;
- (h) annual reports in respect of the applicant's oil exploration and production activities in the preceding three years; and
- (i) Any other information which the Minister may call for by notice in the Federal Gazette or otherwise.¹⁴

The Environmental Impact Assessment (EIA) Act¹⁵: provides the framework for assessing the impact of oil and gas projects on the environment.

The Federal Inland Revenue Service (FIRS) Establishment Act 2007: Provides for the statutory powers of the FIRS to collect all taxes, fees, levies, royalties, rents, signature bonuses, penalties for gas flaring, depot fees, including fees for oil prospecting licenses, oil mining licenses, etc.¹⁶

The Education Tax Act¹⁷: provides for the imposition of annual taxes at 2 per cent of assessable profits on oil and gas companies for the development of Nigeria's educational sector.

¹⁴ Section 1(2) Petroleum (Drilling & Production) Regulations 1969

¹⁵ Cap E12 LFN 2004

¹⁶ See FIRS Establishment Act, Sections 2, 25 and 68. Consider also Value Added Tax Act 2007, Section 10A (2) by which the oil and gas companies are obligated to charge and collect VAT and remit same to the Federal Inland Revenue Service

¹⁷ Cap E4, LFN 2004

The Niger Delta Development Commission (Establishment) Act: requires the payment to the Commission by oil and gas companies of 3 per cent of their annual budgets for the development of the Niger Delta from where oil and gas is exploited¹⁸.

The Nigerian Oil and Gas Industry Content Development Act 2010 provides a framework for promoting participation of Nigerians in the industry and lays down minimum thresholds for Nigerian content utilized by the industry¹⁹.

The Nigerian Extractive Industries Transparency Initiative Act 2007 provides the framework for transparency and accountability by imposing reporting and disclosure obligations on all oil and gas companies upon requirement by NEITI of revenue due to or paid to the federal government²⁰

Regulatory Bodies in the Oil & Gas Industry

The Ministry of Petroleum Resources (headed by the minister of petroleum resources) is responsible for policy formulation and regulating the Nigerian petroleum industry. It is empowered to authorize petroleum activities (e.g. leases, licenses and permits).

The minister acts primarily through the Department of Petroleum Resources, which carries out routine oversight and compliance monitoring functions.

The Nigerian Content Development and Monitoring Board, established by the Nigerian Oil and Gas Industry Content Development Act. The Board supervises, coordinates, administers and monitors the implementation and development of Nigerian involvement in the oil and gas industry.

NNPC: The Nigerian National Petroleum Corporation (NNPC) is the Oil Corporation through which the federal government of Nigeria regulates and participates in the country's petroleum industry. The NNPC has ten subsidiaries; two joint ventures and about ten affiliated companies, which are engaged in a variety of upstream and downstream activities. The PIGB bill introduces the unbundling of the NNPC into two Companies, i.e. Nigeria Petroleum Asset Management Company, and National Petroleum Company. The essence of this unbundling is to ensure efficient and effective commercial performance. The NNPC's subsidiaries are:

- a. Nigerian Petroleum Development Company Limited (NPDC)
- b. Pipelines and Products Marketing Company (PPMC)
- c. Kaduna Refinery and Petrochemicals Company Limited (KRPC)
- d. Eleme Petrochemicals Company Ltd (EPCL)
- e. Port Harcourt Refinery Company Limited (PHRC)
- f. Warri Refinery Petrochemicals Company Limited (WRPC)
- g. Integrated Data Services Limited (IDSL)
- h. National Engineering and Technical Company (NETCO)
- i. Nigerian Gas Company (NGC)
- j. Duke Oil Services (UK) Limited

¹⁸Section 14b, Cap N86 LFN 2004

¹⁹ See particularly NOGICD Act Sections 11 and 106

²⁰ Section 3 NEITI Act

The NNPC also has two downstream joint ventures:

- a. Nigerian Liquefied Natural Gas Company (NLNG)
- b. Hydro Carbon Services of Nigeria (HYSON)

National Petroleum Investment Management Services (NAPIMS): The NAPIMS is a Corporate Services Unit (CSU) in the Exploration and Production Directorate of NNPC. It is charged with the responsibility of managing Federal Government investment in the upstream sector of the Oil and Gas industry. NAPIMS' objective is to enhance the Margin accruing to the Federal Government through effective supervision of the Joint venture companies, Production sharing companies and Service Companies through adequate supervision of Budgets and Performance and ranking of projects that gives higher returns on investment to Federal Government. NAPIMS is also engaged in the direct exploration of the frontier and inland basins.

Subsequently, the roles and responsibilities of NAPIMS can be defined as follows:

- a) Management of Nigerian Government Assets
- b) Prosecution of Nigerian Government Agenda
- c) Defining operational direction and
- d) Spearheading new technology application in the oil and gas industry.

National Oil Spill Detection and Response Agency: The National Oil Spill Detection and Response Agency (NOSDRA) was established in 2006 as an institutional framework to co-ordinate the implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria in accordance with the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 90) to which Nigeria is a signatory. Since its establishment, the Agency has been intensely occupied with ensuring compliance with environment legislation in the Nigerian Petroleum Sector. The Agency embarks on Joint Investigation Visits, ensures the remediation of impacted sites and monitors oil spill drill exercises and facilities inspection. It has set up Zonal Offices in Port Harcourt, Warri, and Uyo all in the Niger-Delta region where much of oil exploration and production in Nigeria is carried out and there are also zonal offices in Lagos, Kaduna and Akure. NOSDRA is currently liaising with relevant stakeholders in the Nigerian Oil and Gas Industry to evolve practical methods of environmental management to cope with the dynamics of the Petroleum Sector.