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A REVIEW OF THE PROPOSED PETROLEUM INDUSTRY GOVERNANCE BILL 2016

1. INTRODUCTION

The first reading of the Petroleum Industry Governance Bill of 2016 (“PIGB”) took place at the Senate (Nigeria’s upper legislative chambers) on the 22nd of March 2016. It was followed by the second reading which took place on Tuesday the 2nd of November 2016 and thereafter referred to the Committee on Petroleum Upstream, Downstream and Gas.



The introduction of the Petroleum Industry Governance Bill is a major step by Nigeria’s National Assembly with the support of the Federal Government to reform the Nigerian oil and gas industry from its chequered past and stimulate fresh investments in the sector. To that end, this Bill seeks to create efficient and effective governing institutions with clear and separate roles for the Petroleum industry and establish a framework for the creation of commercial and profit oriented driven petroleum entities. As we examine the provisions of this new petroleum industry reform agenda, we see a Bill that can lay the necessary structure for a profitable, transparent and efficient industry.

2. ROAD TO REFORM

- In 2000, the Government launched a broad reform process to put in place the Nigeria Oil and Gas Policy and inaugurate the **Oil and Gas Sector Reform Implementation Committee (“OGIC”)**. The reforms were aimed at the development of Nigerian oil and gas policy, institutional, governance and regulatory framework, and the implementation framework of the reform. By 2004, a draft of the National Oil and Gas Policy was put forward. The OGIC was reconstituted in 2007, chaired by Late Dr. Rilwan Lukman, and a report was released in 2008. However, while the policy was developed, the Government faced difficulties in passing the enabling legislation and implementing the proposed reforms.
- The delay in the passage of the Petroleum Industry Bill (PIB) has led to deferment of core investments in the petroleum sector as well as declining revenues for the government and declining production and reserves amongst other negative consequences. It was in a bid to reverse this negative trend and attract fresh investments into the sector that the Senate leadership adopted the passage of the Petroleum Industry Bill as part of its legislative agenda.



- This time around, the 8th National Assembly has decided to split the bill into four or five smaller legislations commencing with PIGB, with the hope that they can be expeditiously dealt with. The PIGB as the name implies deals with the governance and institutional framework for the Nigerian oil and gas industry.

3. REGULATORY STRUCTURE

With the scope of the Petroleum Industry Bill being divided into separate pieces of legislation, the P.I.G.B 2016's main scope is the creation of a holistic regulatory framework for the oil and gas industry.

The main objectives of the Bill are:

- the creation of efficient and effective governing institutions with clear and separate roles for the petroleum industry;
- the establishment of a framework for the creation (out of existing Government-owned entities) of commercially oriented and profit

driven entities that will ensure the restructuring and internationalization of the petroleum industry;

- the promotion of transparency and accountability in the petroleum industry; and
- the creation of a conducive business environment for operators in the petroleum industry.

In this regard, the P.I.G.B 2016 attempts to allocate roles and responsibilities to the various institutions regulating the industry. It mainly does this by clarifying the role of the Minister of Petroleum, creating a new one-stop regulator known as the **Nigerian Petroleum Regulatory Commission ("PRC")**, and splitting of the NNPC into two new limited companies - the **National Petroleum Company ("NPC")** and the **Nigerian Petroleum Assets Management Company ("Management Company")**. All the new institutions are empowered to engage external technical support and commercial partners.

➤ **The Minister of Petroleum**

The Minister of Petroleum Resources will exercise general coordination powers and provide full diplomatic cover on all petroleum-related matters on behalf of the country.



Specifically, the Minister shall:-

- be responsible for the determination, formulation and monitoring of Government policy for the petroleum industry in Nigeria;
- exercise general coordination over the affairs and operations of the petroleum industry subject to the provisions of this Act;
- report developments in the petroleum industry to the Federal Executive Council;
- advise the Government on all matters pertaining to the petroleum industry;
- represent Nigeria at meetings of international organisations that are primarily concerned with the petroleum industry;
- negotiate and execute international petroleum treaties and agreements with other sovereign countries, international organizations and other similar bodies on behalf of the Government
- promote the strategic interest of Nigeria in the global oil and gas industry.

The Minister will be empowered to source professional support on fixed term basis as needed without drawing resources from the Regulatory authority (e.g the DPR) or the National Oil Company (e.g. the NNPC) as currently is the case.

➤ **Nigerian Petroleum Regulatory Commission**

Under the P.I.G.B 2016, the newly created PRC is established as a single one stop shop and an independent regulator for the Petroleum industry. It will consolidate the various functions and roles currently handled by the Department of Petroleum Resources (“DPR”) and the Petroleum Products Pricing Regulatory Agency (“PPPRA”).

It will serve as the regulator of the upstream, midstream and downstream sub-sectors of the oil and gas industry and is vested with the assets, funds, resources and other movable and immovable properties, which are held by the DPR and the PPPRA.



The core mandates of the PRC include the following;

- promote the healthy, safe and efficient conduct of all petroleum operations;
- promote the efficient, safe, effective and sustainable infrastructural development of the petroleum industry;
- ensure compliance with all applicable laws and regulations governing the petroleum industry;
- determine and ensure the implementation and maintenance of technical standards, codes and specifications applicable to the petroleum industry;
- subject to the provisions of this Act, execute Government policies for the petroleum industry assigned to it by the Minister;
- promote an enabling environment for investments in the petroleum industry;
- ensure that regulations are fair and balanced for all classes of lessees, licensees, permit holders, consumers and other stakeholders; and
- implement such other objectives as are consistent with the provisions of this Act.

With regard to environment, the PRC will have primary responsibility over all aspects of health, safety and environmental matters for the Petroleum Industry and shall in consultation with the Federal Ministry of Environment make regulations and

issue directives specifically relating to environmental aspects of the Petroleum Industry. The Federal Ministry of Environment will have overall responsibility for environmental matters. The day to day running of the PRC is to be handled by the Chief Executive Commissioner.

- The PRC is mandated to promote safe conduct of operations and promote efficiency, as well as ensuring compliance with the relevant laws and regulations. It will also be required to set technical standards pursuant to Government policies and objectives. The P.I.G.B 2016 also provides that all funds accruing from upstream leases, bonuses, lease renewal fees, assignment fees and concession rentals are paid into the Federation Account. The NPRC is also empowered to set up a Special Investigation Unit whereby an officer is authorized on its behalf to investigate offences, keep surveillance on oil and gas installations and premises, and also in collaboration with relevant agencies, make arrests and prosecute offenders.
- The Bill also seems to address the issue of multiplicity of regulations and regulators which is currently the bane of the industry. The Bill provides that no Government agency shall exercise any powers and functions in relation to the Petroleum Industry in conflict with the powers and functions of the PRC. Given that the PRC's powers and functions in

relation to the industry are very wide, this will substantially eliminate the incidence of multiplicity of regulations and regulators. The Bill also mandates Government agencies exercising lawful powers and functions in relation to the Petroleum industry to consult with the Commission in the issuance of any regulations, guidelines or the issuance of enforcement orders and directives.



- The size and powers of the Commission requires effective governance and controls to assure delivery as envisaged, in addition to reducing abuse to the absolute minimum. At the same time, there is need to ensure maximum independence of the new Nigeria Petroleum Regulatory Commission and limit political interference in particular on technical decisions. The Commission is proposed to be governed by a 9-man board comprised of politically autonomous individuals with proven integrity, relevant competencies and experience to effectively deliver on core functions. All appointments shall be made by the President and confirmed

by the Senate. It is expected that the Board will operate outside the 4-year electoral cycle to safeguard continuity.

- The PRC will be funded primarily by appropriation by the National Assembly. However, in order to ensure sufficient funding and some level of financial independence given the enormous responsibilities of the PRC, the Bill provides that a percentage of the revenue generated by the Commission for the Government of the Federation as may be determined and appropriated by the National Assembly shall be allocated for the funding of the Commission.
- The Commission has the power to make regulations necessary to give proper effect to the provision of the Bill. However, before making such regulations, a public hearing on the subject matter shall be conducted and the Commission shall take into consideration the findings of the public hearing. The Commission shall also ensure that any decision or order made by it contains the basis of the decision or order, are properly recorded in writing and are accessible to the public.



➤ **Ministry of Petroleum Incorporated (“MOPI”)**

The consistent poor performance of the NNPC is a major concern. Apart from delivery deficiencies which are reported year in and year out, the corporation is saddled with gross capability and transparency issues, making governance the most urgent transformation focus. This necessitated the establishment of the Ministry of Petroleum Incorporated by the PIGB

Features of MOPI are as follows:

- The Ministry of Petroleum Incorporated shall be established as a corporation sole, with legal capacity, perpetual succession and a common seal.
- It is to hold the Government’s shares in the successor companies of the NNPC.

➤ **National Petroleum Company**

The NPC is one of the successor companies created from the NNPC.



Features of NPC are as follows:

- It is to be a limited liability company, incorporated under the Companies and Allied Matters Act, wholly owned by the Government to engage in commercial petroleum activities as a national oil company. To that extent it is expected to operate as a fully integrated oil and gas company which will seek to extract hydrocarbons within Nigeria and abroad, purchase and market crude oil, as well as other commercial aspects of the oil industry, including the sourcing, transportation and marketing of hydrocarbons. The aim of the draftsman is the creation of a company completely free of political interference.
- It is pertinent to note that the NPC's engagement in such ventures will be on a purely commercial and profitable basis, thus, solidifying the fact that the NPC will function as a self-funded company as opposed to relying on Government funds. This also means the

Government is freed from the burden of meeting cash calls obligations. It is clear from the above that the intention of the draftsman is to ensure that the NPC would be steered towards increasing investment in joint ventures as well as generating funds for the Government in a commercially profitable manner.

- The NPC will be entitled to retain its revenue and will not need to depend on the National Assembly for the funding of its cash call obligations.
- The NPC shall take over the participating interests currently held by the NNPC in the existing joint ventures, as well as the existing direct upstream and downstream operations currently undertaken by NNPC and its subsidiaries.
- The initial shares shall be held 51% by the Ministry of Petroleum Incorporated and 49% by the Bureau for Public Enterprises on behalf of the Government. The Government is required, within a period of 5 years from the incorporation to divest not less than 10% of the shares, and within a period of 10 years from the date of incorporation divest not less than an additional 30% of the shares. This will not only provide an opportunity for Nigerian citizens and other investors to acquire shares in the NPC, it will also hopefully instil and entrench world class corporate governance principles

and discipline in the NPC's business operations.

- The company shall be governed by a Board comprising of solid individuals with proven integrity, relevant experience and competencies to effectively deliver its functions.

➤ **Nigerian Petroleum Assets Management Company ("Management Company")**

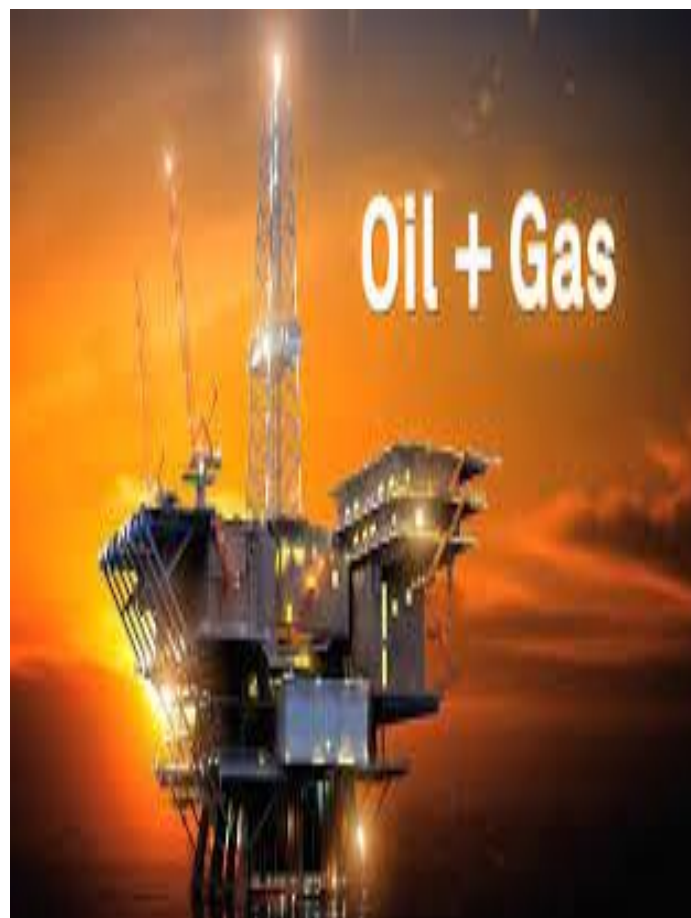
The Management Company under the Bill shall be responsible for the management of the NNPC's oil and gas investment in assets which do not require funding on the part of the Government. This would include the production sharing contracts and also the Government's shares in companies like NLNG as well as service contracts and any other commercial relationships which do not require any cash contribution on the part of NNPC.



Features of the Management Company are as follows:

- Unlike the NPC, which will essentially be self funded, the Management Company will be funded via appropriation by the National Assembly, and is intended to be a much leaner organization and for the most part is not required to make cash investments in petroleum activities. As part of the measure to safeguard the critical National assets held by the Management Company, dividends from the Management Company are required to be paid directly into the Federation Account rather than through its shareholders.
- The initial shares of the Management Company shall be held in the ratio of 51% by the Ministry of Petroleum Incorporated and 49% by the Bureau of Public Enterprises on behalf of the Government.
- The Management Company shall be governed through a Board comprising of solid individuals with proven integrity, relevant experience and competencies to effectively deliver its functions.
- The Minister shall, within twelve months of incorporation of the Management Company, by an order as provided in subsection (2) of section 38, require the NNPC to transfer some employees, assets, liabilities, rights and obligations of the NNPC to the Management Company, as specified in the order.

- The dividend policy of the Management Company shall be as determined by the Board of Directors in accordance with the provisions of the Companies and Allied Matters Act and shall be approved by the shareholders.
- From the Effective Date of the PIGB, the NNPC Act, NNPC (Projects) Act and NNPC Amendment Act shall be deemed to be repealed on the date that
- The Minister signifies by legal notice in the Gazette that the assets and liabilities of NNPC are fully vested in successor entities.
- Also within three months from the Effective Date, the Minister on the advice of the Commission, or NNPC as the case may be, may make any further transitional and savings provisions as are consistent with the transitional and savings provisions in this Act.



➤ Conclusion

The reforms introduced by the P.I.G.B 2016 have the potential to significantly improve the state of play in the petroleum industry. However, it depends on the necessary political will required to ensure it is passed and to ensure the provisions are properly followed. Furthermore, the P.I.G.B 2016, though it lays the foundation for a better industry, deals with the institutional and governance structure of the industry. A complete rebirth of the industry is dependent on the other bills yet to come. However, it is adjudged that passing of the P.I.G.B 2016 will be a significant first step in the reform of the industry.

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Note:

Our Senior Partner Gbenga Biobaku and one of our associates Sandra Gini were part of the multidisciplinary team that advised and drafted the PIGB for the Nigerian Senate. The Firm Gbenga Biobaku& Co. acted as lead legal advisers to the Senate on the project.

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