



GBENGA
BIOBAKU & CO

BARRISTERS & SOLICITORS

**THE FLARE GAS
(PREVENTION OF
WASTE AND
POLLUTION)
REGULATIONS 2018:**

A SMALL STEP IN THE RIGHT DIRECTION



Introduction

The Federal Government of Nigeria, in September 2018, promulgated the new Flare Gas Prevention of Waste and Pollution Regulations 2018 (“the Regulations”). The Regulations provide a legal framework for the utilization and commercialization of Flare Gas in Nigeria. It further introduced a new penalty regime for gas flaring and imposes strict obligations on exploration and production companies. The new regulations also have implications for certain categories of industry stakeholders and apply to persons who make use of flared Gas.

Highlights of the Regulations

The Regulations were issued pursuant to Section 9 of the Petroleum Act and Section 5 of the Associated Gas Reinjection Act (“AGRA”) which grants the Minister of Petroleum Resources the power to make regulations. The Regulations provide a legal framework for the implementation of the Nigerian Gas Flare Commercialization Programme (“NGFCP”). The NGFCP was launched by the Federal Government in 2016 with the core objectives to reduce the environmental and social impact gas flaring has on the environment; protect the environment; prevent waste of natural resources and leverage the social and economic benefits of flare capture. Some of the key provisions in the Regulations are as follows:

1. Proprietary Right of the Federal Government:

The Federal Government is legally entitled to take all Flare Gas free of cost and without payment of royalty. This is made pursuant to Paragraph 35 (b)(i) of the

First Schedule to the Petroleum Act which empowers the Minister of Petroleum Resources (“the Minister”) to impose special terms and conditions on any lease or license with respect to the right of the Federal Government to take Flare Gas.

Flare Gas in the Regulations means -gas that is diverted toward a 'Flare Site' for the purpose of flaring, hence associated natural gas that is designated for flaring by operators may be taken by the government in line with the Regulations.

2. Minister’s Authority:

The Minister can authorize a qualified applicant to take the Flare Gas on behalf of the Federal Government at any specified Flare Site. This will be done via the issuance of a “permit to access flare gas” to a qualified applicant (i.e. Permit Holder), following a competitive bid process conducted by the Federal Government.

3. Commercialization Of Flared Gas:

A holder of an Oil Mining Lease (OML) or an allottee of a Marginal Field (Producer) seeking to utilize its Flare Gas for commercial purpose is required to apply to the Minister for approval.

4. Flare Gas Data Log:

Permit Holders and Producers are required to maintain a daily log of the flaring and venting of natural gas, and shall submit such logs to the Department of Petroleum Resources (DPR) within 21 days after the end of each month. Any person who supplies false data to the DPR, fails to supply such logs or keep

The Regulations provide a legal framework for the utilization and commercialization of Flare Gas in Nigeria.



such logs will be guilty of an offence and fined an additional \$2.50(US Dollars) per 28.317 standard cubic meters of gas flared or vented within the OML or marginal field for each day the producer fails to meet such requirements. In the event of continued failure, the Minister may direct the producer to suspend operations, revoke the OML or marginal field awarded.

5. Data Access Permit: No person shall have access to flare gas data except such person has been issued a permit by the DPR.

6. Permit to Access Flared Gas: The Minister may grant a permit to access flared gas. This permit gives the holder exclusive basis to take flare gas from one or more flare sites, on behalf of the Federal Government and to utilize or dispose of such gas in any manner as authorized by the Federal Government.

7. Prohibition against Flaring Gas: No Producer is permitted to flare gas without a Certificate issued by the Minister, in line with Section 3 of the Associated Gas Reinjection Act;

8. Payment for Gas Flaring: The Regulations also revised the gas flaring fees previously being paid by producers or operators. The newly prescribed payments for Gas Flaring are as follows:

- a) In the case of production of 10,000 barrels of oil and above (per day): \$2 per thousand standard cubic feet (Mscf) of gas flared
- b) In the case of production of less than 10,000 barrels of oil per day: \$0.50 per Mscf of gas flared
- c) Notwithstanding the prescribed payments for gas flaring, a Producer will be required to pay an additional sum of \$2.50 per 28.317

Mscf of gas flared, within the OML or Marginal Field for each day that the Producer fails to;

- i. Provide Flare Gas Data as requested
- ii. Supply accurate or complete Flare Gas Data as requested
- iii. provide qualified Applicant authorized by the Department of Petroleum Resources with access to assess flare site
- iv. provide Permit Holder with access to flare site or Flare Gas
- v. prepare, maintain or submit the logs or records or reports within the time required to do so by the Department of Petroleum Resources
- vi. Install metering equipment within the time required to do so by the Department of Petroleum Resources
- vii. Agree to enter into a Concession Agreement with a Permit Holder

d) An increase in the rates for gas flaring payments from the previous N10 per Mscf to \$2.00 per Mscf and \$0.50 per Mscf, as applicable.

Benefits of the Flare Gas Prevention of Waste and Pollution Regulations 2018

If implemented conscientiously, the Regulations will achieve the following;

- 1. Reduction in gas flaring, thus saving the environment (especially that of the Niger Delta region which has been the most impacted).
- 2. Prevent waste of natural resources.
- 3. Creation of social and economic benefits from flare gas capture.

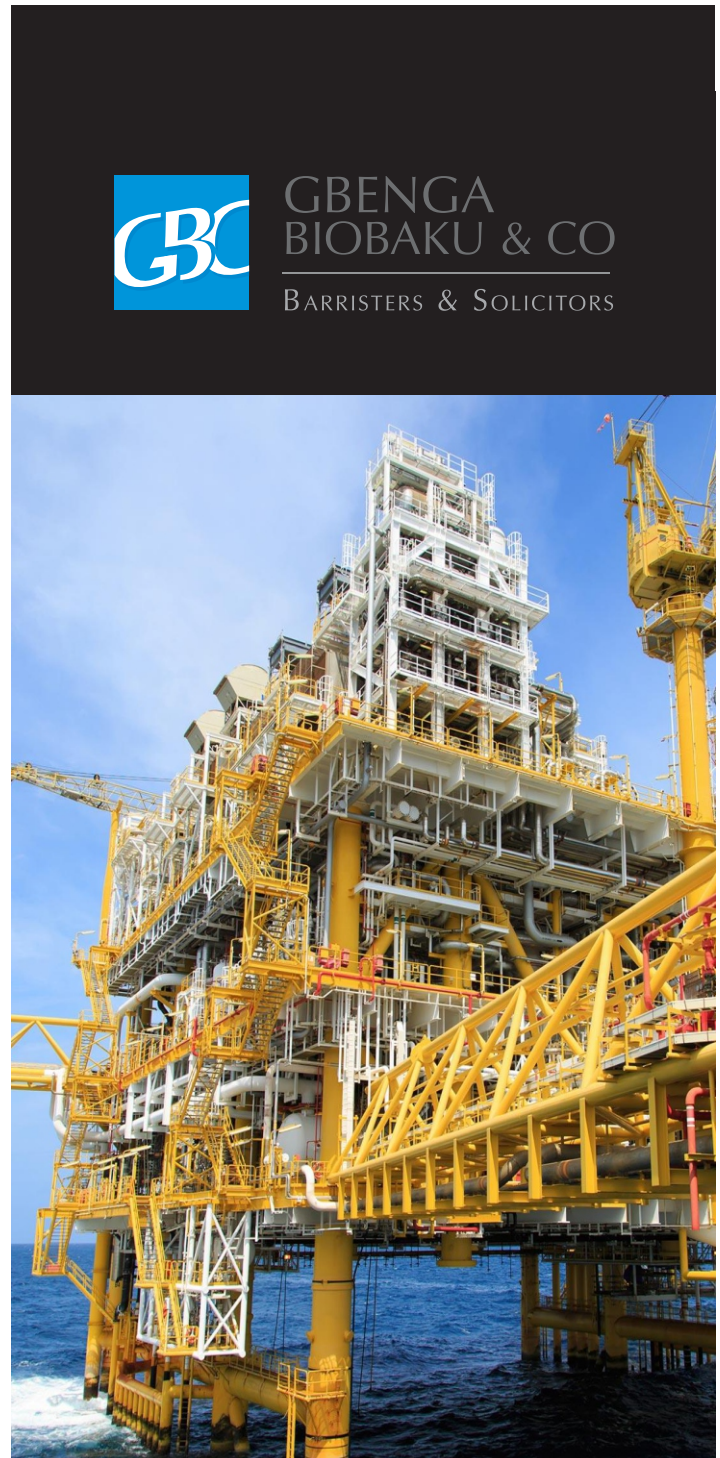
Conclusion

The passage of the Flare Gas Regulations represents a significant step towards resolving the challenges posed by gas flaring to the economy, and more especially to the environment. Effective implementation, on the other hand, will prove to be the litmus test of determining whether the Regulations will be the much needed game-changer in this area.

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Key Facts About Gbenga Biobaku & Co

- Top ranking law firm based in Lagos, Nigeria
- Principal areas of practice – Energy, Projects, Foreign Investments, Banking, Capital Markets and General Corporate/ Commercial Law
- Recipient of the Corporate International Global distinction award for 'Business Formation & Legal Advisory'
- Global Clients include
 - Statoil
 - Nexans Norway
 - Baker Hughes
 - ExxonMobil
 - Oceaneering
 - Standard Chartered Bank
 - Rockwell Automation
 - African Capital Alliance
 - Parker Drilling
 - Nigerian Bottling Company (a Nigerian affiliate of the Coca-Cola Hellenic Bottling Company Group)





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