FEDERAL MINISTRY OF PETROLEUM RESOURCES

OFFICE OF THE HONOURABLE MINISTER OF PETROLEUM RESOURCES

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July 22nd 2009

Honorable (Prince) Bassey E. Otu
Chairman, Committee on Petroleum Resources (Upstream)
National Assembly Complex
P.M.B 141, Garki
Three Arms Zone
Abuja.

Dear Honorable Chairman,

RE: PUBLIC HEARING ON THE PETROLEUM INDUSTRY BILL & SUBMISSION OF ACCOMPANYING MEMORANDA.

We write to acknowledge with thanks the invitation to attend the Public Hearing of the Petroleum Industry Bill coming up on the 29th-31st July 2009 and also attach herewith 30 copies of the accompanying Memoranda.

2. The attached Memoranda contains a detailed representation of the review that was carried out by an Inter-Agency Technical Team to capture all relevant comments and concerns that were raised by Stakeholders in the Oil & Gas Industry as well as the distinguished Members of the House during the second reading.

3. The review exercise incorporated all appropriate concerns aimed at achieving the following:

- Good Governance and Transparency of Operations
- Fiscal Balancing to maintain Nigeria's Competitiveness

- Institutional alignment to ensure the emergence of effective regulatory institutions
- Sustainable development of host communities and maximization of Nigerian Content
- Health, Safety & Environmental concerns and obligations.
- Acreage Management, Domestic Gas Sector Development and Strategic Linkage to the Economy
- Strengthening Indigenous Participation
- Strong Regulatory Framework for Gas

4. All the above amendments were incorporated into the draft Bill, endorsed by the Ministry of Justice. The National Assembly Legislative Drafting Department have also incorporated all the amendments related to the above in the appropriate format. The Revised Bill is hereby submitted for your further necessary actions.

5. We thank you and look forward to participating and contributing effectively at the upcoming Public Hearing.

Yours faithfully,

Dr. Rilwanu Lukman, ***CFR, KBE***
Minister of Petroleum Resources

MEMORANDUM TO THE HOUSE OF REPRESENTATIVES ON THE PETROLEUM INDUSTRY BILL (PIB)

0.0 PREAMBLE

Sequel to Mr President's submission of the Petroleum Industry Bill (PIB) to the National Assembly for enactment into law, the Honourable Minister of Petroleum Resources, in consultation with other relevant Ministers and Heads of Government Agencies constituted an Inter - Agency Technical Team comprising of the Ministry of Petroleum Resources (MPR), Ministry of Finance (MoF), Ministry of Justice (MoJ), Department of Petroleum Resources (DPR), NNPC, Federal Inland Revenue Services (FIRS), Revenue Mobilization Allocation and Fiscal Commission (RMAFC) and Nigeria Extractive Industries Transparency Initiative (NEITI) to jointly review the proposed bill in preparation for the upcoming public hearing. The team was supported by a world renowned Oil and Gas Fiscal systems consultant, Dr. Pedro Van Meus.

The purpose of this review was to ensure that all relevant Government Ministries and Agencies are carried along and are aligned with the Petroleum Industry Reform process. The review was also to ensure that issues and challenges facing the current institutional, legal, regulatory and fiscal regimes are fully addressed in the proposed bill now before the National Assembly. This memorandum seeks the consideration and endorsement of the National Assembly on recommendations made by the Technical Team. Some changes and suggestions were recommended particularly in the institutional framework, gas sector reforms and fiscal and regulatory provisions of the PIB. This is to ensure alignment of the Bill with international best practice of transparency, accountability and good governance. It will also ensure the maximization of Government share of Petroleum economic rent, strategic linkage of the industry to

the domestic economy through the development of a viable domestic Gas market. The new proposed Bill will also open up the industry to new participants through the creation of an open, transparent level playing field for all operators and service providers in the Nigerian Oil and Gas Sector.

1.0 INTRODUCTION

1.1 The Petroleum Industry Bill (PIB) is a proposed legislation currently before the National Assembly through which the Executive intends to set out a new legal, regulatory and fiscal framework for the organisation and operation of the entire oil and gas industry in Nigeria. The PIB is based on the Report of the Oil and Gas Sector Reform Implementation Committee (OGIC) set up by the Federal Government in 2000 to carry out a comprehensive reform of the oil and gas industry. The PIB in essence is therefore a reform legislation which aims to establish in place of the existing myriad of legislative and administrative instruments, an omnibus legislation that seeks to establish clear rules, procedures and institutions for the administration of the petroleum industry in Nigeria.

1.2 The suggestions and recommendations of the Inter-Agency Team have been incorporated in the form of a new proposed draft PIB for ease of reference and comparative analysis.

2.0 BACKGROUND

2.1 Up until 1993, the Nigerian fiscal system was dominated by the joint ventures between NNPC and International Oil Companies whereby Government Take from the IOCs is in the form of royalties and taxes only.

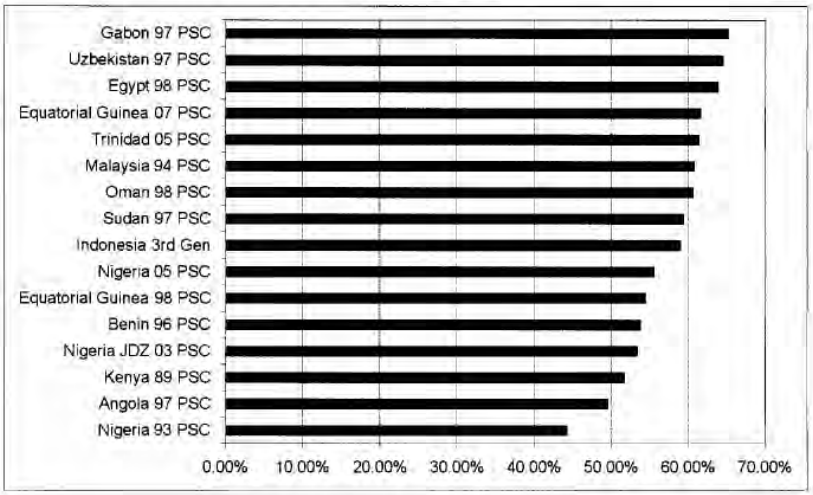
2.2 Funding challenges on the part of Government and the need to open new frontiers for exploration led to the signing of production sharing contracts (PSCs) in the Nigerian deep water.

2.3 These contracts (1993 PSCs) commenced production in 2003. With the declining production from the joint venture arrangements, the PSCs are anticipated to become the main source of production growth.

2.4 The review of these production sharing contracts has revealed a much lower government take than other jurisdictions in similar technical and economic circumstances at US $60 per barrel (see chart below). Under lower oil prices and high costs, there is a possibility for zero government revenue from the sector, which forms the backbone of the Nation's economy.

Chart of government take of production sharing contracts at

(US $60 per barrel)



2.5 This review process revealed the urgent need for a change in the existing fiscal arrangements in the industry in order to make those fiscal regimes competitive in relation to other fiscal systems in the world and to assure greater share of petroleum revenues for the Government.

2.6 The review of all production sharing contracts and joint ventures showed that the existing fiscal terms;

(a) Subsidized gas production mainly targeted at exports, resulting in negative Government take;

(b) did not capture windfall profits under high oil price;

(c) encouraged inefficient producers and high production costs;

(d) placed too much emphasis on PPT and no focus on royalties;

(e) lacked adequate cost control and accounting procedures;

2.7 Furthermore, the existing laws and contracts contained too many confidentiality provisions thereby making the arrangements opaque and non transparent.

2.8 The acreage management provisions are highly inadequate because they left large blocks in the hand of licensees, lessees and contractors without requiring standard international relinquishment provisions.

2.9 Consequent on the above, it became clear that to arrest the declining Government revenues caused by inadequate fiscal provisions and declining Joint Venture production, the existing fiscal arrangements both under the JVs and the PSCs need to be changed. At the same time it is important to find a creative way to stimulate new investments under the JVs by eliminating the funding bottlenecks on the part of NNPC/Government.

3.0 THE PIB AND THE PHILOSOPHY OF CHANGE

3.1 The philosophy of change underpinning the PIB as stated by the OGIC is predicated on the realization that the present legal regime is:

(a) obsolete and out-dated;

(b) not in alignment with international best practice;

(a) opaque and lacking transparency;

(c) lacking good governance practices and processes;

(d) and not in the interest of Nigeria.

The Inter-Agency Team strongly shares these observations.

3.0 IDENTIFIED GAPS IN THE EXISTING PIB

3.1 Though the existing PIB in some of its initiatives is far - reaching by attempting to re-order the basis of petroleum operations in the

Country and thus enshrine a more beneficial industry, it leaves gaps that need to be addressed in order to make the Bill achieve the above stated objectives.

3.2 Some of the gaps identified are as follows:

(1) The existing PIB does not sufficiently deal with the fiscal issues prevalent in the current dispensation in such a way as to achieve optimal revenues for the Government at all times.

(2) Many issues still remain confidential resulting in lack of transparency in the operations

(3) There is no modern acreage management system in line with global best practice.

(4) The provisions relating to award of petroleum prospecting licenses and petroleum mining leases do not guarantee a transparent bid process.

(5) There are no provisions for petroleum exploration licenses.

(6) There are no minimum work program requirements for upstream concessions.

(7) There still remains much ambivalence between the concepts of concessions and contracts.

(8) There is no strong regulatory framework to implement the approved Gas Master Plan.

(9) The incorporated joint venture provisions do not provide adequate protection for the interests of Nigerian Government.

(10) There remains wide ranging discretionary powers to change fiscal terms for individual cases.

(11) The bid process and acreage retention provisions promote the current oligopoly in the upstream.

(12) There remain significant over-laps and lack of clarity in the various roles and powers of the different institutions proposed to be created.

(13) There is no adequate fiscal framework for marginal field operators

(14) There is no incentive to encourage efficient operations through cost reduction.

4.0 KEY CHANGES PROPOSED BY THE INTER-AGENCY REVIEW TEAM

4.1 In the light of the observed gaps, the Inter-Agency Review Team proposed key changes to achieve the following objectives:

(1) Establish clear and enduring good governance principles and fiscal provisions that are flexible and that would guarantee optimal revenue for Nigeria. Investment tax allowances, Investment tax credits and deductibility of interest for tax purposes were removed to encourage low cost and efficient operations.

(2) Establish clear principles for the working of the Incorporated Joint Ventures and guarantee that government continues to secure the maximum financial benefits from its investment in the joint ventures while relieving Government of funding from the Treasury through Cash Calls.

(3) Support the approved National Gas Master Plan aimed at using gas to stimulate Nigeria's economic growth and development through the inclusion of additional provisions on domestic gas supply obligation and pricing as well as favorable royalty rate for domestic gas producers.

(4) Establish good acreage management systems that are based on international best practice of transparency and accountability.

(5) Establish provisions to enhance local content development in the Petroleum Sector through effective linkages between the oil and gas industry and other sectors of the Nigerian economy

(6) Strengthen administration with the requisite powers and rules for the effective administration of the industry through realignment of the roles and functions of the three proposed regulatory institutions.

(7) Support the energy security objectives of Government enshrined this administration's seven point agenda through the development of a commercially viable domestic gas market.

(8) Efficient operators (low cost) will now make more profits than high cost operators as emphasis is placed more on royalty, where cost are not deducted before payments, lowering the tax rate to reduce gold plating and amount of non deductible costs are increased.

5.0 INSTITUTIONAL ALIGNMENT

5.1 So far in the petroleum legislation in Nigeria, the petroleum operations were classified as:

(a) **Upstream**, which referred to all activities entered into for the purpose of finding and developing crude oil or natural gas and includes all activities involved in exploration and in all stages through, up to the production and transportation of crude oil and natural gas from the area of production to the terminal; and

(b) **Downstream**, which referred to the activities which take place from the loading of crude petroleum at the terminal, to the use of oil by the end users and includes transportation, supply, refining, processing, storage, distribution and marketing of petroleum products;

5.2 Though the concept of midstream is defined in the PIB, it is not applied or recognized in the Bill and the midstream is essentially regulated by the downstream regulator.

5.3 The review revealed that in order to succinctly define the Nigerian Hydrocarbon Tax and Corporate Income Tax, it was necessary to apply the internationally accepted concept of midstream in order to avoid

exposure of Government to excessive cost deduction for tax purposes against upstream income.

5.4 The Inter-Agency Team therefore considers it necessary to define "midstream" oil and gas operations as follow:

(a) **"Midstream crude oil operations"** *means activities downstream of the measurement points of petroleum mining leases or unrelated to petroleum mining leases with respect to the construction and operation of upgrading facilities for heavy oil or bitumen; construction and operation of crude oil transport pipelines, including the related pumping stations; acquisition, operation, leasing, rental or chartering of barges, coastal or ocean going tankers, rail cars and trucks for the transport of crude oil; construction, leasing and operation of crude oil tank farms and other storage facilities; construction and operation of refineries; other construction and activities incidental thereto and related administration and overhead.*

(b) **"Midstream gas operations"** *means activities downstream of the measurement points of petroleum mining leases or unrelated to petroleum mining leases with respect to the construction and operation of natural gas transport or transmission pipelines, including the related compressor stations; construction and operations of facilities to compress, transport and deliver compressed natural gas ("CNG"), construction and operations of gas processing facilities, producing ethane, propane, butane and natural gas liquids and marketable natural gas; construction and operation of underground or above ground facilities for the storage of natural gas; ethane extraction plants; construction and operation of gas to liquids ("GTL") plants; construction and operation of liquefied natural gas ("LNG") plants, and related LNG terminals; acquisition, operation or chartering of LNG tankers for coastal and marine transportation; other construction and activities incidental thereto and related administration and overhead.*

5.5 Furthermore, the review revealed that for successful relinquishment of acreages described above, owners of the new licenses would require non discriminatory access to the existing pipeline systems between fields and oil export terminals or the domestic gas market. This means that these assets can no longer be included in the upstream PMLs.

5.6 By creating a well defined midstream sector and the need to ensure access to the existing and new pipeline networks as well as central gas

processing facilities, the need for a strong regulator for the midstream became imperative, distinct from the upstream and downstream.

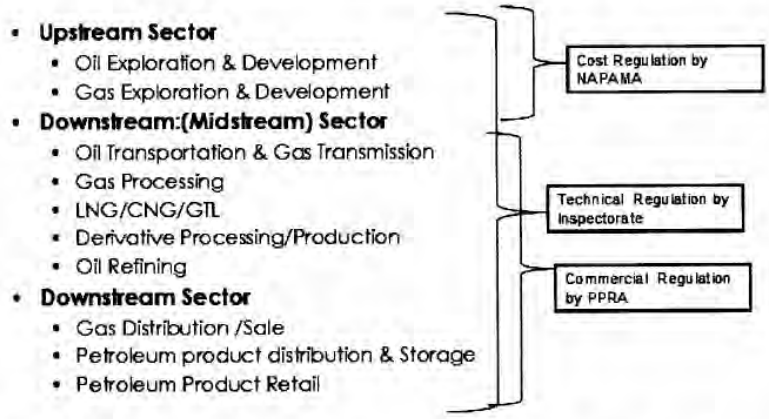
5.7 The regulatory framework for the current PIB establishes the need for two entities to give regulatory approvals for all oil and gas projects:

(a) The Inspectorate for all technical aspects of the project, and

(b) The Agency or the Authority for all cost and commercial aspects of the project.

5.8 This framework is illustrated below:-

Organizations under the current proposed PIB



5.9 Although the above chart includes LNG, CNG and GTL, there is no mention of these very important industries in the PIB, despite the fact that sector based pricing framework under the National Gas Master Plan have been developed and also requires strong regulatory oversight.

5.10 The current institutional structure of the PIB where technical regulation is separated from cost/commercial regulation creates the following challenges:

(a) The proper evaluation of any project needs an integral assessment of technical and commercial factors.

(b) A development plan cannot be properly prepared and evaluated without considering alternative concepts, which have technical, commercial and cost implications. Alternatives can therefore not be evaluated without considering both technical and cost factors.

(c) A pipeline system cannot be optimally designed without considering all commercial aspects of markets and transportation costs.

(d) At the same time splitting the technical and cost/commercial decisions over two separate regulators will make it easy for applicants to "set up" one regulator against the other.

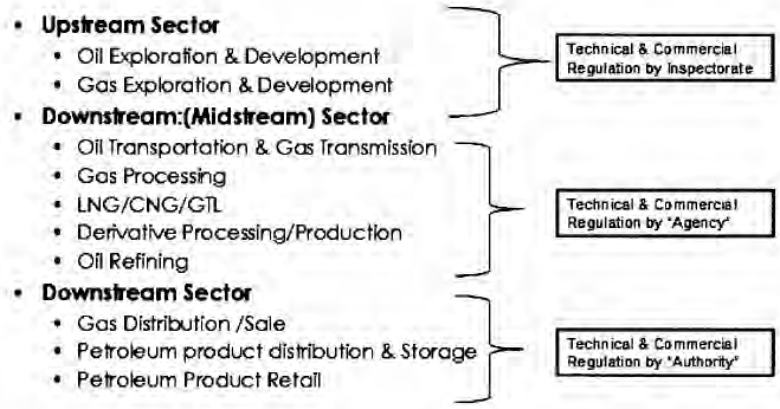
(e) Strong potential for creating overlapping and wasteful bureaucracy, because:

(i) Technical factors cannot be decided upon without considering commercial implications and therefore there is strong incentive for the Inspectorate to engage in commercial evaluation and analysis.

(ii) At the same time commercial factors cannot be decided upon without understanding the technical basis and therefore there is a strong incentive for the Agency/Authority to engage in technical analysis.

5.11 In order to address these challenges and keep to best international practice for regulatory institutions, it is necessary for a single regulator to consider both the technical and commercial aspects of a single project application, as illustrated in the chart below:-

Organizations under the newly proposed PIB



5.12 It is therefore recommended to follow this overall concept and create three regulators with both technical and cost/commercial functions, as follows:

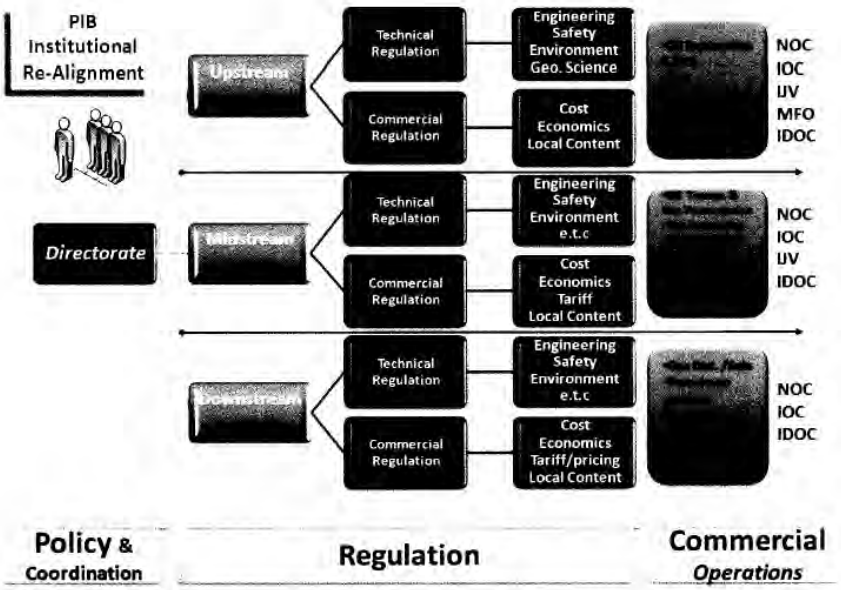
(a) The Inspectorate for upstream petroleum operations

(b) The Agency for midstream petroleum operations, and

(c) The Authority for downstream petroleum operations.

5.13 In this new concept, the functions under the PIB defined for the National Petroleum Assets Management Agency will be carried out by the cost/commercial division of the Inspectorate.

The following chart shows in more detail the linkages between the key institutions:-



6.0 CONCLUSION

6.1 What has emerged from the review of the PIB and enshrined in the new proposed draft PIB, is a bill which would further enhance the important underlying premise and philosophy of the existing PIB. It will improve the performance of the Oil and Gas sector through the creation of a robust Petroleum legal framework that reinforced the linkage of Nigerian Oil and Gas sector with other sectors of the economy and adopted the international best practice of Good governance, Accountability, Transparency and Competitiveness. This review has also strongly protected Nigeria's interest in the Petroleum sector by institutionalizing the Government strategic energy objectives encapsulated in the seven point agenda.

MEMORANDUM

ON

A BILL FOR AN ACT TO ESTABLISH THE LEGAL AND REGULATORY FRAMEWORK, INSTITUTIONS AND REGULATORY AUTHORITIES FOR THE NIGERIAN PETROLEUM INDUSTRY TO ESTABLISH GUIDELINES FOR THE UPSTREAM AND DOWNSTREAM SECTORS AND FOR THE PURPOSES CONNECTED WITH THE SAME.

BY

FEDERAL GOVERNMENT INTER-AGENCY TEAM
(MPR, MOJ, MOF, FIRS, DPR, NEITI, RMAFC AND NNPC)

PROPOSED AMENDMENTS TO THE PETROLEUM INDUSTRY BILL 2009
BY
FEDERAL GOVERNMENT INTER AGENCY REVIEW TEAM

PART I: FUNDAMENTAL OBJECTIVES

CLAUSE:

1. Vesting of petroleum and natural gas
2. Granting of Licenses, Lease and Permits
3. Management of Petroleum Resources
4. Government Participation
5. Transparency and Good Governance
6. Environment and Air Quality Emissions
7. Community Development
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THE PETROLEUM INDUSTRY BILL 2009
A BILL
FOR

An Act to establish the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry, to establish guidelines for the operation of the upstream, midstream and downstream sectors, and for purposes connected with the same.

ENACTED BY THE National Assembly Of The Federal Republic Of Nigeria-

[ ]

Commencement

PART I: FUNDAMENTAL OBJECTIVES

Vesting of petroleum and natural gas

1. The property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf and the Exclusive Economic Zone is vested in the Federal Governement of Nigeria.

Granting of licenses, leases and permits

2. (1) The Minister with respect to upstream petroleum operation, shall only grant a petroleum prospecting license or petroleum mining lease through the processes established in this Act.

(2) A company qualified under terms and conditions prescribed by the relevant institutions, may apply for the grant or award of a licenseor permit as the case may be, in accordance with the provisions of this Act,with respect to petroleum exploration licenses and any licenses or permits related to midstream, downstream or upstream petroleum operations.

Management of Petroleum Resources

3. (1) The management and allocation of petroleum resources and their derivatives in Nigeria shall be conducted strictly in accordance with the principles of good governance, transparency and sustainable development of Nigeria and at all times be conducted to maximise the economic value and benefits to the Nigerian people

(2) Subject to subsection (1) of this section, the main criterion for the management of petroleum resources shall be the total benefits that accrues to the sovereign state of Nigeria.

Government Participation

4. (1) The Minister shall grant licences and leases on the recommendation of the Directors-General of the Institutions and in the public interest , impose special terms and conditions that are not inconsistent with the provisions of this Act on any licence or lease to which this Act applies, including terms and conditions as to- (a) participation by the Federal Government in the venture to which the licence or lease relates, on terms to be determined by the Minister for the licence or lease; and

(b) exploitation of any natural gas discovered.

(2) Subsection (1) of this section does not apply to any indigenous company operating in the upstream sector whose aggregate technical allowable production as determined by the Inspectorate is less than ten barrels per day.

Transparency and Good Governance

5. In achieving their functions and objectives under this Act, the Institutions and the National Oil Company, shall be bound by principles of the Nigerian Extractive Industries Transparency Initiative Act of 2007.

Environment and Air Quality Emissions

6. (1) The Federal Government shall honour International environmental obligations and shall promote energy efficiency and the provision of reliable energy.

(2) In accordance with the provisions of subsection (1) of this section, the Federal Government, shall introduce and enforce integrated health, safety and environmental quality management systems with specific quality, effluent and emission targets for oil and gas related pollutants, without regard for fuel type such as gas, liquid or solid, in order to ensure compliance with international standards.

Community Development

7. The Federal Government, in co-operation with the state and local governments and communities, shall encourage and ensure the peace and development of the petroleum producing areas of the Federation through the implementation of specific projects aimed at ameliorating the negative impacts of petroleum activities.

Nigerian Content

8. (1) The Federal Government shall at all times promote the involvement of indigenous companies and manpower and the use of locally produced goods and services in all areas of the petroleum industry in accordance with existing laws and policies.
(2) Where any contract for work or services is considered to be within the capabilities of Nigerian Companies, in accordance with any law relating to Nigerian content, the tender list shall be restricted to Nigerian Companies
(3) All companies involved in any area of the upstream, midstream or downstream petroleum industry shall, as a condition of their licence, lease, contract or permit, as the case may be, comply with the terms and conditions of any law relating to the Nigerian content law in force at the time.
(4) A company that Fails to comply with the provisions of Part VI and any local content law as determined by the Regulatory Institutions may have a licence, lease, contract or permit granted to it revoked.

PART II - INSTITUTIONS

A-The Minister

The Minister

9. The Minister in charge of petroleum resources shall be responsible for the co-ordination of the activities of the petroleum industry and shall have overall supervisory functions over petroleum operations and all the Institutions of the industry.

Functions and Powers of the Minister

10. The Minister shall-

a) represent the Federal Government in all transactions between the Government and any other person in respect of any matter contemplated by this Act;

b) exercise supervisory functions over the affairs and operations of the petroleum industry;

c) report developments in the petroleum industry to the Federal Executive Council annually;

d) advise the Federal Government on all areas pertaining to the oil and gas industry;

e) administer the petroleum industry through strategies and programmes that may be developed by the National Petroleum Directorate;

f) represent Nigeria at meetings of international organisations that are primarily concerned with the petroleum industry.

g) advise the President as to the appointments of the chief executive officers of the Institutions;

h) have access at all times to:

i) areas covered by existing licences and leases , and

ii) all installations to which this Bill applies, including refineries, storage depots, plants and stations of every description, for the purpose of inspecting the operations conducted therein and enforcing the provisions of this Act and any regulations made under it;

i) have powers to revoke the licences or leases upon the advise of the Director-General of the relevant institution and consistent with the provisions of this Act;and

j)have Rights of preemption of all petroleum (oil and gas) and petroleum products marketed under the licences and leases in pursuit of national interest.

Power to make Regulations

11. (1) On the recommendations of the Directors- General of the Institutions,the Minister may by regulations prescribe all matters which under this Act are required and necessary to give effect to this Act, including any applicable fees and penalties, consistent with the provisions of this Act.

(2) The Minister may by writing under his hand delegate to the Director- General of the appropriate Institution any power conferred on him by or under this Act except the power to make orders and regulations.

B -The National Petroleum Directorate

Establishment of the National Petroleum Directorate

12. (1) There is established a body to be known as the National Petroleum Directorate (in this Act referred to as "the Directorate").

(2)The Directorate shall-

(a) be a body corporate with perpetual succession and a common seal.

(b) have power to acquire, hold and dispose of property, sue and be sued in its own name.

(3) The Directorate shall function as the secretariat of the Minister and shall take over any functions which were previously undertaken by the Ministry of Petroleum Resources.

Functions of the Directorate

13. The functions of the Directorate shall be to:

a) develop policies and instruments for effective coordination and operations of the Oil and Gas industry for the consideration and approval of the Minister;

(b) formulate, and develop strategies, implement the petroleum policy and other related policies approved for the petroleum industry by the Minister;

(c) coordinate and pay to the Directorate, the Inspectorate, the Agency and the Centre, the agreed amounts of fiscalised crude designated for the funding of the said Institutions in accordance with their approved budgets as contained in the Appropriation Act, and collect any unspent amounts at the end of the financial year for payment back to the Federal Treasury;

(d) liaise and co operate with the other Institutions, private and public organisations,institutions, enterprises and individuals operating in all sectors of the petroleum industry;

(e) ensure that the government derives maximum advantage from all petroleum operations for the economic benefit of the people of Nigeria;

(f) promote policies that will ensure the conduct of all activities in the petroleum industry in a transparent, cost effective, and competitive manner;

(g) promote open and competitive processes for:

(i) the allocation of licences for exploration and production;

(ii) upstream quota allocations and midstream and downstream petroleum and capacity allocations by the Regulatory Institutions;

(h) advise the Minister on the allocation of licences and criteria and policy for quota allocations;

(i) formulate and promote policies and strategies to:

(i) stimulate investment and participation in all areas of the petroleum industry;

(ii) encourage the use of advanced technology in the petroleum industry; and

(iii) develop Nigerian content in the industry;

(j) promote measures to increase the national reserves base;

(k) promote measures to increase productivity in all areas of the petroleum industry;

(l) promote the use of locally available raw materials;

(m) promote and ensure the use of Nigerian goods and services in all sectors including insurance, finance, and professional services as a first resort, without at any time compromising cost, quality and competence;

(n) ensure regular consultation with all stakeholders of the Nigerian petroleum industry, including but not limited to-

(i) the petroleum producing companies;

(ii) all companies operating in all sectors of midstream and the downstream petroleum industry;

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(d) liaise and co operate with the other Institutions, private and public organisations,institutions, enterprises and individuals operating in all sectors of the petroleum industry;

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(f) promote policies that will ensure the conduct of all activities in the petroleum industry in a transparent, cost effective, and competitive manner;

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(l) promote the use of locally available raw materials;

(m) promote and ensure the use of Nigerian goods and services in all sectors including insurance, finance, and professional services as a first resort, without at any time compromising cost, quality and competence;

(n) ensure regular consultation with all stakeholders of the Nigerian petroleum industry, including but not limited to-

(i) the petroleum producing companies;

(ii) all companies operating in all sectors of midstream and the downstream petroleum industry;

(3) The Director-General shall be the chief executive and accounting officer of the Directorate and shall be responsible for running the day-to-day affairs of the Directorate.
(4) The Director-General shall have the status of a permanent secretary of the civil service of the Federal Republic of Nigeria.

Tenure, Remuneration and Conditions of Service of the Director-General

16. (1) The Director-General shall hold office for a period of 5 years a may be reappointed for another period of 5 years only, on such terms and conditions as may be specified in the letter of appointment.

(2) The remuneration, tenure and conditions of service of the Director-General shall be at a level sufficient to attract qualified professionals within the petroleum industry.

Directors

17. (1) The Board shall appoint Directors to assist the Director-General in managing and discharging the responsibilities of the Directorate.
(2) The persons to be appointed Directors shall have extensive technical or managerial knowledge of the petroleum industry and shall be chosen through a prescribed and transparent recruitment process.
(3) The remuneration, tenure and conditions of service of the Directors shall be at a level sufficient to attract qualified professionals within the petroleum industry.

Disqualification

18. No person shall be appointed a Director General or Director unless he or she-

(a) is a Nigerian citizen;

(b) has not, in terms of the laws in force in any country:
(i) been adjudged or declared bankrupt or insolvent, or
(ii) made an assignment to, or arrangement or composition with his or her creditors which has not been rescinded or set aside,
(iii) been declared to be of unsound mind,
(iv) been convicted of an offence involving fraud or dishonesty,
(v) been disqualified by a competent authority from carrrying out any assignment, responsibility or function in his or her professional capacity;
(c) has not been disqualified by the Securities Exchange Commission from holding a board appointment in any public company.

Termination of appointment

19. The office of the Director General shall become vacant-

(a) three months after giving notice in writing to the President of his or her resignation;
(b) if he or she becomes disqualified under the provisions of section 18 of this Act; or
(c) on the expiration of his or her appointment.

Vacation of office.

20. The President shall require the Director- General to vacate his or her office if he or she-
a) has committed an act of gross misconduct;
b) has failed to comply with the terms and conditions of his or her office as fixed by this Act;or
c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently.

Appointment of a new Director-General

21. Upon the vacancy of the Director General's office, the President shall, subject to sections 15 and 18, appoint a candidate to fill the vacancy.

Structure of the Directorate

22. (1) The Minister shall, upon the advise of the Director- General establish such Departmnets for the Directorate as may be deemed necessary.

(2) Each department shall be headed by a director.

Other Staff

23. (1) The Directorate may, from time to time, appoint such experienced professionals as staff of the Directorate to assist it in the performance of its functions under this Act.

(2)The staff of the Directorate appointed under subsection (1) of this section shall be on such terms and conditions of service as the Directorate may prescribe.

1999 Constitution.(3) Staff of the Directorate shall be public officers as defined in the Constitution of the Federal Republic of Nigeria 1999.

(4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

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Tenure, Remuneration and Conditions of Service

24. The tenure, remuneration, and conditions of service of staff of the Directorate shall be at a level sufficient to attract qualified professionals within the petroleum industry and shall take into account:

(i) the specialised nature of work to be performed by the staff;
(ii) the need to ensure financial sufficiency of the Directorate; and
(iii) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Pensions

Cap p4 LFN 2004 25.(1) Service in the Directorate shall be approved service for the purpose of the Pensions Reform Act, and accordingly, officers and other persons employed in the Directorate shall be entitled to pensions and other benefits as are prescribed in the Act.

(2) Subsection (1) of this section does not prohibit the Directorate from appointing a person to any office on terms that preclude the grant of a pension or other retirement benefits in respect of that office.

(3) In the application of the provisions of the Pensions Reform Act 2004 to the Directorate, any power exercisable under that Act by a minister or other authority of the Federal Government, other than the power to make regulations, is hereby vested in and shall be exercisable by the Directorate and not by any other person or authority.

Financial Provisions

26. (1) The Directorate shall, not later than September in each year, present to the Minister, a budget showing the expected income and the expenditure which the Directorate proposes to expend in respect of the next succeeding financial year.

(2) The Directorate may during a financial year prepare and present to the Minister a supplementary budget relating to expenditures which were inadequately represented in the annual budget due to unforeseen circumstances.

(3) The Directorate may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.

(4) The financial year of the Directorate shall be for a period of twelve calendar months commencing on the 1st of January in each year.

Funding

27. (1) The Directorate shall establish and maintain a fund which shall consist of-

(a) such money as may, from time to time, be appropriated to the Directorate by the Federal, State or Local Government;
(b) a portion of fiscalised crude and or fiscalised natural gas set aside for the use of the Directorate in accordance with the provisions of section 28 of this Act;
(c) money raised for the purposes of the Directorate by way of gifts, loans and grants-in-aid;
(d) subscriptions, fees and charges payable to the Directorate; and
(e) all other monies that may, from time to time, accrue to the Directorate.

(2) The Directorate shall, from time to time, apply the proceeds of the fund established pursuant to subsection (1) of this section-

(a) to the costs of administration of the Directorate;
(b) to the payment of salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to staff of the Directorate or employees;
(c) for maintenance of any property acquired or vested in the Directorate;
Cap.T22 LFN, 2004(d) for the purposes of investment, as prescribed by the Trustees Investments, or any other relevant statute; and
(e) in connection with all or any of the functions of the Directorate as specified under this Act.

Funding the Institutions

28 (1) A portion of the value of fiscalised crude or fiscalised natural gas, as the case may be and as agreed under the provisions of this section, shall be paid by every company engaged in petroleum operations in the upstream sector of the petroleum industry, into an account of the Directorate designated for the sole purpose of collecting the said value of fiscalised crude or fiscalised natural gas, for the use of, and shared by-

(a) the Directorate;
(b) the Inspectorate;
(c) the Agency;
(d) the Centre; and
(e) the Frontier Service;

in accordance with the amounts necessary to fulfil their functions and as required by the budgets of each of these Institutions.

(2) The exact percentage of the value of fiscalised crude or fiscalised natural gas, as the case may be, shall be as contained in guidelines that shall be issued by the Minister on the advice of the Directorate, three months before the end of the financial year preceeding the year in which the said guidelines will be applicable, and shall be an amount that is-

(a) not greater than 2%; and

(b) at least the value of the combined total budgets of the Directorate, the Inspectorate, the Agency, the Centre, and the Frontier Service.

(3) Subject to the terms of subsection (1) of this section,the Directorate shall pay the portions of the value of fiscalised crude oil and fiscalised natural gas belonging to the Directorate, the Inspectorate, the Agency, the Centre and the Frontier Service within thirty days from the commencement of the financial year.

(4) At the end of the financial year, any unencumbered funds shall be returned by the Directorate, the Inspectorate, the Agency, the Centre and the Frontier Service to the Directorate, and the Directorate shall return the said amounts to the Federal Treasury.

Insurance Provisions

29. In order to accelerate the expansion of the Nigerian insurance and capital market, the Directorate shall support policies that would make it mandatory for operators in the petroleum industry in Nigeria to first utilize the Nigerian insurance and capital markets before resorting to the international market, for the purpose of insuring their assets and raising capital.

Power to Accept Gifts

30. (1) The Directorate may accept gifts of money or other property upon such terms and conditions, if any, as may be specified by the person or organisation making the gift provided such gifts are not inconsistent with the objectives and functions of the Directorate under this Act.

(2) Nothing in subsection (1) of this section or in this Act shall be construed to allow the Director-General and other staff of the Directorate to accept gifts for their personal use.

Borrowing Powers

31. The Directorate may, with the consent of the Minister of Finance, borrow money as may be required by the Directorate for the exercise of its functions under this Act, on such terms and conditions as the Minister may determine.

Accounts and Audits

32. The Directorate shall keep proper accounts of its income and expenditure in respect of each year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed in accordance with guidelines published by the Auditor-General for the Federation.

Annual Reports

33. The Directorate shall prepare and submit to the Minister not later than the month of July in each year a report in such form as the Minister may direct, on the activities of the Directorate during the immediately preceding year, and shall include in such report a copy of the audited accounts of the Directorate for the year and the Auditor-General's report thereon.

Exemption from Income Tax

34.(1) All income derived by the Directorate from the sources specified in section 27(1) of this Act shall be exempt from income tax.

(2) Where contributions to the fund of the Directorate are made by a person subject to tax under the provisions of any law in force in Nigeria, all such contributions shall be tax deductible.

Notice of intention to commence suit

35.(1) No suit shall be commenced against the Directorate before the expiration of a period of three months after written notice of intention to commence the suit shall have been served on the Directorate by the intending plaintiff or his agent.

(2) The notice shall clearly state the-

(a) cause of action;
(b) particulars of the claim;
(c) name, address for service and place of abode of the intending plaintiff; and
(d) relief claimed by the plaintiff.

Service of Notice

36. The notice referred to in subsection(2) above includes any summons, notice or other document required or authorised to be served on the Directorate under the provisions of this Act or any other enactment or law, may be served by:

(a) delivering the same to the Director General or any Director of the Directorate; or

(b) sending it by registered post addressed to the Director General at the head office of the Directorate.

C -The Nigerian Petroleum Inspectorate

Establishment of the Nigerian Petroleum Inspectorate

37. (1) There is established a body to be known as the Nigerian Petroleum Inspectorate (in this Act referred to as "the Inspectorate") which shall be a body corporate with perpetual succession and a common seal.

(2) The Inspectorate shall have power to acquire, hold and dispose of property, sue and be sued in its own name.

(3) The Inspectorate shall be successor to the assets and liabilities of the Petroleum Inspectorate of the Nigerian National Petroleum Corporation and the Department of Petroleum Resources of the Ministry of Petroleum Resources.

Objects of the Inspectorate

38. The objects of the Inspectorate shall be to-

(a) organise and regulate the technical and cost and commercial activities of the Upstream Petroleum Operations;

(b) ensure the efficient, safe, effective and sustainable infrastructural development of Upstream Petroleum Operations;

(c) monitor and approve costs in the Upstream Petroleum Operations of Nigeria with the objective of maximizing the total revenue accruing to the government from the Upstream Petroleum Operations;

(d) ensure that all activities in Upstream Petroleum Operations are carried out in such a manner that will realize or achieve optimal Government take;

(e) promote the healthy, safe and efficient conduct of activities in the Upstream Petroleum Operations in an environmentally acceptable manner;and

(f) ensure the maintenance of standards and specifications which apply to the Upstream Petroleum Operations.

Functions of the Inspectorate

39(1) The Technical functions of the Inspectorate shall be to:

(a) enforce and administer policies, laws and regulations relating to technical aspects of Upstream Petroleum Operations;

(b) ensure and enforce compliance with the terms and conditions of all licences and leases issued in respect of the exploration and production for Upstream Petroleum Operations;

(c) ensure and enforce the compliance of all permits issued for Upstream Petroleum Operations;

(d) enforce approved regulations and standards relating to operations of the upstream petroleum sector, including oil and gas evaluation and management, upstream gas gathering, gas treatment ,and flares elimination;

(e) keep a register of all licences and permit issued for Upstream Petroleum Operations by the Inspectorate and leases issued by the Directorate and any renewals, amendments, suspensions or revocations thereof;

(f) carry out enquiries, tests, audits or investigations and take such other steps as may be necessary to monitor the activities of licencees or lessees and to secure and enforce compliance with licence or lease terms and conditions for Upstream Petroleum Operations;

(g)set and establish standards relating to technical aspects of the Upstream Petroleum Operations, including environmental standards, which shall be established in collaboration with the Federal Ministry of Environment or any other relevant agency;

(h)ensure adherenc to environmental standards that may be established by the government; by all operators and companies involved in any activity pertaining to the Upstream Petroleum Operations;

(i)establish, monitor and regulate safety measures relating to the management of petroleum reserves and installations as well as exploration, development and production activities within the onshore and offshore territory of Nigeria, including the Exclusive Economic Zone, where applicable for Upstream Petroleum Operations;

(j)undertake evaluation of national reserves and reservoir management studies;

(k)administer all licences and leases for Upstream Petroleum Operations that may be granted by the Minister to any company, in accordance with prescribed terms;

(l)conduct regular audits of the operations of operators and companies engaged in all aspects relating to exploration, production and development of crude oil and natural gas, including oil service companies, in order to ensure compliance with Nigerian Content requirements for Upstream Petroleum Operations;

(m) maintain a petroleum industry data bank comprising all data acquired by or given to the Inspectorate in the exercise of its statutory functions;

(n)supervise and ensure accurate calibration and certification of equipment used for fiscal measures for Upstream Petroleum Operations;

(o)publish reports and statistics on activities in the Nigerian Upstream Petroleum Operations and related matters that may be required, in the interests of the growth of the sector;

(p)advise the Minister on fiscal and other issues to enhance the operations of the petroleum sector and improve the benefits to Government from the sector;
(q)issue Clean Certificates of Inspection under Upstream Petroleum Operations at the oil terminals to exporters of crude oil upon satisfaction that the requirements as to quality and quantity have been complied with;
(r)issue permits, licences and any other authorisations necessary for all technical activities connected with, but not limited to the following-

(i) Seismic,
(ii) Drilling,
(iii) Pipelines for Upstream Petroleum Operation,
(iv) Crude Oil storage at terminals,
(v) design and construction of all facilities for Upstream Petroleum Operations ;

(s) set standards for the design, procurement, construction, operation and maintenance of all plants, installations and facilities that pertain to Upstream Petroleum Operations;
(t) establish special laboratories with capabilities for data storage and testing, quality assurance and certification for Upstream Petroleum Operations;
(u) perform technical evaluation and reviews required to evaluate and decide on submissions made to the Inspectorate by operators involved in Upstream Petroleum Operations;
(v) keep records, data and reports obtained from Upstream Petroleum Operations,as may be required under any statute and giving any directive to any person, company or entity in respect thereof;
(w) ensure the promotion of the safe, orderly and optimal development of the Upstream Petroleum Operations in the overall interest of the people of Nigeria;
(x) undertake by itself or through qualified expertise any of the foregoing and such other activities as are necessary or expedient for giving full effect to the provisions of this Act .

(2). The cost and commercial functions of the Inspectorate shall be:

(a) to approve commercial and cost elements of all field development programmes in the Upstream Petroleum Operations;
(b) to superintend and oversee the activities of all operators to which this part II-C applies in the Upstream Petroleum Operations in all areas pertaining to cost control and in pursuance of this, to approve commercial aspects of work programmes and field development plans for all operators in the Upstream Petroleum Operations, including the National Oil Company;
(c) to provide regular cost information to the Directorate for the purpose of allocating petroleum quotas to cost effective operators;
(d) to develop cost benchmarks for the evaluation of opportunities in the Upstream Petroleum Operations;
(e) compute, determine, assess and ensure payment of royalties, rentals, fees, and other charges for Upstream Petroleum Operations as stipulated in this Act and any regulations made hereunder;
(f) advise the National Oil Company to dispose available royalty Oil as the case may be on behalf of the Federal Government; and
(g) to liaise with the Federal Inland Revenue Service on cost deductions under the relevant provisions of this Act and any other law in force.

(3). The technical and commercial functions of the Inspectorate as provided shall be carried out by separate departments within the Inspectorate.

Powers of the inspectorate

40. The Inspectorate shall have power to:

(a) enforce the provisions of:
(i) this part 11-C and any regulations made thereunder,
(ii) any enactments prescribing activities of the petroleum industry made prior to this part C and any regulations made in pursuance of powers given under them, and
(iii) any technical regulations referring to, or formerly administered by the Department of Petroleum Resources of the Ministry of Petroleum Resources or the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation;
(b) order the sealing up of any premises whatsoever, including any facility or plant engaged in Upstream Petroleum Operations, where there has been a contravention of this Act or any other related law;

(c) in respect of the Upstream Petroleum Operations and as and when necessary, issue technical guidelines on the generation, use, storage and transportation of radioactive sources and materials, in line with directives from the Nigerian Nuclear Regulatory Authority;

(d) set standards and enforce the application of new technologies in the Upstream Petroleum Operations;and

(e) do such other things as are necessary and expedient for the effective and full discharge of any of its functions under this Act.

Establishment of a Governing Board

41. (1) There is established for the inspectorate a Governing Board (in this Act referred to as "the Governing Board") which shall consist of:
(a) a chairman to be appointed by the President;
(b) one representative of the Nigerian Petroleum Directorate not below the rank of a Director;
(c) one representative each of the Agency and the Authority;
(d) two persons to be appointed by the President on the recommendation of the Minister being persons who by reason of their ability, experience and specialized knowledge of the petroleum industry are capable of making useful contributions to the work of the Inspectorate;
(e) three Directors who are full time staff of the Inspectorate; and
(f) the Director-General of the Inspectorate.

(2) The persons appointed pursuant to paragraphs (a) (d) and (e) of subsection (1) of this section shall hold office fora period of 4years subject to re-appointment for another period of 4 years only on such terms and conditions as may be specified in their letters of appointment.

(3) Appointments to the Board shall be part- time.

Second Schedule(4) The proceedings of the Board of the Inspectorate and other ancillary matters shall be as prescribed in the Second Schedule to this Act.

Functions of the Governing Board
42. The Governing Board shall ensure that the Inspectorate performs its statutory functions as contained in this Act.

The Director General
43. (1) There shall be a Director-General for the Inspectorate, who shall be appointed by the President.

(2) The Director-General shall be a person with cognate experience.

(3) The Director-General shall be the chief executive and accounting officer of the Inspectorate and shall be responsible for running the day-to-day affairs of the Inspectorate.

(4) The Director-General shall have the status of a permanent secretary of the civil service of the Federal Republic of Nigeria.

(5) The Director-General shall perform such other functions as the Board may determine.

Tenure, remuneration and conditions of service of the Director General
44. (1) The Director General shall hold office for a period of 5years and may be re-appointed for a further term of 5years only, and on such terms and conditions as may be specified in his or her letter of appointment.

(2) The remuneration and conditions of service of the Director-General shall be at a level sufficient to attract qualified professionals within the oil industry.

Disqualification
45. No person shall be appointed as Director- General or member of the Governing Board unless he or she:

(a) is a Nigerian citizen;
(b) has not, in terms of the laws in force in any country:
i) been adjudged or declared bankrupt or insolvent, or
ii) made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside,
iii) been declared to be of unsound mind,
iv) been convicted of an offence involving fraud or dishonesty,
v) been disqualified by a competent authority from carrrying out any assignment, responsibility or function in his or her professional capacity;

(c) has not been disqualified by the Securities Exchange Commission from holding a board appointment in any public company.

Vacation of Office and Termination
46. The office of the Director -General or a member of the Governing Board shall become vacant-

(a) three months after giving notice in writing to the President of his or her resignation;
(b) if he or she becomes disqualified under the provisions of Section 45 of this Act; or
(c) on the expiration of his or her appointment.

Vacation of office.

47. The President shall require the Director-General or member of the Governing Board to vacate his or her office if he or she-

(a) has committed an act of gross misconduct;

(b) has failed to comply with the terms and conditions of his or her office as fixed by this Act ; or

(c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently as a member.

Appointment of a new Director- General.

48. Upon the vacancy of a member's office, the President shall appoint a candidate to fill the vacancy in accordacne with the terms of section 41 of this Act.

Remuneration of Members of the Board

49. (1) Members of the Board shall be paid from the funds of the Inspectorate-

(a) such remuneration as the Board may from time to time determine, in accordance with the guidelines of the Federal Government; and

(b) such allowances as the Board may determine from time to time to meet any reasonable expenses incurred by such members in connection with the business of the Inspectorate.

(2) The Inspectorate while making such determinations, shall have due regard to:

(a) the specialised nature of the work to be performed by the Inspectorate;

(b) the need to ensure the financial self-sufficiency of the members; and

(c) allowances paid in the private sector to board members with equivalent responsibilities, expertise and skills.

Secretary

50. (1) The Inspectorate shall appoint a Secretary who shall keep the corporate records and the common seal of the Inspectorate and undertake such other functions as the Director-General and the Inspectorate may from time to time direct.

(2) The Secretary shall be a lawyer with a minimum of 10 years post qualification experience.

Other staff

51. (1) The Inspectorate may, from time to time, appoint such professionals experienced in the petroleum industry and other persons as staff of the Inspectorate to assist in the performance of its functions under this Act.

(2) Staff of the Inspectorate appointed under subsection (1) of this section shall be appointed on such terms and conditions as the Inspectorate may prescribe.

1999 Constitution(3) Staff of the Inspectorate shall be public officers as defined in the Constitution of the Federal Republic of Nigeria 1999.

(4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

Remuneration

52. The remuneration, tenure and conditions of service of staff of the Inspectorate shall be at a level sufficient to attract qualified professionals within the petroleum industry and shall take into account-

(a) the specialised nature of work to be performed by the staff;
(b) the need to ensure financial sufficiency of the Inspectorate; and
(c) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Pensions

Cap P4 LFN 2004 53. (1) Service in the Inspectorate shall be approved service for the purpose of the Pensions Reform Act and accordingly, officers and other persons employed in the Inspectorate shall be entitled to pensions and other benefits as prescribed in the Act.

(2) Subsection (1) of this section shall not prohibit the Inspectorate from appointing a person to any office on terms that preclude the grant of a pension or other retirement benefits in respect of that office.

(3) In the application of the Pensions Reform Act, any power exercisable under the Act by a Minister or other authority of the Government of the Federation, other than the power to make regulations is hereby vested in and shall be exercisable by the Inspectorate and not by any other person or authority.

(4) Subject to the Pensions Reform Act and notwithstanding the provisions of this section, the Inspectorate shall continue to fulfil all obligations in respect of pensions schemes to which the Petroleum Inspectorate of the Nigerian National Petroleum Corporation or the Department of Petroleum Resources of the Ministry of Petroleum Resources was obliged in respect of its employees, prior to the transfer of assets to the Inspectorate.

Financial Provisions of the Inspectorate

54. (1) The Inspectorate shall, not later than September in each year, present to the Minister, a budget showing the expected income and expenditure which the Inspectorate proposes to expend in respect of the succeeding financial year insofar as the amount so budgeted does not exceed the total amount accruable to the Inspectorate from its sources of funding in any financial year.

(2) The Inspectorate may during a financial year prepare and present to the Minister, a supplementary budget relating to expenditures which were inadequately represented in the annual budget due to unforeseen circumstances.

(3) The Inspectorate may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.

(4) The financial year of the Inspectorate shall be for a period of twelve calendar months commencing on the 1st of January in each year.

Funding

55. (1) The Inspectorate shall establish and maintain a fund which shall consist of:
(a) such money as may be appropriated to the Inspectorate from time to time by the National Assembly for the purposes of this Act;
(b) a portion of the value of fiscalised crude oil and fiscalised natural gas, to be paid to the Inspectorate from the Directorate in accordance with the budget of the Inspectorate and the provisions of section 28 of this Act;

(c) penalties and charges that the Minister may approve to be imposed from time to time on petroleum producers as well as contractors and other companies operating in the Upstream Petroleum Operations;

(d) fees paid in respect of services performed by the Inspectorate as contained in regulations made by the Minister on the recommendation of the Inspectorate;

(e) income received from publications produced by the Inspectorate;

(f) fees for reviews of environmental impact assessment reports and environmental evaluation reports and other related activities;

(g) fees for services rendered to non-petroleum producing companies and service companies and for other services performed generally in the upstream sector;

(h) such money as may be received by the Inspectorate either in the course of its operations, in relation to the exercise of its powers and functions under this Act or in respect of any property vested in the Inspectorate.

(2) The Inspectorate shall apply the proceeds of the Fund under subsection (1) of this section:

(a) to meet the administrative and operating costs of the Inspectorate;
(b) to the payment of:
(i)salaries,
(ii)fees or other remunerations or allowances, and
(iii)pensions and other retirement benefits payable to members of the Inspectorate or its employees;
(c) for the maintenance of property acquired by, or vested in the Inspectorate;
Cap. T22, LFN 2004 (d) for purposes of investment, as prescribed by the Trustee Investments Act or any other relevant statute; and
(e) in connection with carrying out its functions under this Act.

Power to Accept Grants
56. The Inspectorate may accept grants of money or other property upon such terms and conditions, if any, as may be specified by the person or organisation making the grant, provided such grants are not inconsistent with the objectives and functions of the Inspectorate under this Act.

Borrowing Powers
57. The Inspectorate may, with the consent of, or in accordance with the general authority given by the Minister of Finance, borrow such sums of money as the Inspectorate may require in the exercise of its functions under this Act or its subsidiary legislation.

Annual Budget
58. The annual budget of the Inspectorate shall be approved by the Governing Board.

Account and Audit
59. The Inspectorate shall keep proper accounts of its income and expenditure in respect of each year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed in accordance with guidelines published by the Auditor-General of the Federation.

Mid-year and Annual Reports

60. (1) The Inspectorate shall submit to the National Assembly and the President a mid-year report of its operations and finances not later than 31st July of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st July of the following year.

(2) A summary of the annual report and audited financial report of the Inspectorate shall be published in not less than three widely circulating newspapers in every geo-political zone of the country for public notice not later than 31st of July of each year.

Restrictions on Legal Proceedings

61. (1) Court processes, proceedings or suits, against the Inspectorates shall be attended to and handled by the Inspectorate, except in respect of criminal matters.

(2) Any suit or proceedings against the Inspectorate, a member of the Governing Board or any employee of the Inspectorate for any act, omission or default in respect of its functions and powers under this Act or any other enactment shall be brought within twelve months after the act, neglect or default complained of or in the case of a continuance of damage or injury, within twelve months after such damage or injury may have ceased.

(3) No suit shall commence against the Inspectorate before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Inspectorate by the intending plaintiff or his agent.

(4) The notice shall clearly and explicitly state:

(a) the cause of action;

(b) the particulars of the claim;

(c) the name, place of abode and address for service of the intending plaintiff; and

(d) the relief which is being claimed.

Service of Documents

62. The notice referred to in section 61(2) of this Act and any other process required or authorized to be served upon the Inspectorate under the provisions of this Act or any other enactment may be served by:

(a) delivering the same to the Director-General or any other principal officer of the Inspectorate; or

(b) sending it by registered post addressed to the Director-General at the head office of the Inspectorate.

Special Powers

63. The Inspectorate shall have power to investigate any person or organisation in relation to any of its functions or powers under this Act and in order to ascertain any violation of the provisions of this Act.

Special Units etc.

64. (1) For effective conduct of its functions, the Inspectorate shall have the following special units:

(a) Investigation Unit; and

(b) Prosecution Unit.

(2) Notwithstanding the provisions of subsection (1) of this section, the Inspectorate may set up technical committees to assist in the performance of its functions under this Act.

Duties of the Special Units

65. (1) The Investigation Unit shall, while ensuring that due process is followed:

(a) investigate and prosecute offences under this Act;

(b) collaborate with other government agencies and persons in relation to the detection or prosecution of offences under this Act;

(c) maintain surveillance on oil and gas installations, premises and vessels where it has reason to believe that illegal petroleum operations are going on;

(d) have power to search, seize, detain and recommend for prosecution, any person suspected to have engaged or be engaged in illegal activities in relation to petroleum or any petroleum product or in relation to any provision of this Act or any other enactment administered or enforced by the Inspectorate.

(2) The Prosecution Unit shall:

(a) prosecute offenders under this Act;

(b) support the Investigation Unit with legal advice and assistance where required;

(c) conduct such legal proceedings as may be necessary towards the enforcement of this Act; and

(d) perform such other duties as the Inspectorate may refer to it from time to time.

Power of Search and Arrest with Warrant

66. For the purposes of this Act, an officer of the Investigation Unit shall with a warrant obtained from a Federal High Court judge:

(a) enter and search any premises or carrier including vehicles or any other instrumentalities whatsoever which he or she has reason to believe is connected with the commission of an offence;

(b) arrest any person whom he or she reasonably believes to have committed an offence in respect of matters under the authority of the Inspectorate;

(c) seize any item or substance which he or she reasonably believes to have been used in the commission of an offence under this Act.

Indemnity of Governing Board and Employees

67. (1) Every member of the Governing Board and every employee of the Inspectorate shall be indemnified out of the assets of the Inspectorate against any liability incurred in defending any proceeding against the Inspectorate, whether civil or criminal, if such proceedings are brought against the person in his or her capacity as a member of the Governing Board or employee.

(2) Notwithstanding the provisions of subsection (1) of this section, the Inspectorate shall not indemnify any member of the Governing Board or employee of the Inspectorate for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be.

Power to resolve disputes

68. (1) The Inspectorate shall have the power to resolve disputes between persons who are subject to this part 11-C and between any such persons and other persons regarding any matter under this part 11-C with the exception of matters:

(a) regulated by the Authority; or

(b) specifically and primarily governed by any other enactment in force and regulated by any other organ established for that purpose.

(2) No dispute shall be referred to the Inspectorate by any person unless an attempt has been made by the parties concerned to resolve the dispute through negotiation.

(3) The Inspectorate shall convene to resolve a dispute if it is satisfied that-

(a) an agreement may not be reached, or shall not be reached between the parties to the dispute within a reasonable time.

(b) the notification of the dispute is not trivial, frivolous, or vexatious; and

(c) the resolution of the dispute would promote the objectives of this Act and any subsidiary legislation.

(4) If one of the parties to the dispute has provided an undertaking that is relevant to the subject matter of the dispute and the Inspectorate, and has registered the undertaking, the parties may adopt the conditions of the undertaking for the purposes of resolving the dispute.

Notification of disputes

69.(1) Where a party to a dispute in respect of a matter regulated by the Inspectorate so desires, that party shall write to notify the Inspectorate as to the existence of the dispute and to request the intervention of the Inspectorate.

(2) The Inspectorate may intervene to resolve a dispute under this Act only if it is notified in writing of the dispute and requested by either or both parties to intervene.

(3) The Inspectorate shall publish guidelines setting out the principles and procedures that it may take into account in resolving disputes or a class of disputes under this part 11-C.

(4) Upon receipt of the notification of the dispute referred to in subsection (1) of this section, the Inspectorate shall, as soon as practicable, convene to resolve the dispute.

Resolution of disputes

70. (1) In carrying out its functions under subsection (1) of this section, the Inspectorate -

(a) shall always be guided by the objective of establishing a sustained dispute-resolution process that is fair, just, economical and effective;

(b)shall at all times, endeavour to act according to the ethics of justice and the merits of each case; and

(c) shall not be bound by technicalities, legal form or rules of evidence.

(2) The terms and conditions of any determination of the Inspectorate under this Act shall be in writing and shall state the Inspectorate's reasons and the Inspectorate shall provide the parties to the dispute with a copy of its decision as soon as practicable.

(3) The costs of the Inspectorate in making a determination shall be paid in accordance with terms and conditions agreed by the parties prior to the commencement of the dispute resolution process.

Arbitration and Mediation

71. (1) For the purpose of the resolution of disputes the Inspectorate may act

either as an arbitrator or mediator, except in disputes in which the Inspectorate is a party.

(2) When acting as an arbitrator the Inspectorate shall issue a decision on the matter.

(3) The Inspectorate may if it so wishes, appoint a person acceptable to all the parties to act as mediator or arbitrator on its behalf in respect of any dispute before it and the decision of the arbitrator shall be regarded as being the decision of the Inspectorate.

(4) Any decision of the Inspectorate shall be binding on the parties to the dispute.

Cap A19 LFN, 2004 (5) In disputes in which the Inspectorate is a party, the relevant provisions of the Arbitration and Conciliation Act, shall apply.

Judicial Review

72. (1) An aggrieved person shall have a right of appeal to the Federal High Court for a judicial review of questions of law and process pertaining to a determination or other action of the Inspectorate.

(2) Any determination or other action of the Inspectorate, that is the subject matter of the application for judicial review shall subsist and remain binding and valid until it is expressly reversed in a final judgement or order of the Federal High Court.

Register of Decisions

73.(1) The Inspectorate shall keep a register containing all decisions it makes for the purpose of the resolution of disputes.

(2) The register shall contain-
(a) the names of the parties to the dispute;
(b) a general description of the matter pertaining to the decision; and
(c) the date of the decision.

Enforcement of Decisions

74.(1) A decision made by the Inspectorate under this chapter may be enforced by the Court as if the decision is a judgement of such Court.
(2) No certificate under subsection (1) of this section is required if the enforcement action is taken by the Inspectorate under this section.

D- The Petroleum Products Regulatory Authority

Establishment and Scope of the Authority

75. (1) There is established a body to be known as the Petroleum Products Regulatory Authority, (in this Act referred to as "the Authority") which shall be a body corporate with perpetual succession and a common seal.

(2) The Authority shall have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act perform all acts that corporate bodies may perform by law.

(3) The Authority shall be responsible for the technical and commercial regulation of the Downstream Petroleum Operations.

(4) All objects and functions of the Authority in this part 11- D are in respect of Downstream Petroleum Operations.

Objects

76. The objects of the Authority shall be-

(a) to promote the implementation of national technical and commercial policies for the Downstream Petroleum Operations;

(b) to promote the efficient, effective and sustainable technical and commercial development of the Downstream Petroleum Operations;

(c) to promote the efficient technical and commercial development and operation of the distribution network for the Downstream Petroleum Operations;

(d) to encourage and facilitate investments in the Downstream Petroleum Operations;

(e) to organise and regulate technical and commercial activities of the Downstream Petroleum Operations;

(f) to promote, where appropriate, competitive markets for gas and gas services in the Downstream Petroleum Operations;

(g) to promote the distribution of gas and petroleum products in the Downstream Petroleum Operation throughout Nigeria;

(h) to promote conditions that will enable petroleum products and gas, supply and distribution activities to be carried out on an equitable basis while protecting the rights and interests of licensees, customers and other stakeholders;

(i) to provide pricing framework for downstream gas and petroleum products; and

(j) to promote security of gas supply, market development and competition.

Functions

77. (1) The functions of the Authority shall be-

(a) to regulate and co-ordinate the commercial activities of the Downstream Petroleum Operations in Nigeria in a non-discriminatory and transparent manner;

(b) the regulation of commercial downstream activities which include-

i) establishment of methodology for calculating petroleum products prices, and

ii) setting benchmark prices for petroleum products;

(c) to regulate on bulk storage and distribution and to set rules for petroleum products; petroleum product pipelines and regional storage depots;
(d) issue and regulate technical and commercial licences and any other authorisations necessary for all Downstream Petroluem Operations;
(e) enforce compliance with the terms and conditions of technical and commercial licences issued by the Authority;
(f) keep a register of all licences issued and any renewals, amendments, suspensions or revocations thereof;
(g) carry out enquiries, audits or investigations and take such other steps as may be necessary to monitor the activities of licensees and to secure and enforce compliance with licence terms and conditions;
(h) ensure security of fuel supply, market development and the development of competition;
(i) ensure the provision of third party access to the downstream products transportation and distribution networks;
(j) develop market rules for trading in wholesale downstream gas, following consultation with relevant stakeholders at such time as the Authority declares the need to have arisen;
(k) establish customer protection measures in accordance with the provisions of this Act;
(l) undertake consultation with customers, licensees and industry's participants affected by or with an interest in those of its decisions that have the potential to affect them and consider any responses to the consultation;
(m) publish those decisions, directions or determinations that have implications for customers and industry participants together with the reasons for the decision, direction or determination;
(n) promote the interests of customers taking into account the ability of licensees to effectively finance their licenced activities, provided that the Authority shall not be liable for any difficulties arising out of the inefficient or negligent operation of licenced activities by licensees;
(o) promote the principles of sustainable resource and infrastructural development through the efficient supply and use of downstream gas and petroleum products;
(p) promote competition and private sector participation in the Downstream Petroluem Operations, when and where feasible;
(q) ensure that all economic and practical demands for downstream gas are met.
(r) in respect of downstream products:
(i) to set rules for the administration of the open access regime to regulate and administer the open access to transportation and bulk storage facilities,
(ii) to establish methodology for bulk transportation and storage tariffs,
(iii) to regulate and ensure the supply, distribution, marketing and retail of petroleum products,
(iv) to determine annual tarriffs for the common carrier pipeline systems and open access depot system in accordance with tariff setting formulae;
(s) to administer and monitor the national operating and strategic stocks as set by the Minister;
(t) to monitor and enforce the actual application of petroleum product pricing formulae or framework for regulated products;
(u) to monitor market behaviour including the development and maintenance of competitive markets in the Downstream Petroluem Operations;
(v) to arrest situations of abuse of dominant power and restrictive business practices in the Downstream Petroleum Operations;

(w) to enforce customer rights in relation to petroleum products and services; and

(x) to establish appropriate dispute settlement mechanism relating to the commercial rights and obligations of operators and customers in the Downstream Petroluem Operations;

(y) establish, monitor and regulate technical, health, environmental and safety measures relating to the management of downstream assets, including but not limited to petrochemical plants, petroleum depots and distribution pipelines, and downstream gas plants;

(z) monitor and specify technical and safety controls on wholesale marketing, retail marketing, and bunkering of petroleum products;

(aa) inspect the metering of pumps and any other facilities at downstream retail outlets to ensure compliance with safety standards as prescribed by the Inspectorate

(ab) issue permits, licences and any other authorisations necessary for all technical activities connected with, but not limited to the following-

(i) Downstream Product Sector,

(ii) Downstream Gas Sector,

(iii) Downstream Gas Distribution Operations, and

(iv) Downstream Product Operations;

(ac) set standards for the design, procurement, construction, operation and maintenance of all plants installations and facilities that pertain to the Downstream Petroleum Operations;

(ad) establish special laboratories with capabilities for data storage and testing, quality assurance and certification of gas and petroleum products and their derivatives, in the Downstream Petroleum Operations.

(ae) keep records, data and reports obtained and classifying such records, data or reports as may be required under any statute and giving any directive to any person, company or entity in respect thereof;

(af) ensure the promotion of the safe, orderly and optimal development of the Downstream Petroluem Operations in the overall interest of the people of Nigeria

(2) The Authority in furtherance of the functions stated in subsection (1) of this section shall:

(a) establish parameters and codes of conduct for all operators in the Downstream Petroleum Operations;

(b) monitor the financial viability of all operators in the Downstream Petroleum Operations;

(c) promote transparency within the Authority and amongst the operators;

(d) develop and maintain a data base on the Downstream Petroleum Operations particularly such data relating to the construction, conversion and operation of petroleum product and gas distribution pipelines, loading and storage facilities and make such information public;

(e) advise government and other agencies on commercial matters relating to prices of petroleum products; and

(f) undertake such related activities as are necessary for the efficient execution of its objects.

(3) The technical and commercial functions of the Authority as provided herein shall be carried out by separate departments within the Authority.

Powers of the Authority

78. The Authority shall have the power:

(a) to modify, extend, renew, suspend and revoke any licence issued by it pursuant to the provisions of this part 11-D;

(b) to make recommendations to the Minister for the issuance, amendment or revocation of any regulations relevant to the provisions or requirements of this Act;

(c) to monitor and enforce the application of pricing methodologies by licensees in accordance with the provisions of this Act;

(d) subject to paragraph (e) of this section, to request and obtain any information or any document concerning licensed activities in the Downstream Petroleum Operations from any licensee notwithstanding that they may contain business secrets, provided that any such information or documents shall be restricted to those which a company can be compelled to produce as evidence in a civil proceeding in a court of law;

(e) where it considers it to be in the public interest-
(i) publish information provided by licensees, and
(ii) require licensees to publish certain information;

(f) to impose and enforce relevant licence conditions and to enforce the specific requirements of the Act;
(g) to institute legal proceedings against licensees for failure to comply with licence conditions or other `requirements of the Act;
(h) subject to the provisions of this Act, to issue legally binding determinations in respect of any dispute brought before it;
(i) to enforce the provisions of :
(i) any enactment and regulation prescribing activities of the Downstream Petroleum Operations made prior to the commencement of this Act, and
(ii) any regulations referring to, or formerly adminstered by the Petroleum Products Pricing and Regulatory Agency.

Governing Board of the Authority

79. (1) There is established for the Authority a Governing Board which shall consist of:
(a) a non executive Chairman appointed by the President;
(b) one representative of the Nigerian Petroleum Directorate;
(c) one representative each of the Inspectorate and the Agency;
(d) two persons to be appointed by the President on the recommendation of the Minister being persons who by reason of their ability, experience and specialized knowledge of the petroleum industry are capable of making useful contributions to the work of the Authority;
(e) three Directors who are full-time members of the Authority, to be appointed to the Board by the President; and
(f) the Director- General of the Authority.

(2) The persons appointed under paragraphs (a) and (f) of subsection(1) of this section shall hold their membership for 4years subject to re-appointment for another period of 4 years only on such terms and conditions as may be specified in their letters of appointment.
(3) Members of the Governing Board shall be persons of cognate experience in the areas of-

(a) logistics, refinery, bulk transportation and storage and distribution and marketing of petroleum (oil and gas) products;

(b) accountancy, administration, economics, finance or law; and
gas infrastructure, commercialisation and marketing.

Third Schedule (4) The proceedings of the Board of the Authority and other ancillary matters shall be regulated as prescribed in the Third Schedule to this Act.

Director-General

80. (1) There shall be a Director-General for the Authority, who shall be appointed by the President.

(2) The Director-General shall be a person with cognate knowledge in the petroleum industry and who is able to show impartiality and objectivity without any conflict of interest in the petroleum industry.

(3) The Director-General shall be the chief executive and accounting officer of the Authority and shall be responsible for the day-to-day management of the affairs of the Authority.

(4) The Director-General shall have the status of a permanent secretary of the civil service of the Federal Republic of Nigeria.

(5) The Director-General shall perform such other functions as the Board may determine .

Tenure, Remuneration and Conditions of Service of the Director-General

81. (1) The Director-General shall hold office for a period of 5years in the first instance may be re-appointed for another period of 5 years only on such terms and conditions as may be specified in his or her letter of appointment.

(2) The remuneration and conditions of service of the Director-General shall be at a level sufficient to attract qualified professionals within the petroleum industry.

Disqualification

82. No person shall be appointed as Director-General or member of the Governing Board unless he or she:

(a) is a Nigerian citizen;

(b) has not, in terms of the laws in force in any country:

(i) been adjudged or declared bankrupt or insolvent; or

(ii) made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside;

(iii)been declared to be of unsound mind;

(iv)been convicted of an offence involving fraud or dishonesty;

(v) been disqualified by a competent authority from carrying out any assignment, responsibility or function in his or her professional capacity; or

(c) has not been disqualified by the Securities Exchange Commission from holding a board appointment in any public company.

Termination of Appointment

83. The office of the Director- General or member of the Governing Board shall become vacant:

(a) three months after giving notice in writing to the President of his or her resignation;

(b) if he or she becomes disqualified under the provisions of Section 82 of this Act; or

(c) on the expiration of his or her appointment.

Vacation of Office

84. The President shall require the Director- General or member of the Governing Board to vacate his or her office if he or she:

(a) has committed an act of gross misconduct;

(b) has failed to comply with the terms and conditions of his or her office as contained in this Act; or

(c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently as a member.

Appointment of new Director- General

85. Upon the vacancy of a member's office, the President shall appoint a candidate to fill the vacancy in accordance with the terms of section 78 of this Act.

Remuneration of Members of the Board

86. (1) Members of the Board shall be paid from the funds of the Authority:

(a) such remuneration as the Authority may from time to time determine; and

(b) any such allowances as the Authority may determine from time to time to meet any reasonable expenses incurred by such members in connection with the business of the Authority.

(2) The Authority while making such determinations shall have due regard to:

(a) the specialised nature of the work to be performed by the Authority;

(b) the need to ensure the financial self-sufficiency of the Authority;

(c) allowances paid in the private sector to board members with equivalent responsibilities, expertise and skills.

Secretary

87. (1) The Authority shall appoint a Secretary who shall keep the corporate records of the Authority and undertake such other functions as the Director- General and the Authority may from time to time direct.

(2) The Secretary shall be a lawyer with a minimum of 10 years post qualification experience.

(3) The Secretary shall be the legal adviser of the Authority.

Other staff

88. (1) The Authority may, from time to time, appoint such professionals and persons experienced in the petroleum industry as staff of the Authority to assist in the performance of its functions under this Act.

(2) Staff of the Authority appointed under subsection (1) of this section shall be appointed on such terms and conditions of service as the Authority may prescribe.

1999 Constitution(3) Staff of the Authority shall be public officers as defined in the Constitution of the Federal Republic of Nigeria, 1999.

(4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

84. The President shall require the Director- General or member of the Governing Board to vacate his or her office if he or she:

(a) has committed an act of gross misconduct;

(b) has failed to comply with the terms and conditions of his or her office as contained in this Act; or

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(a) such remuneration as the Authority may from time to time determine; and

(b) any such allowances as the Authority may determine from time to time to meet any reasonable expenses incurred by such members in connection with the business of the Authority.

(2) The Authority while making such determinations shall have due regard to:

(a) the specialised nature of the work to be performed by the Authority;

(b) the need to ensure the financial self-sufficiency of the Authority;

(c) allowances paid in the private sector to board members with equivalent responsibilities, expertise and skills.

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(2) The Secretary shall be a lawyer with a minimum of 10 years post qualification experience.

(3) The Secretary shall be the legal adviser of the Authority.

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(2) Staff of the Authority appointed under subsection (1) of this section shall be appointed on such terms and conditions of service as the Authority may prescribe.

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(4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

Remuneration

89. The remuneration, tenure and conditions of service of staff of the Authority shall be at a level sufficient to attract qualified professionals within the petroleum industry and shall take into account-

(i) the specialised nature of work to be performed by the staff;

(ii) the need to ensure financial sufficiency of the Authority; and

(iii) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Pensions

90. (1) Service in the Authority shall be approved service for the purpose of the Pensions Reform Act and accordingly, officers and other persons employed in the Authority shall be entitled to pensions, and other benefits as prescribed in the Act.

Cap P4 LFN 2004 (2) Subsection (1) of this section shall not prohibit the Authority from appointing a person to any office on terms that preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.

(3) In the application of the provisions of the Pensions Reform Act to the Authority, any power exercisable under that Act by a Minister or other agency is hereby vested in the Authority and shall be exercised by the Authority and not by any other person.

Transfer of Service

91. The Authority may request for the services of any experienced staff of any relevant agency hitherto operating in the downstream petroleum sector to be transferred to the Authority if in its opinion such services cannot be obtained elsewhere in the country, and the person shall have the right to refuse or accede to this request.

Financial Provisions

92. (1) The Authority shall, not later than September in each year, present to the Minister, a budget showing the expenditures which the Authority proposes to expend in respect of the next succeeding financial year, insofar as the amount so budgeted does not exceed the total amount accruable to the Authority from its sources of funding in any financial year.

(2) The Authority may during a financial year prepare and present to the Minister, a supplementary budget relating to expenditures which were inadequately represented in the annual budget due to unforeseen circumstances.

(3) The Authority may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.

(4) The financial year of the Authority shall be for a period of twelve calendar months commencing on the 1st of January in each year.

Funds

93.(1) The Authority shall maintain a fund from which both the capital and recurrent expenditure of the Authority shall be defrayed and which shall consist of:

(a) fees, charges and other income accruing to the Authority from things done by it under this Act;

(b) an administrative charge of 0.3% of the price of a litre of annual average consumption of white products per day to be inserted into the template;

(c) administrative charges to be decided by the Authority in respect of liquefied petroleum gas, compressed natural gas and any other fuel;

(d) fees and charges paid in respect of any services performed by the Authority including charges for mediation, arbitration, administrative and other services that the Authority may render in the course of the discharge of its functions;

(e) rents from the Authority's property;

'(f) penalties and fines that may be imposed by the Authority upon any company or individual in the course of discharge of its functions;

(g) loans and grants- in-aid from national, bilateral and multilateral agencies; and

(h) such other money as may be received by the Authority in the course of its operations or in relation to the exercise of its powers and functions under this Act.

(2) The Authority shall apply the proceeds of the Fund established under subsection (1) of this section:

(a) to meet the administration and operating costs of the Authority;

(b) to the payment of-

(i) salaries,

(ii) fees or other remunerations or allowances, and

(iii) pensions and other retirement benefits

payable to members of the Authority or its employees;

(a)for the maintenance of property acquired by, or vested in the Authority;

Cap. T22, LFN 2004 (b)for purposes of investment; as prescribed by the Trustee Investments Act, or any other relevant statute; and

1. in connection with carrying out its functions under this Act.

Power to Accept Grants

94. The Authority may accept grants of money or other property, upon such terms and conditions as may be specified by the person or organisation making the grants provided such terms and conditions are consistent with the objectives and functions of the Authority under this Act.

Borrowing Powers

95. The Authority may with the consent of, or in accordance with the general authority given by the Minister of Finance, borrow such sums of money as the Authority may require in the exercise of its functions under this Act or its subsidiary legislation.

Accounts, Reports and Audit

96. (1) The Authority shall keep proper accounts and other records relating to such accounts in respect of all of the Authority's activities, funds and property including such particular accounts and records as may be required.

(2) The Authority shall not later than six months after the financial year prepare and submit to the Auditor-General of the Federation, a statement of accounts in respect of that particular financial year.

(3) The Authority shall present a half yearly report of all its activities including decisions, procedures, regulations and licences to the Minister.

(4) A summary of the reports mentioned in subsections (1) to (3) of this section shall be published annually on the website of the Authority and in at least two newspapers of nationwide circulation in Nigeria for public notice no later than the 31st of July of each year provided such publication

shall exclude confidential data pertaining to national security, commercial sensitivity or personnel privacy.

(5) Further to the provisions of this section, there shall always be a presumption in favour of releasing information to the public, which the Authority must rebut by showing good reasons for withholding such information from the public.

Auditor

97. The Authority shall appoint an auditor in accordance with the guidelines for the appointment of auditors issued by the Auditor-General of the Federation.

Procedures on Decisions, Orders, Public Hearing and related matters

98. (1) The Authority shall ensure that all its decisions and orders:

(a) contain an explanation or the basis for the decision or order;
(b) are properly recorded in writing and other appropriate permanent forms;
(c) are accessible to the public at reasonable times and places.

(2) The Authority shall issue written reasons in respect of any decisions or orders affecting the existing rights and duties of any person.

(3) The Authority may issue written reasons in respect of any other decision or order as the Authority deems necessary.

(4) The Authority may make interim orders pending the final disposition of a matter before it.

Public Hearing

99. (1) The Authority may hold a hearing of any matter which under this Act or any other enactment it is required or permitted to conduct or on which it is required or permitted to take any action.

(2) The Authority shall hold public hearings on matters regulated by the Authority, which the Authority determines to be of sufficient interest to the public.

(3) Where the Authority is required to or otherwise decides to hold a hearing, all persons having interest in such matter shall as far as is practicable be notified of the questions in issue and given adequate opportunities to make representations.

Engagement of consultants

100. Where any matter arises, entailing the consideration of any professional or technical question, the Authority may consult such persons as may be competent to advise thereon.

Referrence to court

101. (1) Where any question of law arises from an order or decision of the Authority, it may on its own volition or at the request of any person so affected by such order, refer such question for the decision of the Federal High Court.

(2) Where a question has been referred under subsection (1) of this section, the Authority shall state the question in the form of an originating summons and file same with the Registrar of the Federal High Court.

Power to Resolve Disputes

102. (1) The Authority shall have the power to resolve disputes between:

(a) persons whose activities are regulated by the Authority; and
(b) between such persons and other parties

regarding any matter under this part 11-D and in respect of any subsidiary legislation made by the Minister in respect of activities of the Authority or the Petroleum Equalisation Fund.

(2) No dispute shall be referred to the Authority unless-

(a) an attempt has been made by the parties concerned to resolve the dispute through negotiation;
(b) a resolution cannot be reached under any other relevant or applicable dispute resolution procedure prescribed by this part, including but not limited to those pertaining to the wholesale market and the network code; and
(c) both parties are granted the opportunity to present their respective cases to the Authority.

(3) For purpose of the resolution of disputes, the Authority may act either as an arbitrator or mediator.
(4) When acting as an arbitrator, the Authority shall issue a determination on the matter.
(5) The Authority may appoint a person acceptable to all parties to act as mediator or arbitrator on its behalf in respect of any dispute before it and the decision of the mediator or arbitrator shall be regarded as being the determination of the Authority.

Publication of Guidelines for Dispute Resolution

103. (1) The Authority may publish guidelines setting out the principles that it may take into account in resolving disputes.

(2) The Authority shall convene to resolve a dispute if it is satisfied that:

(a) an agreement may not or will not be reached between the parties to the dispute within a reasonable time; and
(b) the resolution of the dispute would promote the objects of this part or any of its subsidiary legislation enacted under this Act pertaining to the Downstream Petroleum Operations.

(3) The Authority shall be entitled to convene to resolve a dispute at its headquarters or at any other place in Nigeria.

(4) The Authority may make recommendations to the Minister to issue regulations for the discharge of the functions and for the conduct of the proceedings of the Authority, including but not limited to procedures for participation in the proceedings of dispute resolution between licensees, customers, wholesale customers and any other persons.

Terms and Conditions for the Resolution of Disputes

Cap A18, LFN 2004. 104. (1) Subject to any guidelines that may be issued by the Authority under this part 11-D, the Authority or, if the Authority deems fit, an arbitrator, may resolve the dispute in accordance with the Arbitration and Conciliation Act.

(2) The Authority may require either party to the dispute to pay any costs incurred by the Authority in appointing an arbitrator.

(3) The Authority, in carrying out its functions under subsection (1) of this section, shall be guided by the objective of establishing a dispute resolution process that is fair, just

economical and effective and shall at all times act in accordance with to the ethics of justice and the merits of each case.

(4) The determination of the Authority shall:

(a) be properly recorded in writing;

(b) state the basis or bases for the determination; and

(c) be provided to the parties to the dispute as soon as practicable.

Registration of Determinations

105. (1) The Authority shall register all determinations that it makes pursuant to this Act.

(2) The register referred to in this section shall contain-

(a) the names of the parties to the dispute;

(b) a general description of the matter pertaining to the determination; and

(c) the date of the determination.

Enforcement of Determinations

106. Subject to the agreement of the parties, a determination of the Authority may be enforced by the Federal High Court as if the determination is a judgment of such court.

Judicial Review

107. (1) An aggrieved person shall have a right of appeal to the Federal High Court for a judicial review of questions of law and process pertaining to a determination or other action of the Authority.

(2) Any determination or other action of the Authority that is the subject matter of the application for judicial review shall subsist and remain binding and valid until it is expressly reversed in a final judgement or order of the Federal High Court.

Referrals of Questions of Law to the Federal High Court

108. (1) If any question of law arises during a proceeding for a determination of the Authority, the Authority may request any person directly affected by such proceeding to refer that question for the decision of the Federal High Court.

(2) Where a question has been reserved in accordance with the provisions of subsection (1) of this section, it shall be stated in the form of a special case and filed with the Registrar of the Federal High Court.

Limitation of Suits against the Authority, its Agents, etc.

109. (1) Any suit or proceedings against the Authority, a member of the Governing Board or any employee of the Authority for any act, omission or default in respect of its functions and powers under this Act or any other enactment shall be brought within twelve months after the act, neglect

or default complained of or in the case of a continuance of damage or injury, within twelve months after such damage or injury may have ceased.

(2) No suit shall be commenced against the Authority before the expiration of a period of one month after written notice of intention to commence the suit has been served upon the Authority by the intending plaintiff or his agent.

(3) The notice shall clearly and explicitly state:

(a) the cause of action;
(b) the particulars of the claim;
(c) the name, address of service, and place of abode of the intending plaintiff; and
(d) the relief which he or she claims.

Service of Notice on the Authority

110. Any summons, notice or other document required or authorised to be served upon the Authority under the provisions of this Act or any other enactment or law may be served by delivering the same to the Director General of the Authority or the Secretary to the Authority at the head office of the Authority.

Judgment against the Authority

111. (1) Where a judgment of the Court awards any sums of money against the Authority, the said amounts shall be paid from the general reserve funds of the Authority.

(2) Where the Authority has filed a notice of appeal, the provisions of subsection (1) of this section shall be subject to any directions that may be given by the court.

Indemnity

112. Every employee, agent, or auditor of the Authority shall be indemnified by the Authority against any liability incurred by him or her in defending any proceedings whether civil or criminal, if any such proceeding is brought against him or her in his or her capacity as employee, agent, auditor or employee.

E. National Midstream Regulatory Agency

Establishment and Scope of the Agency

113. (1) There is established a body to be known as the National Midstream Regulatory Agency, (in this Act referred to as "the Agency") which shall be a body corporate with perpetual succession and a common seal.
(2) The Agency shall have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act perform all acts that corporate bodies may perform by law.
(3) The Agency shall be responsible for the technical and commercial regulation of the Midstream Petroleum Operations.
4) All objects and functions of the Agency in this chapter are in respect of Midstream Petroleum Operations

Objects

114. The objects of the Agency shall be-

(a) to promote the implementation of national technical and commercial policies for the Midstream Petroleum Operations;

(b) to promote the efficient, effective and sustainable technical and commercial development of the Midstream Petroleum Operations;

(c) to promote the efficient technical and commercial development and operation of the transportation network in the Midstream Petroleum Operations;

(d) to encourage and facilitate investments in the Midstream Petroleum Operations;

(e) to organise and regulate technical and commercial activities of the Midstream Petroleum Operations;

(f) to promote, where appropriate, competitive activities in the Midstream Petroleum Operations;

(g) to promote conditions that will enable transportation activities to be carried out in the Midstream Petroluem Operations on an equitable basis while protecting the rights and interests of licensees and other stakeholders; and

(h) to establish and regulate the Domestic Gas Aggregator.

Functions

115. (1) The functions of the Agency shall be to:

(a) to regulate and co-ordinate the technical and commercial activities of the Midstream Petroleum Operations in Nigeria in a non-discriminatory and transparent manner;

(b) regulating commercial midstream activities which include:

(i) midstream crude oil operations,

(ii) midstream domestic gas operations,

(iii) midstream export gas operations,

(iv) establishment of methodology for determining appropriate tariff for gas processing, gas transportation/transmission, and transportation of crude oil, bulk storage of oil and gas for Midstream Petroleum Operations,

(v) establishment of appropriate pricing framework for sale of gas by operators in the Midstream Petroleum Operations,

(vi) setting cost benchmark for Midstream Petroleum Operations;

(c)Publish the tariff and prices from time to time;

(d) regulate on bulk storage and transportation, transmission and set rules for the common carrier systems for crude oil and gas in the Midstream Petroleum Operations;

(e) issue and regulate technical and commercial licences and any other authorisations necessary for all Midstream Petroluem Operations;

(f) enforce compliance with the terms and conditions of technical and commercial licences issued by the Agency;

(g) keep a register of all licences issued and any renewals, amendments, suspensions or revocations thereof;

(h) carry out enquiries, audits or investigations and take such other steps as may be

and gas transportation/transmission pipelines, bulk storage facilities for oil and gas and make such information public;

(e) advise government and other agencies on commercial matters relating to tariff and pricing framework; and

(f) undertake such related activities as are necessary for the efficient execution of its objects.

(3) The technical and commercial functions of the Agency as provided herein shall be carried out by separate departments within the Agency

Powers of the Agency

116. In order to fulfil its functions under this Act, the Agency shall have the power-

(a) to modify, extend, renew, suspend and revoke any licence issued by it pursuant to the provisions of this part 11-E;

(b) to make recommendations to the Minister for the issuance, amendment or revocation of any regulations relevant to the provisions or requirements of this Act;

(c) to monitor and enforce the application of tariff and pricing framework by licensees in the Midstream Petroleum Operations in accordance with the provisions of this Act;

(d) subject to paragraph (e) of this section, to request and obtain any information or any document concerning licensed activities in the Midstream Petroleum Operations from any licensee notwithstanding that they may contain business secrets, provided that any such information or documents shall be restricted to those which a company can be compelled to produce as evidence in a civil proceeding in a court of law;

(e) where it considers it to be in the public interest-

(i) publish information provided by licensees; and

(ii) require licensees to publish certain information;

(f) to impose and enforce relevant licence conditions and to enforce the specific requirements of the Act;

(g) to institute legal proceedings against licensees for failure to comply with licence conditions or other 'requirements of the Act;

(h) subject to the provisions of this Act, to issue legally binding determinations in respect of any dispute brought before it;

(i) to enforce the provisions of :

(i) any enactments and regulations prescribing activities of the Midstream Petroleum Operations made prior to the commencement of this Act, and

(ii) any regulations referring to, or formerly administered by the Department of Petroleum Resources of the Ministry of Petroleum Resources or the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation.

Governing Board of the Agency

117. (1) The Governing Board of the Agency shall consist of:

a) a non- executive chairman appointed by the President;

b) one representative of the Nigerian Petroleum Directorate;

c) one representative each of the Inspectorate and the Authority

d) two persons to be appointed by the President on the recommendation of the Minister being persons who by reason of their ability, experience and specialized knowledge of the petroleum industry are capable of making useful contributions to the work of the Agency;

e) three Directors who are full-time members of the Agency, to be appointed to the Board by the President;;
f) the Director- General of the Agency;

(2) The persons appointed pursuant to paragraphs (a) (d) and (e) of subsection (1) of this section shall hold office for 4 years subject to re-appointment for another period of 4years only on such terms and conditions as may be specified in their letters of appointment.
(3) Members of the Governing Board shall be persons of cognate experience in the areas of-

a) logistics, refinery, bulk transportation and storage and transmission of petroleum (oil and gas);
b) accountancy, administration, economics, finance or law; and
gas infrastructure, commercialisation and marketing.

Third Schedule (4) The proceedings of the Board of the Agency and other ancillary matters shall be as prescribed in the Third Schedule to this Act.

Director-General
118. (1) There shall be a Director-General for the agency, who shall be appointed by the President.
(2) The Director-General shall be a person with cognate knowledge and experience in the petroleum industry and who is able to show impartiality and objectivity without any conflict of interest in the petroleum industry.
(3) The Director-General shall be the chief executive and accounting officer of the Agency and shall be responsible for the day-to-day management of the affairs of the Agency.
(4) The Director-General shall have the status of a permanent secretary of the civil service of the Federal Republic of Nigeria.
(5) The Director-General shall perform such other functions as the board may determine .

Tenure, Remuneration and Conditions of Service of the Director-General
119. (1) The Director-General shall hold office for a period of 5 years in the first instance which may be renewed for another period of 5years only on such terms and conditions as may be specified in his or her letter of appointment.

(2) The remuneration and conditions of service of the Director-General shall be at a level sufficient to attract qualified professionals within the petroleum industry.

Disqualification
120. No person shall be appointed as Director-General or member of the Governing Board unless he or she:
(a) is a Nigerian citizen;
(b) has not, in terms of the laws in force in any country:
(i) been adjudged or declared bankrupt or insolvent; or
(ii) made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside;
(iii)been declared to be of unsound mind;
(iv)been convicted of an offence involving fraud or dishonesty;
(v) been disqualified by a competent authority from carrying out any assignment, responsibility or function in his or her professional capacity;

(c) has not been disqualified by the Securities Exchange Commission from holding a board appointment in any public company.

Termination of appointment

121. The office of the Director-General or member of the Governing Board shall become vacant:
(a) three months after giving notice in writing to the President of his or her resignation;
(b) if he or she becomes disqualified under the provisions of section 120 of this Act; or
(c) on the expiration of his or her appointment.

Vacation of office

122. The President shall require the Director- General or member of the Governing Board to vacate his or her office if he or she:
(a) has committed an act of gross misconduct;
(b) has failed to comply with the terms and conditions of his or her office as contained in this Act; or
(c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently as a member;

Appointment of New Director-General

123. Upon the vacancy of a member's office, the President shall appoint a candidate to fill the vacancy in accordance with the terms of section 119 of this Act.

Remuneration of Members of the Board

124. (1) Members shall be paid from the funds of the Agency:
(a) such remuneration as the Agency may from time to time determine;
(b) any such allowances as the Agency may determine from time to time to meet any reasonable expenses incurred by such members in connection with the business of the Agency.

(2) While making such determinations, the Agency shall have due regard to:
(a) the specialised nature of the work to be performed by the Agency;
(b) the need to ensure the financial self-sufficiency of the Agency;
(c) allowances paid in the private sector to board members with equivalent responsibilities, expertise and skills.

Secretary

125. (1) The Agency shall appoint a Secretary who shall keep the corporate records of the Agency and undertake such other functions as the Director-General and the Agency may from time to time direct.

(2) The Secretary shall be a lawyer with a minimum of 10 years post qualification experience.

(3) The Secretary shall be the legal adviser of the Agency.

Other staff

126. (1) The Agency may, from time to time, appoint such professionals and persons experienced in the petroleum industry as staff of the Agency to assist it in the performance of its functions under this Act.

(2) Staff of the Agency appointed under subsection (1) of this section shall be appointed on such terms and conditions of service as the Agency may prescribe.

(3) Staff of the Agency shall be public officers as defined in the Constitution of the Federal Republic of Nigeria, 1999.

(4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

Remuneration

127. The remuneration, tenure and conditions of service of staff of the Agency shall be at a level sufficient to attract qualified professionals within the petroleum industry and shall take into account:

(i) the specialised nature of work to be performed by the staff;
(ii) the need to ensure financial sufficiency of the Agency; and
(iii)the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Pensions

Cap p4 LFN 2004 128. (1) Service in the Agency shall be approved service for the purpose of the Pensions Reform Act and accordingly, officers and other persons employed in the Agency shall be entitled to pensions, and other benefits as prescribed in the Act.

(2) Subsection (1) of this section shall not prohibit the Agency from appointing a person to any office on terms that preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.

Cap. P4 LFN 2004 (3) In the application of the provisions of the Pensions Reform Act. to the Agency, any power exercisable under that Act by a Minister or other agency is hereby vested in the Agency and shall be exercised by the Agency and not by any other person.

Transfer of staff from other agency

129. The Agency may request for the services of any experienced staff of any relevant agency hitherto operating in the Midstream petroleum sector to be transferred to the Agency if in its opinion such services cannot be obtained elsewhere in the country, and the person shall have the right to refuse or accede to this request.

Financial Provisions

130. (1) The Agency shall, not later than September in each year, present to the Minister, a budget showing the expenditures which the Agency proposes to expend in respect of the next succeeding financial year, insofar as the amount so budgeted does not exceed the total amount accruable to the Agency from its sources of funding in any financial year.
(2) The Agency may during a financial year prepare and present to the Minister, a supplementary budget relating to expenditures which were inadequately represented in the annual budget due to unforeseen circumstances.
(3) The Agency may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.
(4) The financial year of the Agency shall be for a period of twelve calendar months commencing on the 1st of January in each year.

Funds of the Agency

131. (1) The Agency shall establish and maintain a fund which shall consist of:

(a) such money as may be appropriated to the Agency from time to time by the National Assembly for the purposes of this Act;

(b) a portion of fiscalised crude and fiscalised natural gas, to be paid to the Agency by the Directorate in accordance with the budget of the Agency and the provisions of section 28 of this Act; and

(c) fees and charges paid in respect of any services performed by the Agency including administrative charges and other services that the Agency may render in the course of the discharge of its functions , such fees and charges to be decided in accordance with regulations issued by the Minister in accordance with the terms of this Act.

(2) The Agency shall apply the proceeds of the fund established under subsection (1) of this section-

(a) to meet the administration and operating costs of the Agency;
(b) to the payment of-
(i) salaries;
(ii) fees or other remunerations or allowances; and
(iii) pensions, gratuities and other retiring benefits payable to members of the Agency or its employees;

(c) for the maintenance of property acquired by, or vested in the Agency; and

Cap. T22 LFN, 2004 (d) for purposes of investment; as prescribed by the Trustee Investments Act, or any other relevant statute; and in connection with carrying out its functions under this Act.

Power to Accept Grants

132. The Agency may accept grants of money or other property, upon such terms and conditions as may be specified by the person or organisation making the grants provided such terms and conditions are consistent with the objectives and functions of the Agency under this Act.

Borrowing Powers

133. The Agency may with the consent of, or in accordance with the general authority given by the Minister of Finance, borrow such sums of money as the Authority may require in the exercise of its functions under this Act or its subsidiary legislation.

Accounts, Reports and Audit

134. (1) The Agency shall keep proper accounts and other records relating to such accounts in respect of all of the Agency's activities, funds and property including such particular accounts and records as may be required.

(2) The Agency shall not later than six months after the financial year prepare and submit to the Auditor-General of the Federation, a statement of accounts in respect of that particular financial year.

(3) The Agency shall present a half yearly report of all its activities including decisions, procedures, regulations and licences to the Minister.

(4) A summary of the reports mentioned in subsections (1) to (3) of this section shall be published annually on the website of the Agency and in at least two newspapers of nationwide circulation in

Nigeria for public notice no later than the 31st of July of each year provided such publication shall exclude confidential data pertaining to national security, commercial sensitivity or personnel privacy.

(5) Further to the provisions of this section, there shall always be a presumption in favour of releasing information to the public, which the Agency must rebut by showing good reasons for withholding such information from the public.

(6). The Agency shall appoint an auditor in accordance with the guidelines for the appointment of auditors issued by the Auditor-General of the Federation.

Procedures on Decisions, Orders and related matters

135. (1) The Agency shall ensure that all its decisions and orders:

(a) contain an explanation or the basis for the decision or order;
(b) are properly recorded in writing and other appropriate permanent forms;
(c) are accessible to the public at reasonable times and places.

(2) The Agency shall issue written reasons in respect of any decisions or orders affecting the existing rights and duties of any person.
(3) The Agency may issue written reasons in respect of any other decision or order as the Agency deems necessary.
(4) The Agency may make interim orders pending the final disposition of a matter before it.

Public Hearing

136. (1) The Agency may hold a hearing of any matter which under this Act or any other enactment it is required or permitted to conduct or on which it is required or permitted to take any action.
(2) The Agency shall hold public hearings on matters regulated by the Agency, which the Agency determines to be of sufficient interest to the public.
(3) Where the Agency is required to or otherwise decides to hold a hearing, all persons having interest in such matter shall as far as is practicable be notified of the questions in issue and given adequate opportunities to make representations.

Engagement of Consultants

137. Where any matter arises, entailing the consideration of any professional or technical question, the Agency may consult such persons as may be competent to advise thereon.

Referrence to court

138. (1) Where any question of law arises from an order or decision of the Agency, it may on its own volition or at the request of any person so affected by such order, refer such question for the decision of the Federal High Court.
(2) Where a question has been referred under subsection (1) of this section, the Agency shall state the question in the form of an originating summons and file same with the Registrar of the Federal High Court.

Power to Resolve Disputes

139. (1) The Agency shall have the power to resolve disputes between:

(a) persons whose activities are regulated by the Agency; and
(b) between such persons and other parties

regarding any matter under this part 11-E and part 11-H, and in respect of any subsidiary legislation made by the Minister in respect of activities of the Agency.

(2) No dispute shall be referred to the Agency unless:

(a)an attempt has been made by the parties concerned to resolve the dispute through negotiation;

(b) resolution cannot be reached under any other relevant or applicable dispute resolution procedure prescribed by this part, including but not limited to those pertaining to the wholesale market and the network code; and

(c)both parties are granted the opportunity to present their respective cases to the Agency.

(3) For purpose of the resolution of disputes the Agency may act either as an arbitrator or mediator.

(4) When acting as an arbitrator the Agency shall issue a determination on the matter.

(5) The Agency may appoint a person acceptable to all parties to act as mediator or arbitrator on its behalf in respect of any dispute before it and the decision of the mediator or arbitrator shall be regarded as being the determination of the Agency.

Publication of Guidelines for Dispute Resolution

140. (1) The Agency may publish guidelines setting out the principles that it may take into account in resolving disputes.

(2) The Agency shall convene to resolve a dispute if it is satisfied that:

(a) an agreement may not or will not be reached between the parties to the dispute within a reasonable time; and

(b) the resolution of the dispute would promote the objects of this part or any of its subsidiary legislation enacted under this Act pertaining to the Midstream Petroleum Operations.

(3) The Agency shall be entitled to convene to resolve a dispute at its headquarters or at any other place in Nigeria.

(4) The Agency may make recommendations to the Minister to issue regulations for the discharge of the functions and for the conduct of the proceedings of the Agency, including but not limited to procedures for participation in the proceedings of dispute resolution between licensees, customers, wholesale customers and any other persons.

Terms and Conditions for the Resolution of Disputes

141. (1) Subject to any guidelines that may be issued by the Agency under this Chapter, the Agency or, if the Agency deems fit, an arbitrator, may resolve the dispute in accordance with the Arbitration and Conciliation Act. Cap A18, Laws of the Federation of Nigeria 2004.

(2) The Agency may require either party to the dispute to pay any costs incurred by the Agency in appointing an arbitrator.

(3) The Agency, in carrying out its functions under subsection (1) of this section, shall be guided by the objective of establishing a dispute resolution process that is fair, just economical and effective and shall at all times act in accordance with to the ethics of justice and the merits of each case.

(4) The determination of the Agency shall:

(a) be properly recorded in writing;

(b) state the basis or bases for the determination; and

(c) be provided to the parties to the dispute as soon as practicable.

Registration of Determinations

142. (1) The Agency shall register all determinations that it makes pursuant to this Act.

(2) The register referred to in this section shall contain:

(a) the names of the parties to the dispute;

(b) a general description of the matter pertaining to the determination; and

(c) the date of the determination.

Enforcement of Determination

143. Subject to the agreement of the parties, a determination of the Agency may be enforced by the Federal High Court as if the determination is a judgment of such court.

Judicial Review

144. (1) An aggrieved person shall have a right of appeal to the Federal High Court for a judicial review of questions of law and process pertaining to a determination or other action of the Agency.

(2) Any determination or other action of the Agency that is the subject matter of the application for judicial review shall subsist and remain binding and valid until it is expressly reversed in a final judgement or order of the Federal High Court.

Referrals of Questions of Law to the Federal High Court

145. (1) If any question of law arises during a proceeding for a determination of the Agency, the Agency may request any person directly affected by such proceeding to refer that question for the decision of the Federal High Court.

(2) Where a question has been reserved in accordance with the provisions of subsection (1) of this section, it shall be stated in the form of a special case and filed with the Registrar of the Federal High Court.

Limitation of Suits against the Agency, its Agents, etc.

146. (1) Any suit or proceedings against the Agency, a member of the Governing Board or any employee of the Agency for any act, omission or default in respect of its functions and powers under this Act or any other enactment shall be brought within twelve months after the act, neglect or default complained of or in the case of a continuance of damage or injury, within twelve months after such damage or injury may have ceased.

(2) No suit shall be commenced against the Agency before the expiration of a period of one month after written notice of intention to commence the suit has been served upon the Agency by the intending plaintiff or his agent.

(3) The notice shall clearly and explicitly state:

(a) the cause of action;
(b) the particulars of the claim;
(c) the name, address of service, and place of abode of the intending plaintiff; and
(d) the relief which he or she claims.

Service of Notice on the Agency
147. Any summons, notice or other document required or authorised to be served upon the Agency under the provisions of this Act or any other enactment or law may be served by delivering the same to the Director General of the Agency or the Secretary to the Agency at the head office of the Agency.

Judgment against the Agency
148. (1) Where a judgment of the Court awards any sums of money against the Agency, the said amounts shall be paid from the general reserve funds of the Agency.

(2) Where the Agency has filed a notice of appeal, the provisions of subsection (1) of this section shall be subject to any directions that may be given by the court.

Indemnity
149. Every member of the Board employee, agent, or auditor of the Agency shall be indemnified by the Agency against any liability incurred by him or her in defending any proceedings whether civil or criminal, if any such proceeding is brought against him or her in his or her capacity as employee, agent, auditor or employee.

F. Nigerian National Petroleum Company Limited

The National Oil Company
150. (1) The Nigerian National Petroleum Company Limited ("The National Oil Company"), shall be a limited liability company and shall be the successor company to the assets and liabilities of the Nigerian National Petroleum Corporation ("the Corporation.").
(2) If, on the effective date, the National Oil Company has not been incorporated, within three months of the said effective date, the government through the Ministry of Petroleum Resources shall cause the National Oil Company to be incorporated.
(3) The tenure of the initial Board of Directors of the National Oil Company and subsequent appointments to the Board shall be determined in accordance with the provisions of the Articles of Association of the National Oil Company.
(4) Ownership of the National Oil Company shall be vested solely in the Federal Government of Nigeria at the time of incorporation; subsidiaries of the National Oil Company may however be partially owned by other parties.

(5) Notwithstanding the provisions of subsection (4) of this section the government may at any time after two years from the date of incorporation of the National Oil Company, decide to divest itself of any amount of shares in the National Oil Company for sale to the Nigerian public on the Nigerian Stock Exchange.

Transfer of assets and liabilities

151. (1) On the effective date, if the National Oil Company has been incorporated before the said effective date, or no later than one month after the date of incorporation of the National Oil Company, the assets and liabilities of the former Corporation shall be transferred to the National Oil Company.

Cap P LFN, 2004 (2) The assets of the subsidiaries of Nigerian National Petroleum Corporation listed under the Public Enterprises Privatisation and Commercialisation Act shall be de-listed from the effective date of this Act and the power of attorney earlier assigned to the Bureau of Public Enterprises shall stand vacated.

(3) The assets and liabilities in the incorporated joint ventures shall be held jointly and severally by NNPC Limited and the respective joint venture partners.

(4) The assets and liabilities of the Corporation shall on the transfer date be deemed to be the assets and liabilities of the National Oil Company, and the National Oil Company shall without further assurance be entitled to enforce or defend all obligations for or against the Corporation as if the National Oil Company were the original party to such obligations.

(5) For the avoidance of doubt, all bonds, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements subsisting immediately before the transfer date and to which the Corporation was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the National Oil Company as if, instead of the Corporation, the National Oil Company had been named therein.

(6) Any pending action or proceeding brought by or against the Corporation immediately before the transfer date may be enforced or continued by or against the National Oil Company in the same way as if this Act had not been passed.

(7) Notwithstanding the provision of subsection (6) of this section:

(a) an action or proceeding shall not be commenced against the National Oil Company in respect of any employee, asset, liability, right or obligation if the time for commencing the action or proceeding would have expired, had the transfer not been made;

(b) the transfer of assets and liabilities to the National Oil Company shall not be deemed to create any new cause of action in favour of a

(i) holder of a debt instrument issued by the Corporation before the transfer date; or

(ii) party to a contract with the Corporation that was entered into before the transfer date.

Guarantees to subsist

152. Any guarantee given by the Federal Government of Nigeria or any person in respect of any debt or obligation of the Corporation, and which was effective immediately before the transfer of assets and liabilities of the Corporation to the National Oil Company shall remain fully effective against the Government in relation to the repayment of a debt or performance of an obligation by the National Oil Company.

Transfer of employees and conditions of service

153. (1) With effect from the transfer date, the employees of the Corporation shall be deemed to be employees of the National Oil Company on terms no less favourable than those enjoyed immediately prior to such transfer, and service with the National Oil Company shall be deemed to be service qualifying for employment-related-entitlements as may be specified under any relevant enactment.

(2) The National Oil Company shall continue to fulfil all statutory obligations in respect of pension schemes to which the Corporation was obliged in respect of its employees, prior to the transfer of assets to the National Oil Company.

Notice

154. (1) The Minister shall by notice published in the Gazette record satisfaction that the assets and liabilities of the Corporation have been transferred to the National Oil Company in accordance with the provisions of this part of this Act.

The Board

155. Subject to the provisions of this and other relevant laws, members of the board of the National Oil Company shall be guaranteed the authority and resources to fulfil their duties in a professional and objective manner without interference.

Composition of the Board

156. (1) The Board of the National Oil Company shall consist of Nigerians:

(a) who have distinguished themselves in their various capacities,

(b) who have unblemished records of honesty and integrity, and

(c) who will be able to exercise independence and objectivity with respect to the affairs of the National Oil Company.

Board Committees

157.(1) Members of the Board shall within the first three months develop a formal and transparent board nomination and selection process for the committees of the Board.

(2) Further to subsection (1) of this section, the mandate, composition and working procedures of committees of the Board shall be well defined and disclosed by the Board to the National Oil Company and stakeholders.

(3) Where possible, the Boards shall assign non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest, including but not limited to:

(a) ensuring the integrity of financial and non-financial reporting;

(b) nominations of board members and key executives; and

(c) Board remuneration.

Principle of Corporate governance to be applied.

158. Board members shall discharge their responsibilities in accordance with the best standards, practices and principles of corporate governance and their actions shall be transparent and fully explained to affected stakeholders and where necessary, to the general public.

Responsibilities of the Board

159. The Board of the National Oil Company shall at all times:

(a) be responsible for the strategic guidance of the National Oil Company in accordance with the guidelines established by the shareholders for the effective monitoring of the National Oil Company's management by the Board; and

(b) be accountable to the National Oil Company and the shareholders.

(c) act in good faith and on a fully informed basis, and exercise due diligence and care in the best interests of the National Oil Company, the shareholders and the sustainable development of Nigeria;

(d) while recognizing that Board decisions may affect the various shareholders and stakeholders differently, endeavour to treat different shareholders and stakeholders fairly and equally, as the case may be; and

(e) apply high ethical standards in performing its duties to the National Oil Company, taking into account the interests of its stakeholders.

Functions of the Board

160. The functions of the Board shall include:

(a) reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures;

(b) monitoring the effectiveness of the National Oil Company's governance practices and making changes as required;

(c) selecting, compensating, monitoring and, when necessary, replacing management executives and overseeing succession planning;

(d) aligning key executive and board remuneration with the longer term interests of the National Oil Company, its shareholders and stakeholders;

(e) monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related National Oil Company transactions;

(f) ensuring the integrity of the National Oil Company's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards; and

(g) overseeing the process of disclosure and communications to shareholders and the public.

Rights of Shareholders

161. (1) Shareholders of the National Oil Company shall be entitled to full disclosure about the National Oil Company, which disclosure shall include, but not be limited to, material information on-

(a) the financial and operating results of the National Oil Company;

(b) National Oil Company objectives;

(c) major share ownership and voting rights;

(d) remuneration policy for members of the board and key executives, and information about board members (including their qualifications, the selection process, other National Oil Company directorships) and whether they are regarded as independent by the board;

(e) related National Oil Company transactions;

(f) foreseeable risk factors in National Oil Company activities;

(g) issues regarding employees and other stakeholders; and

(h) governance structures and policies, in particular, the content of any other corporate governance code or policy and the process by which it is implemented.

(2) Information relating to the operations and activities of the National Oil Company shall be prepared and disclosed in accordance with high quality international standards of accounting and financial and non-financial disclosure requirements.

(3) An annual audit of the National Oil Company shall be conducted by an independent, competent, experienced and qualified auditor that shall be accountable to the shareholders and shall provide an external and objective assurance to the Board and shareholders that the financial statements fairly represent the financial position and performance of the National Oil Company in all material respects.

(4) External auditors shall be accountable to the shareholders and shall owe a duty to the National Oil Company to exercise due professional care in the conduct of the audit.

G. The Nigerian Petroleum Research Centre

Establishment of the Nigerian Petroleum Research Centre

162. (1) There is established a body to be known as the Nigerian Petroleum Research Centre (in this Act referred to as "the Centre") which shall be a body corporate with perpetual succession and a common seal.

(2) The Centre shall have power to acquire, hold and dispose of property, sue and be sued in its own name and subject to this Act perform all acts that corporate bodies may perform by law.

(3) The corporate headquarters of the Centre shall be in Port Harcourt with offices in such other place as the Supervisory Council may determine with the approval of the Minister.

Functions of the Centre

163. The functions of the Centre shall be to-

(a) carry out research in all areas pertaining to the petroleum industry, but primarily in the areas of exploration and production and process technology, with the primary focus on the need to develop-

(i) new technologies, and

(ii) design capabilities suitable for the needs of Nigeria;

(3) The Director-General shall be the chief executive and accounting officer of the Centre and shall be responsible for running the day-to-day affairs of the Centre.
(4) The Director General shall have the status of a permanent secretary of the civil service of the Federal Republic of Nigeria.

Tenure, Remuneration and Conditions of Service
168. (1) The Director-General shall hold office for 5 years in the first instance subject to re-appointment for another period of 5 years only, on such terms and conditions as may be determined by the Minister or as specified in his or her letter of appointment.

(2) The remuneration and conditions of service of the Director-General shall be at a level sufficient to attract qualified professionals within research centres operated by upstream companies operating within the oil industry and shall be determined in accordance with guidelines prescribed by the Minister.

Disqualification
169. No person shall be appointed as Director General or member of the Supervisory Council unless he or she:

(a) is a Nigerian citizen;
(b) has not, in terms of the laws in force in any country:
    (i) been adjudged or declared bankrupt or insolvent; or
    (ii) made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside;
    (iii) been declared to be of unsound mind;
    (iv) been convicted of an offence involving fraud or dishonesty; or
    (v) been disqualified by a competent authority from carrrying out any assignment, responsibility or function in his or her professional capacity.
(c) has not been disqualified by the Securities Exchange Commission from holding a board appointment in any public company.

Termination
170. The office of the Director General or member of the Supervisory Council shall become vacant:

a) three months after giving notice in writing to the President of his or her resignation;
b) if he or she becomes disqualified under the provisions of Section 169 of this Act; or
c) on the expiration of his or her appointment.

Vacation of office
171. (1) The President shall require the Director General or member of the Supervisory Council to vacate his or her office if he or she-

(a) has committed an act of gross misconduct;
(b) has failed to comply with the terms and conditions of his or her office as contained in this Act ; or
(c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently as a member;

Appointment of a new Director-General
172. Upon the vacancy of a member's office, the President shall subject to section 168, appoint a candidate to fill the vacancy.

(3) The Director-General shall be the chief executive and accounting officer of the Centre and shall be responsible for running the day-to-day affairs of the Centre.
(4) The Director General shall have the status of a permanent secretary of the civil service of the Federal Republic of Nigeria.

Tenure, Remuneration and Conditions of Service
168. (1) The Director-General shall hold office for 5 years in the first instance subject to re-appointment for another period of 5 years only, on such terms and conditions as may be determined by the Minister or as specified in his or her letter of appointment.

(2) The remuneration and conditions of service of the Director-General shall be at a level sufficient to attract qualified professionals within research centres operated by upstream companies operating within the oil industry and shall be determined in accordance with guidelines prescribed by the Minister.

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169. No person shall be appointed as Director General or member of the Supervisory Council unless he or she:

(a) is a Nigerian citizen;
(b) has not, in terms of the laws in force in any country:
(i) been adjudged or declared bankrupt or insolvent; or
(ii) made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside;
(iii) been declared to be of unsound mind;
(iv) been convicted of an offence involving fraud or dishonesty; or
(v) been disqualified by a competent authority from carrrying out any assignment, responsibility or function in his or her professional capacity.
(c) has not been disqualified by the Securities Exchange Commission from holding a board appointment in any public company.

Termination
170. The office of the Director General or member of the Supervisory Council shall become vacant:

a) three months after giving notice in writing to the President of his or her resignation;
b) if he or she becomes disqualified under the provisions of Section 169 of this Act; or
c) on the expiration of his or her appointment.

Vacation of office
171. (1) The President shall require the Director General or member of the Supervisory Council to vacate his or her office if he or she-

(a) has committed an act of gross misconduct;
(b) has failed to comply with the terms and conditions of his or her office as contained in this Act ; or
(c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently as a member;

Appointment of a new Director-General
172. Upon the vacancy of a member's office, the President shall subject to section 168, appoint a candidate to fill the vacancy.

Directors of the Centre

173. (1) There shall also be appointed by the Supervisory Council, Directors who shall assist the Director-General in managing and discharging the responsibilities of the Centre.

(2) The persons to be appointed Directors shall be accomplished researchers of national and international repute in the field of physical sciences, engineering or geosciences with demonstrable knowledge and experience in matters pertaining to the oil and gas industry.

(3)The remuneration, tenure and conditions of service of the Directors shall be at a level sufficient to attract qualified professionals within the oil industry and shall be determined in accordance with guidelines prescribed by the Minister.

Other staff

174. (1) The Centre may, from time to time, appoint such professionals experienced in the petroleum industry and other persons as staff of the Centre to assist it in the performance of its functions under this Act.

(2) Staff of the Centre appointed under subsection (1) of this section shall be appointed on such terms and conditions as the Centre may prescribe.

1999 Constitution (3) Staff of the Centre shall be public officers as defined in the Constitution of the Federal Republic of Nigeria,1999.

(4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

Tenure, Remuneration and Conditions of Service

175. The tenure, remuneration and conditions of service of staff of the Centre shall be at a level sufficient to attract qualified professionals within the oil industry and shall be determined in accordance with guidelines prescribed by the Minister on the recommendations of the Supervisory Council.

Provision of library facilities

176. The Centre shall provide and maintain a library comprising books, publications and other educational materials as may be approved by the Supervisory Council for the advancement of knowledge of petroleum matters, for research purposes, and for other purposes concerned with the objects and functions of the Centre.

Pensions

Cap p4 LFN 2004 177. (1) Service in the Centre shall be approved service for the purpose of the Pension Reforms Act and accordingly, officers and other persons employed in the Centre shall be entitled to pensions, and other benefits as prescribed in the Act.

(2) Subsection (1) of this section does not prohibit the Centre from appointing a person to any office on terms that preclude the grant of a pension or other retirement benefits in respect of that office.

(3) In the application of the Pension Reforms Act to the Centre, any power exercisable under the Act by a Minister or other authority of the Government of the Federation, other than the power to make regulations is hereby vested in and shall be exercisable by the Centre and not by any other person or authority.

Financial Provisions of the Centre
178. (1) The Centre shall, not later than September in each year, present to the Minister, a budget showing the proposed income and expenditure of the Centre in respect of the next succeeding financial year, insofar as the amount so budgeted does not exceed the total amount accruable to the Centre from its sources of funding in any financial year.

(2) The Centre may during a financial year prepare and present to the Minister, a supplementary budget relating to expenditures which were inadequately represented in the annual budget due to unforeseen circumstances.

(3) The Centre may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.

(4) The financial year of the Centre shall be for a period of twelve calendar months commencing on the 1st of January in each year or such other period as the Senate may decide.

Funds of the Centre
179. (1) The Centre shall maintain a fund from which both the capital and recurrent expenditure of the Centre shall be defrayed and which shall consist of:

(a) an amount of fiscalized crude from the account of the Directorate specifically set aside for the collection of fiscalized crude on behalf oF the Institutions that is sufficient to fund the complete budget, or an authorized portion of the budget of the Centre, in accordance with the provisions of this Act;
(b) money appropriated for that purpose from time to time by the National Assembly; and
(c) fees paid in respect of services rendered by the Centre.

(2). The Centre shall apply proceeds of the fund established pursuant to subsection (1) of this section towards the disbursement of all its expenditure, including the day-to-day administration of its operations and the performance of its functions under this Act.

Power to accept gifts
180. The Centre may accept gifts of money or other property, upon such terms and conditions as may be specified by the person or organisation making the gift provided such terms and conditions are consistent with the objectives and functions of the Centre under this Act.

Borrowing powers
181. The Centre may, with the consent of the Minister and the approval of the Supervisory Council, borrow money required in the exercise of its functions on such terms and conditions as the Supervisory Council may prescribe.

Annual Budget
182. The annual budget of the Centre shall be considered by the Supervisory Council and thereafter placed before the Minister for approval.

Account and Audit
183. The Centre shall keep proper accounts of its income and expenditure in respect of each year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed in accordance with guidelines published by the Auditor-General of the Federation.

Mid-year and Annual Reports

184. (1) The Centre shall submit to the President, a mid-year report of its operations and finances not later than 31st July of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st July of the following year.

(2) A summary of the annual report and audited financial report of the Centre shall be published in the website of the Centre and in not less than three widely circulating newspapers in every geo-political zone of the country for public notice not later than 31st July of each year.

Restrictions on Legal Proceedings

185. (1) Any suit or proceedings against the Centre, a member of the Supervisory Council or any employee of the Centre for any act, omission or default in respect of its functions and powers under this Act or any other enactment shall be brought within twelve months after the act, neglect or default complained of, or in the case of a continuance of damage or injury, within twelve months after such damage or injury may have ceased.

(2) No suit shall commence against the Centre before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Centre by the intending plaintiff or his agent.

(3) The notice shall clearly and explicitly state-

(a) the cause of action;

(b) the particulars of the claim;

(c) the name, place of abode and address for service of the intending plaintiff; and

(d) the relief which is being claimed.

Service of Documents

186. The notice referred to in section 185(3) of this Act and any other process required or authorized to be served upon the Centre under the provisions of this Act or any other enactment may be served by:

(a) delivering the same to the Director General or any other Director of the Centre; or

(b) sending it by registered post addressed to the Director General at the head office of the Centre.

Indemnity of Supervisory Council and Employees

187. (1) Every member of the Supervisory Council and every employee for the time being of the Centre shall be indemnified out of the assets of the Centre against any liability incurred in defending any proceeding against the Centre, whether civil or criminal, if such proceedings are brought against the person in his or her capacity as a member of the Supervisory Council or employee.

(2) Notwithstanding the provisions of subsection (1) of this section, the Centre shall not indemnify any member of the Supervisory Council or employee of the Centre for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be.

H: National Frontier Exploration Service

Establishment

188. (1) There is established a body to be known as the National Frontier Exploration Service (in this Act referred to as "the Frontier Service") which shall be a body corporate with perpetual succession and a common seal.

(2) The Frontier Service shall have power to acquire, hold and dispose of property, sue and be sued in its own name.

(3) The Frontier Service shall be an institution with all the capacities and powers of a corporate body under the laws of the Federal Republic of Nigeria.

Objects of the Frontier Service

189. (1) The Objects of the Frontier Service shall be to:

(a) promote efficient, sustainable exploration of hydrocarbons in the frontier basins of Nigeria;

(b) evaluate all unassigned concessions in Nigeria and

(c) undertake activities to stimulate the interest of local and international oil companies in exploration of the frontier basins of Nigeria so as to increase Nigeria's petroleum reserves.

Functions of the Frontier Service

190. (1) The functions of the Frontier Service shall be to:

a) regulate petroleum exploration activities in all unassigned frontier acreages in Nigeria held by the Directorate;

b) identify opportunities and increase information about the petroleum resource base within all frontier acreages in Nigeria, in a cost effective manner and with demonstrable technical and operational excellence;

c) develop exploration strategies and portfolio management for the exploration of the unassigned frontier acreages in Nigeria;

d) promote and stimulate the interest of petroleum exploration and production companies in all unassigned frontier exploration acreages in Nigeria;

e) provide exploration related services to Government and its Agencies on request.

f) undertake any studies and analyses on all unassigned frontier acreages in Nigeria including:

(i) aeromagnetic and gravity data interpretation,

(ii) sedimentological studies of any wells previously drilled in the frontier acreages using old and newly generated data,

(iii) high resolution biostratigraphic analysis and the preparation of any photocatalogues,

(iv) sequence stratigraphic analysis, petrophysical analysis, petroleum geochemical analyis and any other analysis,

(v) petrophysical and dipmeter sedimentology studies,
(vi) petrography and mineralogical studies,
(vii) digitization of all well logs,
(viii) scanning, vectorization and workstation interpretation of any seismic sections, and
(ix) transcriptions of magnetic seismic tapes,
(x) basin modelling.

Powers

191. The Frontier Service shall have the power to:
(a) enter into contracts with any person which in the opinion of the Frontier Service will facilitate the discharge or exercise of its duties or powers under this Chapter;
(b) charge fees at commercial rates for its services to any government or person;
(c) enter any licence, lease, contract, or permit areas within the frontier acreages, including well-sites, storage depots, refineries and any other places where activities relating to the petroleum industry are carried out, for the purposes of collecting data and samples in pursuance of the functions of the Frontier Service.
(d) do such other things as are necesary and expedient for the effective and full discharge of its functions under this part 11-H.

The Governing Board of the Frontier Service

192. (1) There is established for the Frontier Service a Governing Board (in this Act referred to as "the Board") which shall consist of:
a) a non-executive Chairman, appointed by the President;
b) a Director-General; and
c) the Directors of the Service.
(2) The proceedings of the Board of the Frontier Service and other ancilliary matters shall be regulated by Schedule --- to this Act.

Director-General

193. (1) There shall be a Director-General for the Frontier Service , who shall be appointed by the President.
(2) The Director-General shall be a person with cognate knowledge and experience in the petroleum industry and who is able to show impartiality and objectivity without any conflict of interest in the petroleum industry.
(3) The Director-General shall be the chief executive and accounting officer of the Frontier Service and shall be responsible for running the day-to-day affairs of the Frontier Service.
(4) The Director-General shall have the status of a permanent secretary of the civil service of the Federal Republic of Nigeria

Tenure, Remuneration and Conditions of Frontier Service

194. (1) The Director-General shall hold office for 5 years in the first instance which may be renewed for another period of 5 years only on such terms and conditions as may be specified in the letter of appointment.
(2) The remuneration, tenure and conditions of service of the Director-General shall be at a level sufficient to attract qualified professionals within the petroleum industry.

Directors

195 (1) There shall be appointed, Directors who shall assist the Director-General in managing and discharging the responsibilities of the Frontier Service.

(2) The persons to be appointed Directors shall be suitably qualified by having extensive technical or managerial knowledge of the petroleum industry and shall be chosen through a prescribed and transparent recruitment process.

(3) The remuneration, tenure and conditions of service of the Directors shall be at a level sufficient to attract qualified professionals within the petroleum industry.

Disqualification

196. No person shall be appointed a Director-General or Director unless he or she:

a) is a Nigerian citizen;

b) has not, in terms of the laws in force in any country:

(i) been adjudged or declared bankrupt or insolvent; or

(ii) made an assignment to, or arrangement or composition with his or her creditors which has not been rescinded or set aside;

(iii)been declared to be of unsound mind;

(vi)been convicted of an offence involving fraud or dishonesty;

(v) been disqualified by a competent authority from carrrying out any assignment, responsibility or function in his or her professional capacity.

(c) has not been disqualified by the Securities Exchange Commission from holding a board appointment in any public company.

Termination of appointment

197. The office of the Director-General shall become vacant:

(a) three months after giving notice in writing to the President of his or her resignation;

(b) if he or she becomes **disqualified** under the provisions of Section 195 of this Act; or

(c)on the expiration of his or her appointment.

Vacation of office

198. The President shall require the Director-General to vacate his or her office if he or she:

a) has committed an act of gross misconduct;

b) has failed to comply with the terms and conditions of his or her office as fixed by this Act; or

c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently.

Appointment of a new Director -General

199. Upon the vacancy of the Director-General's office, the President shall, subject to the provisions of sections 196, appoint a candidate to fill the vacancy.

The Secretary of the Frontier Service

200. (1) The Board of the Frontier Service shall appoint a Secretary who shall keep its corporate records and undertake such other functions as the Director-General and the Frontier Service may from time to time direct.

(2) The Secretary shall be a lawyer with a minimum of 10 years post qualification experience.

Indemnity of Governing Board and Employees

201. (1) Every member of the Board and every employee of the Frontier Service shall be indemnified out of the assets of the Frontier Service against any liability incurred in defending any proceeding against the Frontier Service, whether civil or criminal, if such proceedings are brought against the person in his or her capacity as a member of the Governing Board or employee.

(2) Notwithstanding the provisions of subsection (1) of this section the Frontier Service shall not indemnify any member of the Governing Board or employee for any liability incurred as a result of the negligence of the member or employee, as the case may be.

Other Staff

202. (1) The Frontier Service may, from time to time, appoint such experienced professionals as members of staff to assist it in the performance of its functions under this Act.

(2) Staff of the Frontier Service appointed under subsection (1) of this section shall be appointed on such terms and conditions of service as the may prescribed by the Board.

1999 constitution(3) Staff of the Frontier Service shall be public officers as defined in the Constitution of the Federal Republic of Nigeria 1999.

(4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments

Tenure, Remuneration and Conditions of Service

203. The tenure, remuneration, and conditions of service of the staff of the Frontier Service shall be at a level sufficient to attract qualified professionals within the petroleum industry and the following shall be taken into account:

i the specialised nature of work to be performed by the staff;
ii the need to ensure financial sufficiency of the Frontier Service; and
iii the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Pensions

Cap p4 LFN2004. 204. (1) Service in the Frontier Service shall be approved service for the purpose of the Pensions Reform Act, and accordingly, officers and other persons employed in the Frontier Service shall be entitled to pensions and other benefits as are prescribed in the Pensions Reform Act (2) Subsection (1) of this section does not prohibit the Service from appointing a person to any office on terms that preclude the grant of a pension or other retirement benefits in respect of that office.

(3) In the application of the provisions of the Pensions Reform Act to the Service, any power exercisable under that Act by a minister or other authority of the Federal Government, other than the power to make regulations is hereby vested in and shall be exercisable by the Frontier Service and not by any other person or authority.

Financial Provisions

205. (1) The Frontier Service shall, not later than September in each year, present to the Minister, a budget showing the expected income and the expenditure which the Service proposes to expend in respect of the next succeeding financial year.

(2) The Frontier Service may during a financial year prepare and present to the Minister a supplementary budget relating to expenditures which were inadequately represented in the annual budget due to unforeseen circumstances.

(3) The Frontier Service may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.

(4) The financial year of the Frontier Service shall be for a period of twelve calendar months commencing on the 1st of January in each year.

Funding

206. (1) The Frontier Service shall establish and maintain a fund which shall consist of:

(a) such money as may, from time to time, be appropriated to the Frontier Service by the Federal, State or Local Government;
(b) a portion of fiscalised crude and or fiscalised natural gas set aside for the use of the Frontier Service in accordance with the provisions of section 28 of this Act;
(c) money raised for the purposes of the Frontier Service by way of gifts, loans and grants-in-aid;
(d) subscriptions, fees and charges payable to the Frontier Service; and
(e) all other monies that may, from time to time, accrue to the Frontier Service.

(2) The Frontier Service shall, from time to time, apply the proceeds of the fund established pursuant to subsection (1) of this section:

(a) to the costs of administration of the Frontier Service;

(b) to the payment of salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to staff of the Frontier Service or employees;

Power to Accept Gifts

207. (1) The Frontier Service may accept gifts of money or other property upon such terms and conditions, if any, as may be specified by the person or organisation making the gift provided such gifts are not inconsistent with the objectives and functions of the Frontier Service under this Act.

(2) Nothing in subsection (1) of this section or in this Act shall be construed to allow the Director-General or any other staff of the Frontier Service to accept gifts for their personal use.

Borrowing Powers

208. The Frontier Service may, with the consent of the Minister of Finance, borrow money as may be required for the exercise of its functions under this Act, on such terms and conditions as the Minister may determine.

Accounts and Audits

209. The Frontier Service shall keep proper accounts of its income and expenditure in respect of each year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed in accordance with guidelines published by the Auditor-General for the Federation.

Annual Reports
210. The Frontier Service shall prepare and submit to the Minister not later than the month of July in each year a report in such form as the Minister may direct, on the activities of the Frontier Service during the immediately preceding year, and shall include in such report a copy of the audited accounts for the year and the Auditor-General's report thereon.

Exemption from Income Tax
211. All income derived by the Frontier Service from the sources specified in section 206 of this Act shall be exempt from income tax and all contributions to the fund of the Service made by persons subject to the payment of tax shall be tax deductible.

Restrictions on Legal Proceedings and Notice of Suits
212. (1) Any suit or proceedings against the Frontier Service, a member of the Governing Board or any employee of the Frontier Service for any act, omission or default in respect of its functions and powers under this Act or any other enactment shall be brought within twelve months after the act, neglect or default complained of or in the case of a continuance of damage or injury, within twelve months after such damage or injury may have ceased.

(2) No suit shall be commenced against the Frontier Service before the expiration of a period of one month after written notice of intention to commence the suit shall have been served on the Frontier Service by the intending plaintiff or his agent.

(3) The notice shall clearly state the:

(a) cause of action;
(b) particulars of the claim;
(c) name, address for service and place of abode of the intending plaintiff; and
(d) reliefs claimed by the plaintiff.

(4). The notice referred to in this Section and any summons, notice or other document required or authorised to be served on the Frontier Service under the provisions of this Act or any other enactment or law, may be served by:

(a) delivering the same to the Director-General or any Director of the Frontier Service; or

(b) sending it by registered post addressed to the Director-General at the head office of the Frontier Service.

I - Petroleum Equalisation Fund

Establishment of the Equalisation Fund
213. (1) There is established a Fund to be known as the Petroleum Equalisation Fund ("the Equalisation Fund") into which shall be paid-

(a) any net surplus revenue recovered from petroleum products marketing companies pursuant to this Act; and
(b) such sums as may be provided for that purpose by the Federal Government.

(2) The Equalisation Fund shall be a body corporate with perpetual succession and a common seal and the power to acquire, hold and dispose of property and subject to this Act perform all acts that corporate bodies may perform by law.

Establishment of the Petroleum Equalisation Fund Management Board
214. (1) There is established a body to be known as the Petroleum Equalisation Fund Management Board (in this Act referred to as "the Board") which shall manage the Equalisation Fund.

(2) The Board shall consist of-

(a) a representative of the National Petroleum Directorate who shall be the Chairman;
(b) a representative of the Federal Ministry of Finance;
(c) a representative of the Petroleum Products Distribution Authority;
(d) a representative of National Association of Road Transport Owners;
(e) a representative of the Major Marketers Association of Nigeria;
(f) a representative of the Independent Petroleum Marketers Association of Nigeria;
(g) a representative of the Nigerian Labour Congress;
(h) three Directors who are full time staff of the Fund, to be nominated by the staff of the Equalisation Fund; and
(i) the Executive Secretaryl.

(3) The Chairman shall hold office for aperiod of 4 years subject to re-appointment for another period of 4 years only on such terms and conditions as may be specified in his or her letter of appointment.
(4) Membership of the Board shall be part- time.
(5) The provisions of the sixth schedule to this Act shall have effect with respect to the composition of the Board and other matters contained therein.

Functions of the Board
215. The Board shall-
(a) determine the method by which net surplus revenue shall be collected from petroleum products marketing companies;
(b) recover such net surplus revenues from the sale of petroleum products from petroleum products marketing companies, as shall be prescribed as such by the Authority;
(c) inspect and inquire about any activity relating to the movement or storage of petroleum products and to that extent, to inspect books and facilities, take measurements, and inquire into the correctness of information provided in support of claims for reimbursement.

Powers of the Board
216. The Board shall-

a) receive any net surplus revenue recovered from petroleum products marketing companies pursuant to this Chapter;

b) receive any such sums as may be provided for the purpose of the Equalisation Fund by the Federal Government of Nigeria;

c) hold the Equalisation Fund in safe custody and in trust, for the reimbursement of petroleum products marketing companies suffering loss solely and exclusively as a result of the sale by them of petroleum products at uniform benchmark prices throughout the country, being benchmark prices set by the Authority pursuant to this Act;

d) make payment of all disbursements of the Equalisation Fund authorised under or by virtue of this Act;

e) account for all money collected, paid or otherwise expended in relation to the Equalisation Fund and pursuant to the provisions of this part 11-I;

f) keep proper public accounts and records of transactions on the Equalisation Fund;

g) prepare in respect of each financial year a statement of accounts in such form as the Minister may direct;

h) ensure the proper administration of the Equalisation Fund in accordance with the provisions of this chapter;

i) make rules and regulations for carrying out the functions of the Equalisation Fund;

j) do such other things as are necessary, expedient, legal, and in conformity with the provisions of this Act for the efficient performance of and in connection with all or any of the functions of the Board as specified under this Chapter.

Utilisation of the Fund

217. The Equalisation Fund shall be utilized for:

(a) the proper administration of the Equalisation Fund;
(b) the reimbursement of petroleum products marketing companies for any loss sustained by them solely and exclusively as a result of sales by them of petroleum products at uniform prices throughout Nigeria, being benchmark prices set by the Authority; and
(c) the management of the Board.

Executive Secretary

218. (1) There shall be an Executive Secretary for the Fund, who shall be appointed by the President.

(2) The Executive Secretary shall be a person with cognate experience in financial and accounting matters relevant to the petroleum industry.

(3) The Executive Secretary shall be the chief executive and accounting officer of the Board and shall be responsible for running the day-to-day affairs of the Board.

Functions

219. The Executive Secretary shall be responsible for:

(a) the day to day management of the Equalisation Fund, subject to the directives of the Board;
(b) determining the net surplus revenue recoverable from any petroleum products marketing company and accruing to that company from the sale by it of petroleum

b) receive any such sums as may be provided for the purpose of the Equalisation Fund by the Federal Government of Nigeria;

c) hold the Equalisation Fund in safe custody and in trust, for the reimbursement of petroleum products marketing companies suffering loss solely and exclusively as a result of the sale by them of petroleum products at uniform benchmark prices throughout the country, being benchmark prices set by the Authority pursuant to this Act;

d) make payment of all disbursements of the Equalisation Fund authorised under or by virtue of this Act;

e) account for all money collected, paid or otherwise expended in relation to the Equalisation Fund and pursuant to the provisions of this part 11-I;

f) keep proper public accounts and records of transactions on the Equalisation Fund;

g) prepare in respect of each financial year a statement of accounts in such form as the Minister may direct;

h) ensure the proper administration of the Equalisation Fund in accordance with the provisions of this chapter;

i) make rules and regulations for carrying out the functions of the Equalisation Fund;

j) do such other things as are necessary, expedient, legal, and in conformity with the provisions of this Act for the efficient performance of and in connection with all or any of the functions of the Board as specified under this Chapter.

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(a) the proper administration of the Equalisation Fund;
(b) the reimbursement of petroleum products marketing companies for any loss sustained by them solely and exclusively as a result of sales by them of petroleum products at uniform prices throughout Nigeria, being benchmark prices set by the Authority; and
(c) the management of the Board.

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218. (1) There shall be an Executive Secretary for the Fund, who shall be appointed by the President.

(2) The Executive Secretary shall be a person with cognate experience in financial and accounting matters relevant to the petroleum industry.

(3) The Executive Secretary shall be the chief executive and accounting officer of the Board and shall be responsible for running the day-to-day affairs of the Board.

Functions

219. The Executive Secretary shall be responsible for:

(a) the day to day management of the Equalisation Fund, subject to the directives of the Board;
(b) determining the net surplus revenue recoverable from any petroleum products marketing company and accruing to that company from the sale by it of petroleum

products at such prices, as may be sold in accordance with the methodology established by the Authority;

(c) determining the amount of reimbursement due to any petroleum products marketing company which has suffered loss as a result of the operation of the enactment as aforesaid;

(d) the payment of all disbursements authorized under or by virtue of this Act;

(e) accounting for all monies collected, paid or otherwise expended under this Act and publishing same in the way and manner prescribed by the Board in consultation with the Authority; and

(f) carrying out such other functions as may, from time to time, be specified by the Board.

Tenure, Remuneration and Conditions of Service

220. (1) The Executive Secretary shall hold office for a period of 5 years in the first instance, which may be renewed for another period of 5 years, on such terms and conditions as may be specified in the letter of appointment.

(2) The remuneration, tenure and conditions of service of the Executive Secretary shall be at a level sufficient to attract qualified professionals within the petroleum industry and shall be determined in accordance with guidelines prescribed by the Minister.

Other officers of the Board

221. The Board may also, on the advice of the Executive Secretary, appoint as employees of the Board such number of persons as may be necessary for the administration of the Equalisation Fund, who shall be subject to the general control of the Executive Secretary and who shall perform such duties as the Executive Secretary may direct.

Remuneration

222. The remuneration, tenure and conditions of service of staff of the Board shall be at a level sufficient to attract qualified professionals within the petroleum industry and shall be determined in accordance with guidelines prescribed by the Minister upon the recommendation of the Board which shall take into account:

(a) the specialised nature of work to be performed by the staff;

(b) the need to ensure financial self-sufficiency of the Board; and

(c) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Disqualification

223. No person shall be appointed as a member of the Board unless he or she:

(a) is a Nigerian citizen;

(b) has not, in terms of the laws in force in any country:

(i) been adjudged or declared bankrupt or insolvent, or

(ii) made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside,

(iii) been declared to be of unsound mind,

(iv) been convicted of an offence involving fraud or dishonesty, or

(v) been disqualified by a competent authority from carrrying out any assignment, responsibility or function in his or her professional capacity;

(c) has not been disqualified by the Securities Exchange Commission from holding a board appointment in any public company.

Termination

224. A member's office shall become vacant:

(a) three months after giving notice in writing to the President of his or her resignation;

(b) if he or she becomes disqualified under the provisions of Section 223 of this Act; or

(c) on the expiration of his or her appointment.

Vacation of office

225. (1) The President shall require a member to vacate his or her office if he or she:

(a) has been found to have conducted himself in a manner unbecoming of a member;

(b) has failed to comply with the terms and conditions of his or her office as fixed by this Act; or

(c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently as a member;

Collection of Net Surplus Revenue

226. Net surplus revenue due and payable by petroleum products marketing companies shall be payable to the Equalisation Fund in accordance with directives issued by the Board from time to time, and the Equalisation Fund shall have no obligation to issue a demand notice in respect thereof nor shall the failure to issue a demand notice constitute a defence for non-payment of outstanding sums.

Bridging and Equalisation Allowances

227. Nothing in section 226 shall derogate from the right of any petroleum products marketing companies maintaining storage facilities to collect bridging and equalization allowances prior to the release of petroleum products to petroleum products marketing companies and to remit same to the Board in accordance with such directives as may be issued by the Board.

Claims

228. (1) Petroleum products marketing companies may, as necessary, bring claims for the recovery of losses sustained under section 216(b) of this Chapter in the manner prescribed by the Board.

(2) Where a company brings a claim under sub-section (1) of this section, the Board shall with the written request of the Executive Secretary, and with or without notice, have the right to enter upon, inspect and inquire about any activity relating to the movement or storage of petroleum products and to that event, to inspect books and facilities, take measurements, and to inquire into the correctness of information provided in support of claims for reimbursement.

(3) The Board shall have the power to-

(a) demand details of production, supplies, loading and dispatches from refining companies, import terminals and storage facilities;

(b) gain unimpeded access to information relating to petroleum product imports, refining and sales collated and maintained by any government agency, including third party monitoring agencies, with authority to monitor or inspect petroleum products.

(4) The power provided under subsection (3) of this section is limited to refining facilities, reception terminals, storage facilities and retail outlets.

(5) Decisions as to payment of claims shall be made by the Board within thirty days from the date on which the claim was first made and where the claim is successful, payments shall be made within ten working days from the date of the said decision.
(6) Where a claim is successful and the Board fails to pay the said claim to the company in accordance with the terms and conditions of this section, the Board shall pay a sum equal to ten percent of the amount due.

Calculation of surplus revenue recoverable
229. The net surplus revenue recoverable from a petroleum products marketing company under this Act shall be calculated by reference to the volume of the affected products sold on zonal basis and to the amount by which the uniform prices at which the products were sold exceeded, or were less than, the prices of those products prevailing immediately before the fixing of the uniform prices of the products.

Prescribed dates for payment and penalty for non-payment
230. (1) The Board shall by notice served on the petroleum products marketing company concerned, specify the date on which any surplus revenue due from that petroleum products marketing company shall be paid to the Board.
(2) If any sum is not paid within 21 days of the specified date, a sum equal to ten per centum of the amount unpaid shall be added for each month or part of a month after the date on which payment should have been made.

(3) The Board may for just cause, waive in whole or in part any penalty imposed under this section.
(4) Where the Board waives a penalty under the provisions of subection (3) of this section, the Board shall give its reasons in writing.

Pensions
Cap p4 LFN 2004 231. (1) Service in the Board shall be approved service for the purpose of the Pension Reforms Act and accordingly, officers and other persons employed in the Board shall be entitled to pensions, gratuity and other benefits as prescribed in the Act .

(2) Subsection (1) of this section does not prohibit the Board from appointing a person to any office on terms that preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.

(3) In the application of the provisions of the Pension Reforms Act to the Board, any power exercisable under that Act by a Minister or other agency is hereby vested in the Board and shall be exercised by the Board and not by any other person.

Financial Provisions
232. (1) The Board shall, on or before the beginning of a financial year present to the Minister, a budget showing the proposed income and expenditure of the Board in respect of a particular financial year insofar as the amount so budgeted does not exceed the total amount accruable to the Board from its sources of funding in any financial year.

(2) The Board may during a financial year prepare and present to the Minister, a supplementary budget relating to income and expenditure which were inadequately represented in the annual budget due to unforeseen circumstances.
(3) A supplementary budget shall be deemed to be part of the annual budget of the Board for the financial year to which it relates.
(4) The Board may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.
(5) The financial year of the Board shall be for a period of twelve calendar months commencing on the 1st of January in each year or such other period as the Senate may decide.

Accounts and audit
233. (1) The Board shall keep proper accounts and proper records of its income and expenditure in relation thereto and shall prepare in respect of each financial year, a statement of accounts in such form as the Minister may direct.
(2) The Board shall not later than six months from the end of the financial year to which the accounts relate, cause the accounts to be audited by auditors appointed by the Board, with the approval of the Minister.
(3) The auditors shall on completion of the audit of the accounts of each financial year, prepare and submit to the Board a report setting out their observations and recommendations on all aspects of the accounts of the Board; and the Board shall forward a copy of the report to the Minister.

Certificate as evidence
234. A copy of an entry in the accounts of the Board or other extract from the records of the Board shall, when certified by the Executive Secretary, be received in all courts as prima facie evidence of the truth of the contents thereof and as the case may be, of the debt to the Board by any petroleum products marketing company.

Reporting Obligations
235.(1) All petroleum product importers, including the National Oil Company, and petroleum products marketing companies shall, prior to or no later than 21 days following each importation, report details of all petroleum products imported into Nigeria to the Equalisation Fund, such reports to include quantities, date of delivery and place of discharge.

(2) All licensed petroleum product storage facilities, including storage facilities belonging to the National Oil Company shall on a monthly basis, deliver to the Board:
(a) logs of product movements into and out of the facilities; and
(b) returns of bridging and equalization allowances collected from petroleum products marketing companies and remitted to the Board.

(3) Marketing companies shall deliver quarterly statements of all petroleum products lifted and discharged, including details of load and discharge points, and dates and times of such loading and discharging to the Board.

(4) In addition to the reporting obligations contained in this section, the Executive Secretary may, with the approval of the Board:
a) require any petroleum products marketing company to furnish such returns and keep such records or any other relevant information as he or she may determine as necessary for the proper administration of the provisions of this Act; and

(2) The Board may during a financial year prepare and present to the Minister, a supplementary budget relating to income and expenditure which were inadequately represented in the annual budget due to unforeseen circumstances.
(3) A supplementary budget shall be deemed to be part of the annual budget of the Board for the financial year to which it relates.
(4) The Board may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.
(5) The financial year of the Board shall be for a period of twelve calendar months commencing on the 1st of January in each year or such other period as the Senate may decide.

Accounts and audit
233. (1) The Board shall keep proper accounts and proper records of its income and expenditure in relation thereto and shall prepare in respect of each financial year, a statement of accounts in such form as the Minister may direct.
(2) The Board shall not later than six months from the end of the financial year to which the accounts relate, cause the accounts to be audited by auditors appointed by the Board, with the approval of the Minister.
(3) The auditors shall on completion of the audit of the accounts of each financial year, prepare and submit to the Board a report setting out their observations and recommendations on all aspects of the accounts of the Board; and the Board shall forward a copy of the report to the Minister.

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(b) returns of bridging and equalization allowances collected from petroleum products marketing companies and remitted to the Board.

(3) Marketing companies shall deliver quarterly statements of all petroleum products lifted and discharged, including details of load and discharge points, and dates and times of such loading and discharging to the Board.

(4) In addition to the reporting obligations contained in this section, the Executive Secretary may, with the approval of the Board:
a) require any petroleum products marketing company to furnish such returns and keep such records or any other relevant information as he or she may determine as necessary for the proper administration of the provisions of this Act; and

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(ii) violation of the Nigerian content policy of positions occupied by expatriates as provided by the Immigration Act, and any other relevant law for all companies operating in the petroleum industry in Nigeria.

(f) any other sum, from time to time freely donated or accruing to the Government or the Development Fund for development of petroleum technology, capacities and capabilities or the training and education of Nigerians in the petroleum industry as the Board established under section 241 of this Act may direct;and

(g) moneys in the said Development Fund together with interest (if any) payable in respect thereof.

Reserve Account

239.(1) The Inspectorate which is responsible for the collection of such sums under section 238 above shall ensure the prompt payment of all such sums directly into the Development Fund's Reserve Account with the Central Bank of Nigeria not more than 60 days after payment has been received by the Inspectorate.

(2) All monies stipulated under section 238 of this Act shall be collected and paid into the Development Fund's Reserve Account with the Central Bank of Nigeria which shall be under the control of the Accountant General of the Federation.

(3) At the beginning of every financial year the Board shall approve the Development Fund's Programme of Action with its Cost Implications following which the approved amount shall be released promptly to the Development Fund by the Accountant General of the Federation to cover its operations for that financial year.

(4) A copy of the approved Programme of Action referred to in subsection (3) of this section shall be submitted to the relevant committees of the National Assembly for the purpose of facilitating their oversight functions over the Fund.

(5) The monies in the Development Fund's Reserve Account not disbursed to the Development Fund shall be held or invested in such manner as may be determined by the Accountant General of the Federation after consultation with the Minister.

(6) Interest accruing from the investments of the undisbursed capital shall be paid directly to the Development Fund at the beginning of every financial year.

(7) The Development Fund shall maintain operational accounts with any bank as may from time to time be approved by the Board.

(8) The annual account of the Reserve Account with the Central Bank of Nigeria shall be prepared by the Accountant General of the Federation and submitted to the Auditor General of the Federation within seven months of the end of the financial year to which they relate.

(9) The certified annual accounts of the Reserve Account and the audit report thereon, together with a report on the operations of the Development Fund, shall be submitted to the Federal Executive Council for its approval annually by the Minister.

Purpose of the Development Fund

240. (1) The funds of the Development Fund shall be used for the purposes of training Nigerians to qualify as graduates, professionals, technicians and craftsmen in the fields of engineering, geology, science and management and other related fields in the petroleum industry in Nigeria or abroad; and in particular, and without prejudice to the generality of the foregoing, the funds shall be utilised to:

a) provide scholarships and bursaries, wholly or partially in universities, institutions, and in petroleum undertakings in Nigeria or abroad;
b) maintain, supplement, or subsidise such training or education as specified in this sub section;
c) make suitable endowments to faculties in Nigerian universities, colleges, or institutions as may be approved by the Board;
d) initiate, design and implement effective indigenous research and capacity development for Nigeria's petroleum industry;
e) coordinate with research centres in Nigeria and abroad on the adaptation of technology and innovations appropriate for the needs of the Nigerian petroleum industry;
f) use existing human resources development facilities in Nigeria for an expanded manpower development programme in the petroleum industry;
g) where applicable, support skill acquisition programmes aimed at enhancing employment in the petroleum industry in Nigeria;
h) periodically compute, evaluate and update the basic needs of Nigeria's petroleum industry in terms of skills, expertise and know-how;
i) enhance and develop infrastructure in tertiary institutions that provide courses of study relevant to the oil and gas industry;
j) make available, suitable books and training equipment in the Nigerian tertiary institutions;
k) as required, sponsor visits to oilfields, refineries and petrochemical plants for the purpose of arranging any necessary attachments of personnel to establishments connected with the development of the petroleum industry;
l) finance participation in seminars and conferences which are connected with the petroleum industry in Nigeria or abroad;
m) promote in-country fabrication and manufacturing of equipment used in the Nigerian petroleum industry;
n) generally facilitate the attainment of 100 percent Nigerian content in the petroleum industry; and
o) engage in any other activity incidental to the Development Fund's mandate as may be approved from time to time by the Board.

Establishment of the Board

241.(1) There is established for the Development Fund, a Board to be known as the Petroleum Technology Development Fund Board (in this part 11-J referred to as "the Board").

(2) The Board shall consist of:

(a) the Minister of Petroleum as chairman;
(b) one representative each of the:
    (i) Federal Ministry of Finance Incorporated,
    (ii) Federal Ministry of Education,
    (iii) Federal Ministry of Science and Technology,
© one representative each of the:

(i) Nigerian Petroleum Inspectorate,
(ii) Petroleum Technology Association of Nigeria,
(iii)Council or Registered Engineers of Nigeria,
(iv)Academic Staff Union of Universities;

(d) two persons of proven integrity and knowledgeable in the field of petroleum resources to be appointed by the President;

(e) two Directors who are full time staff of the Inspectorate, to be nominated by the members of the Equalisation Fund; and

(f) the Executive Secretary.

(3) Membership of the Board shall be part-time basis.

Seventh Schedule (4) The supplementary provisions set out in the Seventh Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters contained therein.

Functions of the Board

242.(1) The Board shall:

(a) provide general policy guidelines relating to the functions of the Development Fund;

(b)recommend annual programme of action for the Development Fund to be approved by the Minister ;

© approve annual budget of the Development Fund;

(d)approve the appointment, promotion and discipline of management staff of the Development Fund;

(e)update the President on its activities and progress through annual audited reports;

(f)do such other things as are necessary, expedient, legal, and in conformity with the provisions of this Act for the efficient performance of and in connection with all or any of the functions of the Board as specified under this Chapter.

(2) The Board may delegate any of its functions to the Executive Secretary.

Disqualification

243. No person shall be appointed as a member of the Board unless he or she:

(a) is a Nigerian citizen;

(b) has not, in terms of the laws in force in any country:

(i) been adjudged or declared bankrupt or insolvent; or

(ii) made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside;

(iii) been declared to be of unsound mind;

(iv) been convicted of an offence involving fraud or dishonesty; or

(v) been disqualified by a competent authority from carrrying out any assignment, responsibility or function in his or her professional capacity.

(c) has not been disqualified by the Securities Exchange Commission from holding a board appointment in any public company.

Termination

244. The office of the Executive Secretary or member of the Governing Board shall become vacant:

(a) three months of his or her giving notice in writing to the President of his or her resignation;

(b) if he or she becomes disqualified under the provisions of section 243 of this Act; or

(c) at the expiration of his or her office.

Vacation of office

245. The President shall require the Executive Secretary or member of the Governing Board to vacate his or her office if he or she-

(a) has committed an act of gross misconduct;

(b) has failed to comply with the terms and conditions of his or her office as fixed by this Act; or

(c) suffers from any mental, physical or legal disability which renders him or her incapable of executing his or her duties efficiently as a member;

The Executive Secretary

246. (1) There shall be an Executive Secretary for the Development Fund who shall be appointed by the President.

(2) The Executive Secretary shall be a person with cognate knowledge and experience in the petroleum industry and who is able to show impartiality and objectivity without any conflict of interest in the petroleum Industry.

(3) The Executive Secretary shall be the chief executive and accounting officer of the Development Fund and shall be responsible for the day-to-day affairs of the Development Fund.

Duties of Executive Secretary

247. The Executive Secretary shall, subject to the direction of the Board, be responsible:

(a) for the day to day administration of the Development Fund;

(b) for keeping the books and proper records of the proceedings of the Board;

(c) for the assessment of contributions under this Act and the collection and payment of moneys to the Development Fund;

(d) for payment of all disbursements authorised under or by virtue of this Act;

(e) for accounting for all moneys collected, paid or otherwise expended under this Act;

(f) for ensuring the utilisation of the fund for the purposes set out under section 240 of this Act;

(g) for ensuring a publication in the national press of a notice inviting applications for scholarship under the Development Fund and giving a list of eligible courses and the minimum educational requirements;

(h) for ensuring that successful applicants who meet the minimum requirements are notified in writing and their names published in the national press;

(i) for the administration of the secretariat of the Board;

(j) for the general direction and control of all other employees of the Development Fund; and

(k) for the creation and modification of organisational structure of the Development Fund as may be necessary to enhance the Development Fund's functions under this Act.

Other Staff

248. (1) The Development Fund may, from time to time, appoint such other category of employees as may appear to it expedient and necessary for the proper and efficient performance of its functions under this Act.

(2) Staff of the Development Fund appointed under subsection (1) of this section shall be appointed on such terms and conditions as the Development Fund may prescribe.

(3) Staff of the Development Fund shall be public officers as defined in the Constitution of the Federal Republic of Nigeria 1999.

(4) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.

Remuneration

249. The remuneration, tenure and conditions of service of staff of the Board shall be at a level sufficient to attract qualified professionals within the petroleum industry and shall be determined in accordance with guidelines prescribed by the Minister upon the recommendation of the Board which shall take into account:

(a) the specialised nature of work to be performed by the staff;
(b) the need to ensure financial self-sufficiency of the Board; and
(c) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

Pensions

Cap P4 LFN 2004. 250. (1) Service in the Development Fund shall be approved service for the purpose of the Pension Reforms Act, and accordingly, officers and other persons employed in the Development Fund shall be entitled to pensions, and other benefits as prescribed in the Act.
(2) Subsection (1) of this section does not prohibit the Development Fund from appointing a person to any office on terms that preclude the grant of a pension or other retirement benefits in respect of that office.
(3) In the application of the Pension Reforms Act, to the Development Fund, any power exercisable under the Act by a Minister or other authority of the Government of the Federation, other than the power to make regulations is hereby vested in and shall be exercisable by the Development Fund and not by any other person or authority.

Financial Provisions

251. (1) The Development Fund shall, not later than September in each year, present to the Minister, a budget showing the proposed income and expenditure of the Development Fund in respect of the succeeding financial year insofar as the amount so budgeted does not exceed the total amount accruable to the Development Fund from its sources of funding in any financial year.
(2) The Development Fund may during a financial year prepare and present to the Minister, a supplementary budget relating to income and expenditure which were inadequately represented in the annual budget due to unforeseen circumstances.
(3) The Development Fund may vary a budget prepared under this section insofar as such variation does not increase the total amount of the expenditure provided for in the original budget.
(4) The financial year of the Development Fund shall be for a period of twelve calendar months commencing on the 1st of January in each year or such other time as the Senate may prescribe.

Power to Accept Grants

252. The Development Fund may accept grants of money or other property upon such terms and conditions, if any, as may be specified by the person or organisation making the grants, provided such grants are not inconsistent with the objectives and functions of the Development Fund under this Act.

Account and Audit

253. The Development Fund shall keep proper accounts of its income and expenditure in respect of each year and shall cause its accounts to be audited within six months after the end of each year

by auditors appointed in accordance with guidelines published by the Auditor-General of the Federation.

Mid-year and Annual Reports

254. (1) The Development Fund shall submit to the President, a mid-year report of its operations and finances not later than 31st July of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st July of the following year.

(2) A summary of the annual report and audited financial report of the Development Fund shall be published in the website of the Development Fund and in not less than three widely circulating newspapers in every geo-political zone of the country for public notice not later than 31st July of each year.

(3) Further to the provisions of this section, there shall always be a presumption in favour of releasing information to the public, which the Development Fund must rebut by showing good reasons for withholding such information from the public.

Borrowing Powers

255. The Development Fund may, subject to the approval of the Board and with the consent of, or in accordance with the general authority given by the Minister of Finance, borrow such sums of money as the Development Fund may require in the exercise of its functions under this Act or its subsidiary legislation.

Exemption from Income Tax

256. All income derived by the Development Fund from the sources specified in section 238 of this Act shall be exempt from income tax and all contributions to the fund of the Development Fund made by persons subject to the payment of tax shall be tax deductible.

CapT22 LFN 2004 (3) The Development Fund may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds in any security prescribed by the Trustees Investment Act, or in such other securities.

Legal Proceedings

257. (1) No suit shall be commenced against the Development Fund before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Development Fund by the intending plaintiff or his agent.

(2) The notice shall clearly and explicitly state:

(a) the cause of action;
(b) the particulars of the claim;
(c) the name, place of abode and address for service of the intending plaintiff; and
(d) the relief claimed by the plaintiff.

(3) The notice referred to in subsection (1) of this section and any summons, notice or other document required or authorised to be served upon the Development Fund under the provisions of this Act or any other law may be served by:

(a) delivering the same to the Executive Secretary or any Director of the Development Fund; or

(b) sending it by registered post addressed to the Executive Secretary at the Headquarters of the Development Fund;

Indemnity

258. A member of the Board or the Executive Secretary or any officer or employee of the Development Fund shall be indemnified out of the assets of the Development Fund against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Executive Secretary, officer or other employee of the Development Fund.

Information

Act No. 36 2007. 259. A member of the Board or any officer or employee of the Development Fund shall, subject to the provisions of the Nigerian Extractive Industries Transparency Initiative Act 2007 and any law in force in Nigeria relating to freedom of information,:

(a) not, for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a member of the Board or as an officer or employee of the Development Fund;

(b) treat as confidential, any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act;

(c) not disclose any information referred to under paragraph (b) of this section, except when required to do so by a court of law or in such other circumstances as may be prescribed by the Development Fund, from time to time.

PART III - UPSTREAM PETROLEUM

A - Incorporated joint venture companies

Establishment of Incorporated Joint Venture Companies

260. (1) Each incorporated joint venture company established pursuant to this part 111-A shall have a Board of Directors to be appointed by the parties to each incorporated joint venture company.

(2) Each Board of directors of an incorporated joint venture company pursuant to this section shall be made up of Nigerians and nationals of other countries who shall be persons -

(a) who have distinguished themselves in their various capacities;

(b) who have unblemished records of honesty and integrity; and

(c) who will be able to exercise independence and objectivity with respect to the affairs of the incorporated joint venture company.

(3) The National Oil Company shall have the right to appoint a majority of the members of the Board of Directors for each of the incorporated joint venture companies, where the National Oil Company owns the majority of the shares.

(4) The appointment and functions of the Chairman, the term of office of the other Directors, and matters related to meetings and notices of the Board of Directors shall be defined in the articles of association.

(5) The powers of the Board of Directors for each incorporated joint venture company shall be established in the articles of association relating to each incorporated joint venture company, provided, however, that among other matters, the Board shall have the power to approve the annual work program and budget and any revisions thereof.

(6) Decisions of the Board of Directors of each incorporated joint venture company shall comply with decisions taken in the Shareholder's meetings of each respective incorporated joint venture company.
(7) The Board may create subcommittees, provided the provisions of subsections (1), (2), (3) and (4) hereof shall apply mutatis mutandis.
(8) The Board of Directors of each of the incorporated joint venture companies under this section shall have the power to appoint the Managing Director for the incorporated joint venture company who shall be a member of the Board of Directors.
(9) The Managing Director appointed by the Board of each incorporated joint venture company shall be in charge of the daily administration of the business of the incorporated joint venture company and shall have the powers and duties provided for in the model articles of association relating the incorporated joint venture company.
(10) The National Oil Company shall have the right to appoint more than 50% of the members of the management team for each incorporated joint venture company under this section and the other parties amongst them shall appoint the remaining members of the management team. Provided that at least 80% of the management team shall at all times be Nigerian nationals.

Special provisions relating to the shares of an incorporated joint venture company

261. (1) Shares in each incorporated joint venture company established pursuant to this part 111-A shall be made up of common shares which shall give equal and same rights to each shareholder. Provided that the shares held by the National Oil Company in each of the incorporated joint venture companies at all times during the term of the incorporated joint venture company shall be maintained at the original shareholding position at incorporation.
(2) The shares held by the National Oil Company in each of the incorporated joint venture companies established pursuant to this Chapter shall at all times during the term of each incorporated joint venture company remain non transferable either by way of sale, assignment, mortgage or pledge to any other entity other than another entity wholly owned by the Federal Government of Nigeria.
(3) Nothing in this section shall however prevent The National Oil Company from having the right to purchase shares of other shareholders for cash and for fair market value, where such shares are offered by the other shareholders.
(4) No holder of shares of an incorporated joint venture company shall encumber, grant as guarantee, assign or transfer (except for a transfer to an entity which is exclusively owned by the ultimate parent company of the transferring shareholder) its shares without the prior written consent of the National Oil Company and any change in the control of any shares other than of the National Oil Company shall require prior approval of the National Oil Company.

Special provisions relating to rents, royalties, taxes and other levies payable by an incorporated joint venture company

262. Each incorporated joint venture company established pursuant to this Chapter shall be subject to the payment of rents, royalties and taxes in the manner prescribed in this Act.

Special provisions relating to the tax effect of the initial capitalization and creation of an incorporated joint venture company

263. The initial capitalization of each incorporated joint venture company established pursuant to this part 111-A and the transactions required to create the incorporated joint venture company shall not create any additional tax liabilities for any of the parties to the incorporated joint venture company or for any person or entity, provided all assets are transferred to the incorporated joint venture company at their net book value.

Special right of parties to the incorporated joint venture company to purchase petroleum and any derivatives

264 (1) Each party to an incorporated joint venture company established pursuant to this Chapter shall have the option to purchase from the incorporated joint venture company:

(a) at the prices established in section 434 of this Act, a percentage of the crude oil, natural gas and condensates produced equal to its share interest in the incorporated joint venture company; and

(b) a percentage of the derivatives, at prices established in the shareholders agreement equal to its share interest in the incorporated joint venture company.

(2) Where parties do not opt to purchase crude oil, natural gas or condensates or do not purchase the full volume they are entitled to, the incorporated joint venture company may sell such excess petroleum to any third party.

(3) Any revenues received by an incorporated joint venture company established pursuant to this part 111-A as a result of the sale of petroleum may be held in bank accounts abroad and used by it to pay its obligations which are payable outside Nigeria.

Special provisions relating to the Board of Directors of the incorporated joint venture company

265. (1) Each incorporated joint venture company established pursuant to this part 111-A shall have a Board of Directors to be appointed by the parties to each incorporated joint venture company.
(2) Each Board of directors of an incorporated joint venture company pursuant to this section shall be made up of Nigerians and nationals of other countries who shall be persons -
(a) who have distinguished themselves in their various capacities
(b) who have unblemished records of honesty and integrity; and
(c) who will be able to exercise independence and objectivity with respect to the affairs of the incorporated joint venture company
(3) The National Oil Company shall have the right to appoint a majority of the members of the Board of Directors for each of the incorporated joint venture companies, where the National Oil Company owns the majority of the shares.
(4) The appointment and functions of the Chairman, the term of office of the other Directors, and matters related to meetings and notices of the Board of Directors shall be defined in the articles of association.
(5) The powers of the Board of Directors for each incorporated joint venture company shall be established in the articles of association relating to each incorporated joint venture company,

provided, however, that among other matters, the Board shall have the power to approve the annual work program and budget and any revisions thereof.
(6) Decisions of the Board of Directors of each incorporated joint venture company shall comply with decisions taken in the Shareholder's meetings of each respective incorporated joint venture company.
(7) The Board may create subcommittees, provided the provisions of subsections (1), (2), (3) and (4) hereof shall apply mutatis mutandis.
(8) The Board of Directors of each of the incorporated joint venture companies under this section shall have the power to appoint the Managing Director for the incorporated joint venture company who shall be a member of the Board of Directors.
(9) The Managing Director appointed by the Board of each incorporated joint venture company shall be in charge of the daily administration of the business of the incorporated joint venture company and shall have the powers and duties provided for in the model articles of association relating the incorporated joint venture company.
(10) The National Oil Company shall have the right to appoint more than 50% of the members of the management team for each incorporated joint venture company under this section and the other parties amongst them shall appoint the remaining members of the management team. Provided that at least 80% of the management team shall at all times be Nigerian nationals.

Special provisions relating to the dividend distribution of an incorporated joint venture company

266. (1) Each incorporated joint venture company established pursuant to this part 11-A shall distribute its dividends pro rata among the number of issued shares held by each party to the incorporated joint venture company.

(2) The dividend distribution policy of each incorporated joint venture company shall ensure a prudent management of the operations given the financial conditions and projections of future investments. Any excess shall be declared as dividends or result in other benefits to the shareholders, subject to the provisions of subsection 261(1).

Special provisions relating to financing of operations
267.(1) Each incorporated joint venture company established pursuant to this part 111-A shall finance any exploration for new prospects, development of new fields, or any other incremental investments in accordance with the approved annual work program and budget from the earnings of the incorporated joint venture company and borrowings as approved by each respective Board.
(2) Where the earnings of an incorporated joint venture company or borrowing capacity are insufficient to finance the work program for incremental investments approved by the Board, the shareholders shall consult as to the manner in which further financing can be raised.

Special provisions relating to the Liquidation of an incorporated joint venture company

268. The liquidation of an incorporated joint venture company established pursuant to this Chapter shall be effected by one (1) liquidator appointed by the Shareholders' Meeting of the incorporated joint venture company that approved the liquidation subject to the condition that all of the assets of the incorporated joint venture company of whatever nature, whether tangible or

intangible, real or personal, shall be transferred only to the National Oil Company, except for cash not reserved for the payment of expenses and other obligations, which shall be distributed to the shareholders in proportion to their shareholdings in the incorporated joint venture company.

B – Other upstream issues

Vesting of Acreages in the Directorate

269. (1) All acreages, and licence or lease areas in respect of the exploration, production and development of petroleum not previously granted prior to the commencement of this Act are hereby vested in the Directorate on behalf of the Federal Government of Nigeria.

(2). All acreage relinquished pursuant to the provisions of this Act under any upstream licence or lease shall automatically become acreage that vests with the Directorate and such acreage can only be awarded pursuant to the provisions of Section 289.

(3). All licences and leases or any interests in licences and leases held prior to the commencement of this Act by the Nigerian National Petroleum Corporation are hereby transferred to the National Oil Company.

National Grid System

270. (1) The Inspectorate, after consultation with the Surveyor General of the Federation, shall adopt a national grid system for acreage management and such grid system shall be based on the U.T.M system.

(2).The basic unit shall be a parcel of two (2) by two (2) kilometer, subject to adjustment zones and the national boundary, in which case a parcel shall be the part of the parcel in the adjustment zone or on Nigerian territory as described in section 1 hereof. The Inspectorate shall define a numbering system for the parcels and provide for subdivision of these parcels and aggregation of these parcels into larger blocks.

(3.)The grid system shall be used for the definition of license and lease areas, relinquishments, bid procedures, identification of well locations, petroleum conservation measures and such other regulatory and acreage management procedures as are applicable in the opinion of the Inspectorate. Subject to the provisions of subsection 291(1), any current boundaries of licenses and leases that do not conform with the new grid system shall remain unaltered, and parcels shall be apportioned accordingly.

Licences and Leases

271. (1) There shall be the following licences or leases:

(a) a licence, to be known as petroleum exploration licence, to carry out exploration on a non exclusive basis.

(b) a licence, to be known as a petroleum prospecting licence, to prospect for crude oil and natural gas; and

(c) a lease, to be known as a petroleum mining lease, to search for, win, work, carry away and dispose of crude oil and natural gas.

(2) Subject to the provisions of this Act, the Minister on the recommendation of the Directorate, may grant a petroleum prospecting license or petroleum mining lease and where the Minister decides to grant such licence or lease;

(a) it shall be to the winning bidder pursuant to the bid process prescribed in Section 289, provided the winning bidder has complied with all steps identified in the bid invitation; and

(b) directly to the National Oil Company, where the National Oil Company with the approval of the Directorate, has completed an open and transparent bid process for potential contractors pursuant to Section 289 of this Act , for entering into a contract with the National Oil Company pursuant to Section 272 of this Act, on the basis of a model contract approved by the Directorate.

(3) Subject to the provisions of this Act, the Minister on the recommendation of the Directorate, may grant a petroleum exploration license to any qualifying company, over any area, including areas that are subject of petroleum prospecting licenses or petroleum mining leases.

(4) Every petroleum prospecting licence or petroleum mining lease shall be in respect of crude oil and natural gas, provided that under special circumstances to be defined by the Inspectorate a petroleum mining lease may be granted for either crude oil or natural gas.

Cap C20LFN 2004(5) Only companies incorporated under the Companies and Allied Matters Act and which have complied with all the conditions that may be prescribed by the Directorate and the Inspectorate, as the case may be, shall be entitled to be a licensee, lessee or contractor under the terms of this Part III of the Act.

(6) The conditions prescribed in sub-section (5) shall include the requirement to be a company that qualifies pursuant to the qualification criteria determined in the bid invitation. Such criteria shall be different for operators and non-operators in the following respects-

(a) the criteria for operator shall establish that the operator shall have the financial means and the technical qualifications to carry out the upstream petroleum operations in a safe manner and in accordance with the highest international standards; and

(b) the criteria for non-operator shall establish that the non-operator shall have the financial means to adequately finance his obligations.

(7) It shall be a condition under any petroleum prospecting licence and petroleum mining lease that at all times a company that qualifies as operator shall be operator of the upstream petroleum operations.

Power to enter into contracts

272.(1) Where the Minister grants any licence or lease under subsection 271(2)(a) of this Act, the National Oil Company or any other oil company, by such grant and without further assurance, shall be empowered to enter into any contract for the exploration, prospecting, production and development of oil or gas, as the case may be, in respect of any licence or lease held by the National Oil Company or other oil company, upon such terms and conditions as the National Oil Company or other company may determine, and with any company qualified under conditions prescribed by this Act.

(2) The model contracts referred to in subsection 271(2)(b) include-

(a) production sharing contracts for the exploration, production and development of crude oil or natural gas, on terms under which the financial risk-bearing party shall be reimbursed

for costs where a discovery is made; and all parties to the contract shall be entitled to agreed pre-determined proportions of production from the relevant contract area;

(b) risk service contracts for the exploration, production and development of crude oil or natural gas on terms under which the oil company contractor shall be reimbursed for costs where a discovery is made and shall be entitled to payment in cash or from crude oil or natural gas produced from the contract area;

(c) any contract being a variation of production sharing contracts or risk service contracts, which for the time being is an internationally acceptable mode of awarding contracts for exploration and production of oil or natural gas, as the case may be.

(3) The power to enter into contracts given under this section shall not confer the right to assign an interest in any licence or lease, except in compliance with the terms of section 292 of this Act.

Confidentiality Clauses

273. (1) Confidentiality clauses or other clauses contained within any licences, leases, agreements or contracts for upstream petroleum operations that are for the purpose of preventing access to information and documents by third parties in respect of any payments of-

(a) royalties;

(b) fees and bonuses of whatever sort; and

(c) taxes shall be null, void and of no effect.

(2) Subsections (1) and (4) of this section shall not apply to proprietary industrial property rights owned by any of the parties to a licence, lease, agreement or contract to which the said subsection (1) and (4) applies, which shall be exempted from the scope of mandatory disclosure to the extent that confidentiality in such cases is protected by any law in force in Nigeria relating to the freedom of information, or by any treaty obligations of Nigeria under international law.

(3) The question of whether information or documents are proprietary industrial property rights and within the ambit of subsection (2) of this section shall be decided by the Directorate.

(4) Every licensee, lessee and company involved as licensee, lessee or contractor shall for each license and lease provide a yearly summary of all revenues and costs on which the payments under subsection (1) of this section were based within three years after the termination of each calendar year and the provisions with respect to confidentiality under subsection (1) hereof shall apply to the requirement to provide such summaries.

(5) The Directorate shall define the required detail and classification of the summary under subsection (4) of this section and such summaries shall be non confidential and published on the website of the Directorate together with the revenue information pursuant to subsection(1) hereof.

(6) The text of any existing or future license or lease or contract with the National Oil Company and any amendments or side letters thereto shall not be confidential and shall be published on the website of the Directorate and the provisions of sub-section (1) apply.

(7) The texts pursuant to this subsection (6) shall be on the website of the Directorate within one year after the commencement of this Act, and where such information is not supplied to the Directorate, a company in default shall pay a penalty of US $ 10,000 for every day such information is not available after the date required to the Directorate.

(8) All geological, geophysical, geochemical and other technical petroleum data obtained during the petroleum operations as determined by the Inspectorate shall be provided directly to the national petroleum data bank of the Inspectorate as soon as such data are being obtained by any licensee or lessee. Such data shall not be confidential, except for data obtained under a petroleum prospecting license for a period of 5 years or until such

time the exploration period ends or the related acreage is relinquished, whatever is the earlier date. With respect to petroleum exploration licenses the Directorate may agree to a period of confidentiality where the licensee obtains the data for the main purpose of selling this data to interested parties. All data in the national petroleum data bank shall be accessible for any interested person under such access agreements as may be determined by the Inspectorate.

(9) All information pursuant to Section 462(1) of this Act shall be non-confidential and the Inspectorate shall publish this information on their website.

Petroleum exploration licence

274. (1) The holder of a petroleum exploration licence shall have the non-exclusive right to carry out geological, geophysical and geochemical exploration for crude oil and natural, within the area of his licence, and drill wells not deeper than one hundred and fifty (150) meters, provided, however, that a petroleum exploration license granted exclusively to the Frontier Service may include the right to drill wells to any depth.

(2) A petroleum exploration licence shall be for not more than three years and shall not include any right or option to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the said licence area.

(3) A petroleum exploration license may cover an area that includes petroleum prospecting licences and petroleum mining licenses, provided, however, that the holders of such licences shall have no obligation to purchase the results of the surveys.

(4) Any petroleum exploration shall be under the supervision of the Inspectorate.

Petroleum prospecting licence

275. The holder of a petroleum prospecting licence shall have-

(a) the exclusive right to carry out petroleum exploration operations within the area of his licence;

(b) have the right to carry away and dispose of crude oil or natural gas won during prospecting operations as a result of production tests, subject to the fulfilment of obligations imposed by or under this Act and any other enactment in force at the time.

Duration and area of petroleum prospecting licence

276. A petroleum prospecting licence shall be-

(a) with respect to onshore and shallow water areas, for a duration of not more than seven years, consisting of an initial period of three years, a renewal of two years and a possibility for appraisal of any discoveries until the termination of the licence and the initial petroleum prospecting licence area shall not be more than five hundred (500) square kilometres and not be less than one parcel;

(b) with respect to deep water areas and inland basins, for a duration of not more than ten years, consisting of an initial period of five years, a renewal of three years and a possibility for appraisal of any discoveries until the termination of the licence and the initial petroleum prospecting licence area shall not be more than one thousand (1000) square kilometres and not be less than one parcel.

Work commitment, commercial discovery and significant gas discovery during petroleum prospecting licence

277. (1) A petroleum prospecting license shall contain the requirement for the licensee to commit to a work program.

(2) During the initial period, the licensee shall commit to the drilling of at least one exploration well to a specified minimum depth, provided, however, that the licence may require more than one well to a minimum depth.

(3) Where the licensee requests a renewal, the licensee shall commit to the drilling of at least one further exploration well to a specified minimum depth, provided that the licence may require more than one well to a minimum depth during such renewal.

(4) An exploration well shall be a well that in the opinion of the Inspectorate is aimed at discovering petroleum in a separate geological feature or structure in which petroleum has not been previously discovered.

(5) Any exploration well drilled in excess of the minimum work program specified in the licence during the initial period can be credited to the work obligation under the renewal.

(6) Where the licensee makes a discovery during the initial period or renewal, he shall inform the Inspectorate within one hundred and twenty (120) days after making such discovery whether the licensee considers that the discovery merits appraisal.

(7) In case the licensee considers that a discovery merits appraisal, he shall submit for approval to the Inspectorate:

(a) a commitment to an appraisal program of a duration of not more than two years and of a scope and nature that will permit the licensee to declare a commercial discovery in case results of the appraisal are positive, and

(b) the appraisal area which shall not be larger than the parcels covering the reasonable outer boundary of the discovery as well as a zone of not more than five (5) km surrounding such outer boundary.

(8) Upon the approval of the appraisal program and appraisal area by the Inspectorate, the licensee shall promptly carry out the committed appraisal program. The Inspectorate shall decide on the appraisal program and appraisal area within sixty (60) days after the submission.

(9) Upon the completion of the appraisal program, the licensee shall:

(a) declare a commercial discovery;

(b) declare a significant gas discovery; or

(c) inform the Inspectorate that the discovery is of no interest to the licensee.

(10) Where a significant gas discovery has been declared, the licensee shall be entitled to retain such significant gas discovery area for a retention period of not more than 10 years from the declaration of a significant gas discovery and where the petroleum prospecting license has otherwise expired pursuant to section 276, the significant gas discovery retention area shall continue to subsist until the expiration of the retention period or the declaration of a commercial discovery.

(11)Where in the opinion of the Inspectorate a commercial opportunity to sell the gas materializes based on information provided by the Agency with respect to domestic gas demand during the retention period provided for in subsection (10) hereof, the Inspectorate shall invite the licensee to make a declaration of a commercial discovery pursuant to sub-section (9) hereof with respect to the significant gas discovery and present a development plan with a commitment to execute such development plan pursuant to section 278.

(12) Where the licensee does not make a declaration of a commercial discovery within one year of the invitation of the Inspectorate pursuant to subsection (11) of this section the petroleum prospecting license shall be revoked

(13) Where the licensee does not make a declaration of a commercial discovery prior to the expiry of the retention period pursuant to subsection (10) of this section the significant gas retention area shall be relinqished, and where the last significant gas retention area has been relinquished, the licence shall expire.

(14) Where the licensee declares the discovery of no interest pursuant to subsection 9(c) of this section the Inspectorate may require the relinquishment of the parcels that cover the structure of the discovery.

(15) Any commitments under this section shall be supported by a bank guarantee or performance bond from a reputable international bank and acceptable to the Inspectorate, and shall be for the full amount of the committed work with respect to for the full amount of the committed work with respect to subsections (1), (2), (3) and (7)(a) of this section and for a percentage of the amount of the committed work, as determined by the Inspectorate, with respect to subsection (11) of this section.

Commercial discovery and development plan

278. (1) Where the licensee declares a commercial discovery pursuant to section 277(9)(a) of this section, the licensee shall within one hundred and twenty (120) days submit a development plan of the commercial discovery to the Inspectorate as well as a commitment, to carry out the work described in the development plan in a manner acceptable to the Inspectorate.

(2) The Inspectorate shall evaluate the technical and commercial merits and the costs of the development plan and where the development plan meets all requirements established by the Inspectorate, the development plan shall be approved within ninety (90) days.

(3) The Inspectorate shall only approve the development plan, where the development plan:

(a) meets the technical standards that are required for the related works;

(b) results in the maximum recovery of crude oil, natural gas or condensates, taking into consideration a reasonable economic framework;

(c) meets adequate health, safety and environmental standards;

(d) represents an optimal commercial project in terms of use of midstream transport and processing facilities or use of production facilities owned by other lessees;

(e) does not involve excessive capital or operating expenditures based on the benchmarking analysis of the Inspectorate which would result in a reduction in anticipated petroleum revenues that would not be in the national interest;

(f) includes an approved Nigerian Content Plan pursuant to Part VI hereof;

(g) includes an approved environmental management plan pursuant to section 299 of this Act

(h) provides for the elimination of routine gas flaring, and

(i) does not relate to upstream gas operations that are undertaken to support midstream export gas operations and the Agency has made the determination that furtherexports of gas from Nigeria are not in the national interest.

(4) Where a licensee does not submit a development plan and work commitment pursuant to subsection (1) of this section, the licence may be revoked.

(5) Where the licensee has declared a commercial discovery, such area can be retained and the licence shall subsist for such retained area, until the process regarding the grant of a lease has been completed.

(6) Any work commitments under this section shall be supported by a bank guarantee or

performance bond for a percentage of the amount of the committed work, as determined by the Inspectorate, from a reputable international bank and acceptable to the Inspectorate.

Unitization

279. – (1) If a petroleum discovery in the license area extends beyond the boundaries of the license area, the Inspectorate may require that the upstream petroleum operations related to such discovery shall be carried out on the basis of a unitized development with the licenses or leases into which such discovery extends.

(2) If some or all of the area into which such discovery extends is not under any licence or lease, the Inspectorate shall request the Directorate to promptly offer the open area for bids pursuant to section 289 of this Act.

(3) The licensee and the holder(s) of the area(s) into which such discovery extends shall make a joint proposal to the Inspectorate for a common development plan and joint production of the discovery.

(4) If the proposal is not approved by the Inspectorate or the parties do not present a unitization proposal pursuant to subsection (3) hereof, in the time specified by the Inspectorate, the Inspectorate may require that the unitization proposal shall be prepared by an expert, and such plan shall be binding on all related licensees and lessees.

Petroleum mining leases

280. (1) A petroleum mining lease may be granted:

(a) to the holder of a petroleum prospecting licence who has:

(i) satisfied all the conditions imposed on the licence or otherwise imposed on licensee by this Act; and

(ii) made a commercial discovery of crude oil or natural gas or both and has received approval for the related development plan from the Inspectorate

(b) pursuant to the provisions of subsection 271(2), where

(i) the lease area already contains a discovery of crude oil or natural gas or both, which in the opinion of the Inspectorate is commercial, or

(ii) where the lease area contains a petroleum field or fields with suspended wells or continuing commercial production, where the corresponding petroleum mining lease has been terminated or expired.

(2) Subject to subsection (6) of this section, a licensee may propose that a separate petroleum mining lease may be granted for each commercial discovery in the petroleum prospecting license, prior to the termination of the petroleum prospecting license.

(3) Notwithstanding the grants of any petroleum mining leases under sub-section (2), the petroleum prospecting license shall continue for the remaining license area subject to the relinquishment provisions of the licence.

(4) The area of a petroleum mining lease shall contain every parcel within the outer boundary of the field as determined by an independent engineering firm, and approved by the Inspectorate, based on oil-water contacts or other reservoir limits and includes a zone surrounding such boundary consisting of all parcels that are in whole or in part within one (1) kilometre of such outer boundary, provided, however, that the lease shall not contain any parcels that are:

(i) outside the original license area from which the lease is derived,

(ii) in areas relinquished by the licensee, or

(iii) consist of any parcels that were already granted under another petroleum mining lease.

(5) Where during the petroleum prospecting license period the outer boundary of the commercial discovery changes, due to further drilling and other exploration, or due to further petroleum discoveries in deeper or shallower formations, the Inspectorate may approve a modification of the area of the petroleum mining lease to include such further parcels as are appropriate based on the criteria established in subsection (4) of this section.
(6) Where the boundaries of selected petroleum mining leases join with respect to a single side of a single parcel, the petroleum mining leases shall be considered as one lease or where petroleum mining leases in the opinion of the Inspectorate consist of a single field the leases shall be considered as one petroleum mining lease, even if their boundaries do not join with another lease.
(7) A petroleum mining lease shall not consist of an area that is less than one parcel.

Exclusive Right to Conduct Operations
281(1). A petroleum mining lessee shall have the exclusive right to carry out upstream petroleum operations in or under the said lease area.
(2) A petroleum mining lease shall also contain the right to continue to explore and prospect deeper formations.
(3) A petroleum mining lease for the purpose of carrying out upstream petroleum operations shall only be granted on the basis of a firm commitment to:

(a) to develop and produce the commercial discovery made in the lease area in accordance with the approved development plan, or
(b) restart or continue petroleum production.

(4) During the term of the lease, the Inspectorate shall:

(a) verify the implementation of the work commitments and compliance with the approved development plan;
(b) monitor the capital and operating costs;
(c) ensure that the upstream petroleum operations at all times are carried out at the required standards under this Act.

Domestic Gas Supply Obligation
282. (1) All existing and future petroleum mining lessees shall comply with the domestic gas supply obligations during such periods that the Agency has determined that lessees shall supply the domestic market for such periods of time and in such manner as the Agency may determine.
(2) During such periods as determined pursuant to subsection (1), the Inspectorate shall require the lessee producing gas to carry out all such works and operations as may be required to allocate production or increase production in order to dedicate a specific volume of the gas production towards the requirements of the domestic market
(3) The volume of gas to be dedicated by each lessee shall be based on an allocation system among lessees to supply the domestic gas demand requirement determined by the Inspectorate from time to time
(4) Any lessee who does not comply with the domestic gas supply obligation regulations and instructions of the Inspectorate in this respect shall not be entitled to supply gas to any midstream gas export operations in addition to such other penalties as may apply under this Act and where the lessee is only supplying gas to midstream gas export operations, the lessee shall comply with the instructions of the Inspectorate to suspend production.

Duration and Renewal

283. (1) A petroleum mining lease may be for a term of not more than twenty years, provided, however, that where a petroleum mining lease is derived from a petroleum prospecting license, the term may be from the date of the granting of the lease until:

(a) twenty-seven years from the date of the grant of the related petroleum prospecting license for onshore and shallow water areas; and

(b) until thirty years from the date of the grant of the related petroleum prospecting license for deep water areas and frontier acreages.

(2) Where a petroleum mining lease is not in commercial production within five years from the granting of the petroleum mining lease such lease may be revoked at the end of such five year period. The acreage shall be vested with the Directorate and may be subject to a new grant subject to subsection 280 (1)(b).

(3) Where a lease continues to be in commercial production, a lease may be renewed in accordance with this Act for a further term of not more than ten years and upon the termination of such renewal, the area shall be relinquished and may be subject to a new grant subject to subsection 280(1)(b).

(4) Where a lease has been in commercial production but such production has terminated and no commercial production has occurred from a lease for a period of one hundred and eighty (180) days, other than for reasons of force majeure, a lease may be revoked.

Conditions for renewal of lease

284. (1) Not less than twelve months before the expiration of a petroleum mining lease the lessee of the said petroleum mining lease may, if the lessee so wishes, apply in writing to the Minister for a renewal of the lease either in respect of the whole of the leased area or any particular part thereof and the renewal may be granted if the lessee has paid all rent and royalties due in respect of and has otherwise performed all his obligations under the lease.

(2) The terms and conditions that shall apply to such renewal shall be the prevailing conditions for new petroleum mining leases at the time of renewal and the lessee shall pay a renewal bonus of an amount specified in the lease on the date of such renewal.

(3) The renewal of the said petroleum mining lease may furthermore be subject to any additional conditions which may be required by the Minister, in consultation with the Director Generals of the Directorate, the Inspectorate and the Agency, as the case may be.

Relinquishment

285(1). Every petroleum prospecting license, which initially is larger than ten parcels, shall provide for the obligation to relinquish a number of parcels equal to at least fifty (50%) of the original license area upon the expiration of the initial exploration period, provided, that such relinquishment shall be subject to the fact that any acreage included in petroleum mining leases, appraisal and significant gas discovery retention areas may be retained by the licensee and does not require relinquishment.

(2) Upon the expiration of the renewal period, the licensee shall relinquish all parcels that are not part of petroleum mining leases, appraisal areas or significant gas discovery retention areas.

(3) Upon the expiration of the petroleum prospecting license, all acreage that is not included in petroleum mining leases, significant gas discoveries or areas pursuant to subsection 278(5) shall be relinquished.

(4) Upon the expiration of any retention period of a prospecting licence, all acreage related to the significant gas discovery retention area shall be relinquished unless the licensee has declared a commercial discovery for such significant gas discovery retention area.
(5) Ten years after the granting of a lease, the lessee shall relinquish all parcels that are not in commercial production.
(6) The licence or lease shall not contain any priority rights or negotiation rights for the licensee or lessee with respect to acreage relinquished by the licensee or lessee.
(7)The relinquished acreage shall be vested with the Directorate and can only be issued on the basis of a bidding rounds pursuant to section 289 hereof.
(8) Any rent paid in respect of the area of the lease to be relinquished shall not be refundable, and such relinquishment shall be without prejudice to any obligation or liability imposed by or incurred under the lease or any contract entered in pursuance thereof before such relinquishment.
(9) The shape and size of the area to be retained and of the area to be relinquished or surrendered shall be as approved by the Inspectorate.

Surrender of licence
286.(1) Without prejudice to any provisions on relinquishment, a licensee or lessee shall be entitled at any time to surrender part or whole of the licensed or leased area provided at least three months notice in writing is given to the Inspectorate prior to such surrender and provided such licensee or lessee has complied with all obligations under the license or lease and complies with any surviving obligations.
(2) No rent paid prior to the surrender shall be refundable.

Right of ways
287. Subject to the provisions of all the relevant laws and on such terms and conditions as may be approved by the Inspectorate, the licensee or lessee shall be entitled to such right of ways for the laying, operation and maintenance of pipelines, telephone lines and the like through or across the surrendered area or areas as the licensee or lessee may reasonably require:
(a) for the carrying on of operations under the licence or lease; or
(b) for inter-communication and passage between retained areas and, in the case of offshore licences or leases, between retained areas and onshore lands.

Right of ways reserved to the Inspectorate
288. There shall be reserved to the Inspectorate over the retained area, such right of ways, easements or other rights as in its opinion are necessary or desirable for the laying, operation and maintenance of pipelines, telephone lines and power lines; and any right of ways or other rights so reserved shall continue for the benefit of any entity to whom the Inspectorate may subsequently grant the same to the extent that it may so grant them pursuant to the regulations made by the Minister for that purpose on the advice of the Inspectorate.

Award Process
289. (1) The grant of a petroleum prospecting licence or a petroleum mining lease, not derived from a petroleum prospecting license, in respect of any territory in, under or upon the territory of Nigeria shall be by a bidding process conducted by the Directorate, or conducted by the National Oil Company pursuant to Section 271(2)(b) hereof, in consultation with the Inspectorate, which bidding process shall be open, transparent and competitive.
(2) The winning bidder shall be determined on the basis of the following bid parameters:

(a) single bid parameter, which can be based on

(i) a signature bonus, or

(ii) a royalty percentage in addition to the royalty percentage based on daily production pursuant to section 437 hereof, or

(iii) a work commitment in terms of number of wells to a specified minimum depth during the initial exploration period, or

(iv) work units; or

(b) a combination of the parameters indicated under sub-section (2)(a) of this section, based on a point system that is self-assessable by the bidder in such a manner that the bidder will bid the respective points and the highest points determine the winning bidder.

(3) For the avoidance of doubt, no discretionary awards shall be given under any circumstances whatsoever, except as provided for under sub-section 271(2)(b), 291(4) and 291(6).

(4) The Minister shall direct the Directorate to call for bids in accordance with a process that shall be made available to the general public through publications on the website of the Inspectorate and in at least two newspapers with international and two newspapers with national coverage.

(5) Where the Directorate calls for bids pursuant to sub-section (1) of this section, the Inspectorate shall establish the technical, legal, economic and financial requirements as well as the minimum experience and capacity necessary for would be licensees, lessees, and contractors, which shall be contained in guidelines prepared by the Directorate, and licensees, lessees and contractors shall be chosen in accordance with these guidelines.

Right of Participation

290. A licence or lease may include the right of the Government to a participating interest in the licence or lease and in this case the Minister may exercise this right to participate in accordance with the terms of the said licence or lease.

Relinquishment from current licences and leases and marginal fields

291. (1) With respect to any existing oil prospecting licenses or oil mining leases the licensee or lessee shall select prior to the relinquishment date within such oil prospecting licenses or oil mining leases, the portions of such licences and leases that the licensee or lessee intends to propose as petroleum mining leases or significant gas discovery retention areas pursuant to this Act and based on the parcels pursuant to the acreage selection process established in this Act and:

(a) for which the licensee or lessee is prepared to make a declaration of a commercial discovery,

(b) for which the licensee or lessee is prepared to make a declaration of a significant gas discovery, provided, however, that the lessee shall not be entitled to select significant gas discovery areas where the oil mining lease from which the lessee intends to select the significant gas discovery area has been in existence, including any renewals, for more than thirty (30) years at the commencement of this Act;

(c) for which development is underway based on an approved development plan, and

(d) in which regular commercial production is occurring.

(2) On or prior to the relinquishment date, the licensee or lessee shall relinquish all parcels from the oil prospecting license or oil mining lease areas with the exception of the parcels selected pursuant to subsection (1) of this section; such relinquishment shall include marginal fields operated by marginal field operators.

(3) The relinquishment date for the purpose of subsections (1) and (2) of this section shall be the later of:

(a) one year after the commencement of this Act, and

(b) ten years after the oil prospecting license was granted or with respect to oil mining leases, ten years after the oil prospecting license was granted from which the oil mining lease was derived.

(4) The Minister on the recommendation of the Directorate, shall automatically convert the areas selected pursuant to subsections (1)(a), (c) and (d) of this section, into petroleum mining leases under this Act with a term of 20 years, subject only to the areas complying with the selection methodology established in section 280(4) of this Act and selected pursuant to subsection (1)(b) convert the areas into significant gas discovery retention areas of petroleum prospecting licenses and the declaration of a commercial discovery or significant gas discovery shall be deemed to have been made one day prior to the granting of such petroleum mining lease or petroleum prospecting license.

(5) Where any existing license, lease or contract contains any provisions contrary to the provisions of subsections (1), (2) and (3) of this section, such provisions shall be null, void and of no effect.

(6) Notwithstanding the provisions of section 289 of this Act, marginal field operators shall be entitled prior to the relinquishment date to apply for petroleum mining leases for the fields being operated as marginal fields by such operators at the commencement of this Act and such petroleum mining leases shall be granted to such marginal operators and such leases shall be effective from the respective relinquishment dates pursuant to subsection(4) hereof and shall be subject to all provisions of this Act.

(7) The Directorate shall be entitled to award pursuant to the provisions of section 289 of this Act any acreage relinquished pursuant to subsection (2) hereof and not granted to marginal field operators pursuant to subsection (6) hereof.

(8) The Agency shall grant automatically technical and commercial licenses pursuant to Part IV hereof, to all existing pipelines, bulk storage depots and terminals on existing oil mining leases and oil prospecting licenses under this section.

Assignment, Mergers and Acquisitions

292. (1) A licensee, lessee or contractor shall not assign his licence, lease or contract, or any right, power or interest therein without the written consent of the Minister.

(2) An application for assignment shall be in accordance with terms and conditions specified within this Act and any regulations made under it.

(3) The Minister shall consent to an assignment if the proposed assignee is able to show to the satisfaction of the Minister that:

(a) the proposed assignee is a company incorporated in Nigeria;

(b) the proposed assignee is of good reputation;

(c) the proposed assignee has sufficient technical knowledge, experience and financial resources to enable it to effectively carry out the responsibilities under the license or lease which is to be assigned; and

(d) in the case the proposed assignee has the function of operator, such assignee has proven operating experience with respect to operations to be carried out under the license or lease which is to be assigned.

(4) Where a licensee, lessee, or contractor is taken over by another company, or merges, or is acquired by another company either by acquisition or exchange of shares, it shall be treated as an assignment and shall be subject to the terms and conditions of this Act and any regulations made under it.

(5) Any assignment, merger or acquisition under this section shall be subject to a fee equal to 2% of the fair market value of the transaction, and such fee shall be paid to the Inspectorate.

Grounds for revocation of licence or lease

293. (1) The Minister may revoke a license or lease if the licensee or lessee:

(a) is controlled directly or indirectly by a person who is a citizen of, or subject of any country which is a country the laws of which do not permit citizens of Nigeria or Nigerian companies to acquire, hold and operate petroleum concessions on conditions which the Directorate finds to be reasonably comparable to the conditions upon which such concessions are granted to subjects of the country;

(b) in the opinion of the Inspectorate, is not conducting operations continuously and in a vigorous and businesslike manner and in accordance with good oil field practice;

(c) is not fulfilling his or her obligations under the special conditions of his or her licence or lease;

(d) fails to pay fees or its rent or royalties as they fall due, whether or not they have been demanded by the Inspectorate, within the period specified by or in pursuance of this Act;

(e) has failed to furnish any reports on its operations that are prescribed by this Act or any other act in force within the stipulated time;

(f) has assigned or otherwise transferred his interest in the license or lease to any person or company without the prior consent of the Minister as is required by section 292 of this Act; and

(g) has not complied with such other specific requirements for which revocation is a consequence of non compliance under this Act.

(2) The Minister shall revoke a license or lease if the licensee or lessee:

(a) has obtained or acquired the license or lease on the basis of false representations or corrupt practices; or

(b) is owned or controlled by a former or present public officer who has obtained the license or lease through misuse of public office.

Representation permitted before revocation

294. (1) Where the Minister receives information from the Inspectorate of any of the acts listed in section 293, the Minister shall within one month of the matter coming to its knowledge, inform the licensee or lessee of the grounds on which a revocation is contemplated and shall invite the licensee or lessee to make any representation to the Minister if the licensee or lessee so desires and if the Minister is satisfied with the explanation, the licensee or lessee may be asked to rectify the matter complained of pursuant to section 293(1) of this Act within a specified period.

(2) If:

(a) a matter relates to subsection 293(1) and a licensee or lessee is unable to offer satisfactory explanation as is required in subsection (1) of this section or does not rectify the matter complained of within the specified period, the Minister may revoke the licence or lease and such revocation shall be final,

(b) a matter relates to section 293(2) and a licensee or lessee is unable to disprove the matters under paragraph (a) or (b) of this section 293(2), the Minister shall revoke the license or lease and such revocation shall be final.

(3) For the avoidance of doubt:

(a) the revocation of any licence or lease in accordance with the provisions of this Act cannot be rectified; and

(b) where the grounds of revocation are found to be true, the revocation shall stand.

(4) Notice of revocation sent to the last known address of the licensee or lessee or his legal representative in Nigeria and published in the Federal Gazette shall, for all purposes, be sufficient notice of the revocation of the licence or lease.
(5) Revocation shall be without prejudice to any liabilities which the licensee or lessee may have incurred, or to any claim which may be made by the Federal Government against the licensee or lessee.

Fees
295. There shall be paid in respect of licences and leases granted under this Act such fees as may be contained in this Act and in any regulations made by the Minister, pursuant to this Act and on the recommendation of the Inspectorate.

Protected Objects
296. (1) In the course of upstream petroleum operations, no person shall injure or destroy any tree or object which is:
(a) of commercial value;
(b) the object of veneration,
to the people resident within the petroleum prospecting licence or petroleum mining lease area, as the case may be.
(2) A licensee or lessee who causes damage or injury to a tree or object of commercial value or which is the object of veneration shall pay fair and adequate compensation to the persons or communities directly affected by the said damage or injury.
Compensation
297. The amount of compensation payable under section 296 shall be determined by the Inspectorate in consultation with designated persons and representatives which shall include a licensed valuer, in accordance with regulations prescribed under this Act.
Effect of failure to pay compensation
298.(1) Where a licensee or lessee fails to pay compensation, the license or lease shall be suspended until the amount awarded is paid.

(2) Where the licensee or lessee fails to make payment within thirty days after the suspension of the said licence or lease in accordance with subsection (1) of this section, the Minister may revoke the said licence or lease.

Environmental Quality Management
299. (1) Every licensee or lessee engaged in petroleum operations shall, within three months of the commencement of this Act, or within three months after having been granted the license or lease, submit an environmental management plan which shall be submitted to the Inspectorate for approval and which shall:
(a) contain the licensee's written
(i) environmental policy, objectives, and targets, and
(ii) commitment to comply with relevant laws, regulations, guidelines and standards;
(b) establish initial baseline information and a program for collecting further baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives;

(c) investigate, assess and evaluate the impact of the licensee or lessee's proposed exploration and production activities on:

(i) the environment, and

(ii) the socio-economic conditions of any person who might be directly affected by the petroleum operations;

(d) develop an environmental awareness plan describing the manner in which the applicant intends to inform his or her employees of any environmental risks which may result from their work and the manner in which the risks must be dealt with in order to avoid pollution or the degradation of the environment; and

(e) describe the manner in which he or she intends to:

(i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation,

(ii) contain or remedy the cause of pollution or degradation and migration of pollutants, and

(iii) comply with any prescribed waste standard or management standards or practices.

(2) The Inspectorate, in consultation with the Ministry of the Environment shall approve the environmental management program if:

(a) it complies with the subsection (1) of this section; and

(b) the applicant has the capacity, or has provided for the capacity to rehabilitate and manage negative impacts on the environment.

(3) The Inspectorate shall not approve the environmental management program unless it has considered the comments of the said federal or state ministries of the environment.

(4) The Inspectorate may call for additional information from the licensee or lessee and may direct that the environmental management program in question be adjusted in such way as the Inspectorate may require.

(5) The Inspectorate may at any time after he or she has approved an environmental management program and after consultation with the holder of the licence or lease concerned, approve an amended environmental management program.

(6) No chemicals shall be utilized for upstream petroleum operations, unless the Inspectorate has granted the respective technical licences.

Gas flaring penalties

300. (1) The lessee shall pay such gas flaring penalties as the Minister may determine from time to time.

(2) The lessee shall install all such measurement equipment as ordered by the Inspectorate to properly measure the amount of gas being flared.

Consultation with State departments

301. (1) When considering an environmental management program, the Inspectorate shall consult with the Federal Ministry of the Environment and the State Ministries of Environment within which the licence or lease is situated and with any other relevant bodies within which the licence or lease is situated.

(2) The federal and state ministries of environment, and any other bodies that the Inspectorate may consult, shall submit their written comments within thirty days of the date of request.

Financial contribution for remediation of environmental damage

302. (1) Prior to the approval of the environmental management program by the Inspectorate, every licencee or lessee shall pay the prescribed financial contribution to an environmental

remediation fund established by the Inspectorate, subject to audit by the lessee, in accordance with guidelines as may be issued by the Inspectorate from time to time, for the rehabilitation or management of negative environmental impacts, as a condition for the grant of the said licence or lease.
(2) If the holder of a licence or lease fails to rehabiltate or manage, or is unable to undertake such rehabilitation or to manage any negative impacts on the environment, the Inspectorate may, upon written notice to such holder, use all or part of the fund contemplated in subsection (1) of this section to rehabilitate or manage the negative environmental impact in question.
(3) The holder of a licence or lease must annually assess its environmental liability and increase its financial contribition to the satisfaction of the Inspectorate.
(4) If the Inspectorate is not satisfied with the assessment and financial contribution contemplated in this section, the Inspectorate may appoint an independent assessor to conduct the assessment and determine the financial contribution.

Abandonment, Decommissioning and Disposal
303. (1) The decommissioning and abandonment of onshore and offshore petroleum wells, installations, structures, utilities and pipelines shall be conducted in accordance with good oil field practice and in accordance with guidelines issued by the Inspectorate, provided that such guidelines, standards and regulations shall be in line with the guidelines and standards set by the International Maritime Organisation with respect to offshore petroleum installations and structures.
(2) The Inspectorate shall by written notice, require a licensee or lessee to commence the decommissioning and abandonment of a well, project or installation.
(3) A licensee or lessee may request by written notice, the Inspectorate to issue a notice pursuant to subsection (2) of this section.
(4) Upon such a notice in subsection (2) of this section, the lessee or licensee, shall prior to any decommissioning or abandonment submit to the Inspectorate, a programme setting out:

(a) an estimate of the cost of the proposed measures;
(b) details of measures proposed to be taken in connection with the decommissioning of disused installations, structures and/or pipelines as the case may be;
(c) vivid descriptions of the methods to be employed to undertake the work programme, which shall be in line with best oil field practices, sustainable field and environmental development;
(d) steps to be taken to ensure maintenance and safeguard where any installations, structures or pipelines are to remain disused and in position, or are to be partly removed;

(5) Except for the abandonment of wells, upon the submission of the decommissioning programme by the licensee or lessee to the Inspectorate, consultations shall be made with interested parties and other relevant public authorities and bodies.
(6) The programme referred to in subsection (4) of this section shall not be approved unless all relevant environmental, technical and commercial regulations or standards are met.
(7) Before the Inspectorate approves an application or programme for decommissioning or abandonment, it shall ensure that:

(a) considerations and recommendations are taken in the light of individual circumstances;
(b) the potential for reuse of the pipeline in connection with further hydrocarbon developments is considered before decommissioning together with other existing projects;

(c) all feasible decommissioning options have been considered and a comparative assessment made;

(d) any removal or partial removal of an installation, structure or pipeline is to be performed in a manner that guarantees sustainable environmental development;

(e) any recommendation to leave an installation, structure or pipeline in place is made with regard to its likely deterioration and to the present, possible, and future effects on the environment.

(8) The Inspectorate may, if it do decides, recall any previous owner of an installation, structure or pipeline to be responsible for the costs associated with the decommissioning or abandonment programme.
(9) The Inspectorate shall ensure that a list of all the petroleum installations, structures and pipelines onshore and offshore Nigeria and their current status is compiled and made available or accessible to the public.

Agreement and Funding
304. (1)At the commencement of production, the Inspectorate shall enter into agreement with every licensee or lessee regarding the abandonment and decommissioning of oil and gas installations within their licence or lease area, as the case may be.
(2) The Inspectorate shall require a lessee to set up and manage an abandonment fund for the purpose of abandonment, decommissioning and disposal and such funds shall be accessible by the Inspectorate in the case the lessee fails to carry out the obligations under section 303.

Part IV – *MIDSTREAM AND* DOWNSTREAM PROJECT APPROVAL AND LICENSING

A - Project Approval

Project approval for midstream petroleum operations
305 .(1) Any new project or modification or expansion of any project with respect to midstream petroleum operations shall require prior to any construction or operation a project approval certificate ("Project Approval Certificate") issued by the Agency.
(2). The Project Approval Certificate of the Agency shall consist of:
(a) the Technical Licence issued by the Agency pursuant to this Part IV, which certifies that the project meets all technical requirements under this Act;
(b) the Commercial Licence issued by the Agency pursuant to this Part IV, which certifies inter alia that the project:

(i) meets all commercial requirements under this Act, and

(ii) does not involve excessive capital or operating expenditures based on the benchmarking analysis of the Agency, which would result in a reduction in anticipated petroleum revenues or increased consumer prices;

(c) a declaration of the Agency that the project meets all health, safety and environmental standards required under this Act;

(d) an approval of the Nigerian Content Plan pursuant to Part VI hereof;

(e) an approval of environmental management plan pursuant to Part VII hereof;

(f) in case the project involves the export of gas, a license to export gas granted by the Agency.

Cap C20 LFN, 2004 (3) A Project Approval Certificate with respect to midstream petroleum operations can only be granted to a company incorporated under the Companies and Allied Matters Act, and which have complied with all the conditions that may be prescribed by the Directorate and the Agency.

Project approval for downstream petroleum operations

306.(1) Any new project or modification or expansion of any project with respect to downstream petroleum operations shall require prior to any construction or operation a Project Approval Certificate issued by the Authority.

(2). The Project Approval Certificate of the Authority shall consist of:

(a) the Technical Licence issued by the Authority pursuant to this Part IV, which certifies that the project meets all technical requirements under this Act;

(b) the Commercial Licence issued by the Authority pursuant to this Part IV, which certifies inter alia that the project:

(i) meets all commercial requirements under this Act, and

(ii) does not involve excessive capital or operating expenditures based on the benchmarking analysis of the Authority, which would result in a reduction in anticipated petroleum revenues or increased consumer prices;

(c) a declaration of the Authority that the project meets all health, safety and environmental standards required under this Act;

(d) an approval of the Nigerian Content Plan pursuant to Part VI hereof; and

(e) an approval of environmental management plan pursuant to Part VII hereof.

Cap C20 LFN, 2004 (3) A Project Approval Certificate pursuant to subsections (1) and (2) of this section can only be granted to a company incorporated under the Companies and Allied Matters Act, and which have complied with all the conditions that may be prescribed by the Directorate and the Authority

(4) The commercial licence pursuant to subsection 2(b) of this section and the approved Nigerian Content Plan shall not be required for independent pipelines and depots pursuant to section 374.

(5) A Nigerian Content Plan shall not be required for projects requiring an investment below the level established in section 413(1) of this Act.

B – Technical Licensing

Licencing

307. (1) The Agency shall grant all technical licences related to midstream petroleum operations.

(2) The Authority shall grant all technical licences related to downstream petroleum operations.

(3) The technical licenses shall relate to design, procurement, construction and operation of all facilities and infrastructure in the petroleum industry in Nigeria, including refineries, process plants, petrochemical plants, which shall include licences to:

(a) establish, construct and maintain a process plant;

(b) establish, construct, and, or maintain a petroleum transportation pipeline;

(c) establish, construct, and, or maintain a petroleum transportation network;

(d) establish, construct, and, or maintain a petroleum distribution network.

(e) utilize all chemicals used for midstream petroleum operations or downstream petroleum operations, as the case may be.

(4) No person shall conduct:

(i) any midstream petroleum operations without a technical licence issued by the Agency, or

(ii) any downstream petroleum operations without a technical licence issued by the Authority.

(5) Subject to a formal consultation process, the Agency or the Authority, as the case may be, may by regulations issued pursuant to this Act, prescribe additional activities to be undertaken only on the basis of a technical licence.

(6) Any person who:

(a) engages in any of the activities set out in subsection (3) without a licence; or

(b) engages in any activity that becomes subject to licensing under subsection (5) of this section without a licence; or

(c) in applying for a licence, knowingly makes a statement which is false or misleading in any material particular;

shall be guilty of an offence and liable subject to regulations issued by the Minister, to a fine of US $ 200,000, which fine shall be adjusted yearly by the Adjustment Factor of Section 431 of this Act, or to imprisonment for the responsible officers or managers of the company for a term of up to two years, provided that proceedings in respect of any such offence shall be commenced only by the Agency or Authority and, provided further that, in addition to the fine, after due enquiry and having made arrangements to ensure that customers are not adversely affected, suspend or revoke any licence issued on the basis of false or misleading information.

Modification of Licence Applications

308. (1) The Regulatory Institution may grant, renew, modify or extend individual technical licences issued in pursuance of Section 307.

(2) An application for the grant, renewal, modification or extension of a technical licence shall be presented to the Regulatory Institution in the form and manner prescribed by regulations issued by the Minister on the advice of the Regulatory Institution and shall be accompanied by the prescribed fee, if any, together with such information or documents as may be prescribed in the said regulations.

(3) The Regulatory Institution may furnish any person applying for the grant, renewal or extension of a technical licence with such non-confidential information as the applicant may request which may facilitate the filing of the application.

(4) An applicant for a technical licence who is an affiliate of a company that has applied for or holds any other licence in respect of any sector of the petroleum industry in Nigeria, shall disclose such interest to the Regulatory Institution in its application.

(5) The Regulatory Institution shall consider all information presented in respect of an application for a technical licence, including representations from interested parties in favour of or against the granting, extension or renewal of the licence;

(6) Where the Regulatory Institution has decided to grant a technical licence it shall publish a notice of its decision in the form and in the manner prescribed in regulations issued by the Minister on the advice of the Regulatory Institution.

(7) Where the Regulatory Institution has declined an application, it shall inform the applicant of its reasons for such refusal and shall state a reasonable period within which the applicant can

make further representations in respect of the decision.
(8) The Regulatory Institution shall duly consider any representation made by an applicant for a technical licence in respect of a refusal of a technical licence application.
(9) No further application or representation shall be made by an applicant or considered by the Regulatory Institution in the event that representations in respect of a refusal of an application have been considered and rejected by the respective Regulatory Institution.

Advertisement of Licence Applications
309. (1) When an application is made for a technical licence, the applicant shall publish a notification of the application in at least two Nigerian newspapers with nationwide circulation, in manner prescribed in any regulations issued by the Minister on the advice of the Regulatory Institutions.
(2) Following the above publication, interested parties may comment on or make representations to the Regulatory Institution in respect of the application within the period of time prescribed in the Regulations, which period of time must be indicated in the published notification.
(3) Following the grant or renewal of a technical licence the applicant shall publish the notification of the grant or renewal in a manner prescribed in regulations made by the Minister on the advice of the Regulatory Institution.

Licence Regulations
310. (1) The Regulatory Institutions shall make recommendations to the Minister to issue regulations applicable to technical licensing procedures under this Act, with respect to matters under their responsibility, which shall include, but shall not be limited to:

(a) the procedure, form, criteria, timescale and fees for technical licence applications, including any criteria for the grant of the technical licence and the grounds on which licences may be refused;

(b) the duration of technical licences and the procedure, form, criteria and timescale for their renewal;

(c) the procedure, form and timescale for publishing notification of a technical licence application or renewal;

(d) the procedure, form, criteria and timescale for technical licence modifications, including the process for changing standard and special technical licence conditions and the public consultation process required as part of the licence modification procedures;

(e) the procedure, form, criteria and timescale for the transfer or surrender, suspension or revocation of a technical licence.

(2) Such regulations may be different with respect to:
(a) Regulations of the Agency with respect to midstream petroleum operations, and
(b) Regulations of the Authority with respect to downstream petroleum operations,

Licence Conditions
311. (1) Conditions included in a technical licence issued pursuant to this Part may require the licensee:

(a) to comply with any directions given by the Regulatory Institution in relation to matters specified in the technical licence;

(b) to undertake or refrain from undertaking anything specified in the technical licence;

(c) to secure the approval of the Regulatory Institution prior to undertaking anything specified in the technical licence;

(d) to comply with industry codes and standards;

(e) to provide information to the Regulatory Institution;
(f) to restrict the use of certain types of information deemed to be sensitive by the Regulatory Institution, provided that this condition is not in contravention with any law relating to freedom of information that may be in force at the time;
g) to prepare and submit to the Regulatory Institution such information and periodical reports as the Regulatory Institution may require;
(h) to operate its technical licence and related facilities, if any, according to the standards of a reasonable and prudent operator in the upstream, downstream products or gas industries, as the case may be, as specified by the Regulatory Institution.

(2) Conditions applicable to a technical licence may cease to have effect or may be modified under circumstances specified in the licence or pursuant to the provisions of section 308 of this Act.

(3) Technical licences granted by the Regulatory Institution to licensees of the same class shall contain similar conditions, which shall be standard licence conditions for that class and any differences in conditions contained in technical licences issued to licensees of the same class shall only be for objectively justifiable reasons.

(4) Subject to the provisions of this Act, the Regulatory Institution shall have the power to include special conditions specific to a particular technical licence, provided that such special licence conditions shall be designed to meet specific circumstances and shall not unduly disadvantage one technical licensee in relation to another.

(5) The Regulatory Institution may specify a date after the grant of a technical licence on which licensed activities shall commence, provided, however, that such date shall not be prior to the grant of the Project Approval Certificate.

(6) The Regulatory Institution may provide that a licensed facility shall be for
(a) the exclusive use of the licensee;
(b) all or part of the period of the technical licence;
(c) a specific purpose;
(d) a specified geographical area, route; or
(e) any combination of the foregoing.

Duration of Licence

312. (1) A technical licence issued by the Regulatory Institution pursuant to this Chapter shall be for a period of twenty-five (25) years in the first instance.

(2) A technical licence may be renewed for such further periods as the Regulatory Institution may determine subject to the criteria and in accordance with the procedure prescribed by regulations issued pursuant to this Act, provided however that any renewal shall not exceed twenty-five (25) years.

(3) The Regulatory Institution may set new or different licence conditions upon the renewal of a technical licence.

Assignment or Transfer

313. (1) No licensee under this Part shall, directly or indirectly, assign or transfer its technical licence or any rights or obligations arising from such technical licence without the prior written consent of the Regulatory Institution.

(2) An application for the assignment or transfer of a technical licence shall be made to the Regulatory Institution, which may require the applicant to publish a notice of the application in such form and in the manner and within the period prescribed in regulations issued pursuant to this Act.

(3) In determining whether a technical licence may be assigned or transferred, the Regulatory

Institution shall follow the same procedures with such modifications as may be appropriate in the circumstances, apply the same rules and criteria, and consider the same issues as if the party to whom the technical licence is being assigned or transferred is itself applying for a new technical licence, and shall, in so doing, duly consider the representations made to it by third parties in respect of the application.

(4) The Regulatory Institution shall, subject to subsection (3) of this section, communicate its refusal or approval of an application for the assignment or transfer of a technical licence in writing.

(5) The Regulatory Institution shall advise the applicant of the reasons for its refusal of an application for an assignment or a transfer of a technical licence, and shall state a reasonable period of time within which further representations may be made by the applicant or by third parties in respect of the application.

(6) The Regulatory Institution shall grant its consent to an assignment or transfer of a technical licence, subject to such conditions as it may consider appropriate.

Amendment of Licence

314. (1) The Regulatory Institution may modify, suspend or revoke any licence conditions or include additional conditions, subject to the terms of this section.

(2) The Regulatory Institution shall not modify, suspend, revoke or include additional conditions to a technical licence unless it has:

(a) consulted with the Minister, industry participants and stakeholders, giving reasons for the proposed modification, suspension, removal or addition and having properly considered any representations or objections raised; and

(b) given the affected licensee written notice of its intention to do so together with a draft copy of the proposed technical licence modification,

(c) given the licensee an opportunity to make written submissions to the Regulatory Institution in respect of the proposed amendment within the time period specified in regulations issued pursuant to this Act which shall not be more than thirty days from the date of the written notice.

(3) The procedure to be followed in modifying, suspending, revoking or adding any licence conditions shall be as prescribed in the regulations issued pursuant to this Act.

Contravention and Enforcement of Licence Conditions

315. (1) Where it appears to the Regulatory Institution that a technical licensee is contravening, has contravened, or is likely to contravene any of the conditions of the technical licence, the Regulatory Institution may publish a notice in such manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the technical licence:

(a) specifying the actual or potential contravention;

(b) directing the licensee to do, or not to do, such things as it may specify;

(c) specifying the remedy and the period of time for compliance;

(d) notifying the licensee of its intention to issue an enforcement order.

(2) The licensee and any other interested party shall be entitled to make representations against or in support of the enforcement notice by a date specified in the notice.

(3) If a licensee fails to comply with a notice served pursuant to subsection (1) of this section, the Regulatory Institution may issue an enforcement order.

(4) Failure to comply with an enforcement order shall constitute an offence.

(5) The Regulatory Institution may not issue an enforcement order if:

(a) the licensee is able to demonstrate to the satisfaction of the Regulatory Institution that

it is not contravening or about to contravene a condition of a technical licence; or

(b) the licensee has ceased to contravene a condition of a technical licence provided that if the earlier contravention was deliberate, the Regulatory Institution may, at its discretion, impose an appropriate penalty as determined by regulations made pursuant to this Act.

(6) If the licensee fails to comply with the enforcement order the Regulatory Institution may institute legal proceedings against the licensee to ensure compliance.

(7) Appeals in respect of legal proceedings under subsection (6) of this section shall be brought before the Court of Appeal.

Surrender of Licence

316. (1) In accordance with any regulations issued pursuant to this Act and upon application to the Regulatory Institution, a licensee may apply to surrender its technical licence if:

(a) the licensed activity is no longer required;

(b) in the opinion of the licensee the licensed activity is not economically justifiable;

(c) the licensee has failed to commence licensed activity within the time frame specified in the technical licence; or

(d) another qualified person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act;

(2) A licensee applying to surrender its license shall comply with all requirements of the law in respect of relinquishment and decommissioning of installations and reclamation of land.

(3) Where the licensee has commenced activities and has ongoing operations, it shall, unless a shorter period is stipulated in the licence, give the Regulatory Institution at least twelve months notice in writing of its intention to cease its activities.

Revocation or Suspension of Licence

317. The Regulatory Institution may suspend or revoke a technical license:

(a) if the licensee has breached or continues to breach a condition of the license, a regulation, or a provision of this Act where such condition or provision stipulates that the said breach shall make the technical license liable to suspension or revocation, as the case may be;

(b) if the Regulatory Institution has given six months notice of its intention to suspend or revoke the said technical licence;

(c) if-

(i) the licensee becomes insolvent or bankrupt; or

(ii) the licensee enters into an agreement or composition with its creditors; or

(iii)takes advantage of any enactment for the benefit of its debtors; or

(iv)goes into liquidation, except as part of a scheme for an arrangement or amalgamation;

(d) upon the transformation or dissolution of the licensee unless it is for the purpose of amalgamation or reconstruction and provided the prior consent of the Regulatory Institution has been obtained; or

(e) if a licensee fails to commence activities within the period of time prescribed in the licence.

Mandatory Registration with the Regulatory Institution

318. Any company engaged in activities which are required to be licensed by the Regulatory Institution pursuant to this part IV-B shall register its activities with the Regulatory Institution and provide such information concerning the activities of the undertaking as may be prescribed by regulations issued pursuant to this Act.

Register of Licenses
319.(1) The Regulatory Institution shall establish, maintain and make publicly available a register of all technical licenses issued, revoked, suspended, surrendered or withdrawn and all modifications and exemptions granted for the purposes of this Act.
(2) The officer registering the issuance of a technical licence or any modifications or exemptions as contemplated under subsection (1) of this section shall require an acknowledgement of the receipt of a copy of the licence modification or exemption from the Regulatory Institution in such form as may be prescribed by Regulations issued pursuant to this Act.

Preparation of Licenses and Duplicates,
320. (1) All technical licenses or exemptions granted by the Regulatory Institution under this Chapter shall be prepared in duplicate, one copy being delivered by the Regulatory Institution to the technical licensee and the other retained by the Regulatory Institution to be bound up in a book of the appropriate series and serially numbered.
(2) The Regulatory Institution shall not cause any technical licence to be prepared until the requisite fees have been paid.

Register of Memorials
321. The Regulatory Institution shall enter in the appropriate register a memorial of the extensions, transfers, surrenders, revocations, exemptions, forfeitures, changes of address, changes of name or any other matter affecting the status of or any interest in any technical licence registered under this part together with the date of such entry.

Effect of Registration
322. The registration of any technical licence registered under this Part shall be conclusive evidence:
(a) that the rights described therein are vested in the person named as the licensee within the said technical license; and
(b) of the conditions and other provisions to which the licensee is subject.

Public Access to the Registry
323. (1) The registry and the registers required under sections 318 and 319 shall be accessible to the public.
(2) Upon the payment of the prescribed fee, a member of the public shall be entitled to obtain a certified true copy of any document or record contained in the registers referred to in sections 319 and 321 of this Act.

Disclosure of Confidential or Other Information
324. (1) Where:
(a) any member or employee of the Regulatory Institution in the course of his duties, acquires information relating to the financial affairs of any licensee, or to any commercial secret; or
(b) any other person indirectly acquires such or other information required to be kept confidential under the provisions of this Act from any employee of the Regulatory Institution,
he or she shall not make use of such information, nor disclose it to any other person except under the conditions stated in subsection (2) of this section:
(2) Subsection (1) of this section shall not prohibit any licensee or person from disclosing any information required to be kept confidential:
(a) for the purpose of legal proceedings under this part or any other law;

(b) to the extent that it may be necessary to do so for the purpose of this Act or any other law; or
(c) to another employee of the Regulatory Institution.

(3) No member or employee of the Regulatory Institution shall, for personal gain, make use of any information acquired by him in the course of his duties for a period of five years after the date on which he ceased to be a member or employee.

(4) Any person who contravenes subsections (1) and (3) of this section shall be guilty of an offence and liable on conviction to:

(a) the forfeiture of any proceeds accruing to him or her as a result of the said offence; and

(b) a fine not US $ 40,000, which fine shall be adjusted yearly by the Adjustment Factor of Section 431 hereof subject to regulations made by the Minister or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

C- Commercial Licensing

Activities requiring a Commercial Licence

325.(1) No company shall, except with a commercial licence issued by the Regulatory Institution;

(a) own and operate a petroleum pipeline transportation business;

(b) own and run a petroleum transportation network business;

(c) undertake the supply of downstream products or natural gas; or

(d) own and run a downstream products or natural gas distribution network business.

(2) No company shall engage in refining, marketing, or operating any petroleum processing or transmitting plant, terminal or premises without a commercial license issued by the Regulatory Institution.

(3) Subject to a formal consultation process held between industry participants, stakeholders and the Regulatory Institution, the Regulatory Institution may, by regulations issued pursuant to this Act, prescribe additional activities to be undertaken only on the basis of a commercial licence.

(4) Any person who at the commencement of this Act was engaged in any activity regulated under this Act shall, within sixty days of the commencement of this Act, apply to the Regulatory Institution for the issuance of an appropriate commercial license for the transportation, distribution or supply of gas, as the case may be.

(5) Any person who:

(a) engages in any of the activities set out in subsection (1) and (2) of this section without a commercial license; or

(b) engages in any activity that becomes subject to licensing under subsection (3) or (4) of this section without a commercial license; or

(c) in applying for a commercial licence, knowingly makes a statement which is false or misleading in any material particular;

shall be guilty of an offence and liable to a fine US $ 200,000, which fine shall be adjusted yearly by the Adjustment Factor of section 431 of this Act, subject to regulations made by the Minister, or if a natural person, to imprisonment for a term of two years, and, after due enquiry and arrangements to ensure that customers will not be adversely affected, the Regulatory Institution may, in addition, suspend or revoke the license in question.

(6) Proceedings in respect of subsection (5) of this section shall be commenced only by the Regulatory Institution.

(7) For the purpose of this chapter, the term "operator" shall refer to any company licensed by the Regulatory Institution to operate in the downstream petroleum sector.

Transportation Pipeline Owner

326. (1) Subject to section 325 of this Act, and upon the approval of the Agency of an application by a qualified person and the payment of the prescribed fee, the Agency may grant and issue to that person a transportation pipeline licence with the exclusive right to own, operate and maintain a midstream transportation pipeline within a route as defined in the licence.

(2) In considering an application for a transportation pipeline licence, the Agency shall consider the economic viability of, and the potential demand for the use of a transportation pipeline.

(3) In considering an application the Agency shall benchmark the capital and operating costs proposed by the applicant, and determine whether such cost are excessive and whether such excessive cost would have a negative impact on the values for royalty purposes pursuant to section 434 of this Act or would impact on consumper prices.

Obligations of a Transportation Pipeline Owner

327. The transportation pipeline licensee shall undertake the activities contemplated by the transportation pipeline licence in a manner best calculated to comply with the obligations to:

(a) operate and maintain economical, safe and reliable transportation infrastructure, taking into account any strategic plans that may be formulated by the Agency;

(b) manage supply shortfalls and where feasible, meet requests of customers for transportation above contractual volumes;

(c) shut down its transportation systems in emergencies and in order to carry out maintenance;

(d) manage the transportation pipelines as a reasonable and prudent operator; and

(e) do nothing that, in the opinion of the Agency, prevents, restricts or distorts competition.

Conditions Applicable

328. (1) In addition to such conditions as may be imposed by the Agency under the terms of this Act, a transportation pipeline licensee shall:

(a) not be transporter of crude oil, condensates or gas to customers in Nigeria directly on its own account;

(b) conduct its licensed activities safely and reliably in compliance with any law then in force and prescribed health and safety provides pursuant Part VII of this Act;

(c) have due regard for the effect of its licensed activities on the environment and comply with requirements for environmental protection, management, and restoration under this Act and any law in force at the time; and

(d) mark, maintain and secure the boundaries of any pipelines and associated infrastructure constructed under the terms of its licence and any law then in force.

(2) Transporters on a midstream transportation pipelines or transportation networks below can be producers or buyers of crude oil, condensates or gas, or other companies which are not the transportation pipeline owner, provided, however, that affiliates of the transportation pipeline owner may be transporters.

Transport Network Operator License

329. (1) Subject to the provisions of section 325 of this Act, and upon approval by the Agency of an application by a qualified person and the payment by such person of the prescribed fee, the Agency may grant and issue to that person a transportation network operator licence authorizing the conduct of activities specified in the licence, including:

(a) the conveyance of gas through the transportation network;

(b) balancing the inputs and offtakes from the transportation network;

(c) providing third party access to the transportation network; and
(d) charging for the use of the transportation network.
(2) The Agency may grant a transportation network operator licence within a geographically defined area to a single network operator; provided however, that the Agency may issue transportation pipeline licenses to other parties for the operation of isolated or dedicated pipelines.

General Duties of a Transportation Network Operator
330. The transportation network operator shall exercise the rights and obligations imposed on it in a manner best calculated to:
(a) operate an efficient and economical transportation network for the safe and reliable conveyance of gas in such a manner as is designed to meet all reasonable demands for gas;
(b) operate nominations and balancing mechanisms and an equitable curtailment of gas transportation whenever technical or operational expediencies so require;
(c) ensure equitable and transparent access to the transportation network;
(d) establish and publish terms and conditions for access to the network, which terms and conditions shall be approved by the Agency and shall be part of the Project Approval Certificate;
(e) enter into agreements with transportation pipeline owners, distributors, and, where appropriate, wholesale customers, for connection to and operation of the transportation network.

Powers of a Transportation Network Operator
331. Subject to the provisions of this Act and to facilitate the conduct of its licensed activities, the Agency may grant to a transportation network operator:
(a) the power to request for and obtain from all transporters, information required to operate the nominations and balancing mechanism, to operate the network or to facilitate competition;
(b) subject to any restrictions or conditions imposed by the Agency with respect to both the level and structure of its charges, the right to recover, on the basis of an invoice, expenses reasonably incurred in undertaking its licensed activities; and
(c) the right to purchase gas for its own pipeline operations for purposes such as testing and commissioning of facilities, for compression purposes and for line fill.

Conditions Applicable to a Transportation Network Operator Licence
332. In addition to such conditions as may be imposed by the Agency pursuant to this part, the Agency may furthermore develop market rules in accordance with the provisions of this Part, which shall be complied with by the transportation network operator.

Supply Licence
333. (1) Subject to section 325 of this Act, and upon the approval by the Agency of an application made by a qualified person and the payment of the prescribed fee, the Agency may grant and issue to that company a supply licence to supply gas into the downstream gas sector.
(2) An upstream gas producer intending to supply gas to an aggregator, a wholesale buyer or into the downstream gas sector shall be a qualified supplier within the meaning of the provisions of this Part and shall be entitled to apply for and be issued a supply licence by the Agency.
(3) A company proposing to be an aggregator shall be entitled to apply for and may be issued a supply license by the Agency, where such company is technically and financially qualified as a gas marketing company.
(4) A supply licence shall authorise the licensee ("supplier") to purchase gas and to, sell and deliver gas to purchasers of gas at any location in Nigeria.

General Duties of a Supplier
334. (1) A supplier shall undertake the activities contemplated by the supply licence in a manner best calculated to comply with the obligations to:

(a) provide a reliable supply of gas to purchasers on request, provided that it is economically feasible to do so; and

(b) do nothing that, in the opinion of the Agency, may prevent, restrict or distort competition.

(2) The sale of gas to wholesale customers by the holder of a supply licence shall be subject to the provisions of this Act.

Domestic Supply Obligations
335. All gas suppliers shall comply with the Domestic Gas Supply Obligations under Chapter 3 of Part V hereof.

Conditions Applicable to a Supply Licence
336. (1) In addition to such conditions as may be imposed by the Agency pursuant to this Part, a Supply Licence shall:

(a) ensure a reliable and efficient supply of gas to customers on request, provided that it is economical to do so;

(b) request security or apply a credit scoring methodology approved by the Agency in deciding whether supply is economical;

(c) subject to safety and network capacity constraints, supply gas on request to a customer who is willing and able to pay for connection to the transportation network;

(d) conduct licensed activities safely and reliably in compliance with any law in force and any health and safety regulations issued pursuant to this or any other Act;

(e) comply with customer protection measures in accordance with the provisions of this Part.

Distribution Licence
337. (1) Subject to section 325 of this Act, and upon approval by the Authority of an application made by a qualified company and the payment of the prescribed fee, the Authority may grant and issue to that company a distribution licence granting the exclusive right to own and operate a distribution system and to distribute gas within a local distribution zone.

(2) The holder of a distribution licence shall be entitled to apply for, hold and operate a license for the exclusive supply of gas within the local distribution zone to customers that are not wholesale customers.

(3) In considering an application for a distribution licence, the Authority shall consider the economic viability of, and the potential demand for its use.

(4) In considering an application the Authority shall benchmark the capital and operating costs proposed by the applicant, and determine whether such cost are excessive and whether such excessive cost would have a negative impact on consumer prices.

(5) The geographical limits of each local distribution zone shall be defined in the relevant distribution licence.

Obligations of a Distribution Licensee

338. The holder of a distribution licence shall undertake the activities contemplated by the distribution licence in a manner best calculated to comply with the obligations:

(a) to develop, operate and maintain an economical distribution network for the safe and reliable conveyance of gas;

(b) to ensure a reliable and efficient distribution of gas to customers on request, provided that it is economical to do so;

(c) subject to safety and network capacity constraints, to distribute gas on request to any customer who is willing and able to pay for connection to the distribution network;

(d) to conduct licensed activities safely and reliably, in compliance with any law in force and any health and safety regulations issued pursuant to this Act or any other Act;

(e) to connect all customers within its local distribution zone in accordance with prescribed regulations, if it is economically practicable to do so;

(f) to co-operate with the Authority in the development of the network code;

(g) to offer and publish terms and conditions of access to its distribution network as required;

(h) to comply with customer protection measures in accordance with the provisions of this Act; and

(i) to do nothing to prevent, restrict or distort competition.

Rights of the Distribution Licensee

339. (1) Subject to the provisions of this Act and in order to facilitate the conduct of its licensed activities, the Authority may grant the holder of a distribution licence the right:

(a) to enter the premises of a customer in order to read meters, to test metering equipment or to disconnect customers and remove meters;

(b) to recover, on the basis of an invoice, costs reasonably incurred in the provision of appropriate infrastructure, subject to any restriction or conditions imposed by the Authority with respect to both the level and structure of a Distributor's charges.

(2) Reasonably incurred costs referred to in subsection (1) of this section shall include any amounts paid to the Authority as fees.

Conditions Applicable to a Distribution Licence

340. (1) In addition to such conditions as may be imposed by the Authority pursuant to this Act, or that may be prescribed by regulations issued pursuant to this Act, each distribution licensee shall:

(a) conduct its licensed activities in accordance with safe and reliable standards and in compliance with prescribed management, health, and safety regulations issued pursuant to this Act or any other Act;

(b) having due regard to the effect of its licensed activities on the environment, comply with any requirements for environmental protection, management, and restoration under this Act and any law in force;

(c) mark, maintain and secure the boundaries of the gas distribution pipelines constructed as prescribed;

(d) comply with customer protection measures set out in chapter 2 of Part V-C of this Act.

(2)The holder of a distribution license shall connect customers within its local distribution zone in the manner prescribed by regulations issued pursuant to this Act, provided that it is economical and practical to do so.

(3) The Authority shall settle any disputes that may arise in relation to the distribution network.

Arrangements for Gas Distribution

341. The holder of a distribution licence shall consult stakeholders on proposed development projects within its local distribution zone and shall duly consider all representations received.

Matters Relating to Licence Applications

342. (1) The Regulatory Institution may grant, renew, modify or extend commercial licenses issued further to Section 325 of this Act.

(2) An application for the grant, renewal, modification or extension of a commercial licence shall be presented to the Regulatory Institution in the form and manner and accompanied with the prescribed fee, if any, and any other information or documents that may be prescribed under any regulations issued by the Regulatory Institution.

(3) The Regulatory Institution may furnish any person applying for the grant, renewal or extension of a commercial licence with such non-confidential information as the applicant may request which may facilitate the filing of the application.

(4) An applicant for a commercial licence who is an affiliate of a body corporate that has applied for or holds any other licence shall disclose such interest to the Regulatory Institution in its

application.

(5) The Regulatory Institution shall consider all information presented in respect of an application for a commercial licence including representations from interested parties in favour of or against the granting, extension or renewal of the said commercial licence; and shall furnish any applicant for a licence with any other information that may facilitate the filing of an application.

(6) Where the Regulatory Institution has decided to grant a commercial licence it shall publish a notice of its decision in the form and in the manner prescribed in regulations issued by the Minister on the recommendation of the Regulatory Institution, for the purpose of regulating the commercial aspect of midstream or downstream gas and products as the case may be.

(7) Where the Regulatory Institution has declined an application, it shall inform the applicant of its reasons for such refusal, and shall state a reasonable period of time within which the applicant in respect of the application can make further representations in respect of the decision.

(8) The Regulatory Institution shall duly consider any representation made by an applicant for a licence in respect of the refusal of a licence application.

(9) No further application or representation shall be made by an applicant, or considered by the Regulatory Institution in the event that representations in respect of a refusal of an application have been considered and rejected by the Regulatory Institution.

Advertisement of Licence Applications

343. (1) When an application is made for a commercial licence under the provisions of this Part IV-C, the applicant shall publish a notification of the application in at least two Nigerian newspapers as may be prescribed in any regulations issued by the Minister on the recommendation of the Regulatory Institution.

(2) Following the publication of the notification of the application, interested parties may comment on or make representations to the Regulatory Institution in respect of the application in accordance with the prescribed periods of time in the regulations, which periods of time must be indicated in the published notification.

(3) Following the grant or renewal of a commercial licence the applicant shall publish the notification of the grant or renewal in at least two Nigerian newspapers with nationwide circulation, as the Regulatory Institution may prescribe in accordance with the prescribed regulations.

Licence Regulations

344. (1) The Regulatory Institution shall make recommendations to the Minister to issue regulations applicable to the commercial licensing of midstream petroleum operations and downstream petroleum operations, as the case may be, which regulations shall include, but shall not be limited to:

(a) the procedure, form, criteria, periods of time, and fees for licence applications, including any criteria for the grant of the licence, and the grounds on which licenses may be refused;

(b) the duration of licenses and the procedure, form, criteria and timescale for their

renewal;

(c) the procedure, form and periods of time for publishing notification of a licence application or renewal;

(d) the procedure, form, criteria and periods of time for licence modifications, including the process for changing standard and special licence conditions and the public consultation process required as part of the licence modification procedures;

(e) the procedure, form, criteria and timescale for the transfer or surrender or suspension or revocation of a licence.

Licence Conditions

345. (1) Conditions included in a commercial licence issued pursuant to this chapter may require the licensee to:

(a) comply with any directions given by the Regulatory Institution in relation to matters specified in the commercial licence;

(b) undertake or refrain from undertaking anything specified in the commercial licence;

(c) secure the approval of the Regulatory Institution prior to undertaking anything specified in the commercial licence, provided that no activities under a commercial licence can take place unless the Project Approval Certificate has been granted;

(d) comply with industry codes, standards and market rules;

(e) comply with price or revenue restrictions imposed by the Regulatory Institution in accordance with the provisions of this Act;

(f) provide information to the Regulatory Institution;

(g) restrict the use of certain types of sensitive information;

(h) prepare and submit to the Regulatory Institution true and sufficient annual statements of accounts for each licensed activity in such form, and containing such particulars as the Regulatory Institution may require and produce such books upon the request of duly authorized officers of the Regulatory Institution;

(i) adhere to undertakings made within a business plan submitted as part of the commercial licence application process;

(j) prepare and submit to the Regulatory Institution such information and periodical reports as the Regulatory Institution may require;

(k) publish terms of access to its transportation or distribution pipeline or network as the case may be;

(l) operate its licence according to the standard of a reasonable and prudent operator.

(2) Conditions applicable to a commercial licence may cease to have effect or may be modified under circumstances specified in the commercial licence.
(3) Commercial licenses granted by the Regulatory Institution to licensees of the same class shall contain similar conditions, which shall be standard licence conditions for that class.
(4) Any differences in conditions contained in commercial licenses issued to licensees of the same class shall only be for objectively justifiable reasons, which shall be communicated to the licensees if they so request.
(5) Subject to the provisions of this Act, the Regulatory Institution shall have the power to include special conditions specific to a particular commercial licence or licensee provided that such special licence conditions shall be designed to meet specific circumstances and shall not unduly disadvantage one licensee in relation to another.
(6) The Regulatory Institution may specify a date after the grant of a commercial licence on which licensed activities shall commence.
(7) The Regulatory Institution may provide that a licensed activity shall be exclusive for all or part of the period of the licence, for a specific purpose, for a specified geographical area or route, or for any combination of the foregoing.

Separation of Certain Licensed Activities
346. (1) Subject to section 328(2) and the approval of the Minister and at such time as the Regulatory Institution determines that it is practical and necessary to facilitate competition, the Regulatory Institution may introduce licence conditions, requiring the separation of licensed activities, which conditions may prohibit a licensee from also holding commercial licenses of another type.

(2) Sales between a licensee and an affiliate of that commercial licensee shall be undertaken in a manner that:
(a) ensures that the pricing between both entities is at a transparent arms length basis; and
(b) reflects the pricing and tariff principles contained in the appropriate sections of this Act.

(3) No licensee shall directly or indirectly acquire an interest in, purchase, or otherwise affiliate with another licensee or an affiliate of a licensee without the prior written consent of the Regulatory Institution.

Non-discrimination
347. Except on the basis of objectively justifiable and identifiable differences which shall be communicated to all customers, licensees shall not discriminate between customers or classes of customers, or their related undertakings, or network users, in respect of access, tariffs, prices, conditions or standards of service, unless expressly permitted by the Regulatory Institution.

Duration of Licence
348. (1) A commercial Licence issued pursuant to this chapter shall be valid for a period of twenty-five (25) years in the first instance and may be renewed for such further periods as the Regulatory Institution may determine, subject to the criteria and in accordance with the procedure prescribed by regulations issued pursuant to this Act, provided however that any one extension shall not exceed twenty-five (25) years.

(2) The Regulatory Institution may set new or different licence conditions upon the renewal of a commercial licence.

Assignment or Transfer of Licence

349. (1) A licensee shall not, directly or indirectly, assign or transfer its commercial licence or any rights or obligations arising from such licence without the written consent of the Regulatory Institution.

(2) An application for the assignment or transfer of a commercial licence shall be made to the Regulatory Institution, in accordance with prescribed regulations.

(3) In determining whether a commercial licence may be assigned or transferred, the Regulatory Institution shall follow the same procedures, with such modifications as may be appropriate in the circumstances, and apply the same rules and criteria and consider the same issues as if the party to whom the commercial licence is being assigned or transferred is itself applying for a new commercial licence, and shall, in so doing, duly consider the representations made to it by third parties in respect of the application.

(4) Subject to subsection (3) of this section, the Regulatory Institution shall communicate its refusal or approval of an application for the assignment or transfer of a commercial licence to the licensee in writing.

(5) The Regulatory Institution shall advise the applicant of the reasons for its refusal of an application for an assignment or a transfer of a commercial licence, and shall state a reasonable timescale within which further representations may be made by the applicant or by third parties in respect of the application.

Amendment of Licence

350. (1) The Regulatory Institution may modify, suspend or revoke any commercial licence conditions or include additional conditions, subject to the provisions of this Act.

(2) The Regulatory Institution shall not modify, suspend, revoke or include additional conditions to a commercial licence unless it has:

(a) consulted with the Minister, industry participants and stakeholders, giving reasons for the proposed modification, suspension, removal or addition and having properly considered any representations or objections raised;

(b) given the affected licensee written notice of its intention to do so together with a draft copy of the proposed licence modification; and

(c) given the licensee an opportunity to make written submissions within the time period specified in regulations issued pursuant to this Act but within thirty days from the date of the written notice.

(3) The Regulatory Institution shall not modify, suspend, revoke or include additional conditions to the licence conditions of any type of licence if:

(a) such modification, suspension, revocation or inclusion would adversely interfere with the performance of contractual obligations assumed by the licensee with customers on the basis of such licence; or

(b) result in any licensee being unduly disadvantaged in competing with another licensee

or licensees of the same type or with suppliers of competing fuels, in the case of a supply licence.

(4) The procedure to be followed in modifying, suspending, revoking or adding any Licence conditions shall be as contained in the prescribed regulations.

(5) A licensee may appeal against a proposed licence modification subject to the provisions of this chapter.

Contravention and Enforcement of Licence Conditions

351. (1) Where it appears to the Regulatory Institution that a licensee is contravening, has contravened or is likely to contravene any of the conditions of the commercial licence, the Regulatory Institution may publish a notice in such manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the said commercial licence:

(a) specifying the actual or potential contravention;

(b) directing the licensee to do, or not to do, such things as it may specify;

(c) specifying the remedy and the timescale for compliance; and

(d) notifying the licensee of its intention to issue an enforcement order.

(2) The licensee and any other interested party shall be entitled to make representations against or in support of the enforcement notice by a date specified in the notice.

(3) If a licensee fails to comply with a notice served pursuant to subsection (1) of this section, the Regulatory Institution may issue an enforcement order. Failure to comply with an enforcement order shall constitute an offence.

(4) The Regulatory Institution shall not issue an enforcement order if:

(a) the licensee is able to demonstrate to the satisfaction of the Regulatory Institution that it is not contravening or about to contravene a condition of a commercial licence; or

(b) where the contravention was not intentional and deliberate, the licensee has ceased to contravene a condition of a commercial licence.

(5) Where it is found that the licensee deliberately contravened a provision of the license the Regulatory Institution may, if it so wishes, impose an appropriate penalty in accordance with prescribed regulations.

(6) If the licensee fails to comply with an enforcement order the Regulatory Institution may institute legal proceedings against the Licensee and before the Federal High Court to ensure compliance.

(7) The Regulatory Institution may, subject to the regulations made pursuant to this Act, adjust from time to time the penalty mentioned in subsection (4)(b) of this section in order to reflect

current rates of inflation.

Surrender of Licence

352. (1) The licensee may, in accordance with conditions prescribed by regulations issued pursuant to this Act, surrender the commercial licence if:

(a) the licensed activity is no longer required;

(b) the licensed activity is not economically justifiable;

(c) the licensee has failed to commence licensed activity within the time frame specified in the commercial licence;

(d) another qualified person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this chapter; and

(e) where applicable, the licensee has complied with all requirements of the law in respect of relinquishment and decommissioning of installations and reclamation of land.

(2) Where the licensee has commenced activities and has ongoing operations, it shall, unless a shorter period is stipulated in the commercial licence, give the Regulatory Institution at least twelve months notice in writing of its intention to cease its activities.

Revocation or Suspension of Licence

353. The Regulatory Institution may after giving (six) months notice of its intention, suspend or revoke a commercial licence if the licensee has breached or continues to breach a condition of the licence or a regulation or a provision of this Part, where such condition or provision stipulates that a breach thereof shall make the licence liable to revocation or suspension, as the case may be.

Grounds for the Revocation of a Licence

354. A licence may be revoked:

(a) if the licensee becomes insolvent or bankrupt or enters into an agreement or composition with its creditors or takes advantage of any enactment for the benefit of its debtors or goes into liquidation, except as part of a scheme for an arrangement or amalgamation;

(b) upon the transformation or dissolution of the company or corporation unless it is for the purpose of amalgamation or reconstruction and provided the prior consent of the Regulatory Institution has been obtained; or

(c) if a licensee fails to commence activities within the period of time prescribed in the licence.

Mandatory Registration with the Regulatory Institution

355. Any person engaged in activities in the downstream petroleum industry which are required to

be licensed by the Regulatory Institution pursuant to this part shall register with the Regulatory Institution and provide such information concerning the activities of the undertaking as may be prescribed by regulations issued pursuant to this Act.

Register of Licenses
356. (1) The Regulatory Institution shall establish, maintain and make publicly available a register of all commercial licenses issued, revoked, suspended, surrendered or withdrawn and all modifications and exemptions granted for the purposes of this Act.

(2) The officer registering the issuance of a commercial licence or any modifications or exemption as contemplated under subsection (1) of this section shall require an acknowledgement of the receipt of a copy of the licence modification or exemption from the person accepting it in such form as may be prescribed by Regulations issued pursuant to this Act.

Preparation of Licenses and Duplicates,
357. (1) All commercial licenses or exemptions granted by the Regulatory Institution under this chapter shall be prepared in duplicate, one copy being delivered by the Regulatory Institution to the licensee and the other retained by the Regulatory Institution to be bound up in a book of the appropriate series and serially numbered.

(2) The Regulatory Institution shall not prepare a licence until the prescribed fees have been paid.

Register of Memorials
358. (1) The Regulatory Institution shall maintain a registry within which registers of memorials of all commercial licenses issued by it are kept.

(2) The memorial of any commercial license shall contain entries of extensions, transfers, surrenders, revocations, exemptions, forfeitures, changes of address, changes of name or any other matter affecting the status of or any interest in any licence given by the Regulatory Institution in respect of this Part, in addition to the dates of such entries.

Effect of Registration
359. The memorial of any commercial license, as contained in the registry maintained by the Regulatory Institution in accordance with the provisions of section 358 of this Act shall be conclusive evidence:

(a) that the rights described therein are vested in the person named as the licensee; and

(b) of the conditions and other provisions to which the licensee is subject, so far as the same are required by any provision of this Act to be specified in the document.

Public Access to the Registry
360. (1) The registry and the registers required under sections 356 and 358 shall be readily accessible to the public during the hours and upon the days designated by the Regulatory Institution.

(2) Upon the payment of the prescribed fee, a member of the public shall be entitled to obtain a certified true copy of any document or record contained in the registers maintained by the

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Register of Licenses
356. (1) The Regulatory Institution shall establish, maintain and make publicly available a register of all commercial licenses issued, revoked, suspended, surrendered or withdrawn and all modifications and exemptions granted for the purposes of this Act.

(2) The officer registering the issuance of a commercial licence or any modifications or exemption as contemplated under subsection (1) of this section shall require an acknowledgement of the receipt of a copy of the licence modification or exemption from the person accepting it in such form as may be prescribed by Regulations issued pursuant to this Act.

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(2) The Regulatory Institution shall not prepare a licence until the prescribed fees have been paid.

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(2) The memorial of any commercial license shall contain entries of extensions, transfers, surrenders, revocations, exemptions, forfeitures, changes of address, changes of name or any other matter affecting the status of or any interest in any licence given by the Regulatory Institution in respect of this Part, in addition to the dates of such entries.

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(a) that the rights described therein are vested in the person named as the licensee; and

(b) of the conditions and other provisions to which the licensee is subject, so far as the same are required by any provision of this Act to be specified in the document.

Public Access to the Registry
360. (1) The registry and the registers required under sections 356 and 358 shall be readily accessible to the public during the hours and upon the days designated by the Regulatory Institution.

(2) Upon the payment of the prescribed fee, a member of the public shall be entitled to obtain a certified true copy of any document or record contained in the registers maintained by the

a) supply to the downstream domestic market refined petroleum products at the benchmark price set by the Authority.
b) undertake whatever investments that are required to upgrade its refinery and to increase its refining capacity in order to fulfil its obligations to the Agency under this section;
c) from the inception of its licence, have open access to logistics facilities such as harbours, petroleum bulk storage and transportation facilities and pumping installations at any refinery not operated by, or transferred to it, in accordance with the terms of this part, and at tariffs approved by the Authority; and
d) own any and all storage facilities integral to the refinery.

Reorganization of midstream and downstream NOC assets

365. (1) The Petroleum Products Marketing Company shall be split into two companies:

(a) a limited liability company dealing with product pipeline transportation and bulk terminals and depots, to be known as the National Transport Logistics Company, shall be wholly owned by the Nigerian state, and

(b) a limited liability company, wholly owned by the National Oil Company, dealing with downstream petroleum product marketing.

(2) The Nigerian Gas Company shall be split into two companies:

(a) a limited liability company dealing with midstream gas pipeline transportation, known as National Gas Transportation Company, and

(b) a limited liability company, wholly owned by the National Oil Company, and be known as the Nigerian Gas Marketing Company dealing with downstream gas distribution and marketing.

(3) The allocation of existing assets and liabilities shall be determined by the National Oil Company.

(4) The Agency shall issue to the companies under subsections (1)(a) and (2)(a) such licences as required under this Act

(5) The Authority shall issue to the companies under subsections (1)(b) and (2)(b) such licences as required under this Act.

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Transfer of ownership

366. (1) On the effective date, or no later than one month after the date of incorporation, the Minister shall transfer the ownership of the product pipelines and applicable depot systems formerly owned by the Petroleum Products Marketing Company to the National Transport Logistics Company, except for such depots required for marketing as the National Oil Company may allocate to the company pursuant to section 365(1)(b).

(2) The petroleum product pipelines and depots and other assets transferred to the National Transport Logistics Company shall be divided into geographical or other segments and each segment shall be concessioned out to regional storage depot companies, who shall be selected and regulated in accordance with guidelines to be specified by the Authority, who shall be in charge of the management and operation of the segment of petroleum product pipelines and depots that have been concesioned out to them.

(3) The city-gate terminals and gas distribution systems shall be transferred to the Nigerian Gas Marketing Company pursuant to section 365(2)(b)

Limits on regional storage depot companies

367. No regional storage depot company shall engage, directly or indirectly, in any other operational activity in the downstream petroleum sector, with the exception of bulk transportation.

Open Access

368. A licensed petroleum marketing company and a refining company shall be given access to the regulated petroleum product pipelines system and regulated jetties and loading facilities and storage depots operated by regional depot management:

(a) in the manner prescribed by this Act and other regulations, guidelines or directives from the Authority; and

(b) on such commercially viable terms as may be determined by the Authority from time to time.

Contract for Pipeline capacity

369. (1) Every licensed petroleum marketing company shall contract for pipeline capacity and loading and storage capacity with a regional depot management company:

(a) in proportion to the petroleum marketing company's shares of the domestic petroleum market;

(b) in the manner prescribed by this Act and other regulations, guidelines and directives from the Authority; and

(b) on commercially viable terms as may be determined by the Authority from time to time.

Non-Discrimination

370. The National Transport Logistic Company and regional storage depot companies shall not discriminate between customers or classes of customers regarding access, tariffs, prices, conditions or services, except on grounds defined as justifiable and identifiable by the Authority.

Rights to Uncommitted Capacity in Private Facilities

371. (1) Licensed petroleum marketing companies shall have rights of access to uncommitted capacity in:

a) petroleum product pipelines that are controlled by private domestic or foreign operators but deemed to be strategic to the national interest;
b) storage facilities that are controlled by private domestic or foreign operators but deemed by the Authority to be strategic to the national interest;
c) petroleum product pipelines operated by any of the facility management companies.

(2) The rights to uncommitted capacity in subsection (1) of this section shall be:

(a) in the manner prescribed by this Act and other regulations, guidelines and directives from the Authority; and

(b) on commercially viable terms as may be determined by the Authority from time to time.

Interconnections

372. The Regulatory Institutions shall require midstream pipeline companies and downstream product pipeline licensees to allow interconnections with the facilities of other licensees, provided that:

(a) the interconnection is technically feasible, and

Limits on regional storage depot companies

367. No regional storage depot company shall engage, directly or indirectly, in any other operational activity in the downstream petroleum sector, with the exception of bulk transportation.

Open Access

368. A licensed petroleum marketing company and a refining company shall be given access to the regulated petroleum product pipelines system and regulated jetties and loading facilities and storage depots operated by regional depot management:

(a) in the manner prescribed by this Act and other regulations, guidelines or directives from the Authority; and

(b) on such commercially viable terms as may be determined by the Authority from time to time.

Contract for Pipeline capacity

369. (1) Every licensed petroleum marketing company shall contract for pipeline capacity and loading and storage capacity with a regional depot management company:

(a) in proportion to the petroleum marketing company's shares of the domestic petroleum market;

(b) in the manner prescribed by this Act and other regulations, guidelines and directives from the Authority; and

(b) on commercially viable terms as may be determined by the Authority from time to time.

Non-Discrimination

370. The National Transport Logistic Company and regional storage depot companies shall not discriminate between customers or classes of customers regarding access, tariffs, prices, conditions or services, except on grounds defined as justifiable and identifiable by the Authority.

Rights to Uncommitted Capacity in Private Facilities

371. (1) Licensed petroleum marketing companies shall have rights of access to uncommitted capacity in:

a) petroleum product pipelines that are controlled by private domestic or foreign operators but deemed to be strategic to the national interest;
b) storage facilities that are controlled by private domestic or foreign operators but deemed by the Authority to be strategic to the national interest;
c) petroleum product pipelines operated by any of the facility management companies.

(2) The rights to uncommitted capacity in subsection (1) of this section shall be:

(a) in the manner prescribed by this Act and other regulations, guidelines and directives from the Authority; and

(b) on commercially viable terms as may be determined by the Authority from time to time.

Interconnections

372. The Regulatory Institutions shall require midstream pipeline companies and downstream product pipeline licensees to allow interconnections with the facilities of other licensees, provided that:

(a) the interconnection is technically feasible, and

(b) the licensee requesting the interconnection bears the costs of creating the interconnection.

Indemnification

373. The national transport logistic company and regional storage depot companies shall indemnify all users of their open access facilities against all losses and incidental expenses arising from the poor technical integrity of their facilities.

Independent Pipelines and Depots

374. (1) Nothing in this Act shall preclude any licensed oil marketing company or bulk consumer of petroleum products from constructing and operating independent petroleum product pipelines and depots for its exclusive usage.

(2) The pipelines and depots referred to in subsection (1) of this section shall not be subject to the commercial regulation of the Authority, with the exception of section 371 which shall apply to the the said pipelines and depots.

(3) Notwithstanding the provisions of subsection (2) of this section, where operators of independent pipelines and depots enter into open access agreements with third parties, such pipelines and depots shall be subject to the commercial regulation and supervision of the Authority.

Tariff Methodology

375. (1) The Regulatory Institution shall prescribe tariffs for:

(a) transportation by pipelines;

(b) bulk storage of crude oil and petroleum products in depots designated by the Authority as open access facilities;

(c) distribution of petroleum products;

(d) marketing of petroleum products; and

(e) retail supply of petroleum products.

(2) Tariffs for activities referred to in subsection (1) of this section shall be set according to one or more tariff methodologies adopted by the Regulatory Institution for regulating prices and such tariff methodologies shall:

(a) allow an operator that operates efficiently to recover the full cost of its business activities including a reasonable return on the capital invested in such business;

(b) provide incentives for continued improvement of the technical and economic efficiency of the business;

(c) provide incentives for the continued improvement of quality of services;

(d) avoid undue discrimination among categories of consumers; and

(e) gradually reduce cross-subsidies among different categories of consumers.

(3) In establishing tariff methodologies, the Regulatory Institution shall take into account the existence of any subsidy given to the operators from which they directly benefit, any favourable financing terms, and any other matter that impacts directly or indirectly on tariff methodologies.

(4) Notwithstanding subsection (2) of this section, the Regulatory Institution shall have the power to establish tariff methodologies that reflect the terms and conditions of a contract between operators or between an operator and one or more eligible customers.

(5) Prior to approving a tariff methodology the Regulatory Institution shall give notice in the official Gazette and in at least two newspapers of nationwide circulation of the proposed establishment of a tariff methodology and such notice shall

(a) indicate a period within which any aggrieved person may raise objections on the proposed methodology, and

(b) the date of a public hearing the Regulatory Institution shall conduct for discussion of that methodology.

(6). Prior to the establishment of the tariff methodology, the Regulatory Institution shall:

(a) consider any representations made by applicants, operators, consumers, prospective customers, consumers' associations, associations of prospective customers and such other persons reasonably interested; and

(b) obtain evidence, information or advice from any person possessing relevant expert knowledge.

(7) The Regulatory Institution shall fix a date upon which the tariff methodology shall come into effect and it shall cause the notice of that day to be given in the official Gazette and published in at least one national newspaper.

(8) If it appears to the Regulatory Institution that a tariff methodology should be changed, it shall conduct a public hearing on the proposal to change the methodology and give notice of it in accordance with the terms of subsection (5) of this section, indicating the period within which any persons may make representations to the Regulatory Institution in connection with the proposal.

(9) The Regulatory Institution may confirm the proposed changes to tariff methodology after taking into account any objections or representations received in response to notices issued under subsection (8) and shall comply with the provisions of subsection (7).

(10) Every person upon whom any duty has been imposed in connection with setting tariffs shall be so bound by the operative tariff methodology adopted through the method prescribed in this section.

(11) Every downstream operator shall display at its office a current copy of the tariff methodology applicable to such operator.

(12) No downstream operator shall pass the costs of any fines or penalties incurred under this Act or any other law on to the consumers as an operational cost.

National Strategic Stock

376. The Authority shall:

(a) administer and ensure compliance, disctribution and storage of the national strategic stocks of petroleum products in accordance with guidelines set by the Minister on the recommendation of the Authority;

(b) determine the amount to be charged as a levy for the financing of the national strategic stock, which shall form part of the retail price of each petroleum product; and

(c) designate, in conjunction with the appropriate authorities and national security agencies, the strategic points across the country where the national strategic stocks shall be distributed and maintained.

Operating Stock

377. The Authority shall ensure that all oil marketing companies maintain operating stocks in accordance with guidelines set by the Authority.

Price Monitoring

378. (1) The Authority shall monitor:

(a) the prices of petroleum products applied in the domestic market to ensure that such products are sold at prices that do not exceed the benchmark prices set by the Authority; and

(b) any activity of any operator in the downstream sector that, in the opinion of the Authority, is likely to adversely affect the prices of petroleum products.

(2) In monitoring the prices of petroleum products, the Authority shall:

(a) inspect the metering of pumps and other facilities at retail outlets to ensure they conform to the standards set by the Authority, to the extent that any distortion of such metering is likely to affect the prices of petroleum products;

(b) inspect all facilities at retail outlets to ensure that the products conform to such quality standards as set by the Inspectorate and the Authority, to the extent that non-compliance is likely to affect the prices of petroleum products;

(c) inspect any facility used in the storage and transportation of petroleum products in whatsoever quantity, whether used legally or otherwise, to ensure that no petroleum product is transported or stored in a manner capable of creating scarcity or artificial hikes in the price of the products.

Powers

379. (1) The Regulatory Institution shall have the power to investigate any operator or any other person to ascertain if an offence has been, is being or is likely to be committed under the provisions of this Part V-A.

(2) In the exercise of the functions contained in subsection (1) of this section the Regulatory Institution shall have the power to summon any witness to appear before it.

Power of inspection

380. (1) Any person(s) authorised by the Regulatory Institution for the purposes of this Act may:

(a) enter any property upon which a licensed activity is taking place at any reasonable time and inspect any facility, equipment, machinery, book, account or other document found on that premises;

(b) require any person to furnish the Regulatory Institution with such information, returns or other particulars as may be necessary for the proper administration of this Part V- A;

(2) The Regulatory Institution may require that the accuracy of any information, return or particulars furnished pursuant to subsection (1) of this section be verified by an affidavit.
(3) No information obtained by the Regulatory Institution under this section of the Act and that is non-generic, confidential, personal, commercially sensitive or proprietary in nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates or by an order of the Federal High Court.

Offences

381.(1) No person or company shall:

(a) obstruct or assault any officer of the Regulatory Institution or any person authorised by the Regulatory Institution in pursuance of the powers given to the Regulatory Institution under this Act;

(b) refuse any officer of the Regulatory Institution access to any premises, facilities or retail outlets, or refuse to submit to a search of any premises, facilities or retail outlets by any authorised officer or agent of the Authority;

(c) refuse to acknowledge the receipt of any summons by the Regulatory Institution issued and duly delivered to any person;

(d) fail to comply with any lawful demand, notice, order or requirement of an officer or authorised person of the Regulatory Institution in the execution of his or her duties under this Act.

(2). No person or company shall:

(a) engage in refining, marketing, distributing or operating any petroleum or gas processing or transmitting plant, terminal or premises without a valid license;

(b) remove, destroy or damage any pipeline or other works or installations utilised for the purpose of supplying petroleum products;

(c) sell petroleum products above the benchmark prices set by the Authority;

(d) furnish a statement or incomplete information calculated to mislead or wilfully delay or obstruct the Regulatory Institution and its officers in the exercise of their duties;

(e) fail to cooperate with the Regulatory Institution in its investigation of any suspected crime or corrupt practice;

(f) discriminate among third parties in the allocation of capacity, access to open access facilities and payment of regulated prices and tariffs.

(g) use or permit its pipelines, equipment, or other facilities to be used for or in relation to the commission of any criminal or civil offence.

Penalty

382. (1) Any person who violates the provisions of Section 381(1) and 381(2) of this Act shall:

(a) be liable to payment of a fine which shall be as prescribed by the Regulatory Institution.

(b) reimburse any affected downstream operator for injuries suffered as a result of the said violation of the provisions of this Chapter, which reimbursement shall include, where applicable, the replacement of any petroleum products illegally taken or of any damaged equipment.

(2) Where such company or person is unable to pay the penalty or to reimburse the downstream operator as prescribed under subsection (1) of this section, he or she, or in the case of a company,

every officer responsible for the management of the company, shall be liable to imprisonment for a period of not less than two years and not more than five years.

(3) With respect to subsection (2) of this section where an officer proves that he or she had taken all reasonable precautions and exercised due diligence to prevent the said violations, the officer shall be liable to pay half the fine stipulated for such offence.

(4). Where an offence has been committed under the provisions of section 381(1) and 381(2) of this Act the affected company or person shall discontinue the supply of petroleum products until any damage, alteration, malfunction or loss has been rectified and all safety issues have been resolved.

Dispute Settlement
383. The Regulatory Institution shall be responsible for the resolution of disputes between downstream operators or between downstream consumers and downstream operators in the downstream petroleum sector in respect of all matters to which this Act pertains and in accordance with the provisions of this Act.

B – Specific Provisions Applicable to Midstream and Downstream Gas

Network Code
384 (1) In consultation with licensees and other stakeholders, the Regulatory Institution shall establish a network code governing the operation of the midstream or downstream gas network;

(2) The network code shall include but shall not be limited to;

(a) a connection policy, standard terms for connection to the transportation network and distribution network, and a statement of the connection charging methodology;

(b) a mechanism by which users reserve capacity in the transportation network or distribution network, and, in the event that at any time there is a greater demand for access than there is available capacity, a mechanism for allocating capacity between users; and

(c) the nomination of :

(i) the seller of the wholesale gas being conveyed,
(ii) the purchaser of the wholesale gas being conveyed, or
(iii) a willing third party,

to take responsibility for matters that may arise with respect to gas in transit through the network, such matters to include but not be limited to the amount of gas injected into or withdrawn from the network, nominating volumes, payment for the use of the network and payment for overruns and shortfalls of gas,

(d) requirements for the provision of information to the transportation network operator

and the distributor about the volume, timing and flow rate of injections into and withdrawals from the transportation network or distribution network, as the case may be;

(e) the structure of charges and the applicable tariffs charged for using the transportation network and distribution networks;

(f) where required, arrangements for balancing the wholesale gas being conveyed;

(g) registration arrangements;

(h) metering, allocation and settlement arrangements;

(i) governance arrangements;

(3) The Regulatory Institution shall make copies of the network code available to interested parties upon payment of a prescribed fee.

Wholesale Gas Market

385. (1) Following consultations with interested stakeholders, the Agency shall make recommendations to the Minister to issue regulations:

(a) defining the class or classes of customers that, from time to time, shall constitute wholesale customers under this Act; and

(b) specifying the qualifying criteria for such classification.

(2) Regulations made under subsection (1) of this section may be amended as necessary to facilitate and encourage competition among suppliers, and any amendment of such regulations which results in a change in the class of customers shall not affect the rights and obligations of parties under gas supply contracts entered into prior to such amendment.

Wholesale Customers

386. Wholesale customers shall be entitled to secure gas from any holder of a licence to supply gas.

Third Party Access

387. (1) Any person shall be permitted access to a transportation pipeline, a transportation network or a distribution network, as the case may be, for the purpose of having gas transported to points of consumption, subject to compliance with the prescribed terms and conditions for access stated in the network code.

(2) The Agency and Authority shall be responsible for the development of a network code that shall set out standard terms and conditions for connection to, access and use of the transportation and distribution networks.

(3) Where a transportation or distribution pipeline is isolated from the main transportation network or distribution, the Regulatory Institution shall develop separate terms of access for such isolated transportation or distribution pipeline.

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(3) Where a transportation or distribution pipeline is isolated from the main transportation network or distribution, the Regulatory Institution shall develop separate terms of access for such isolated transportation or distribution pipeline.

Access to transportation and distribution

388. (1) Third party access to the transportation network and distribution network shall be:

(a) on a non-discriminatory basis between system users with similar characteristics;

(b) in respect of any available capacity, provided that such capacity is not subject to a previous contractual commitment;

(c) in accordance with and governed by the terms and conditions of the network codes approved by the Regulatory Institution;

(d) on the condition that the applicant for access is or becomes a party to and undertakes to comply with the applicable network code; and

(e) subject to the principles in sections 390 and 391 of this Act.

(2) Connection agreements may be entered into between:

(a) a customer and a distributor; or

(b) a transportation pipeline owner and a transportation network operator, or

(c) a distributor and the transportation network operator, when a distribution network connects to the main transportation network, or

(d) a supplier and a transportation pipeline owner or transportation network operator.

Disputes in Respect of Third Party Access

389. (1) Disputes in respect of third party access shall be resolved by a determination of the Regulatory Institution.

CapA 19 LFN 2004(2) Appeals against determinations made by the Regulatory Institution in connection with third party access may be referred to arbitration in accordance with the procedure specified in the Arbitration and Conciliation Act.

Gas Pricing

390. (1) Where the Regulatory Institution determines:

(a) that a particular licensed activity is a monopoly service; or

(b) that competition has not yet developed to such an extent as to protect the interests of customers; or

(c) that a particular licensee is a dominant provider,

then the Regulatory Institution shall have the power to regulate the gas prices charged or the revenues earned by licensees in respect of such activities, in a manner consistent with the duties of the Regulatory Institution under this Act and in accordance with the pricing principles set out in section 392 of this Act.

(2) The Regulatory Institution shall consult with licensees, industry participants and stakeholders before undertaking a gas pricing review or establishing a methodology for regulating prices and revenues earned by licensees providing monopoly or dominant services.

Gas Pricing Principles

391. In the exercise of its powers to regulate prices charged for downstream gas and the revenues earned by downstream gas licensees, the Regulatory Institution shall at all times be guided by the following principles:

(a) gas prices shall be disaggregated into the component elements of the supply chain, including the costs of wholesale gas, transportation, distribution and supply;

(b) the prices charged for each licensed activity shall reflect the costs incurred for the efficient provision of that activity;

(c) prices charged shall permit a reasonable return for licensees on their investments; and

(d) prices shall not discriminate between customers with similar characteristics, such as similar size or a similar consumption profile.

Approval and Publication of Charging Structures and Tariff and Pricing structures

392 (1) Subject to price or revenue regulations issued pursuant to this Act all licensees in the downstream gas sector shall:

(a) propose tariffs and tariff methodologies for the approval of the Regulatory Institution, prior to the application of such charges;

(b) impose tariffs in accordance with such approval; and

(c) publish such tariffs in a manner that ensures that the customers of such licensees are able to identify and calculate the full extent of all charges for which they will become liable.

(2) Tariffs charged for the use of the gas transportation network shall reflect:

(a) efficient investment and capital costs;

(b) efficient operating and maintenance expenses; and

(c) a reasonable return to licensees on their investments.

(3). The tariff charged for the use of the gas distribution network shall reflect:

(a) efficient investment and capital costs;

(b) efficient operating and maintenance expenses; and

(c) a reasonable return to licensees on their investments.

(4) Regulated customer prices shall reflect:

(a) the reasonable costs incurred in the purchase of wholesale gas;

(b) the transportation tariff;

(c) the distribution tariff, if the customer is connected to a distribution network;

(d) efficient supply charges covering billing, metering and other services relating to gas supply; and

(e) a reasonable return for the supplier.

Wholesale Gas Prices

393. (1) Any wholesale gas supply volumes in excess of the Domestic Gas Supply Obligations pursuant to Part V-C, between a supplier and a customer shall be negotiated directly between the parties on an arms length basis and the gas transfer price between an upstream gas producer and a midstream or downstream purchaser shall be transparent and shall reflect the costs of transfer between the parties, in line with the provisions of section 391 of this Act.

(2) The Agency shall have power to monitor wholesale gas supply transactions in order to ensure that the transfer price between the wholesale gas supplier and customer is undertaken on a transparent arms length basis.

(3) Within 14 days of the conclusion of a wholesale gas transaction, the supplier shall provide the Agency with information relating to the transaction including, where applicable, the cost incurred by the gas producer in the production and supply of the gas and all other information relevant to the price at which the gas is sold.

(4) The information provided to the Agency by the supplier in compliance with the provisions of subsection (3) of this section shall be classified by the Agency as confidential information and may not be disclosed to any persons or institutions, except the Federal Inland Revenue Service, for a period of five years commencing from the date of the submission of the information to the Agency.

(5) The supplier shall be guilty of an offence and liable to a fine not exceeding US $ 40,000, which fine shall be adjusted yearly by the Adjustment Factor of Section 431 of this Act, if he or she:

(a) knowingly conceals information required under subsection (3) of this section; or

(b) provides information which is false or misleading in any material particular with respect to the information required in subsection (3) of this section.

Determinations

394. (1) The Regulatory Institution shall investigate any case of suspected anti-competitive behaviour and make necessary determinations thereon as contemplated in sections 397 and 398 of this Act.

(2) The Regulatory Institution may impose penalties if the licensee is adjudged to have conducted its activities in a non – competitive manner.

(3) A determination made by the Regulatory Institution in respect of any matter within this Part shall be legally binding and subject to appeal before the Federal High Court in the manner prescribed in this Act.

Customer Protection

395. (1) In order to protect the interests of customers, the Regulatory Institution may make recommendations to the Minister to issue regulations requiring suppliers or distributors, as the case may be, and by such means as the regulations may specify:

(a) to publish their terms of supply or distribution;

(b) to establish or to facilitate the establishment of a forum at which customers are able to express their views and to raise concerns;

(c) to formulate and adhere to such standards of performance as are, in its opinion, necessary to ensure the safety, reliability and quality of supply and distribution services to customers; and set penalties for failure to comply;

(d) to prepare and submit reports to the Regulatory Institution indicating their performance levels and the status of their operations in respect of licensed activities, at such times as may be prescribed by regulations or in their respective licences, and at least on an annual basis;

(e) to develop and adhere to customer service codes, setting out the practices and procedures to be followed in the conduct of specified licensed activities including but not limited to practices and procedures for:

(i) the installation, testing, maintenance and reading of meters,

(ii) fault repairs and responses to customer emergencies,

(iii) the connection and disconnection of customers,

(iv) responding to customer complaints and complaint resolution,

(v) billing and invoicing,

(vi) the extension of payment and credit facilities,

(vii) the provision of information to customers and the use and protection of customer information,

(viii) the establishment of special services for economically or socially disadvantaged customers.

(2) All customer service codes shall be approved by the Regulatory Institution prior to publication and may be reviewed at intervals as may be considered necessary by the Regulatory Institution.

(3) Customer codes shall be made available to all customers on request.

(4) Licensees shall notify customers of customer service codes that must be adhered to by licensees by advertising the availability of the customer service codes in a form and manner prescribed in regulations issued pursuant to this Act.

(5) In developing customer protection regulations, the Regulatory Institution shall:

(a) consult with suppliers, distributors, and interested stakeholders; and

(b) take into account existing procedures, practices and standards.

Provision of Service to Customers and Public Service

396(1) The Authority may, at its discretion and at such time or times as it deems appropriate, to designate distributors and suppliers of last resort to provide services to customers:

(a) in the event that an existing distributor for a local distribution zone or a supplier becomes insolvent, or is unable to provide licensed services, or has had its licence suspended or revoked;

(b) in the event that the distributor for a local distribution zone or supplier refuses or fails to fulfil the terms of its licence to distribute or supply gas to customers; and

(c) in such other circumstances as the Authority may, deem appropriate;

provided that any reasonable additional costs associated with the obligation to act as distributor or supplier of last resort will be recoverable through appropriate charging arrangements agreed with the Authority.

(2) The Regulatory Institution may, following consultations with licensees, customers, and other interested stakeholders, make recommendations to the Minister to issue regulations imposing public service obligations on licensees in relation to matters including, but not limited to:

(a) security of supply;

(b) economic development and the achievement of wider economic policy objectives;

(c) environmental protection; and

(d) health and safety.

Competition and Market Regulation

397. No licensee or any other person having the ability to influence the terms and conditions on which licensed activities are performed and the price at which petroleum products are supplied shall:

(a) make it a condition for the provision or supply of a product or service that any person acquiring such a product or service will be required to acquire or not to acquire any other product or service either from the licensee or from any other licensee, person or entity;

(b) enter into any contract, arrangement collaboration or understanding, whether legally enforceable or not, which provides for or permits the fixing of tariffs, prices or charges for the purpose of, or in such a manner as to, manipulate market prices or the price of any product or service;

(c) engage in or conduct its activities, directly or indirectly, for purpose of market sharing;

(d) permit, allow, influence, direct or indirect exclusion of, or the imposition of any embargoes or boycotts on, another licensee, operator or supplier of equipment or apparatus; or

(e) engage in any other conduct that the Authority deems anti-competitive.

Power of the Authority to Determine Abuse of Market Power

398. (1) The Regulatory Institution shall have the responsibility to prevent and take action against anti-competitive behaviour in the midstream petroleum operations and downstream gas sector; and for this purpose may:

(a) initiate an action in the Federal High Court for the determination of the question whether any conduct by a licensee or any other person operating or intending to operate in the downstream gas sector:

(i) has the purpose or effect of substantially lessening competition in any segment of the downstream gas sector; or

(ii) would likely result in anti-competitive or discriminatory conduct, including but not limited to an unlawful exercise of market power that may prevent customers from obtaining the benefits of a properly functioning and competitive downstream gas market;

(b) consider in its decisions and determinations matters including but not limited to

(i) license applications,
(ii) the grant of licences, licence terms and conditions,

(iii) the regulation of prices in respect of services in competitive markets; and
(iv) how best to prevent or mitigate abuses of market power

(2) Where, in the opinion of the Authority there is, or may be, or there exists a likelihood of, anti-competitive behaviour and in particular an abuse of market power, the Regulatory Institution may:

(a) issue cease and desist orders as may be required;

(b) require and compel the disclosure of information from such licensees;

(c) undertake inquiries and investigations;

(d) levy fines which shall be set out in regulations issued pursuant to this Act from time to time, provided that such fines shall not exceed 10% of the annual turnover of the affected person or company for the preceding year.

(3) Notwithstanding the provisions of this section, where there is an application by a licensee or other person with the ability to influence the price of gas in the downstream gas sector, and where the Regulatory Institution considers that it would be in the national interest or that it would be necessary to preserve or promote the benefits of a properly functional and effectively competitive downstream gas market, the Regulatory Institution:

(a) may give written approval for a specific activity upon such terms and conditions as the Regulatory Institution shall deem appropriate;

(b) in issuing the approval, may impose such requirements as it deems fit and require such undertakings as it deems appropriate from the applicant as a condition precedent to the issuance of the said approval;

(c) may withdraw an approval of a specific activity that it has granted subject to such terms and conditions as it may, in its absolute discretion, designate; and

(d) issue directions to prevent or mitigate any conduct that shall or is likely to lead to unlawful exercise of market power that will prevent customers from obtaining the benefits of a properly functioning and competitive downstream gas market.

(4) Nothing in subsections (1) (2) and (3) of this section shall be construed to preclude or restrict the right of the Regulatory Institution or any person to seek an injunction against any conduct prohibited in this Part V-C.

(5) Any person who wishes to proceed to court or to arbitration for the enforcement of any of the provisions of this chapter shall first notify the Regulatory Institution.

(6) The Regulatory Institution shall, until such time as a Federal agency having the power to pronounce upon, administer, monitor and enforce compliance with anti-competition laws is established and functional, have the exclusive competence to determine, pronounce upon,

administer, monitor and enforce compliance with the provisions of this Act relating to anti-competition and with any competition laws and regulations that govern or relate to the downstream gas sector whether or not they are of a general or specific nature.

(7) In the exercise of its powers under subsection (6) of this section, the Regulatory Institution may consider:

(a) the relevant economic market;

(b) global trends in the relevant economic market;

(c) the effect on the number of competitors in the market and their respective market shares;

(d) the effect on barriers to entry into the market;

(e) the effect on the range of services in the market;

(f) the effect of the conduct on the cost and profit structures in the market;

(g) the ability of any independent licensee or operator to make price or tariff regulating decisions; and

(h) any other matters which the Regulatory Institution deems relevant.

Competition and Market Monitoring

399. (1) The Regulatory Institution shall have responsibility to monitor the state of the gas market so as:

(a) to determine whether the downstream gas sector is ready for an increased level of competition in retail and supply services in order that it may make recommendations to the Minister to issue regulations which allow for the said increased level of competition in retail and supply services.

(b) to determine whether there is a need for an organised market for wholesale gas in order that it may take the relevant steps pursuant to this Act to develop a wholesale market arrangement;

(c) to assess whether the downstream gas sector is operating properly or whether the existing market arrangements may constitute barriers to entry into the market for new players;

(d) to determine whether there is any anti-competitive activity being carried on, in which case the Regulatory Institution would be required to exercise its powers under this Act to prevent the continuance of such activity;

(e) to determine any pre-conditions and any transitional arrangements required for any services to be offered competitively.

(2) To enable the Regulatory Institution to discharge its responsibilities under sub-section (1) above and in particular, to determine whether there is, or may be, an abuse of market power, the Regulatory Institution shall have power to:

(a) require and compel the disclosure of information from licensees; and

(b) undertake inquiries and investigations.

(3) If, in the opinion of the Regulatory Institution there has been an abuse or a threatened abuse of market power, the Regulatory Institution may serve a notice on such company or person specifying the abuse or threatened abuse, and of its intention to issue a cease and desist order.

(4) The Regulatory Institution shall publish a notice:

(a) specifying the actual or threatened contravention;

(b) directing the company or person to whom the notice is issued to, or not to do, such things as it may specify;

(c) specifying the remedy and the timescale for compliance; and

(d) notifying the company or person to whom the notice is issued of its intention to issue a cease and desist order or to levy a fine not exceeding US $ 300,000, which fine shall subject to the adjustment factor of section 431 of this Act provided that such fine shall not exceed 10% of the annual turnover of the company or Person for the preceding year.

(5) The Regulatory Institution shall publish the notice in the form and manner specified in the prescribed regulations and shall invite the company or person to whom the notice is issued and any other interested parties to make representations against or in support of the notice by a specified date.

(6) If the company or person to whom the notice is issued fails to comply with a notice served pursuant to subsection (3) of this section, the Regulatory Institution may issue a cease and desist order.

(7) Failure to comply with an order issued under subsection (6) of this section shall be an offence punishable by a fine not exceeding US $ 40,000, which fine shall subject to the adjustment factor of section 415 of this Act or the revocation of the relevant licence where that company or person is a licensee.

(8) A cease and desist order may not be issued nor a fine imposed if:

(a) the company or person to whom the notice is issued is able to demonstrate to the satisfaction of the Regulatory Institution that it has not abused or is not threatening to abuse its market power; or

(b) the company or person to whom the notice is issued has ceased to abuse or has ceased from the threat to abuse its market power.

(9) Where a person has ceased to abuse or has ceased from the threat to abuse its market power, if it is found that the said threat or threat of abuse was deliberate, the Regulatory Institution may

impose an appropriate penalty which shall be prescribed in the regulations issued pursuant to this Act.

Offences and Penalties
400. (1) No person shall:

(a) cause damage to any infrastructure, plant or equipment belonging to a downstream products or gas licensee, including but not limited to fittings, meters, apparatus or equipment;

(b) alter the operation of any meter, equipment or apparatus including but not limited to those used for measuring the quantity or quality of petroleum products or gas supplied;

(c) prevent any such meter, equipment or apparatus including but not limited to all such items used for measuring or registering the quantity of petroleum products or gas supplied from functioning accurately or properly such as or registering the quantity of petroleum products or gas supplied; or

(d) otherwise destroy, interfere with or remove the meters, equipment or apparatus of a licensee without the permission of the licensee.

(2) Any person convicted for intentionally committing any offence listed in subsection (1) of this section shall be liable to:

(a) pay a penalty not exceeding US $ 100,000, which penalty shall be subject to the adjustment factor of section 431 of this Act; and

(b) reimburse the licensee for any petroleum products or gas illegally taken and for any damage to the licensee's equipment; provided that:

(i) where such person is unable to pay the penalty or to reimburse the licensee, he or she or, in the case of a company, every officer responsible for the management of the company shall be liable to imprisonment for a period of not less than two years and not more than five years unless, the officer proves to the strictest standard that he or she had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence; and

(ii) the Regulatory Institution may, as necessary, adjust the amount of the penalty stipulated in subsection (a) of this section by regulations issued pursuant to this Act, in order to reflect current rates of inflation.

(3) Any person convicted for negligently committing any offence listed in subsection (2) of this section shall be liable to

(a) pay a penalty not exceeding US $ 20,000, which penalty shall be subject to the adjustment factor of section 431 hereof; and

(b) reimburse the licensee for any gas illegally taken and for any damage to the licensee's equipment, provided that:

(i) where such person is unable to pay the penalty or to reimburse the licensee, he she or, in the case of a company, every officer responsible for the management of the company, shall be liable to imprisonment for a period of not less than six months and not more than two years unless, having regard to the nature of his or her functions in that capacity and to all circumstances, the officer proves that he or she had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence; and

(ii) the Regulatory Institution may, from time to time adjust the amount of the penalty stipulated in subsection (a) of this section by regulations issued pursuant to this Act, in order to reflect current rates of inflation.

(4) Where an offence has been committed under subsection (1) of his section, the supplier may, discontinue the supply of gas until any damage, alteration, malfunction or loss has been rectified and all safety issues have been resolved.

Prohibition on the Wrongful Use of Equipment

401. No licensee shall use or permit its pipeline, equipment or other facilities to be used in, for, or in relation to, the commission of any criminal or civil offence, and each licensee shall:

(a) upon a written request from the Regulatory Institution or any other lawful or duly empowered authority, assist the Authority or such lawful authority, in preventing the commission or attempted commission of any criminal offence under this Act or any other statute in force in the Federal Republic of Nigeria, including but not limited to those affecting the public revenue and the preservation of national security.

(b) not be liable for any act or for any omission done in good faith, in respect of any act or omission arising from the performance of a duty or obligation imposed by the Regulatory Institution or other lawful authority.

Penalty Not Prescribed

402. (1) Where no specific penalty is prescribed in respect of any offence under this part, any person who contravenes any of the provisions of this part or any regulations issued in respect of this Part and is guilty of an offence shall be liable:

(a) as a first offender, to
(i) a fine not exceeding US $ 20,000, which fine shall be subject to the adjustment factor of section 431 hereof; or to such other amount as may be prescribed in regulations issued pursuant to this Part; or
(ii) imprisonment for a period not exceeding two years; or
(iii) both fine and imprisonment.

(b) for subsequent convictions, to
(i) a fine not exceeding US $ 100,000, which fine shall be subject to the adjustment factor of section 431 of this Act or such other amount as may be prescribed in regulations issued pursuant to this part, or
(ii) imprisonment for a period not exceeding five years, or

(iii) both fine and imprisonment.

(2) The Regulatory Institution may, as necessary, adjust the amount of the penalty stipulated in subsection (1) of this section through prescribed regulations, in order to reflect current rates of inflation.

Penalty for Refusal to Furnish Return or Supply Information

403. Any person who:

(a) fails or refuses to furnish a return or to supply information to the Regulatory Institution or any other duly empowered lawful authority at the time and in the manner prescribed;

(b) furnishes a false or incomplete return;

(c) supplies false or incomplete information;

(d) wilfully delays or obstructs officers of Regulatory Institutions, an inspector or police officer in the exercise of the powers or duties conferred or imposed on the Regulatory Institution under this Act; or

(e) conceals, fails or refuses, without reasonable cause, to supply information required by the Authority or any duly empowered lawful authority at the time and in the manner prescribed or when required to do so,

shall be guilty of an offence and shall be liable to a fine not exceeding US $ 100,000, which fine shall be subject to the adjustment factor of section 431 hereof or to imprisonment for a period not exceeding one year or to both fine and imprisonment

(2) The Regulatory Institution may, as necessary, adjust the amount of the penalty stipulated in this section by prescribed regulations, in order to reflect current rates of inflation.

C – Domestic Gas Supply Obligation

Domestic gas market management

404. (1) The Agency shall regulate the midstream gas sector, in accordance with the national master plan for gas ("National Gas Master Plan") and this Act and policies of the Government from time to time.

(2) The National Gas Master Plan pursuant to subsection (1) hereof shall be the plan updated by the Government from time to time for the sustainable development and utilization of the natural gas resources of Nigeria.

(3) The Agency shall at the beginning of each calendar year:

(a) announce the update of the gas demand requirement ("Domestic Gas Demand Requirement") which shall be the aggregate of the quantity of gas required to meet the gas demand for the strategic sectors, as determined by Government from time to time, within the domestic economy for a specific period of time, not exceeding 20 years;

(b) request the Inspectorate to allocate the domestic gas supply obligation to every petroleum mining lessee;

(c) establish an aggregate price for gas ("Aggregate Gas Price") for the volume of the domestic gas supply obligation, which shall be based on the weighted average of the purchase prices and volumes of the purchased gas, and shall be used by the Domestic Gas Aggregator as a basis for gas supply to the domestic market.

(4) The Agency shall arbitrate on all issues of conflict between purchasers, suppliers and the Domestic Gas Aggregator.

Domestic Gas Aggregator

405. (1). The Agency shall establish an aggregator for the domestic gas market ("Domestic Gas Aggregator"), which shall be an independent entity distinct from both suppliers and purchasers, reporting to the Agency, and which shall in consultation with suppliers and purchasers, pursuant to section 333(4) of this Act:

(a) implement a gas management model, through which the demand and supply of gas for utilization within Nigeria shall be monitored;

(b) operate nominations and balancing mechanism for equitable curtailment of gas production, whenever demand and supply conditions require;

(c) ensure transparency of dealings between gas suppliers and purchasers with respect to the volumes of gas being marketed under its jurisdiction;

(d) act as intermediary, between suppliers and purchasers of gas in the domestic market and ensure the supply of gas to the strategic sectors, in accordance with the approved national gas pricing framework.

(2) The gas management model pursuant to subsection (1) of this section shall be a supply and demand model to analyze pipeline quality gas availability from the petroleum mining leases and to compare the volume with the demand of gas by the strategic sectors and other domestic projects, as determined by the Government.

(3) The Domestic Gas Aggregator shall have the power to:

(a) ensure that the domestic gas demand requirement being met, through the implementation of the Domestic Gas Supply Obligation;

(b) ensure a balanced growth of domestic gas projects, through the availability of an adequate volume of gas to the strategic sectors;

(c) open and manage an escrow account with an escrow agent, approved by the Agency;

(d) direct purchasers of gas to make payment for gas supply into the escrow account, in accordance with payment schedules agreed by the suppliers, gas purchasers and the Domestic Gas Aggregator;

(e) make payment to suppliers in accordance with the Aggregate Gas Price

(f) prepare and provide annually, a detailed non-confidential audit report of the escrow account to be published on the website of the Domestic Gas Aggregator,

(g) carry out all such things as are necessary for or incidental to the carrying out of the functions and duties under this Act.

Domestic Gas Demand Requirement

406. (1) When required, the lessee of a petroleum mining lease shall:

(a) submit a gas production and supply plan, consistent with its Domestic gas Supply Obligation to the Agency;

(b) supply a specific volume of gas to a purchaser, in accordance with a gas purchase order ("Gas Purchase Order"), issued by the Domestic Gas Aggregator

(c) pay compensation to any purchaser, for any losses suffered as a result of default to supply gas, in compliance with the order of the Domestic Gas Aggregator

(2) The Agency shall take such measures as appropriate to create franchise areas for gas processing facilities in Nigeria to support the National Gas Master Plan for an exclusive period of five (5) years for the first three franchises from the grant of the commercial licence for the facilities pursuant to Part IV of this Act.

Penalties for non-compliance with the Domestic Gas Supply Obligation

407. (1) As from the establishment of the Domestic Gas Aggregator, any supplier who does not comply with the Domestic Gas Supply Obligations as specified by the Agency, shall:

(a) pay the amount prescribed under the take or pay provisions in the executed gas sales and purchase agreement

(b) pay a penalty to the Agency of US $ 3.50 per Mcf, for gas not supplied, less any amounts payable under the take or pay provision, where such amount is less than $ 3.50 per Mcf, in addition to any other penalties that the Minister may deem fit; and

(c) not supply gas to any export project for the period that the supplier is not complying with the Domestic Gas Supply Obligations.

(2) The penalties pursuant to subsection (1) shall be reviewed from time to time by the Agency and may be adjusted by the Agency, in a manner that such adjustment shall be applicable to all suppliers.

(3) Where the supplier continues to fail to comply with the Domestic Gas Supply Obligations for a period in excess of three months, the gas export licence of such supplier may be revoked.

Procedure for gas supply

408. (1). The sale and supply of gas under the provisions of this Chapter shall commence with an application by the purchaser to the Domestic Gas Aggregator for a Gas Purchase Order

(2) Upon the receipt of the application, the Domestic Gas Aggregator shall conduct due diligence on the purchaser, with a view to determine its ability to engage in wholesale purchase of gas.

(3) Upon the satisfactory due diligence the Domestic Gas Aggregator shall issue a Gas Purchase Order to the purchaser.

(4) The Gas Purchase Order shall specify the gas supplier expected to supply the required gas, the quantity of the gas to be supplied to the purchaser, the price payable in respect of the gas to be supplied, the delivery schedule, revenue due to the gas supplier and other details as may be determined by the Domestic Gas Aggregator.

(5) The issuance of a Gas Purchase Order by the Domestic Gas Aggregator shall be sufficient evidence that a quantity of gas has been allocated for supply to a purchaser in accordance with the Domestic Gas Demand Requirement.

(6) The Domestic Gas Aggregator shall attach to the Gas Purchase Order, a master gas sales and purchase agreement, which will contain the operational and commercial issues relevant to the transaction.

Gas exports

409. (1) Any export of gas shall require a gas export licence issued by the Agency for a certain volume of natural gas for a specified period of time.

(2) Any company intending to export gas, shall submit an application for a gas export license pursuant to such guidelines as the Agency may determine from time to time.

(3) Export licences may be refused by the Agency, where the Agency has determined that the exports of gas from Nigeria are not in the national interest due to insufficiency of available proved gas reserves to supply to long term domestic market.
(4) Where the domestic gas market in Nigeria and export markets reach a level of maturity that is reflective of fully competitive conditions, the Agency may decide that the Domestic Gas Aggregator shall no longer issue new Gas Purchase Orders.

General gas market provisions
410. (1) Nothing in this part V-D shall limit any purchaser or supplier to enter into any gas sales and purchase agreement for the domestic market under such terms and conditions as they may freely decide, for volumes that are in excess of the Domestic Gas Supply Obligation.
(2) There shall be no discrimination with respect to access to midstream gas pipelines for volumes under the jurisdiction of the Domestic Gas Aggregator and any volumes of gas to be transported based on agreements pursuant to subsection (1) hereof.
(3) After the period of five (5) years pursuant to section 406(2) any company can apply for a Project Approval Certificate for a gas processing facility.

PART VI - INDIGENOUS OIL COMPANIES AND NIGERIAN CONTENT

A - Indigenous Oil Companies

General Terms
411. (1) Participation by the Federal Government in accordance with the provisions of this Act or any law in force shall not be applicable to petroleum operations carried out by indigenous oil companies whose aggregate production from petroleum operations is not more than ten thousand barrels per day of crude oil or its natural gas equivalent.
(2). An indigenous oil company whose aggregate production of crude oil is not more than ten thousand barrels per day or its natural gas equivalent shall be allowed to produce up to the technical allowable output set for the license or lease, by the Directorate or Inspectorate, as the case may be .

Indiginous particepation
412. (1) The Minister in consultation with the Directorate or Inspectorate, as the case may be, shall issue regulations prescribing clearly defined targets and programmes for continuously increasing the level of indigenous participation in the Nigerian petroleum industry and to generally give effect to the provisions of this Act which regulations shall include:
(a) targets for indigenous oil and gas reserves; and
(b) production personnel content and measurable parameters for determining the level of indigenous participation.
(2). With reference to subsection (1) hereof, the Minister shall not later than three months after the commencement of this Act and thereafter at intervals of two years, undertake a general review of the set targets, parameters and programmes for continuous increase in the level of indigenous participation in the Nigerian petroleum industry and set such new targets, parameters and programmes as shall be necessary to give full effect to the provisions of this Act.

(3) .The programs and parameters for increasing indigenous participation shall not consist of any modifications to the fiscal terms provided for in Part VIII, and shall not conflict or interfere with any other provisions under this Act.

B - Nigerian Content and Local Social Responsibility

Nigerian Content Plan and Local Social Responsibility for Host Communities

413 (1) A development plan pursuant to Part III shall not be approved or a commercial licence pursuant to Part IV shall not be granted without an approved plan for Nigerian content ("Nigerian Content Plan"), provided such development plan or commercial licence relates to a proposed project involving an investment of US $ 10 million or higher based on the assessment of the Inspectorate, Agency or Authority as the case may be.

(2)The Nigerian Content Plan pursuant to subsection (1) of this section shall contain commitments as defined in sections 414 through 419 of this Act with respect to:

(a) purchase of Nigerian goods and services;
(b) procurement guidelines;
(c) employment of Nigerian citizens;
(d) training and education;
(e) research and development; and
(f) regular reporting on and verification of the Nigerian Content Plan to the applicable Regulatory Institution.

(3) The Nigerian Content Plan shall be submitted on the basis of guidelines established by the Inspectorate, Agency or the Authority as the case may be.

(4) The proponent of a Nigerian Content Plan shall ensure that the provisions contained in this section shall also apply to any contractors or subcontractors of the proponent.

(5) Any petroleum prospecting license and petroleum mining lease shall contain social responsibility provisions with respect to economic spin-offs to local communities situated near the petroleum operations of a licensee or lessee. Such provisions shall include, without limitation and in addition to such legal provision that may already apply, the following:

(a) repair and maintenance of local roads, in particular those roads used or created by the licensee or lessee
(b) contributions to or payments for community water and power
(c) contributions to or payments for local schools, hospitals and community centres
(d) employment of local Nigerian citizens
(e) purchase of local goods and services
(f) assistance with the creation, development and support to small scale local enterprises
(g) local training and education programs, with specific emphasis on increasing local job opportunities in the petroleum operations
(h) specific emphasis on local issues with respect to subsection (5)(c), (d) and (e) of this section under the Nigerian Content Plan pursuant to subsection (1) of this section,
(i) regular consultation with local communitities about the ongoing implementation of the social responsibility provisions, and
(j) regular reporting and verification of the social responsibility provisions

(6) With respect to petroleum mining leases, the leases may specify the conditions under which the commitments pursuant to subsection (5) of this section may be contained in specific community development agreements with the host communities located within or near the area of a petroleum mining lease.

(7) The community development agreements pursuant to subsection (6) of this section shall be reviewed at least once every five years in order to take new developments in the communities into account.

Nigerian goods and services

414.(1) With respect to subsection 413(2)(a), the Nigerian Content Plan shall contain with respect to the proposed project pursuant to section 413(1) of this Acta description of the classes of capital and operating costs, that:

(a) qualify as Nigerian goods and services and that proponent commits to purchase based on procurement from Nigerian suppliers only;

(b) the the proponent commits to purchase from Nigerian suppliers where Nigerian goods and services are competitive in terms of prices (taking into consideration any import duties or other similar charges as may apply) and quality and delivery conditions and that the the proponents intends to purchase based on procurement from Nigerian and foreign suppliers; and

(c) the proponent intends to procure from foreign suppliers only.

(2) Goods, materials and equipment, shall be considered "Nigerian goods" pursuant to subsection 414(1)(a) of this Act where such goods:

(a) are quarried, mined or grown in Nigeria

(b) are produced, manufactured or processed in Nigeria in such a manner that:

(i) these goods differ substantially in its basic characteristics, purpose or utility from any of its imported components, and

(ii) where the total cost of the Nigerian materials, labor and services used to produce the item constitutes at least fifty (50) percent of the cost of the finished product.

(3) Services shall be considered "Nigerian services" pursuant to subsection (1)(a) hereof where the professionals providing the services are at least 80% Nigerian citizens.

(4) The Nigerian Content Plan shall describe the measures the proponent has undertaken to maximize the purchase of Nigerian goods and services and the future measures that the proponent intends to apply in order to increase purchase of Nigerian goods and services.

Procurement

415. (1) With the submission of the Nigerian Content Plan the proponent shall submit his procurement procedures with respect to the proposed project.

(2) Such procurement procedures shall be designed in such a manner that the proponent complies with all provisions of section 414 of this Act.

(3) The procurement procedures shall ensure that purchases and contracts are sized, so far as technically and economically practicable, to match the capability (time, finance and manpower) of Nigerian companies supplying Nigerian goods and services.

(4) All tenders, including those related to section 414(1)(c) of this Actshall be advertised in at least two major local newspapers in Nigeria.

(5) All tenders shall be evaluated and the winning bidders shall be decided upon in Nigeria.

(6) The proponent shall commit to give equal treatment to Nigerian companies by assuring access to all tender invitations for which they qualify.

(7) The proponents shall commit to give assurances to Nigerian companies in respect of prompt payment for Nigerian goods and services provided, provided the Nigerian suppliers meet all conditions of the purchase and sale agreement or contract.

Project Employment and Personnel

416 (1) The proponent shall submit with his Nigerian Content Plan an Employment Plan for Nigerian citizens for the duration of the proposed projectand such plan shall contain the positions that the proponent intends to be filled by Nigerian citizens, in terms of skilled and non-skilled labour and supervisory, technical and administrative personnel during the construction phase of the project and the operating phase of the project.

(2) The Employment Plan plan shall provide for:

(a) a minimum proportion of eighty (80%) of Nigerian citizens with respect to any construction of the proposed project in Nigeria; and

(b) a minimum proportion of eighty (80%) of Nigerian citizens and a minimum proportion of seventy five percent (75%) of all management and supervisory functions during the initial two years of operation of the project and a scheduled increase of Nigerian citizens during the subsequent years.

(3) Irrespective of the percentages established in subsection (2) hereof, the proponent undertakes and shall cause its contractors and subcontractors to employ with priority Nigerian citizens in all aspects of the petroleum operations to the extent that nationals with the requisite qualifications and experience are available. The proponent and its contractors and subcontractors shall in this regard minimise the employment of foreign personnel but may employ foreign nationals:

(a) to the extent that qualified nationals cannot be found to fill the positions required;

(b) to fill a limited number of specialist technical or managerial positions, provided that national counterparts are also engaged for each such position to work with the foreign specialist or manager to learn the job; or

(c)to provide short term specialist expertise.

(4) The proponent commits to cross-post Nigerian citizens in its headquarter operations, where expatriates are used to fill positions under subsection 3(b) of this section.

Training

417. (1) The proponent shall submit with the National Content Plan a Training Plan and related financial commitment where the proponent undertakes at its own cost the development and training of its Nigerian citizens and (including training for the specific purpose of taking over positions held by expatriates) for all positions including administrative, technical and executive management positions as well as other training obligations pursuant to this section.

(2) The proponent shall ensure that its programs are aimed at developing local human resources in key areas, including general management, design engineering, project management, seismic data processing, human resources, and legal and the related on-the-job training shall emphasise the honing of strategic business skills including leadership, business development, executive management, commercial, analytical, negotiating, strategy development and trading know how and acumen.

(3) The proponent shall also at its own expense provide a reasonable number of personnel of the Institutions and the Service with on-the-job training , including on-the-job training in its main office or in other international locations and on the job training shall involve the trainees working with experienced expatriate professionals or managers of operator in order to gain hands-on knowledge and experience in the handling of actual situations as they occur in a particular speciality or specialities, as well as to gain a better understanding of management styles and the needs and constraints of the international petroleum company.

(4) The proponent shall commit to discuss on an ongoing basis the possibilities for on-the-job training and agree on number of persons and their backgrounds, locations and schedules with the Institutions and the Service.
(5) The proponent shall commit to provide support to Colleges and Universities in Nigeria as defined in the Training Plan.
(6) The proponent shall provide scholarships abroad to students which are Nigerian citizens as defined in the Training Plan.

Research and Development
418. The proponent shall prepare and submit as part of the Nigerian Content Plan an annual Research and Development Plan and related financial commitment, which shall consist of:

(a) Research and Development Program with respect to any matter that has a relationship to the project to be undertaken; or
(b) support for petroleum research and development programs in Colleges and Universities in Nigeria; or
(c) a combination of paragraphs (a) and (b) of this section.

Reporting and monitoring of the Nigerian Content Plan
419. (1) The proponent shall report on an annual basis with respect to the implementation of the Nigerian Content Plan,
(2) Such reporting shall be based on guidelines established by the Inspectorate, the Agency or the Authority as the case may be.
(2) Where the proponent is subject to a contract under section 272, the Contractor shall include in its annual work program and budget the required information regarding all aspects of the Nigerian Content Plan.

General Employment and Personnel requirements

420. (1) The holder of a petroleum mining lease under Part III or commercial license under Part IV of this Act shall ensure that:

(a) the number of Nigerian citizens employed by him in connection with the lease or licence in its managerial, professional and supervisory grades or any other corresponding grades designated by him shall not be less than ninety five per cent (95%) of persons employed by him in those grades and further that Nigerians constitute a minimum of sixty percent of its Board of Directors; and

(b) the number of Nigerian citizens in any one such grade shall not be less than sixty percent (60%) of the total and with respect to managerial, professional and supervisory grades not less than seventy five percent (75%) of the total; and

(c) all skilled, semi-skilled and unskilled workers, or any other corresponding grades designated by the lessee are citizens of Nigeria.

(2) The provisions under subsection (1) shall not apply to an indigenous company which has less than fifty employees.

Penalties

421. (1) Any proponent, lessee, licensee, or their contractors and subcontractors that do not implement all or part of the approved Nigerian Content Plan or section 420 of this Act, shall be fined US $ 100,000 per day adjusted with the adjustment factor pursuant to section 431 hereof.
(2) Where the non-compliance (by a lessee pursuant to Part III hereof or licensee pursuant to Part IV hereof, or contractor or subcontractor of the lessee or licensee) with the Nigerian Content Plan continues beyond a period of six (6) months, the respective lease or license may be revoked pursuant to the provisions under this Act.

PART VI I- HEALTH, SAFETY AND ENVIRONMENT

Responsibility over the Environment

422. (1) Without prejudice to the overall responsibility of the Federal Ministry of Environment for the environment of Nigeria, the Regulatory Institutions shall have responsibility over all aspects of health, safety and environmental matters in respect of the petroleum industry.
(2) The Regulatory Institutions shall at all times ensure that any regulation or directive in respect of the petroleum industry, made in pursuance of subsection (1) of this section, shall not conflict with any regulation or directive issued by the Federal Ministry of the Environment.
(3) For the avoidance of doubt the Regulatory Institutions shall, in consultation with the Ministry of Environment, make regulations and issue directives specifically relating to environmental aspects of the petroleum industry.
(4) In the event of a conflict between the regulations or directives of a Regulatory Institution and the Federal Ministry of the Environment, representatives of the Regulatory Institution and the said Ministry shall meet to resolve and agree on the areas of conflict within thirty days from the date of the first meeting, and the agreement between the representatives shall be in writing and duly signed by the representatives of the Regulatory Institution and the Ministry.
(5) With reference to subsection (4) of this section, where there is no agreement between representatives of the Regulatory Institution and the Federal Ministry of the Environment, the regulations or directives of the Federal Ministry of the Environment shall prevail.

Compliance with health regulation

423. Every company engaged in any activities with respect to petroleum operations, shall comply with all environmental health and safety laws, regulations, guidelines or directives as may be issued by the Ministry of Environment, the Minister, or the Regulatory Institutions, as the case may be.

Conduct of Operations

424. Every company engaged in any activities requiring a licence, lease or permit in petroleum operations shall conduct its operations in accordance with internationally accepted principles of sustainable development which includes the necessity to ensure that the constitutional rights of present and future generations to a healthy environment is protected.

Obligations of Licensee, Lessee and Contractors
425. Every company engaged in petroleum operations shall:

(a) uphold the freedom of association and effective recognition of the right of collective bargaining of its employees.

(b) not utilise on its own behalf or encourage the utilisation of all forms of forced and compulsory labour by any of its contractors.

(c) not employ or engage the services of any person below the age of eighteen years old.

(d) ensure that decisions in respect of employment and occupation are not discriminatory against gender or ethnicity.

(e) support a precautionary approach to environmental challenges.

(f) encourage the development and use of environmentally friendly technologies for petroleum operations.

Duty to Restore
426. (1) Any person engaged in actities requiring a license, lease or permit in petroleum operations shall:

(a) manage all environmental impacts in accordance with the licensee or lessee's environmental management plan or programme, as the case may be;

(b) as far as it is reasonably practicable, rehabilitate the environment affected by the petroleum operations, whenever environmental impacts occur as a result of licensees and lessees operations:

(i) to its natural or pre-existing state before the operations or activities as a result of which the environmental impact occurred,or

(ii) to a state that is in conformity with generally accepted principles of sustainable development;

(c) be responsible for any environmental damage, pollution or ecological degradation occurring within the license or lease area as the result of exploration and production activities in the case of upstream operations and as a result of any licensed activity in the case of downstream activities.

(2) Where there is a dispute as to the cause of an act that has resulted in harm to the environment, the affected person or persons may refer the matter to the respective Regulatory Institution for a determination and the determination of the Regulatory Institutions shall be final.

Development Programmes
427. From the commencement of this Act, the Regulatory Institutions shall undertake an annual comprehensive review of the impact of development programmes and practices by petroleum companies in all sectors of the industry since the inception of the petroleum industry in order to identify potential areas of conflict or areas that may lead to possible unrest in the areas of operation.

Utilisation of Good Oil Field Practices
428. Every Licensee, Lessee and Contractor engaged in petroleum operations in the upstream petroleum industry shall utilise good oil field practices in the course of their operations within the country.

Compensation
429. (1) The holder of a leases or licenses under Parts III and IV of this Act, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or any other rights to any person who owns or is in lawful occupation of the licensed or leased lands, in accordance with written guidelines as shall be issued by the Regulatory Institutions.

(2) The rates of compensation contained in the guidelines referred to in subsection (1) of this section shall be arrived at through a consultative process and the Regulatory Institutions shall update the said guidelines annually so as to reflect rates of inflation and any other salient factors.

Publications
430. Every year, holder of a leases or licenses under Part III and IV of this Act, shall publish the criteria used for community development projects and other social investment initiatives within their respective areas of operation.

Part VIII – FISCAL PROVISIONS

A – GENERAL MATTERS

Adjustment factors
431.(1) Certain amounts expressed in US$ in this Act, where such adjustment is indicated, shall be adjusted on April 1 of each calendar year by the Inspectorate with an adjustment factor as follows:

$$\text{Adjustment Factor} = \frac{\text{CPI (y-1)}}{\text{CPI (2008)}}$$

In which:
"CPI (y-1)" means the average United States Consumer Price Index (Annual) for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, unadjusted for seasonal variation, as announced by the United States Department of Labor Bureau of Labor Statistics, for the calendar year prior to the April 1 date under consideration; and
"CPI (2008)" means the average United States Consumer Price Index (Annual) for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, unadjusted for seasonal variation, as announced by the United States Department of Labor Bureau of Labor Statistics, for the calendar year 2009.

(2) Where the statistical information for the CPI (y-1) is no longer available the Minister may by regulation replace this index with another published similar index used by the United States.

B – COMPANIES INCOME TAX

General requirement to pay corporate income tax

432.(1) The Companies Income Tax Act shall be amended by inserting a new section 39A as follows:

"39A. Companies income tax applicable to operations related to petroleum

(1) All companies, concessionaires, licensees, lessees, contractors and subcontractors involved in petroleum operations under the Petroleum Industry Act shall be subject to tax pursuant under this Companies Income Tax Act.

(2) Notwithstanding section 27 of the Companies Income Tax Act, all companies engaged in upstream petroleum operations, midstream petroleum operations and downstream petroleum operations shall determine the tax pursuant to the Act separately for:

(a) upstream petroleum operations under the Petroleum Industry Act ("Upstream Petroleum"), and

(b) midstream petroleum operations and downstream petroleum operations under the Petroleum Industry Act.

(3) In determining the companies income tax, the Nigerian Hydrocarbon Tax under the Petroleum Industry Act shall not be deductible.

(4) All companies engaged in midstream domestic gas operations and downstream gas distribution and utilization operations under the Petroleum Industry Act shall be entitled to benefit from the incentives provided under Section 39 of the Companies Income Tax Act.

(5) All companies engaged in midstream export gas operations with respect to LNG under the Petroleum Industry Act, shall be entitled to benefit from the incentives provided under Section 39 provided they make firm guaranteed commitments for investments in new LNG facilities prior to December 31, 2011 and any plants, projects or expansions of LNG facilities after this date shall not entitle the companies to the benefits from the incentives provision under Section 39 of the Companies Income Tax Act.

(6) Section 39 (1) of the Companies Income Tax Act shall be amended by replacing the words "gas utilization (downstream)" with "operations pursuant to Section 39A(4) of the Companies Income Tax Act."

(7) Section 39(3) of the Companies Income Tax Act shall be amended by deleting the definition of "gas utilization".

(8) The Second Schedule of the Companies Income Tax Act shall be amended by inserting below the word "Mining" in Table I and II with respect to Initial and Annual Allowance the word "Upstream Petroleum Operations", with an initial allowance of 25% and 25% in the subsequent three years.

(9) Section 2 of the Companies Income Tax Act shall be amended by adding the definition of Upstream Petroleum as follows:

"Upstream Petroleum" means upstream petroleum operations as defined in the Petroleum Industry Act.

(10) Section 20 shall be amended by re-numbering (j) into (k) and by inserting a new paragraph (j) as follows:

"(j) any rents and royalties payable on upstream petroleum operations"

(11) Any companies pursuant to subsection (2)(a) hereof shall use Nigerian Hydrocarbon Tax accounting periods on an actual year basis for the Companies Income Tax and shall apply the procedures for determining and paying tax estimates under the Nigerian Hydrocarbon Tax to Companies Income Tax.

(12) Any companies pursuant to subsection 2(a) hereof shall pay estimates of the Companies Income Tax Act on a monthly basis in anticipation of the full tax due at the end of the accounting period.

C – RENTS AND ROYALTIES

Rents for licenses and leases

433. (1) Every Petroleum Exploration License ("PEL") shall be subject to a rent of US $ 10 per square kilometer included in the PEL upon the grant of the PEL and any anniversary thereof.

(2) Every Petroleum Prospecting License ("PPL") shall be subject to a rent of:

(a) US $ 100 per square kilometer upon the grant of the PPL and the first and second anniversary thereof,

(b) US $ 300 per square kilometer on the third and fourth anniversary of the PPL, and

(c) US $ 500 per square kilometer on the fifth anniversary and any further anniversaries of the PPL

(d) During any significant gas discovery retention period pursuant to subsection 277(10) hereof the rent shall be US $ 10,000 per square kilometer per annum and shall be paid on the declaration of a significant gas discovery and any anniversary thereof.

(3) Every Petroleum Mining License ("PML") shall be subject to a rent of US $ 1000 per square kilometer upon the grant of the PML and any anniversary thereof

(4) A PEL, PPL or PML cannot be granted without prior payment of the applicable rent for the first year.

(5) Failure to pay the rent upon any anniversary of the PEL or PPL shall result in the application of an interest rate of LIBOR plus 2% to the outstanding payment in US $ and where the payment of the applicable rent is not made within three months, termination of such license pursuant to subsection 293(1)(d) hereof shall be initiated.

(6) The rents shall be adjusted pursuant to section 431 of this Act.

(7) Any rents shall be verified and collected by the Inspectorate.

All petroleum production subject to royalties

434.(1) All production of petroleum, including production tests in Petroleum Prospecting Licences, shall be subject to royalties.

(2) The production and value of the petroleum for the purpose of determining the royalties shall be determined at the measurement point(s) in the Petroleum Mining Lease ("PML") as defined in Section 434(3) and shall be determined monthly on the basis of the average daily production and value of petroleum as provided for in this Part VII-C.

(3) The measurement point(s) referred to in subsection (2) of this section shall be determined by the Inspectorate and where there is production from production tests under a Petroleum Prospecting Licence, the Inspectorate shall determine the point of measurement for such production.

(4) The production shall be measured at standard temperatures and pressures as defined from time to time by regulation and production shall not include:

(a) any volumes burned, flared or vented with the approval of the Inspectorate,

(b) any volumes re-injected by the lessee into reservoirs for the purpose of improving or enhancing production of crude oil or for conservation of natural gas,

(c) any volumes used in the upstream crude oil operations or upstream gas operations for the production of electricity or heat for exclusive use in the operations of the PML,

(d) any water or sediments.

(5) The value for the purpose of royalty calculation for crude oil and condensates shall be determined by the Inspectorate and based on the official selling price at the export terminals and shall be adjusted taking into consideration:

(a) any quality differentials; and

(b) any transportation costs that apply within Nigeria as determined by the Agency.

(6) The average official selling price applicable to any calendar month for crude oil and condensates produced from any PML shall be determined by the Inspectorate on the basis of information from non-confidential independent publications making such adjustments for quality and transport costs as appropriate to prices of comparable crude oils and condensates sold in the international market, as determined by the Inspectorate, for which appropriate information is available.

(7) The value for the purpose of royalty calculation for natural gas shall be determined by the Inspectorate and shall be based on the netback value at the measurement point as follows:

(a) based on the composition of the natural gas at the measurement point, based on a reasonable estimate of the content of marketable natural gas, ethane, propane, butanes and natural gas liquids as will be typically derived by processing of the natural gas;

(b) for export markets, it shall be determined by taking representative publicly available data for the values of these products in the export markets and deducting from these values reasonable allowances for processing, transportation, compression, liquefaction and re-gasification as the case may be.

(c) for domestic markets, shall be determined:

(i) initially on the gas pricing framework determined by the Minister based on the Nigerian Gas Master Plan,

(ii) and where the Agency determines that competitive markets exist in Nigeria, it shall be based on a reference price at the appropriate gas market location, determined by the Agency, and by deducting the appropriate processing and transportation costs, and

(iii) adding to the values under (i) or (ii) the values for the ethane, propane, butane and natural gas liquids netted back to the measurement point by deducting the appropriate processing and transportation costs.

(8) Where natural gas is processed, transported, compressed, liquefied or re-gasified based on tariffs, such tariffs shall be used for the purpose of determining the netback value pursuant to subsection (7) hereof and be based on:

(a) tariffs determined by the Agency in export markets, and

(b) tariffs determined by the Agency in the Nigerian market.

(9) The detailed procedures for determining the production, official selling price the value of natural gas pursuant to this section shall be established in regulations applicable from time to time.

Royalties in kind or cash

435. (1) At the option of the Government, the Inspectorate shall inform the lessee whether the Government elects to take the royalty in kind or in cash, provided, however, that with respect to any lessee which is an incorporated joint venture pursuant to Section 260, the royalties shall only be paid in cash.

(2) With respect to crude oil and condensates, the Inspectorate shall inform the lessee with three months notice of its option, and such option may be exercised at multiple times and where no such notice is provided, the lessee may deem that the royalty must be paid in cash.

(3) With respect to natural gas the Inspectorate shall inform the lessee upon the granting of the lease and such option may be exercised only one time and where no such notice is provided, the lessee may deem that the royalty must be paid in cash.

(4) Where the royalty is paid in cash, the amount of royalty shall be based on the values established pursuant to Section 434 of this Act and shall be determined separately for:

(a) crude oil plus condensates, and

(b) natural gas.

(5) Any royalty paid in cash shall be paid on a monthly basis in the month following the month for which the royalty was determined, and where such royalty is not paid in the respective month an interest of LIBOR plus 2% shall be applied to the outstanding payment, and where a royalty payment is not made within three months after the month in which the royalty is due, termination of such lease pursuant to section 293(1)(d) of this Act shall be initiated.

(6) Where the royalty is taken in kind, the Inspectorate or the National Oil Company, as the case may be, shall agree with the lessee on a lifting schedule, that is determined on the basis that royalties have to be paid monthly.

(7) Any royalties shall be determined and collected by the Inspectorate.

Total royalty rates

436. The total royalty rate for each PML shall be the royalty rate based on average monthly daily production pursuant to section 437 hereof plus the royalty rate based on the average monthly value pursuant to section 438 of this Act.

Royalty rates based on daily production.

437. (1) The average monthly daily production shall be based on the total production for the month from each PML divided by the number of days in the month and shall be determined separately for:

(a) for the volume of crude oil plus the volume of condensates, and

(b) for the volume of natural gas

(2) Subject to the provisions of section 289(2)(a)(ii) of this Act, the royalty rates for crude oil and condensates shall be based on the geographical area and shall be:

(a) for onshore areas, 5% for the part of the production up to and including 2000 barrels per day, 12.5% for the part of the production over 2000 barrels per day up to and including 5,000 barrels per day and 25% for the part of the production over 5,000 barrels per day;
(b) for shallow water areas, 5% for the part of the production up to and including 5,000 barrels per day, 12.5% for the part of the production over 5,000 barrels per day up to and including 20,000 barrels per day and 25% for the part of the production over 20,000 barrels per day.
(c) for deep water areas, 5% for the part of the production up to and including 25,000 barrels per day, 12.5% for the part of the production over 25,000 barrels per day up to and including 50,000 barrels per day, and 25% for the part of the production over 50,000 barrels per day.

(3) Subject to the provisions of subsection 289(2)(a)(ii) hereof, the royalty rates for natural gas shall be based on the geographical areas and shall be:
(a) for onshore areas, 5% for the part of the production up to and including 50 million cubic feet per day, 12.5% for the part of the production over 50 million cubic feet per day up to and including 100 million cubic feet per day and 25% for the part of the production over 100 million cubic feet per day;
(b) for shallow water areas, 5% for the part of the production up to and including 100 million cubic feet per day, 12.5% for the part of the production over 100 million cubic feet up to and including 200 million cubic feet per day and 25% for the part of the production over 200 million cubic feet per day;
(c) for deep water areas, 5% for the part of the production up to and including 250 million cubic feet per day, 12.5% for the part of the production over 250 million cubic feet and up to and including 500 million cubic feet per day, and 25% for the part of the production over 500 million cubic feet per day.

(4) where a PML produces crude oil, condensates or natural gas partly from onshore and partly from offshore, or partly shallow water area and partly from deep water areas, the weighted average royalty shall be calculated in the following manner:
(a) by determining the total production of the PML from both geographical areas; and
(b) by determining the production on either side of the geographical boundary based on the location of the well intersections with the producing reservoirs, as determined by the Inspectorate based on applicable regulations; and
(c) by determining two royalty rates:
(i) on the assumption that all petroleum is on one side of the boundary applying the respective sliding scale, and
(ii) on the assumption that all petroleum is on the other side of the boundary applying the respective sliding scale;
(d) the weighted average royalty rate will be based on the volumes determined under paragraph (b) hereof in relation to the total volume determined under (a).

(5) for frontier acreages the royalty rate based on daily production shall be 5% for crude oil, condensates and natural gas irrespective of the level of average monthly daily production.

(6) With respect to all oil mining leases that on the commencement of this Act were in production or have been in production as part of joint venture agreements, the production levels under subsections (2) and (3) shall be determined based on the sum of the production from all such oil mining leases and the royalty rates shall be capped at 20% for onshore areas and at 18.5% for shallow water areas, and such royalty determination procedures shall continue after granting of the corresponding petroleum mining leases pursuant to section 291(4) of this Act. For such joint ventures and for incorporated joint ventures, any PML's or OML's prior to the relinquishment

date pursuant to section 291 of this Act, commencing production subsequent to the commencement of this Act shall be dealt with as defined in subsection (1), (2) and (3) hereof.
(7) Any PML's granted to marginal field operators pursuant to section 291(6) of this Act shall be subject to the royalties as defined in subsections (1), (2) and (3) of this Act.

Royalty rates based on value.
438. (1) The royalty rates based on value shall be identical for the various geographical regions, including frontier acreages, and shall be based on the average value for the month from each PML for the petroleum production as determined pursuant to section 434 hereof and shall be determined separately for:

(a) crude oil plus condensates, and
(b) natural gas.

(2) the royalty rates for crude oil plus condensates shall be:

(a) 0% for a value from US $ 0 per barrel and up to and including US $ 70 per barrel,
(b) over US $ 70 per barrel and up to and including US $ 110 per barrel the royalty rate shall increase by 0.4% royalty percentage for every US $ 1 increase in value over US $ 70 per barrel,
(c) over US $ 110 and up to and including US $ 140 per barrel the royalty rate shall be 16% plus 0.2% royalty percentage for every US $ 1 increase in value over US $ 110 per barrel,
(d) over US $ 140 and up to and including US $ 170 per barrel the royalty rate shall be 22% plus 0.1% royalty percentage for every US $ 1 increase in value over US $ 140 per barrel, and
(e) over US $ 170 per barrel the rate shall be 25%.

(3) the royalty rates for natural gas shall be:

(a) 0% for a value from US $ 0 per million Btu up to and including US $ 2 per million Btu,
(b) over US $ 2 per million Btu and up to and including US $ 6 per million Btu the royalty rate shall increase by 0.3% royalty percentage for every US $ 0.10 per million Btu increase in value over US $ 2 per million Btu,
(c) over US $ 6 per million Btu and up to and including US $ 10 per million Btu the royalty rate shall be 12% plus 0.2% royalty percentage increase for every US $ 0.10 per million Btu increase in value over US $ 6 per million Btu, and
(d) over US $ 10 per million Btu and up to and including US $ 15 per million Btu the royalty rate shall be 20% plus 0.1% royalty percentage increase for every US $ 0.10 per million Btu increase in value over US $ 10 per million Btu, and
(e) over US $ 15 per million Btu the rate shall be 25%.

(4) The oil price levels and the US $ 1 in subsection (2) hereof and the gas price levels and the US $ 0.10 in subsection (3) hereof shall be adjusted pursuant to section 431 hereof.

D – NIGERIAN HYDROCARBON TAX

Requirement to pay Nigerian Hydrocarbon Tax

439. Companies engaged in upstream petroleum operations, with the exception of operations under a petroleum exploration licence, shall be subject to the Nigerian Hydrocarbon Tax ("NHT") as provided for under Section 443, such companies shall include:

a) incorporated joint venture companies;

b) the National Oil Company;

c) holders of interests in petroleum prospecting licenses;

d) holders of interests in petroleum mining leases;

e) existing marginal field operators;

f) indigenous oil companies; and

g) Contractors pursuant to section 272(2) of this Act of any one of the companies under paragraphs a) through f) of this section.

Powers and Duties

440. (1) The due administration of this Part VII-D shall be under the care and management of the Service who may do all such acts as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Minister;

(2) Whenever the Service shall consider it necessary with respect to tax due, the Service may acquire, hold and dispose of any property taken as security for or in satisfaction of any tax or of any judgment debt due in respect of any tax, and shall account for any such property and the proceeds of sale thereof in a manner to be prescribed as aforesaid;

(3) The Service may sue and be sued in its official name and, subject to any express provision under any subsidiary legislation or otherwise, the Service may authorise any person to accept service of any document to be sent, served upon or delivered to the Service and to represent the Service in any proceedings;

(4) Subject to such conditions as the Service may specify, the Service may by notice in the Federal Gazette direct that any information, return or documents required to be supplied, forwarded or given to the Service may be supplied to such other person whether within or without Nigeria as the Service may direct;

(5)The Service may by notice in the Federal Gazette or in writing authorise any person within or without Nigeria to:

(a) perform or exercise, on behalf of the Service, any power or duty conferred upon the Service other than the powers or duties specified in this Act; and

(b) receive any notice or other document to be given, delivered or served upon the Service under or in consequence of this Act or any subsidiary legislation made thereunder.

(6) In the exercise of the powers and duties conferred upon the Service, the Service shall be subject to the authority, direction, and control of the Minister and any written direction, order or instruction given by the Minister after consultation with the Executive Chairman of the Service shall be carried out by the Service.

(7) The Minister shall not give any direction, order or instruction in respect of any particular company which would have the effect of requiring the Service to;

(a) raise an additional assessment upon such company; or

(b) increase or decrease any assessment made or to be made or any penalty imposed or to be imposed upon or any relief given or to be given; or

(c) defer the collection of any tax, penalty or judgment debt due by such company; or

(d) do anything which would have the effect of altering the normal course of any proceedings, whether civil or criminal, relating either to the recovery of any tax or penalty or to any offence relating to tax;

(8) Every claim, objection, appeal, representation or the like made by any person under any provision with respect to the Nigerian Hydrocarbon Tax or of any subsidiary legislation made thereunder shall be made in accordance with the provisions of this Part VIII-D and any subsidiary legislation to this Act; and

(9) In any claim or matter or upon any objection or appeal under this Part VIII-D, any act, matter, or thing done by or with the authority of the Service, in pursuance of any provisions of this Chapter shall not be subject to challenge on the ground that such act, matter, or thing was not or was not proved to be in accordance with any direction, order or instruction given by the Minister.

Signature and Execution of Powers and Duties

441. (1) Anything required to be done by the Service, in relation to the powers or duties specified in the Ninth Schedule of this Act, may be signified under the hand of the Executive Chairman of the Service, or of an officer of the Service who has been authorised by the Service to signify from time to time, anything done or to be done by the Service in respect of such powers or duties.

(2) Any authorisation given by the Service under or by virtue of this Part VIII-D shall be signified under the hand of the Executive Chairman of the Service unless such authority is notified in the Federal Gazette.

(3) Subject to subsection (1) of this section, any notice or other document to be given under this Act shall be valid if:

(a) it is signed by the Executive Chairman of the Service or by any person authorised by the excutive Chairman; or

(b) such notice or document is printed and the official name of the Service is duly printed or stamped thereon.

(4) Every notice, authorisation or other document purporting to be a notice, authorisation or other document duly given and signified, notified or bearing the official name of the Service, in accordance with the provisions of this section, shall be deemed to be so given and signified, notified or otherwise without further proof, until the contrary is shown.

Service and Signature of Notices

442. (1) Where a notice is sent by registered post it shall be deemed to have been served on the next day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course of events that such registered letter is awaiting him or her at a post office, if such notice is addressed in accordance with the provisions of subsection (3) of this section:

(2) Notice shall not be deemed to have been served under this subsection if the addressee proves that no notification, informing him or her of the fact that the registered letter was awaiting him at a post office, was left at the address given on such registered letter.

(3) A notice to be served in accordance with subsection (1) of this section shall be addressed:

(a) in the case of a company incorporated in Nigeria, to the registered office of the company; and

Cap C20 LFN, 2004 (b) in the case of a company incorporated outside Nigeria, either

(i) to the individual authorised to accept service of process under the Companies and Allied Matters Act, at the address filed with the Registrar-General, or

(ii) to the registered office of the company wherever it may be situated.

(4)Any notice to be given, sent or posted under this Part VIII-D may be served by being left at the appropriate office or address determined under subsection (3) of this section, unless such address is a registered post office box number.

Charge of Tax

443. (1) There shall be charged a Nigerian Hydrocarbon Tax, which shall be the higher of an amount based on:

(a) a percentage pursuant to section 454(1) from its total profits from each and every source during each accounting period of any company engaged in upstream petroleum operations on the basis of petroleum prospecting licenses and petroleum mining leases, assessed and payable in accordance with the provisions of this Part VIII-D, or

(b) 2% of the gross income from upstream petroleum operations pursuant to subsection 444(1) of this Act.

(2) With respect to any contract area pursuant to section 272 of this Act and any production sharing contract area in existence prior to the commencement of this Act, a company shall determine the Nigerian Hydrocarbon Tax separately for each contract area.

(3) With respect to contract areas pursuant to subsection (2) of this Section, the Service shall have the option to request payment of the Nigerian Hydrocarbon Tax in cash or in kind, and such payment in cash or kind shall be subject to the same notice periods and procedures as provided for royalties in section 435 of this Act.

Ascertainment of Profits

444. (1) In relation to any accounting period, the income from upstream petroleum operations of that period of a company shall be taken to be the aggregate of:

(a) the value of all oil and condensates spiked with crude oil shall be official selling price multiplied by the crude oil and condensate production attributable to the company at the measurement point pursuant to section 434 hereof; and

(b) the value of all natural gas shall be the value of the natural gas multiplied by by the natural gas production attributable to the company at the measurement point pursuant to section 434 hereof;

(c) any income pursuant to subsection 495(2) of this Act, and

(d) all income of the company from that accounting period incidental to and arising from one or more of its upstream petroleum operations.

(2) The adjusted profit of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 445 of this Act.

(3) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed under section 448 of this Act.

(4) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by sections 452 and 453 of this Act.

Deductions

445.(1) In computing the adjusted profit of any company of any accounting period from its upstream petroleum operations, there shall be deducted all outgoings and expenses wholly, exclusively and necessarily incurred for these operations, to the extent such outgoings and expenses have been previously benchmarked by the Regulatory Institutions or the National Oil Company, as the case may be, and included in an approved budget with respect to contracts pursuant to Section 272, and shall be verified and approved by the Service in accordance with procedures established by the Service, including but without otherwise expanding or limiting the generality of the foregoing:

(a) rents incurred by the company for that period in respect of land or buildings occupied under a petroleum prospecting license or a petroleum mining lease for disturbance of surface rights or any other like disturbances;

(b) all rents and royalties pursuant to Sections 433 and 434 of this Act incurred by the company;

(c) all sums the liability for which was incurred by the company to the Federal Government of Nigeria during that period by way of customs or excise duty or other like charges levied in respect of machineries, equipment and goods used in the company's upstream petroleum operations; and

(d) any expense incurred for repair of premises, plant, machinery, or fixtures employed for the purpose of carrying on upstream petroleum operations, or for the renewal, repair or alteration of any implement, utensils or articles so employed;

(e) Any expenditure attributable to petroleum prospecting licenses.

(f) Any contribution to a pension, provident or other society, scheme or fund which may be approved, with or without retrospective effect, by the Service subject to such general conditions or particular conditions in the case of any such society, scheme or fund as the Service may prescribe:

Provided that any sum received by or the value of any benefit obtained by such company, from any approved pension, provident or other society, scheme, or fund, in any accounting period of that company shall, for the purposes of this part VIII-D, be treated as income of that company of that accounting period;

(g) all sums donated to a Nigerian university or other Nigerian tertiary or research institution

(i) for research or any other developmental purpose; or

(ii) as an endowment out of the profits of the accounting period of the company;

notwithstanding that the donation is of a capital or revenue nature, provided that the said donation shall not exceed an amount which is equal to 2 per cent of chargeable profit pursuant to Section 452.

(h) All sums, the liability of which was incurred by the company during that period to the Federal Government, or to any State or Local Government Council in Nigeria by way of duty, customs and excise duties, stamp duties, education tax, tax (other than companies income tax or the Nigerian Hydrocarbon Tax under this Chapter) or any other rate, fee or other like charges.

(i) Any costs incurred by contractors for the creation of assets to be owned by a licensee of a petroleum prospecting license or lessee of a petroleum mining lease.

(j) Such other deductions as may be prescribed by any regulation made under this Act.

(2) Where a deduction has been allowed to a company under this section in respect of any liability of the company and such liability or any part thereof is waived or released the amount of the deduction or the part thereof corresponding to such part of the liability shall, for the purposes of section 444 (1)(c) of this Act, be treated as income of the company of its accounting period in which such waiver or release was made or given.

Deductions Not Allowed

446. Subject to the express provisions of subsection 445(1)(i) of this Act and other provisions of this Chapter, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its petroleum operations or upstream gas operations, no deduction shall be allowed in respect of:

(a) any disbursement or expenses not being wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred, for the purpose of those operations;

(b) any capital withdrawn or any sum employed or intended to be employed as capital with the exception of any capital that may be employed with respect to an petroleum prospecting licence;

(c) any capital employed in improvement as distinct from repairs;

(d) any sum recoverable under any insurance or contract of indemnity;

(e) rent or cost of repair to any premises or part of any premises not incurred for the purpose of those operations;

(f) any amount incurred in respect of any income tax, profit tax, or similar tax whether charged within Nigeria or elsewhere;

(g) the depreciation of any premises, buildings, structures, work of a permanent nature, plant, machinery or fixtures;

(h) any payment to any provident, savings, widows, orphans or other society, scheme or fund;

(i) any customs duty on goods (including articles or any other thing) imported by the company:

(i) for resale or for personal consumption of employees of the company, or

(ii) where goods of the same quality to those so imported are produced in Nigeria and are available, at the time the imported goods were ordered by the company for sale to the public at prices less or equivalent to the cost to the company of the imported goods;

(j) any expenditures related to petroleum exploration licences, except for the purchase of information from licensees of a petroleum exploration licences;

(k) any expenditure for the purpose of paying a penalty, including gas flaring fees or penalty or penalties with respect to domestic supply obligations;

(l) any demurrage and surcharges incurred at the ports or fines and penalties paid with respect to commercial transactions between Parties;

(m) all workover expenditures;

(n) any signature or production bonuses;

(o) any sums for interest, financing charges or other charges related to money borrowed or equity raised;

(p) all general, administrative and overhead expenses incurred outside Nigeria;

(q) twenty percent (20%) of any expenses, other than pursuant to paragraph (p) incurred outside Nigeria;

(r) any costs attributable to midstream petroleum operations or downstream petroleum operations;
(s) any legal and arbitration costs related to cases against the Service or the Government of Nigeria, unless specifically awarded to the company during the legal or arbitration process;
(t) costs for which records do not exist or are, not correct in any material respect;
(u) costs of goods and services in excess of the fair market value, to the extent of such excess;
(v) costs incurred prior to the establishment of the company in Nigeria;
(w) costs incurred related to activities downstream of the measurement points;
(x) any cost resulting from any arrangement or event that arises from fraud or willful misconduct or negligence on the part of the company;
(y) costs incurred in organizing or managing any partnership, joint operating agreement, incorporated joint venture or other arrangement between or among companies or any assignments, mergers or acquisitions as well as the related fee pursuant to subsection 292(5) of this Act;
(z) insurance costs where such costs are earned by the company or an affiliate of the company; and
(aa) any costs that have been determined as excessive as a result of the benchmarking by the Inspectorate based on a reasonable comparison of such costs with similar operations in Nigeria and abroad, to the extent of such excess.

Artificial Transaction Etc.

447.(1) Where the Service is of opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Service may disregard any such disposition or direct that such adjustments shall be made as liability to tax as the Service considers appropriate so as to counteract the reduction of liability to tax effected, or to counteract the reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessable accordingly and in this subsection, the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.

(2) For the purpose of this section, transactions deemed to be artificial or fictitious, include; a) transactions between persons one of whom has control over the other; or

b) transactions between persons both of whom are controlled by some other person which, in the opinion of the Service, have not been made on the terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm's length.

(3) Nothing in this section shall prevent the decision of the Service in the exercise of any discretion given to the Service by this section from being questioned in an appeal against an assessment in accordance with the provisions of section 475 this Act and on the hearing of the Federal High Court may confirm or vary any such decision including any directions made under this section.

Assessable Profits and Losses.

448.(1) The assessable profits of any company for any accounting period shall be the amount of the adjusted profit of that period after the deduction of:

(a) the amount of any loss incurred by that company during any previous accounting period;

and

(b) in a case to which section 450 of this Act applies, the amount of any loss which under that section is deemed to be a loss incurred by that company in its trade or business during its first accounting period.

(2) A deduction under subsection (1) of this section shall be made so far as possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss, was incurred, and, so far as it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on.

(3) Within five months after the end of any accounting period of a company, or within such further time as the Service may permit in writing in any instance, the company may elect in writing that a deduction or any part thereof to be made under this section shall be deferred to and be made in the succeeding accounting period, and may so elect from time to time in any succeeding accounting period.

Trade or Business Sold or Transferred to Nigerian Company

449.(1) Without prejudice to section 459 of this Act, where a trade or business of upstream petroleum operations carried on in Nigeria by a company incorporated under any law in force in Nigeria is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in that trade or business is so sold or transferred, then, if the Service is satisfied that one of those companies has control over the other or that both companies are controlled by some other person or are members of a recognised group of companies, the provisions set out in subsection (2) shall have effect.

(2) The Service may:

(a) direct that the respective petroleum production shall be attributable to the company from the date the sale or transfer takes place and that the respective accounting period shall commence pursuant to paragraph ii) of the definition of accounting period pursuant to Section 526 hereof.

Ninth Schedule(b) direct that for the purposes of the Ninth Schedule to this Act, the asset sold or transferred to the Nigerian company by the company selling or transferring the trade or business shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure on the asset on the day following the day on which the sale or transfer thereof occurred; and

Ninth Schedule(c) direct that the Nigerian company, acquiring the asset so sold or, transferred shall not be entitled to any initial allowance in respect of that asset, and shall be deemed to have received all allowances given to the company selling or transferring the trade or business in respect of the asset under the Ninth Schedule and any allowances deemed to have been received by that company under the provisions of this paragraph:

(3) With reference to subsection (1) of this section the Service may:

(i) require the company selling or transferring the trade or business, or the Nigerian company acquiring that trade or business, to guarantee or give security, to the satisfaction of the Service, for payment in full of all tax due or to become due from the company selling or transferring the trade or business, and

(ii) impose such conditions as it sees fit on either of the companies aforesaid or on both of them, and in the event of failure by that company or, as the case may be, those companies to carry out or fulfil the guarantee or conditions, the Service may revoke the

direction and may make all such additional assessments or repayment of tax as may be necessary to give effect to the revocation.

Trade or Business Transferred under the Companies Act

Cap C20 LFN, 2004 450.(1) Where in pursuance of the provisions of Part A of the Companies and Allied Matters Act, a company ("the reconstituted company") is incorporated under that Act to carry on any trade or business of upstream petroleum operations previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the reconstituted company, then, if the Service is satisfied that the trade or business carried on by the reconstituted company immediately after the incorporation of that company under that Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the provisions of this section shall have effect, notwithstanding anything stated to the contrary in this Part VIII-D:

(a) the first accounting period of the reconstituted company shall commence pursuant to paragraph ii) of the definition of accounting period pursuant to Section 526 hereof.

Ninth Schedule(b) for the purposes of the Ninth Schedule to this Act, the assets so vested in the reconstituted company shall be deemed to have been sold to it on the day of its incorporation, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on, in Nigeria by the foreign company ceased;

(c) the reconstituted company shall not be entitled to any initial allowances in respect of those assets, and shall be deemed to have received any allowances deemed to have been received by the foreign company under the provisions of this paragraph or Section 449 of this Act; and

(d) the amount of any loss incurred during any accounting period by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits of any accounting period of that foreign company, shall be deemed to be a loss incurred by the reconstituted company in its trade or business during its first accounting period; and the amount of that loss shall, in accordance with the provisions of section 448 of this Act, be deducted from the adjusted profits of the reconstituted company.

Call for Returns and Information relating to Certain Assets

Cap C20 LFN, 2004 451. For the purpose of sections 449 and 450 of this Act, the Service may by notice require any person, (including a company to which any assets are sold or transferred, or in which any assets have vested in pursuance of Part A of the Companies And Allied Matters Act, to complete and deliver to the Service any returns specified in the notice or any such information as the Service may require about the assets; and it shall be the duty of that person to comply with the requirements of any such notice within the period specified in the notice, which shall be a period of not less than twenty-one days from the service thereof.

Chargeable Profits and Capital Allowances.

452.(1) The chargeable profits of any company of any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section and section 453.

Ninth Schedule(2) There shall be computed the aggregate amount of all allowances due to the company under the relevant provisions of the Ninth Schedule to this Act for the accounting period.

(3) Where the total amount of the allowances computed under subsection (2) of this section cannot be deducted under subsection (1) of this section owing to there being an insufficiency of or no assessable profits of the accounting period such total amount or the part thereof which has not been so deducted, shall be added to the aggregate amount to be computed under subsection (2) of this section for the following accounting period of the company, and thereafter shall be deemed to be an allowance due to the company, under the relevant provisions of the Ninth Schedule to this Act for that following accounting period.

(4) Cost categories under section 446 (q), (r), (t), (u), (v), (w), (x), (z), and (aa) which are not deductible would also not qualify for capital allowances.

Other Allowances

453.(1) There shall be a general production allowance in order to encourage the production from new small oil fields of $ 40 per barrel:

(a) for onshore –up to a cumulative maximum of 10 million barrels per PML

(b) for shallow water areas –up to a cumulative maximum of 20 million barrels per PML; and

(c) for frontier acreages and deep water areas –up to a cumulative maximum of 40 million barrels per PML

(2) There shall be an allowance for the development and production of new natural gas fields, equal to lower of:

(a) 50% of the value of the natural gas production pursuant to section 434 of this Act; and

(b) US $ 1 per million Btu, and

(c) such allowance shall be capped at a level of cumulative production per PML of:

(i) 100 billion cubic feet for the onshore,

(ii) 200 billion cubic feet for shallow water, and

(iii) 400 billion cubic feet for frontier acreages and deep water

(3) The small field allowance of subsection (1) and the gas allowance of subsection (2) of this section shall be allocated to companies in proportion to the capital expenditures contributed to the field development, including any expenditures pursuant to subsection 445(1)(i) of this Act.

(4) The gas allowance pursuant to subsection (2) of this section, shall only apply to any gas production which is subject to royalties and where a purchaser of natural gas involved in upstream crude oil operations or upstream gas operations is purchasing gas for the purpose of reinjection of such gas in reservoirs produced by such purchaser, the purchaser shall pay a gas allowance refund fee equal to the lower of:

(a) 50% of the purchase price of the natural gas; and

(b) US $ 1 per million Btu; and

(c) such allowance shall be capped at a level of cumulative production per PML depending on the geographical area of the PML of the purchaser of:

(i) 100 billion cubic feet for the onshore,

(ii) 200 billion cubic feet for shallow water, and

(iii) 400 billion cubic feet for frontier acreages and deep water

(5) The total amount of the allowances computed under this section shall be deducted from the amount determined pursuant to subsection 452(1) of this Act, and where these allowances cannot be deducted under subsection 452(1) owing to there being an insufficiency of or no assessable

profits of the accounting period the deductions shall be limited to the available assessable profits and can not be carried forward into the next accounting period.
(6) Any petroleum mining leases that on the commencement of this Act are in production or have been in production shall not be eligible for the allowances under this section.
(7) Any companies with interests in petroleum mining leases granted pursuant to subsection 291(6) hereof to marginal field operators shall be able to apply the allowances under subsection (1) and (2) hereof for the full cumulative amounts provided for in these subsections, from the date such new leases are granted.

Assessable Tax.
454.(1) The assessable tax for any accounting period of a company engaged in upstream petroleum operations shall be a percentage of the chargeable profit of that period as follows:
(a) for onshore and shallow water areas: 50%, and
(b) for frontier acreages and deep water areas: 30%
(2) Where companies carry on operations in both geographical zones indicated under (a) and (b) of subsection (1) hereof, they shall submit separate tax returns for each zone. In this case:
(a) production shall be allocated in a similar manner as applicable to royalties under Section 437(4) of this Act, and
(b) applicable deductions and capital allowances for PML's for which the production is entirely within a particular zone shall be allocated to such zone, and
(c) applicable deductions and capital allowances for PML's for which the productions takes place from two zones shall be allocated pro-rata to the production.

Partnership Etc.

455.(1) Any person (other than company) who engages in upstream crude oil operations or upstream gas operations either on his own account or jointly with any other person or in partnership with any other person with a view of sharing profits arising from those operations shall be guilty of an offence. Where such person has benefitted from any profits on upstream crude oil operations, such person shall be subject to the tax under this Part VIII-D on such profits and shall pay a penalty as provided for under section 484 of this Part VIII-D.

(2) Where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint operating agreement or in concert under any scheme or arrangement the Minister may make rules for the ascertainment of the tax to be charged and assessed upon each company so engaged, which may necessarily:

a) provide for the apportionment of any profits, outgoing, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company;

b) provide for the computation of any tax as if the partnership, joint operating agreement, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned;

c) accept some other basis of ascertaining the tax chargeable upon each of the companies which may be put forward by those companies; or

d) contain provisions which have regard to any circumstances whereby such operations are partly carried on for any companies by an operating company whose expenses are reimbursed by those companies.

(2) The rules referred to in Subsection (1) of this section:

a) shall be expressed to be of general application;
b) may be amended or replaced from time to time as may be necessary.

(3) Rules made under this section shall not impose a greater burden of tax upon any company so engaged in any partnership, joint venture, scheme or arrangement than would have been imposed upon that company under this Act if all things enjoyed, done or suffered by such partnership, joint operating agreement, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint operating agreement, scheme or arrangement.

Each company responsible

456. Notwithstanding the provisions of subsection 455 (3) of this Part VIII-D, each company shall be responsible for reporting its own upstream petroleum operations profits, outgoings, expenses, qualifying expenditure and the tax chargeable on its upstream petroleum operations.

Manager of Companies etc, to be Answerable

457. The manager or any principal officer in Nigeria of every company which is or has been engaged in upstream petroleum operations shall be answerable for doing all such acts as are required to be done by virtue of this Part VIII-D for the assessment and charge to tax of such company and for payment of such tax.

Company Wound Up, Etc.

458.(1) Where,

a) a company is being wound up, or

b) where in respect of a company a receiver has been appointed by any Court, by the holders of any debentures issued by the company or otherwise,

the company may be assessed and charged to tax in the name of the liquidator of the company or the receiver or any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver.

(2) Any such liquidator, receiver or agent shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.
(3) Such liquidator or receiver under this section shall not distribute any assets of the company to the shareholders or debenture holders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company or by such liquidator, receiver or agent on behalf of the company

Avoidance by Transfer

459. Where a company which is or was engaged in upstream petroleum operations transfers a substantial part of its assets to any person without having paid any tax, assessed or chargeable

upon the company, for any accounting period ending prior to such transfer and in the opinion of the Service one reason for such transfer by the company is to avoid payment of such tax, then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 481 of this Part VIII-D, subject to any necessary modification of the amount pursuant to that section

Indemnification of Representative

460. Every person answerable under this Act for the payment of tax on behalf of a company may retain out of any money in or coming to his hands or within his de facto control on behalf of such company so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in accordance with the provisions of this Act.

Preparation and Delivery of Accounts and Particulars

461.(1) Every company which is or has been engaged in upstream petroleum operations shall for each accounting period of the company, make up accounts of its profits or losses, arising from those operations, of that period and shall prepare the following Particulars:

(a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;

Ninth Schedule (b) in connection with the Ninth Schedule to this Act, a schedule showing:

(i) the residues at the end of that period in respect of its assets,

(ii) all qualifying petroleum expenditure incurred by it in that period,

(iii) the values of any of its assets (estimated by references to the provisions of that Schedule) disposed of in that period, and

(iv) the allowances due to it under the said schedule for that period.

(c) a computation of its estimated chargeable profits of that period;

(d) a statement of other sums, deductible under the liabilities for which were incurred during that period;

(e) a statement of all amounts repaid, refunded, waived or released to it, during that period; and

(f) a computation of its estimated tax for that period.

(2) Every company which is or has been engaged in upstream petroleum operations shall, with respect to any accounting period of the company, within five months after the expiration of that period or within five months after the date of publication of this Act in the Federal Gazette upon enactment (whichever is later) deliver to the Service a copy of its accounts (bearing an auditor's certificate) of that period, made up in accordance with the provisions of subsection (1) of this section, and copies of the particulars referred to in that subsection relating to that period; and such copies of those accounts and each copy of those particulars (not being estimates) shall contain a declaration which shall be signed by a duly authorised officer of the company or by its liquidator, receiver or the agent of such liquidator or receiver, that the same is true and complete and where such copies are estimates each copy shall contain a declaration, similarly signed, that such estimate was made to the best of the ability of the person signing the same

Roles of Agency, National Oil Company and Inspectorate

462.(1) The Agency, the Authority, the National Oil Company, and the Inspectorate shall provide information to the Service and the Inspectorate on:

(a) the approved budgets of incorporated joint ventures and for production sharing contracts and information on project cost benchmarking and cost monitoring;
(b) production, lifting or exported crude and Natural Gas , LNG, CNG, NGLs, realisable prices, American Petroleum Institute gravity of various crude oil blends, schedule of shipping agents or companies involved in lifting crude oil, Natural Gas , LNG, CNG, NGLs stating names, addresses, quantity and value of crude oil lifted.
(c) names and addresses of licensed companies in the oil and gas industry, schedule and approved cost of all exploration and appraisal wells, schedule of licenses or concessions granted categorised as to petroleum prospecting licences and oil mining leases and payments made thereon, production and lifting of crude oil specifying the affected terminals by the Inspectorate; and
(d) any other information that the Service may, by regulations, require, from time to time.

(2) The information specified in subsection (1)(a) of this section shall be delivered to the Service not later than 30 days after the approval;

(3) The information specified in subsection (1)(b) of this section shall be delivered to the Service on or before the 30th day of the month following that in which the production or lifting took place.

(4) The information specified in subsection (1)(c) of this section shall be delivered to the Service as follows:

(a) names and addresses of such shall be delivered not later than 15 days after the issuance of licences to such companies;

(b) schedules and approved costs of all exploration and appraisals wells shall be delivered not later than 30 days after the approval; and

(c) schedules of licenses/concessions granted shall be delivered on or before the 30th day of the month following the granting of licenses/concession.

Service May Call For Further Information

463. The Service may give notice in writing to any company which is or has been engaged in upstream petroleum operations when and as often the Service may require, requesting it to furnish within such reasonable time as may be specified by such notice fuller or further information as to any of the matters either referred to section 461 of this Act, or as to any other matters which the Service may consider necessary for the purposes of this Act

Power To Call for Returns, Books, Etc.

464.(1) For the purpose of obtaining full information in respect of any company's upstream petroleum operations the Service may give notice to such company requiring it within the time limited by such notice, which time shall not be less than twenty-one days from the date of service of such notice, to complete and deliver to the Service any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such liquidator or receiver, to attend before the Service or its authorised representative on such date or dates as may be specified in such notice and to produce for examination any books, documents, accounts and Particulars which the Service may deem necessary.

(2) If a company assessable to tax under the provisions of this Act fails or refuses to keep books or accounts which, in the opinion of the Service are adequate for the purpose of ascertaining the tax, the Service may by notice in writing require it to keep such records, books and accounts as the Service considers to be adequate in such form and in such language as the Service may in the

said notice direct and, subject to the provisions of subsections (3) and (4) of this section, the company shall keep records, books and accounts as directed.
(3) An appeal shall lie from any direction of the Service made under this section to a judge of the High Court.
(4) On hearing such appeal the judge may confirm or modify such direction and any such decision shall be final

Returns of estimated tax
465.(1) Not later than two months after the commencement each accounting period of any company engaged in upstream petroleum operations, the company shall submit to the Service a return, the form of which the Service may prescribe, of its estimated tax for such accounting period

(2) If, at any time during any such accounting period the company having made a return as provided for in subsection (1) of this section is aware that the estimate in such return requires revision then it shall submit a further return containing its revised estimated tax for such period.

(3) Where the further returns provided for under subsection (2) of this section is not made, the Service shall impose interest at the prevailing LIBOR plus two percentage points for the differential of actual tax over estimated tax paid by the company.

(4) Every return made by an oil and gas producing company in fulfilment of the provisions of this Section shall be subject to review and validation by the Service.

Power of Service to review and reject estimated tax
466. The Service may reject any estimated tax pursuant to Section 465 of this Act, if the estimates, in the opinion of the Service, are not reflective of current circumstances and may replace the estimates by an assessment of the Service.

Extension of Periods for Making Returns.
467. Where it is shown by any company to the satisfaction of the Service that for some good reason the company is not able to comply with the provisions of section 461 of this Act, within the time limited by that section or any notice given to it under sections 463 or 464 of this Act, and within the time limited by any such notice, the Service may grant in writing such extension of that time as the Service may consider necessary

Service to make Assessments
468.(1) The Service shall proceed to assess every company with the tax for any accounting period of the company as soon as may be after the expiration of the time allowed to such company for the delivery of the accounts and Particulars provided for with respect this Chapter.

2) Where a company has delivered accounts and Particulars for any accounting period of the company, the Service may:
(a) accept the same and make an assessment accordingly; or
(b) refuse to accept the same and proceed as provided in subsection (3) of this section upon

any failure as therein mentioned and the like consequences shall ensue.

(3) Where, for any accounting period of a company, the company has failed to deliver accounts and Particulars provided for in section 461 of this Act within the time limited by that section or has failed to comply with any notice given to it under the provisions of sections 463 or 464 of this Act within the time specified in such notice or within any extended time provided for within this Act, and the Service is of the opinion that such company is liable to pay tax, the Service may estimate the amount of the tax to be paid by such company for that accounting period and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver such accounts and Particulars or to comply with such notices; and nothing in this subsection shall affect the right of the Service to make any additional assessment under the provisions of section 470 of this Act.

Powers to distrain

469.(1) Without prejudice to any other power conferred on the Service for the enforcement of payment of tax due from a company that has been properly served with an assessment which has become final and conclusive and a demand notice has been served upon the company in accordance with the provisions of this Part VIII-D, or has been served on the company or upon the person in whose name the company is chargeable, then, if payment of tax is not made within the time specified by the demand notice, the Service may in the prescribed form, for the purpose of enforcing payment of the tax due:

(a) distrain the taxpayer by his goods, other chattels, bond or other securities; or

(b) distrain upon any land, premises or places in respect of which the taxpayer is the owner and, subject to the provisions of this Section, recover the amount of tax due by sale of anything so distrained.

(2) The power to distrain under this section shall be in the form contained in the Fourth Schedule to the Federal Inland Revenue Service (Establishment) Act 2007, and such authority shall be sufficient warrant and authority to levy by distraint the amount of tax due.

(3) For the purpose of levying any distraint under this section, an officer duly authorised by the Executive Chairman may apply to a Judge of the Federal High Court sitting in Chambers under oath for the issue of a warrant under this section.

(4) The Judge of the Federal High Court may on application made ex-parte authorise such officer, referred to in subsection (3) of this section, in writing to execute any warrant of distraint and, if necessary, break open any building or place in the daytime for the purpose of levying such distraint and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distraint and in levying the distraint.

(5) Things distrained under this section may, at the cost of the owner thereof, be kept for 14 days, at the end of which time, if the amount due in respect of tax and the cost and charges incidental to the distraint are not paid, they may, subject to subsection (8) of this section, be sold at any time thereafter.

(6) There shall be paid out of the proceeds of sale, in the first instance, the cost or charges incidental to the sale and keeping of the distraint, and the residue, if any, after the recovery of the

tax liability, shall be payable to the owner of the things distrained upon demand being made within one year of the sale or shall thereafter be forfeited.

(7) In exercise of the powers of distraint conferred by this section, the person to whom the authority is granted under subsection (4) of this section may distrain upon all goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.

(8) Nothing in this section shall be construed as authorising the sale of any immovable property without an order of a Court of competent jurisdiction

Additional Assessments.

470.(1) If the Service discovers or is of the opinion at any time that, with respect to any company liable to tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at a less amount than that which ought to have been charged and assessed for any accounting period of the company, the Service may within six years after the expiration of that accounting period and as often as may be necessary, assess such company with tax for that accounting period at such amount or additional amount as in the opinion of the Service ought to have been charged and assessed, and may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company.
(2) Where a revision under subsection (1) of this section results in a greater amount of tax to be charged than has been charged or would otherwise be charged an additional assessment, or an assessment for any such subsequent accounting period shall be made accordingly, and the provisions of this Act as to notice of assessment, objection, appeal and other proceedings under this Act shall apply to any such Assessment or additional assessment and to the tax charged thereunder.
(3). For the purpose of computing under subsection (1) of this section the amount or the additional amount of tax for any accounting period of a company which ought to have been charged, all relevant facts consistent which subsection (3) of section 476 of this Act shall be taken into account even though not known when any previous assessment or additional assessment on the company for that accounting period was being made or could have been made.
(4) Notwithstanding the other provisions of this section, where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act, the Service may, at any time and as often as may be necessary, for the purpose of recovering any loss of tax attributable to the fraud, wilful default or neglect.
(5) With respect to the collection of any additional tax under this section, Section 465 (3) of this Act shall apply.

Making of Assessments, Etc,

471.(1) Assessment of tax shall be made in such form and in such manner as the Service shall authorise and shall contain the names and addresses of the companies assessed to tax or of the persons in whose names any companies (with the names of such companies) have been assessed to tax, and in the case of each company for each of its accounting periods, the Particular accounting period and the amount of the chargeable profits of and assessable tax and chargeable tax for that period.
(2) When any assessment requires to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) of this section but showing the amended or revised amount of the

chargeable profits; assessable tax and chargeable tax.
(3) A copy of each assessment, and of each amended or revised assessment shall be filed in a list which shall constitute the Assessment List for the purpose of this Act.

Notices of Assessment, Etc.

472.(1) The Service shall cause to be served personally on or sent by registered post to each person whose name appears on an assessment in the Assessment List, a notice of assessment stating its accounting period and the amount of its chargeable profits, assessable tax and chargeable tax charged and assessed upon the company, the place at which payment of the tax should be made, and informing such company of its rights under subsection (2) of this section.

(2) If any person in whose name an assessment was made in accordance with the provisions of this Act disputes the assessment, that person may apply to the Service, by notice of objection in writing, to review and revise the assessment so made on him; and such application shall be made within twenty-one days from the date of service of the notice of such assessment and shall state the amount of chargeable profits of the company of the accounting period in respect of which the assessment is made and the amount of the assessable tax and the tax which such person claims should be stated on the notice of assessment.
(3) The Service, upon being satisfied that owing to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of twenty-one days shall, extend the period as may be reasonable in the circumstances.
(4) After receipt of a notice of objection referred to in subsection (2) of this section the Service may within such time and at such place as the Service shall specify, require the person giving the notice of objection to furnish such Particulars as the Service may deem necessary, and may by notice within such time and at such place as the Service shall specify, require any person to give evidence orally or in writing resisting any matters necessary for the ascertainment of the tax payable, and the Service may require such evidence if given orally to be given on oath or if given in writing to be given by affidavit
(5) In the event of any person assessed who has objected to in assessment made upon him agreeing with the Service as to the amount of tax liable to he assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person.
(6) If an applicant for revision under the provisions of subsection (2) of this section fails to agree with the Service the amount of the tax, the Service shall give such applicant notice of refusal to amend the assessment as desired by such applicant, and may revise the assessment to such amount as the Service may determine and give such applicant notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this subsection

Errors and defects in assessment and notice

473.(1) No assessment , warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or any Act amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.
(2) An assessment shall not be impeachable or affected:
(a) by reason of a mistake therein as to-

(i) the name of a company liable or of a person in whose name a company is assessed; or

(ii) the amount of the tax;

(b) by reason of any variance between the assessment and the notice thereof,

if in cases of assessment, the notice thereof be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the Particulars on which the assessment is made.

Nigerian Hydrocarbon Tax computation

474.(1) Tax computations made under this Part VIII-D, including any assessments made under section 468 of this Chapter, shall be made in US $.

Appeals to Federal High Court against Assessments.

475.(1) Every company appealing shall appoint an authorised representative who shall attend before the court in person on the day and at the time fixed for the hearing of its appeal, but if it be proved to the satisfaction of the judge that owing to absence from Nigeria, sickness or other reasonable cause any duly appointed representative is prevented from attending in person at the hearing of the company's appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal, for such reasonable time as he thinks necessary for the attendance of the appellant's representative, or he may admit the appeal to be made by any other agent, clerk or servant of the appellant, on its behalf or by way of written statement.

(2) Twenty-one clear days' notice shall, unless rules made hereunder otherwise provide, be given to the Service of the date fixed for the hearing of the appeal.

(3) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(4) The judge may confirm, reduce, increase or annul the assessment or make such order thereon as to him may seem fit.

(5) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by a duly authorised representative of the Service either personally on or by registered post to, the appellant.

(6) Notwithstanding anything contained in this Act, if in any Particular case, the judge from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, he may on application being made by or on behalf of the Service require the appellant to furnish within such time as may be specified security for payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.

(7) All appeals shall be heard in camera, unless the judge shall, on the application of the appellant, otherwise direct.

(8) The costs of the appeal shall be in the discretion of the judge hearing the appeal and the judge shall fix a sum.

(9) The Chief Judge of the Federal High Court may make rules providing for the method of tendering evidence before a judge on appeal, the conduct of such appeals and the procedure to be followed by a judge upon stating a case for the opinion of the Court of Appeal.

(10) Pending the making of any rules under this subsection, the rules applicable in civil appeal cases from Magistrates Court to the High Court of Lagos State shall apply to any appeal or to any such procedure for the purposes of this section and Act with any necessary modifications.

(11) An appeal against the decision of the judge shall lie to the Court of Appeal:

(a) at the instance of the appellant where the decision of the judge is to the effect that the correct assessment of tax is in the sum of US $ 1000 or upwards; and

(b) at the instance of the Service where the decision of the judge is in respect of a matter in which the Service claimed that the correct assessment of tax was in the sum of US $ 1000 or upwards.

Assessment to be final and Conclusive

476.(1) Where:

(a) no valid objection or appeal has been lodged within the time limited by either section 472 or 475 of this Act, as the case may be, against an assessment as regards the amount of the tax assessed thereby, or

(b) where the amount of the tax has been agreed to under subsection (5) of section 472 of this Act, or

(c) the amount of the tax has been determined on objection or revision under subsection (6) of section 472 of this Act, or

(d) on appeal, the assessment its made, agreed to, revised or determined on appeal, as the case may be,

the said assessment shall be final and conclusive for all purposes of this Act as regards the amount of such tax, and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 479 of this Act shall apply and any late payment of tax shall be subject to an interest rate of LIBOR plus 2%.

(2) Where an assessment has become final and conclusive, any tax overpaid shall be repaid, in which case interest shall be applied pursuant to subsection 465(3) of this Act.

(3) Nothing in Section 472 of this Act shall prevent the Service from making any assessment or additional assessment to tax for any accounting period which does not involve re-opening any issue on the same facts which has been determined for that accounting period under subsection (5) or (6) of section 472 of this Act, by agreement or otherwise or on appeal.

Procedure In Cases Where Objection Or Appeal Is Pending.

477. Collection of tax shall in cases where notice of an objection or an appeal has been given remain in abeyance, any pending proceedings for any instalment thereof being stayed until such objection or appeal is determined but the Service may in any such case enforce payment of that portion of the tax (if any) which is not dispute.

Time Within Which Payment Is To Be Made.

478.(1) Subject to the provisions of section 470 of this Act, tax for any accounting period for upstream petroleum operations shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4) of this section.

(2) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or, where the accounting period

is less than a year, in an amount equal to monthly proportion, of the amount of tax estimated to be chargeable for such accounting period in accordance with the section 465 of this Act.
(3) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) of this section shall be due and, payable not later than the last day of the month in question and shall be in an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with subsection (2) of section 465 of this Act, less so much as has already been paid for such accounting period divided by the number of such of the monthly payments remaining to be made in respect of such accounting period.
(4) A final instalment of tax shall be due and payable within twenty-one days after the service of the notice of assessment of tax for such accounting period, and shall be the amount of the tax assessed for that accounting period less so much thereof as has already been paid under subsection (2) and (3) of this section or is the subject of proceedings.
(5) Any instalments on account of tax estimated to be chargeable shall be treated as tax charged and assessed for the purposes of section 479 and 481 of this Act.
(6) The Service shall impose interest at a rate of LIBOR plus 2%.
Ninth Schedule(7) For the purposes of subsection (1) of this section, the conversion of the timing of payments of tax to provide for the making of monthly payments shall be given effect to as set out in the Ninth Schedule of this Act.

Penalty for Non-Payment of Tax and Enforcement of Payment

479.(1) If any tax is not paid within the period stipulated in section 478 of this Act:

(a) a penalty equal to 10 per cent per annum of the amount of tax payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection of such sum;

(b) the tax due shall incur interest at LIBOR plus 2% from the date when the tax becomes payable until it is paid and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;

(c) the Service shall serve a demand note upon the company or person in whose name the company is chargeable, and if the payment is not made within one month from the date of service of such demand note, the Service may proceed to enforce payment as provided in this Section;

(d) the penalty and interest imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.

(2) Any company which without lawful justification or excuse fails to pay the tax within the period of one month prescribed in paragraph (b) of subsection (1) of this section, commits an offence under this Act, and the burden of proof of such justification or excuse shall be on the company.

Collection of Tax after determination of objection or appeal

480. Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal as the case may be shall be payable forthwith as to any part thereof in proceedings

stayed pending such determination and as to the balance thereof within one month from the date of service on the, company assessed, or on the person in whose name the company is assessed, of the notification of the tax payable, and if such balance is not paid within such period the provisions of section 479 of this Act shall apply.

Suit for Tax by the Service

481.(1) Tax may be sued for and recovered in a court of competent jurisdiction at the place at which payment should be made, by the Service in its official name with full costs of suit from the company assessed to such tax or from the person in whose name the company is assessed to such tax as a debt due to the Government of the Federation.

(2) For the purposes of this section, a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, if the amount claimed in any suit does not exceed the amount of the jurisdiction of the magistrate concerned with respect to personal suits.

(3) In any suit under subsection (1) of this section the production of a certificate signed by any person duly authorised by the Service giving the name and address of the defendant and the amount of tax due by the defendant shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

Relief in Respect of Error

482.(1) If any person who has paid tax for any accounting period alleges that any assessment made upon him or in name for that period was excessive by reason of some error or mistake in the accounts, Particulars or other written information supplied by him to the Service for the purpose of the assessment, such person may at any time, not later than six years after the end of the accounting period in respect of which the assessment was made, make an application in writing to the Service for relief.

(2) On receiving any such application the Service shall inquire into the matter and subject to the provisions of this section shall by way of repayment of tax give such relief in respect of the error or mistake as appears to the Service to be reasonable and just.

(3) No relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where such accounts, Particulars or information was in fact made or given on the basis or in accordance with the practice of the Service generally prevailing at the time when such accounts, Particular or information was made or given.

(4) In determining any application under this section the Service shall have regard to all the relevant circumstances of the case, and in Particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the chargeable profits of the applicant, and for this purpose the Service may take into consideration the liability of the applicant and assessments made upon him in respect of other years.

(5) No appeal shall lie from a determination of the Service under this section, which determination shall be final and conclusive.

Repayment of Tax

483.(1) Save as otherwise expressly provided in this Act, no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates and if the Service disputes any such claim it shall give to the

claimant notice of refusal to admit the claim and the provisions of the relevant sections of this Part VIII-D shall apply with any necessary modifications.
(2) The Service shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and upon the receipt of the certificate, the Accountant-General of the Federation shall cause repayment to be made in conformity therewith.

Penalty for Offences

484.(1) Any person guilty of an offence against this Act or of any rule made there under for which no other penalty is specifically provided, shall be liable to a fine of US $ 10,000, and where such offence is one under subsection (1) of section 455 of this Act, or is a failure to submit a return under 465 of this Act, or is a failure, arising from the provisions of sections 461 through 467 of this Act to deliver accounts, particulars or information or to keep records required, a further sum of US $ 2000 for each and every day during which such offence or failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

(2) Any person who:

(a) fails to comply with the requirements of a notice served on him under this Act; or

(b) having a duty so to do, fails to comply with the provisions of section 461 of this Chapter; or

(c) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him; or

(d) fails to submit any return required to be submitted by the relevant sections of this Chapter shall be guilty of an offence.

(3) Any offence in respect of which a penalty is provided by subsection (1) of this section shall be deemed to occur in Abuja.

False Statements and Returns.

485.(1) Any person who:

(a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Service or any officer of the Service, any declaration, notice, certificate or other document whatsoever; or

(b) makes any statement in answer to any question or enquiry put to him by an officer which he is required to answer by or under this Act or any other enactment or law,

being a document or statement produced or made for any purpose of tax, which is untrue in any material particular, commits an offence under this section.

(2) Where by reason of any such document or statement required to be produced under subsection (1) of this section the full amount of any tax payable is not paid or any overpayment s made in respect of any repayment of tax, the amount of tax unpaid or the overpayment shall be recoverable as a debt due to the Service.

(3) Any person who commits an offence under this section shall be liable on conviction to a fine of US $ 1,000,000 and 100 per cent of the amount of tax unpaid or overpayment made in respect of any repayment or to imprisonment for a term of 3 years or to both such fine and imprisonment.

Penalties for offences by authorised and unauthorised persons

486. Any person who is appointed for the due administration of this Act or employed in connection with the assessment and collection of a tax who:

(a) demands from any company an amount in excess of the authorised assessment of the tax; or

(b) withholds for his own use or otherwise any portion of the amount of tax collected; or

(c) renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or

(d) defrauds any person, embezzles any money, or otherwise uses his position to deal wrongfully with the Service; or

(e) steals or misuses Service documents; or

(f) compromises on the assessment or collection of any taxes,

commits an offence and shall be liable on conviction to a fine equivalent to 200 per cent of the sum in question or to imprisonment for a term of 3 years or to both such fine and imprisonment.

Deduction of Nigerian Hydrocarbon Tax at Source.

487.(1) Tax assessable on any company, whether or not an assessment has been made, shall, if the Service so directs, be recoverable from any payment made or to be made by any person to such company.

(2) Any such directive referred to in subsection (1) of this section may apply to any person or class of persons specified in such directive, either with respect to all companies or a company or class of companies, liable to payment of income tax.

(3) Any directive under subsection (1) of this shall be in writing addressed to the person or published in the Federal Gazette.

(4) In determining the rate of tax to be applied to any payments made to a company, the Service may take into account:

(a) any assessable profits of that company for the year arising from any other source on which income tax is chargeable under this Part VIII-D; and

(b) any income tax or arrears of tax payable by that company for any of the six preceding years of assessment.

(5) Income tax recovered pursuant to this by deduction from payments made to a company shall be set-off for the purpose of collection against tax charged on such company by an assessment.

(6) For the purposes of this, the rate at which tax is to be deducted and the nature of activities and the services for which a company making the payment is to deduct tax and the date when the payment is made or credited which ever first occurs shall be in accordance with the regulations to be issued by the Minister responsible for finance acting on the advice of the Service with the approval of the Federal Executive Council.

Tax to be payable notwithstanding any proceedings for penalties.

488. The institution of proceedings for or the imposition of, a penalty, fine or term of imprisonment under this Part VIII-D shall not relieve any person from liability to payment of any tax for which he is or may become liable.

Prosecution to be with the sanction of the Service

489. No prosecution in respect of an offence under sections 486 of this Act may be commenced, except at the instance of or with the sanction of the Service.

Saving for criminal proceedings

490. The provisions of this Part VIII-D shall not affect any criminal proceedings under any other Act or law.

Double taxation arrangements with other territories

491.(1) If the Minister by order declares that arrangements specified in the order have been made with the Government of territory outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in any enactment.

(2) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.

(3) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for accounting periods commencing or terminating before the making of the order and provisions as to income (which expression includes profits) which is not itself liable to double taxation.

Cap P8 LFN 2004 (4) Where, before the publications of this Act in the Federal Gazette upon enactment, any order has been made under the provisions of section 33 of the Personal Income Tax Act and the arrangements specified in that order, with any modifications, are expressed to apply to a tax in a territory outside Nigeria and to income tax in Nigeria and to any other taxes of a substantially similar character either imposed in that territory or Nigeria or imposed by either contracting party to any such arrangements after those arrangements came into force and:

(a) such order was made before the 1st day of January, 1958, then, for the purposes of this Act, that order shall be deemed to have been made under this section on that day and those arrangements shall have effect, in Nigeria, as respects tax for any accounting period; or

(b) such order was made on a day after the year 1957, then, for the purposes of this Act, that order shall be deemed to have been made under this section on that day and the arrangements specified therein shall have effect, in Nigeria, as respects tax for any accounting period beginning on or after the date when those arrangements come into force and for the unexpired portion of any accounting period current at that date.

Cap C21 LFN, 2004(5) Where any arrangements, to which this subsection applies, contain a provision for exchange of information with the Commissioner of Income Tax or the Commissioner as defined in section 2 of the Companies Income Tax Act then the order, with respect to those arrangements, as deemed to have been made under this section, shall be deemed provide for such exchange with the Chairman of the Service as respects tax.

(6) The Minister may by order replace or vary any order deemed to have been made under this section for the purposes of this Act, without otherwise affecting such last mentioned

order for the purpose of any other Act.

Method of Calculating Relief to be Allowed for Double Taxation.

492. (1) In this section

"foreign tax" means any tax payable in that territory which, under the arrangements, is to be so allowed; and

"income" means that part of the profits of any accounting period which is liable to both tax and foreign tax, before the deduction of any tax, foreign tax, credit therefore or relief granted under subsection (6) of this section.

(2) The provisions of this section shall have effect where, under arrangements having effect under section 491 of this Act, foreign tax payable in respect of any income in the territory with the Government of which the arrangements are made is allowed as a credit against tax payable in respect of that income in Nigeria.

(3) The amount of the credit admissible to any company under the terms of any such arrangements shall be set off against the tax chargeable upon that company in respect of the income, and where that tax has been paid the amount of the credit may be repaid to that company or carried forward against the tax chargeable upon that company of any subsequent accounting period.

(4) The credit for an accounting period shall not exceed whichever is the less of the following amounts, that is to say:

(a) the amount of the foreign tax payable on the income, or

(b) the amount of the difference between the tax chargeable under this Act (before allowance of credit under, any arrangements having effect under the relevant sections of this Part VIII-D and the tax which would be so chargeable if the income were excluded in computing profits.

(5) Without prejudice to the provisions of subsection (4) of this section, the total credit to be allowed to a company for any accounting period for foreign tax under all arrangements having effect under section 489 of this Act shall not exceed the total tax which would be ultimately borne by that company, for that accounting period, if no such credit had been allowed

(6) Where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be into account in computing the amount of the credit.

(7) Where the amount of the foreign tax attributable to the income exceeds the credit therefore computed under subsection (4) of this section, then the amount of that income, to be included in computing profits for any purposes of this Act other than that of subsection (4) of this section, shall be taken to be the amount of that income increased by the amount of the credit therefore after deduction of the foreign tax.

(8) Where:

(a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if a dividend is paid to a company which controls, directly or indirectly, not less than half of the voting power in the company paying the dividends, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(9) Any claim for an allowance by way of credit shall be made not later than three years after the end of the accounting period, and in the event of any dispute as to the amount allowable the Service shall give to the claimant notice of refusal to admit the claim which shall be subject to appeal in like manner as an assessment.

(10) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for repayment of tax shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than three years from the time when all such assessments, adjustments and other determination have been made whether in Nigeria or elsewhere, as are material in determining whether any, and if so that, credit falls to be given.

(11) Where a company is not resident in Nigeria throughout an accounting period no credit shall be admitted in respect of any income included in the profits of that company of that period.

Power to Amend Schedules.

493. At any time after the enactment of this Act, the Minister may by order delete any of the powers or duties specified in the Ninth Schedule or include therein additional powers or duties and may do so by amendment of such Schedule or by substituting a new Schedule therefore.

E – PRODUCTION SHARING CONTRACTS AND OTHER CONTRACTS OF THE NATIONAL OIL COMPANY

Minimum provisions of contracts

494.(1) The National Oil Company may at its discretion enter into production sharing contracts or enter into other contracts pursuant to section 272 of this Act.

(2) Any contract of the National Oil Company as concessionaire shall contain as a minimum the fiscal provisions provided for in this Part VIII-E.

(3) Each contract shall be subject to the conditions of the petroleum prospecting licenses and petroleum mining leases as defined in Part III of this Act.

Rents, royalties and taxes

495.(1) All contracts shall be subject to the rents, royalties and tax provisions contained in this Act, as clarified in the further subsections of this section

(2) All companies comprising the contractor of a contract shall pay Companies Income Tax and Nigerian Hydrocarbon Tax on their share cost oil and cost gas, profit oil and profit gas and any other shares of crude oil, condensates and natural gas and on any remuneration under contracts pursuant to section 272 of this Act, and any cost oil and cost gas and profit oil and profit gas from production sharing contracts in existence prior to the commencement of this Act, as well as incidental income that the companies may have obtained as a result of the operations under the contract.

(3) The National Oil Company shall pay the rents under this Part to the Inspectorate

(4) The National Oil Company shall take the royalties under this Part in kind on a monthly basis and shall pay the equivalent amount in cash to the Inspectorate.

(5) The National Oil Company shall not include any provisions in the contract that would lower the rents, royalties or taxes established under this Part.

Bonuses

496.(1) Contracts may contain the bonuses, which shall be lump sum amounts in cash or in production as follows:

(a) a signature bonus in cash

(b) crude oil production bonuses, based on daily or cumulative production, to be paid in cash or in crude oil

(c) Gas production bonuses, based on daily or cumulative production, to be paid in cash or in natural gas.

(2) Signature bonuses and the production bonuses shall not be recoverable as cost oil or cost gas for purposes of a production sharing contracts

(3) The National Oil Company shall deposit any signature bonuses in the account established for that purpose by the Inspectorate and any production bonuses shall be retained by the National Oil Company.

Available crude oil, gas and condensates in production sharing contracts.

497.(1) In case of production sharing contracts, the cost oil and profit oil, and where applicable cost gas and profit gas, shall be determined separately for each production sharing contract area.

(2) The production shares for crude oil and condensates shall be determined based on the available oil, which shall be the total amount of crude oil produced each month as determined pursuant to Section 434 of this Act, less the royalty in kind pursuant to subsection 495(4) of this Act.
(3) The production shares for natural gas shall be determined based on the available gas, which shall be the total amount of natural gas produced each month as determined pursuant to Section 434 of this Act, less the royalty in kind pursuant to subsection 495(4) of this Act.
(4) The National Oil Company shall take the royalty in kind and pay the royalty in cash to the Inspectorate.

Valuation
498. Where a contract requires the valuation of crude oil, gas and condensates, such valuation shall be based on the same values as are applicable to royalties under section 434 of this Act.

Funding of costs under production sharing contracts.
499. (1) The contractor under a production sharing contract shall be responsible for all costs related to the upstream petroleum operations.
Cap C21 LFN 2004. (2) The contractor shall incur these costs at his own risk and where no production is established, the contractor shall not be able to recover his costs provided, however, that for the purposes of companies income tax, certain costs shall be deductible pursuant to the provisions of the Companies Income Tax Act .

Cost oil, cost gas and cost condensate limits under production sharing contracts
500. (1) The recovery of costs in the form of cost oil or cost gas, under production sharing contracts, shall:
(a) be limited to a percentage cost oil limit or cost gas limit that is 80% of the available oil and available gas or such lesser amount determined by the National Oil Company, and
(b) such percentage may be subject to a sliding scale based on volume, price or other variables as established in the model contract.
(2) Where any costs of subsection (1) hereof are not recovered on the last day of the contract as cost oil, cost gas or cost condensates, such costs shall be non recoverable.
(3) All costs under subsection (1) shall be recovered in accordance with the accounting procedure annexed to the production sharing contract, where such costs are recoverable pursuant to this Part VIII-E.

Non recoverable costs
501. Under the accounting procedure of a production sharing contract the following costs shall be non-recoverable as cost oil, cost gas or cost condensates:
(a) interest, financing charges or other charges related to borrowing of money or raising of equity;
(b) costs for which records do not exist or are, not correct in any material respect;
(c) costs incurred before the effective date of the contract or after the termination date of the contract;
(d) costs that were not incurred within the relevant work programme and budget, or that are of a category not permitted by the contract or the accounting procedure;
(e) costs of equipment, goods and services in excess of the fair market value, to the extent of such excess;

(f) charges for equipment, goods and services which are not in accordance with the relevant agreement with the sub-contractor or supplier;
(g) charges for goods in excess of the amount set out in the accounting procedure with respect to valuation of materials;
(h) any costs not included in an approved work programme and budget (unless resulting from an emergency);
(i) costs incurred beyond the measurement point;
(j) income and revenue taxes, incurred within or outside Nigeria;
(k) signature bonuses and production bonuses;
(l) costs of expert determination or arbitration, unless the arbitral award permits the recovery of the costs;
(m) fines and parties imposed by any authority;
(n) donations or contributions;
(o) overhead and general administrative expenditures incurred outside Nigeria;
(p) cost of finance leases to the extent such leases payments can be considered an interest expense;
(q) costs of licensing or purchasing technology from an affiliate, unless specifically approved by the National Oil Company;
(r) any cost resulting from any arrangement or event that (i) arises from fraud or wilful misconduct or negligence on the part of the contractor and contractor's subcontractors, agents or representatives in the performance of their services under the contract, or (ii) constitutes a breach of the contract or any applicable law or regulations, including any related legal costs for defence;
(s) costs incurred in organizing or managing any partnership, joint venture or other arrangement between or among the entities comprising the contractor;
(t) insurance costs where such costs are earned by any entity comprising the contractor or their affiliates;
(u) costs for any loss that was insurable or for failure to claim insurance;
(v) joint costs that are related to the upstream petroleum operations under the contract and to other activities of the contractor or entities comprising the contractor, with respect to the portion of such costs that is related to the activities other than the upstream petroleum operations under the contract;
(w) Such other costs as the accounting procedure establishes as non recoverable.

Cost Allocation
502. Where a production sharing contract contemplates the sharing of natural gas and the sharing of condensates in addition to the sharing of crude oil, the accounting procedure shall set out the allocation procedures in order to identify costs as cost oil, cost gas or cost condensates.

Revenues to be credited against recoverable costs
503. Under the accounting procedure of a production sharing contract the following revenues earned under the contract shall be credited against recoverable costs:
(a) the proceeds of any insurance or claim in connection with the upstream petroleum operations or any assets charged to the accounts;
(b) any legal costs claimed and subsequently recovered.
(c) Revenues earned from third parties for the use of property or assets, for the delivery of any services by the contractor or for any information or data.

(d) any discounts or adjustments earned by the contractor from the suppliers/manufacturers or their agents in connection with goods purchased or defective equipment or materials, the costs of which were previously charged to the accounts.
(e) rentals, refunds or other credits earned by the contractor, which apply to any charge which has been made to the accounts.
(f) earnings from the disposal of assets, applying the valuation criteria for materials established in the accounting procedure annexed to the contract;
(g) in case contractor sells, exports or transfers any material, equipment or supplies to Affiliates or other entities or persons, the value of such transfer shall be credited to the costs of which were previously charged to the accounts.
(h) such other revenues as may be identified in the accounting procedure to be credited against recoverable costs.

Profit Oil, Profit Gas and Profit Condensates
504.(1) The Available Oil less the Cost Oil shall be Profit Oil, the Available Gas less the Cost Gas shall be Profit Gas, and the Available Condensates less the Cost Condensates shall be Profit Condensates.
(2) The Minimum share of Profit Oil, Profit Gas and Profit Condensates to the National Oil Company shall be stipulated in the model contract and the model contract shall set out sliding scales resulting in a higher percentage for the National Oil Company based on volume, price or such other variables as the National Oil Company may consider, provided that sliding scales based on the internal rate of return shall not be used.

Audit Procedures
505.(1) The National Oil Company shall carry out such audits as required for a period of five years, following the year in which the production was shared.
(2) The details of the audit process shall be established in the contract and shall not relate to the audits that are required under any of the payments under section 495, which have their own audit processes as provided for under this Part or decided by the Inspectorate.
(3) There shall be no time limit on any audits related to alleged fraud or wilful misconduct, and the National Oil Company shall have the right to re-examine reports and statements that otherwise were considered final.
(4) The impact of any exceptions that have been identified shall be calculated back to the month to which such exception applies and the amounts of adjustment shall be applied as a correction to the production sharing calculations for the month following the final determination of such exception. Where the share of the production to the contractor or the National Oil Company is insufficient in order to accommodate the exception, the correction shall be applied to successive months until fully absorbed and where the exception is of an amount that cannot be accommodated for the remainder of the contract or after the termination of the contract, the correction shall be due in cash.
(5) The contractor shall be required to include in the contracts with affiliates and subcontractors audit and record retention provisions which allow the National Oil Company to carry out such audits as required.
(6) If any entity comprising the contractor conducts an audit of the books and records of operator or any other entity comprising the Contractor pertaining to the contract, it shall provide free of any charges to the National Oil Company a copy of the audit results, a report setting out the audit

exceptions, claims and queries and the manner in which these exceptions, claims and queries were finally allowed or denied by operator or other entity.

(7) Subject to the delivery of books, records and documents to the National Oil Company in accordance with the contract upon termination of the contract, all books, records and documents must be maintained by the contractor, the Contractor's Affiliates and subcontractors and made available for inspection until the later of:

(a) the period established under subsection (1) of this section;

(b) if any cost or amount is under dispute, the time at which that dispute has been resolved; and

(c) such longer period as may be legally required.

Model Contract

506. Any contract can only be entered into by the National Oil Company on the basis of a model approved pursuant to section 272(2).

F– MISCELLANEOUS PROVISIONS

Other taxes, duties and levies

507.(1) All companies, lessees, licensees, concessionaires, IJV's, contractors and other entities involved in petroleum operations shall be subject to such other taxes, duties and levies as may apply to them from time to time, including, without restricting the generality of the forgoing capital gains tax, education tax, withholding taxes, stamp duties, any other taxes and levies under the Taxes and Levies (approved List for Collection) Act approved for collection by the Federal Government, any State Government and any Local Government, with the exception of any tax or levy from which the companies are specifically exempted.

(2) The payment of any tax or levy shall not reduce the obligation of a company to pay the amounts stipulated under Section 28 of this Act.

Electronic management information system

508. (1) All companies involved in upstream petroleum operations shall establish an electronic management information system which includes a modern oil and gas accounting system; The accounting system hardware and software shall accommodate current technology and evolving functional requirements and the accounting system shall be based on the applicable regulations under this Act and the sub-systems thereof shall be designed and structured in a manner that facilitates comparative analysis and data retrieval , including without limitation:

(a) year-by-year comparisons;
(b) actual-to-budget comparisons;
(c) effective and flexible report writing capability;
(d) effective roll-up by cost category;
(e) categorization of expenditures by location, project or authorization for expenditure grouping, in particular permitting the identification of local expenditures in Nigeria;
(f) currency conversion, exchange gains and losses, and revaluation of liabilities;
(g) multiple data entry categories, including accounts payable invoices, cash disbursement, accounts receivable invoices, cash receipts, journal entries, material transfers, invoice offsets, check cancellation, standard entries, adjusting entries, various system processes including accruals, and overhead allocation;
(h) cash management capabilities and aging analysis;
(j) time writing capabilities;
(k) accounts payable management capabilities;
(l) identification of production and revenues from various grades of crude oil, condensates and natural gas and the determination of their value under this Act for purposes of royalty, Nigerian Hydrocarbon Tax and contractor administration.
(l) effective transactional audit trails, including the ability to access all of the charges that are used as the basis for an allocation of costs, in particular:

(i) deductible and non-deductible costs for purposes of the Nigerian Hydrocarbon Tax,

(ii) recoverable and non-recoverable costs for any contract pursuant to section 272 of this Act,

(iii) cost classification for the Companies Income Tax; and

(iv) any netback calculations for royalty purposes of Section 434 and 435 hereof.

(2) The management information system, shall be primarily designed to capture revenue and cost information, as well as the production and valuation of production of crude oil, condensates and

natural gas, and shall also have the capability to record other non-financial, quantitative information, where this is required for the proper administration under this Act.
(3) The management information system shall be accessible on a real time basis with a security code system for authorized persons that have the authority to inspect and audit upstream petroleum operations under this Act, and in the case of contracts, by persons authorized by the National Oil Company.
(4) The management information systems pursuant to this section shall be fully operational within one year after the commencement of this Act, and where such systems are not operational and accessible to authorized persons pursuant to subsection (3) hereof, a company in default shall pay a penalty of US $ 10,000 for every day such system is not operational after the date required to the Service and shall be dealt with under the provisions of sub-section 484(1).

Restriction of powers
509.(1) Any person involved in the administration of this Act is prohibited from making decisions, rules or regulations that shall reduce the payments related to rents, royalties, taxes or levies required under this Act.
(2) Any person making a decision, rule or regulation pursuant to subsection (1) shall be guilty of an offense.

PART IX: Repeals, Transitional and Savings Provisions

Repeals
510. (1) From the commencement of this Act the following enactments and regulations are hereby repealed-

(a) Associated Gas Reinjection Act CAP A25 Laws of the Federation 2004
(b) Deep Offshore and Inland Basin Production Sharing Contracts Act CAP D3 Laws of the Federation of Nigeria 2004, except for subsections 16 (1) and (2).
(c) Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 Laws of the Federation of Nigeria 2004
(d) Motor Spirits (Returns) Act CAP M20 Laws of the Federation of Nigeria 2004
(e) Nigerian National Petroleum Corporation Act No. 73 of 1977, CAP 123 Laws of the Federation of Nigeria 2004
(f) Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, CAP N124 Laws of the Federation of Nigeria 2004
(g) Nigerian National Petroleum Corporation (Amendment) Act 2007
(h) Oil Pipelines Act CAP 07 Laws of the Federation of Nigeria 2004
(i) Petroleum Act 1969, CAP 350 Laws of the Federation 1990
(j) Petroleum (Amendment) Decree No. 23 of 1996
(k) Petroleum (Amendment) Decree No. 22 of 1998
(l) Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003

(m) Petroleum Equalisation Fund (Management Board e.t.c.) Act No. 9 of 1975, CAP P11 Laws of the Federation of Nigeria 2004
(n) Petroleum Profits Tax Act Cap. P13 Laws of the Federation 1990
(o) Petroleum (Special) Trust Fund Act Cap P14 Laws of the Federation of Nigerian 2004
(p) Petroleum Technology Development Fund Act, CAP P15 Laws of the Federation of Nigeria 2004

(2) Any subsidiary legislation repealed as a result of the repeal of any of the enactments in subsection (1) of this section shall, in so far, as it is not inconsistent with this Act, remain in operation until it is revoked or replaced by subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act.

Savings Provisions

511. (1) Any license or lease granted under the Mineral Oils Act, 1958 and the Petroleum Act 1969 shall continue, subject to all the provisions under this Act except:

(a) that oil prospecting licenses at the commencement of this Act, shall not be subject to provisions of section 276, sections 277(1) - (8) and section 285 (1) and (2), and for such licenses the terms with respect to the oil prospecting licences regarding duration of the licence, work commitments and relinquishments shall continue unaltered for a period upto the tenth anniversary of the granting of such licence;

(b) that for oil mining leases at the commencement of this Act the following shall apply:

(i) with respect to the application of Part VIII, the new provisions shall be effective from January 1, 2010 onwards, and

(ii) capital allowances applicable to investments incurred prior to January 1, 2010, shall be applied for the purposed of Nigerian Hydrocarbon Tax and Corporate Income Tax

(iii) carry forward losses existing as of December 31, 2009, shall be applied to the calculation of the Nigerian Hydrocarbon Tax and Corporate Income Tax.

(iv) with respect to section 453, any cumulative volumes shall be determined from the start of the production of the field(s) in the respective petroleum mining lease.

(v) Any profit oil shares of deep water production sharing contract shall be reviewed by the National Oil Company in line with section 16(1) and (2) of the Deep Offshore and Inland Basin Production Sharing Contract Act, 1999, in order to facilitate the payment of Corporate Income Tax and Nigerian Hydrocarbon Tax and by taking into consideration the new royalties applicable, provided, however, that all production sharing contracts shall adhere to the provisions of Part VIII-E of

this Act and the review shall ensure that the contracts shall be economically beneficial to the Government,

(vi) Any profit oil shares of onshore and shallow water production sharing contract shall be reviewed by the National Oil Company, in order to facilitate the payment of Corporate Income Tax and Nigerian Hydrocarbon Tax and by taking into consideration the new royalties applicable, provided, however, that all production sharing contracts shall adhere to the provisions of Part VIII-E of this Act and the review shall ensure that the contracts shall be economically beneficial to the Government.

(4) Any reviewed terms shall provide for a one time adjustment of profit oil reflecting the newly reviewed terms, upon the signing of the respective amendment to the contract.

(2). Any license, permit or other right granted in respect of commercial activities pertaining to midstream petroleum operations or downstream petroleum operations, including refineries, pipelines, storage, transportation, distribution and retail, under any laws in force at the time in Nigeria, shall, in accordance with the terms of section 325 (4) apply to the Regulatory Institutions for the issuance of the appropriate commercial licence, and pending the issuance of the said appropriate licence, the said licence, permit, or right shall continue in force as if it had been issued under the provisions of this Act.

(3) Any other licence, permit or other right in respect of any sector of the petroleum industry in Nigeria to which subsection (1) and (2) of this section does not apply, and that has been granted by the Department of Petroleum Resources or the Petroleum Products Pricing and Regulatory Authority, as the case may be, and which is still in existence on the effective date, shall continue in force for the remainder of its duration as if it had been issued under the provisions of this Act.

(4) Any tariff, price, levy, or surcharge, which was payable to the Department of Petroleum Resources or the Petroleum Products Pricing and Regulatory Authority prior to the effective date shall continue in force until the expiration of the term of the said tariff, price, levy, or surcharge, or until alternative provisions are made pursuant to the provisions of this Act or any regulations made under it, whichever is earlier, provided, however, that any payments under Part VIII of this Act hereof shall be applicable.

(5). Within three months from the date of commencement of this Act the Minister on the advice of the Directorate or the Inspectorate, as the case may be, may make any further transitional and

savings provisions that are considered necessary or desirable, provided that these provisions are consistent with the transitional and savings provisions in this Act.

The Directorate

512. Any staff of the Ministry of Petroleum Resources who are employed by the Directorate as from the effective date shall be regarded as having transferred their services to the Directorate with effect from that date, on terms and conditions no less favourable than those obtaining immediately before the effective date, unless they indicate otherwise before the expiration of three months next following the effective date, and such services will be regarded as continuous for the purpose of pensions and gratuities.

Application of all contracts

513. (1) The provisions of this section shall apply to all contracts or other instruments subsisting immediately before the effective date and entered into by the Ministry of Petroleum Resources.

(2) By virtue of this Act there is vested in the Directorate as from the effective date and without further assurance all assets, funds, resources and other moveable or immovable property which immediately before the effective date were vested and held by the Ministry of Petroleum Resources on its own behalf.

(3) As from the effective date:

(a) the rights, interest, obligations and liabilities of the Ministry of Petroleum Resources existing immediately before the effective date under any aforementioned contract or instrument at law or in equity which shall have been held on its own behalf, or have accrued to or have been incurred on its own behalf, or for its own benefit or use shall by virtue of this Act be assigned to and vested in the Directorate;

(b) any such contract or instrument as is mentioned in sub-paragraph (a) above, shall be of the same force and effect against or in favour of the Directorate and shall be enforceable as fully and effectively as if instead of the Ministry of Petroleum Resources, the Directorate had been named therein or had been a party thereto;

(c) any proceeding or cause of action pending or existing or which could have been taken by or against the Ministry of Petroleum Resources immediately before the effective date in respect of any such rights, interest, obligation or liability of the Ministry of Petroleum Resources may be commenced, continued or enforced or taken by or against the Directorate as if this Act had not been made.

The Inspectorate

514. All staff of the former Petroleum Inspectorate dealing with upstream petroleum operations, National Petroleum Investment Management Services in the Nigerian National Petroleum Corporation or the Department of Petroleum Resources in the Ministry of Petroleum Resources on the effective date shall be regarded as having transferred their services to the Inspectorate with effect from that date on terms and conditions no less favourable than those obtaining immediately before the effective date, unless they indicate otherwise before the expiration of three months next following the effective date, and such services will be regarded as continuous for the purpose of pensions and gratuities.

Cessation of employment.

515. Every person whose service has been transferred to the Inspectorate from the former Petroleum Inspectorate in the Nigerian National Petroleum Corporation or the Department of Petroleum Resources in the former Ministry of Petroleum Resources under this Act shall cease to be in the employment of the Nigerian National Petroleum Corporation or the Ministry of Petroleum Resources on the day preceding the effective date and shall be deemed to be employed by the Inspectorate with effect from the effective date.

Exemption from liability.

516. No liability shall attach to the Inspectorate or to any employee or agent of the Inspectorate or to a member for any loss or damage sustained by any person as a result of the lawful exercise or performance of any function which in terms of this Act is conferred or imposed upon the Inspectorate or the members.

Application of subsisting contracts

517.(1) The provisions of this section shall apply to all contracts or other instruments subsisting immediately before the effective date and entered into by the former Nigerian National Petroleum Corporation or the former Ministry of Petroleum Resources for or on behalf of the former Petroleum Inspectorate or the former Department of Petroleum Resources.

(2) By virtue of this Act there is vested in the Inspectorate as from the effective date and without further assurance all assets, funds, resources and other moveable or immovable property which immediately before the effective date were vested and held by the Nigerian National Petroleum Corporation or the Ministry of Petroleum Resources for and on behalf of, or for the use of the former Petroleum Inspectorate or the Department of Petroleum Resources to the extent that such assets, funds, resources and other moveable or immovable property relates to upstream petroleum operations as determined by the Directorate .

(3) As from the effective date:

(a) the rights, interests, obligations and liabilities of the Ministry of Petroleum Resources existing immediately before the effective date under any aforementioned contract or instrument at law or in equity, which shall have been held on behalf of, or have accrued to, or have been incurred on behalf of, or for the benefit of, or for the use of the former Petroleum Inspectorate of the Nigerian National Petroleum Corporation or the Department of Petroleum Resources of the Ministry of Petroleum Resources, shall by virtue of this Act be assigned to and vested in the Inspectorate; to the extent that such rights, interests, obligations and liabilities relate to upstream petroleum operations as determined by the Directorate;

(b) any such contract or instrument as is mentioned in sub-paragraph (a) above, shall be of the same force and effect against or in favour of the Inspectorate and shall be enforceable as fully and effectively as if instead of the Petroleum Inspectorate of the Nigerian National Petroleum Corporation or the Department of Petroleum Resources of the Ministry of Petroleum Resources, the Inspectorate had been named therein or had been a party thereto;

(c) any proceeding or cause of action pending or existing or which could have been taken by or against the Petroleum Inspectorate of the Nigerian National Petroleum Corporation or the Department of Petroleum Resources of the Ministry of Petroleum Resources immediately before the effective date in respect of any such right, interest, obligation or liability of the Petroleum Inspectorate or the Department of Petroleum Resources may be commenced, continued or enforced or taken by or against the Inspectorate as if this Act had not been made.

The Authority

518. From the date of commencement of this Act the staff of the former Petroleum Products Pricing Regulatory Authority and the Petroleum Inspectorate in the Nigerian National Petroleum Corporation or the Department of Petroleum Resources in the Ministry of Petroleum Resources dealing with downstream petroleum operations, shall be regarded as having transferred their services to the Authority with effect from that date on terms and conditions no less favourable than those obtaining immediately before the effective date, unless they indicate otherwise before the expiration of three months next following the effective date, and such services will be regarded as continuous for the prupose of pensions and gratuities.

Exemption from liability by a member etc.

519. No liability shall attach to the Authority or to any member or employee or agent of the Authority for any loss or damage sustained by any person as a result of the lawful exercise or

performance of any function which by or in terms of this Act is conferred or imposed on the Authority.

Subsistence of contract.

520. (1) The provisions of this section shall apply to all contracts or other instruments subsisting immediately before the effective date and entered into by the former Petroleum Products Pricing Regulatory Authority.

(2) By virtue of this Act there is vested in the Authority as from the effective date and without further assurance all assets, funds, resources and other moveable or immovable property which immediately before the effective date were vested and held by the Petroleum Products Pricing and Regulatory Authority and applicable to downstream petroleum operations in the Petroleum Inspectorate, in the Nigerian National Petroleum Corporation or the Department of Petroleum Resources in the Ministry of Petroleum Resources as determined by the Directorate .

(3) As from the effective date:

(a) the rights, interest, obligations and liabilities of the Petroleum Products Pricing and Regulatory Authority and applicable to downstream petroleum operations in the Petroleum Inspectorate in the Nigerian National Petroleum Corporation or the Department of Petroleum Resources in the Ministry of Petroleum Resources existing immediately before the effective date under any aforementioned contract or instrument at law or in equity which shall have been held on behalf of or have accrued to or have been incurred for its own benefit or use, shall by virtue of this Act be assigned to and vested in the Authority;

(b) any such contract or instrument as is mentioned in sub-paragraph (a) above, shall be of the same force and effect against or in favour of the Authority and shall be enforceable as fully and effectively as if instead of the Petroleum Products Pricing and Regulatory Authority, the Authority had been named therein or had been a party thereto;

(c) any proceeding or cause of action pending or existing or which could have been taken by or against the Petroleum Products Pricing and Regulatory Authority immediately before the effective date in respect of any such rights, interest, obligation or liability of the Petroleum Products Pricing and Regulatory Authority, may be commenced, continued or enforced or taken by or against the Authority as if this Act had not been made.

The Agency

521. From the effective date of this Act any staff of the former Nigerian National Petroleum Corporation that are employed by the Agency and of the former Petroleum Products Pricing Regulatory Authority, the Petroleum Inspectorate in the Nigerian National Petroleum Corporation or the Department of Petroleum Resources in the Ministry of Petroleum Resources dealing with midstream petroleum operations,, shall be regarded as having transferred their services to the Agency with effect from that date, on terms and conditions no less favourable than those obtaining immediately before the effective date, unless they indicate otherwise before the expiration of three months next following the effective date, and such services will be regarded as continuous for the purpose of pensions and gratuities.

Contract relating to the agency.

522. Any contracts entered into by the Corporation, for the benefit of, or with respect to the functions of the National Petroleum Investment Management Services of the Nigerian National Petroleum Corporation, as the case may be, and which are in respect of matters pertaining to the functions of the Agency, shall be enforceable as fully and effectively as if instead of the Corporation, the Agency had been named therein or had been a party thereto.

The Centre

523.Staff of Research and Development Division. From the effective date of this Act, any staff of the Research and Development Division of the former Nigerian National Petroleum Corporation that are employed by the Centre shall be regarded as having transferred their services to the Centre with effect from that date, on terms and conditions no less favourable than those obtaining immediately before the effective date, unless they indicate otherwise before the expiration of three months next following the effective date,and such services will be regarded as continuous for the purpose of pensions and gratuities.

Contracts relating to the center.

524. Any contracts entered into by the Corporation, for the benefit of, or with respect to the functions of, the Research and Crude Oil Marketing Department and which are in respect of matters pertaining to the functions of the Centre, shall be enforceable as fully and effectively as if instead of the Corporation, the Centre had been named therein or had been a party thereto.

Staff of the Institutions

525. From the effective date of this Act any staff of the former

a) Ministry of Petroleum Resources,

b) Department of Petroleum Resources,

c) Petroleum Products Pricing and Regulatory Authority,

d) Nigerian National Petroleum Corporation,

and of the Petroleum Equalisation Fund, and the Petroleum Technology Development Fund, and who is employed by the National Oil Company or any of the Institutions of this Act shall be regarded as having transferred his or her services to the said National Oil Company or any of the said Institutions with effect from that date, on terms and conditions no less favourable than those obtaining immediately before the effective date, and such services will be regarded as continuous for the purpose of pensions and gratuities.

PART X- INTERPRETATION AND CITATION

Interpretation

526. In this Act unless it is specifically stated otherwise-

"Act" means the Petroleum Industry Act;

"accounting period", in relation to a company required to pay Nigerian Hydrocarbon Tax, pursuant to Part VII-D, means;

(i) a period of one year commencing on 1st January and ending on 31st December of the same year; or

(ii) any shorter period commencing on the day the first petroleum is produced that is attributable to the company in the opinion of the Service and ending on 31st December of the same year; or

(iii) any period of less than a year being a period commencing on 1st January of any year and ending on the date in the same year when the company ceases to be engaged in upstream petroleum operations;

"adjusted profit" means adjusted profit as stated in Chapter 4 of Part VIII of this Act;

"assessable profits" means assessable profits as stated in Chapter 4 of Part VIII of this Act;

"assessable tax" means assessable tax as stated in Chapter 4 of Part VIII of this Act;

"associated gas" means:

a) natural gas, commonly known as gas-cap gas, which overlies and is on contact with crude oil in a reservoir; and

b) solution gas dissolved in crude oil in a reservoir;

"benchmark prices" means:

(a) a price set by the Authority as a basis for comparison; or

(b) a price set by the Authority to be used as a reference point for petroleum products;

"board" means the governing board of the Institution or any other entity that is the subject matter of the chapter within which the word has been used, unless it is specifically stated otherwise;

"chargeable profits" means chargeable profits as stated in Chapter 4 of Part VIII of this Act;

"chargeable tax" means chargeable tax as stated in Chapter 4 of Part VIII of this Act and imposed under this Act;

"commercial" means matters relating to economic ventures, returns on investments and profitability;

"commercial discovery" means a discovery of crude oil, tar sands, bitumen, heavy oils, extra heavy oils, natural gas or condensates within a petroleum prospecting licence which can be economically developed in the opinion of the licensee, after consideration of all relevant economic factors normally applied for the evaluation of crude oil natural gas or condensate evaluation and development;

"commercial regulation" means the regulation of commercial issues pertaining to the petroleum industry including commercial matters pertaining to exploration, development, production, processing, trading, distribution and pricing of petroleum;

"company" means any body corporate incorporated under any law in force in Nigeria or elsewhere;

"Council" means the governing board of the Institution that is the subject matter of the chapter within which the word has been used, unless it is specifically stated otherwise;

"condensate" refers to a portion of natural gas of such composition that are in the gaseous phase at temperature and pressure of the reservoirs, but that, when produced, are in the liquid phase at surface pressure and temperature;

"crude oil" means mineral oil in its natural state before it has been refined and treated;

"decommissioning" or **"abandonment"** refers to the approved process of cessation of operations of oil and gas wells, installations and structures, including shutting down installation's operation and production, total or partial removal of installations and structures where applicable,

chemicals, radioactive and all such other materials handling, removal and disposal of debris and removed items, environmental monitoring of the area after removal of installations and structures;

"deep water" means areas offshore Nigeria with a water depth in excess of 200 meters.

"downstream product sector" comprises the sector of the Nigerian economy that consist of the sale and distribution of petroleum products, as well as product pipelines and storage.

"downstream gas sector" comprises the sector of the Nigerian economy that consist of downstream gas distribution operations.

"domestic gas supply obligation" means the obligations of every petroleum mining lessee to dedicate a specific volume of gas towards the Domestic Gas Demand Requirement as stipulated in Chapter 3 of Part V and to deliver gas to a purchaser in accordance with a specified nomination procedures;

"downstream gas distribution and utilization operations" means, with respect to Chapter 2 of Part VIII, downstream gas distribution operations as well as construction and operations of facilities using natural gas, including but not limited to power plants and plants for the production of fertilizers, ammonia, aluminum, iron ore reduction, methanol, and petrochemicals and other construction and activities incidental thereto and related administration and overhead.

"downstream gas distribution operations" comprises the activities of distribution and supply of gas to customers, construction and operation of city-gate reception terminals for natural gas and gas or ethane distribution pipelines, and the sale, marketing and delivery to final consumers of gas and compressed natural gas.

"downstream petroleum operations" means downstream petroleum product operations and downstream gas distributions operations.

"downstream product operations" means construction and operation in Nigeria of facilities, product pipelines, tank farms and stations for the distribution, marketing and retailing of petroleum products, and other construction and activities incidental thereto and related administration and overhead.

"effective date" means the date on which this Act comes into force;

"enforcement order" means an order issued by the Inspectorate; Authority or Agency;

"Exclusive Economic Zone" shall have the same meaning as defined in the Exclusive Economic Zone Act Cap. 350, Laws of the Federation of Nigeria;

"Field" includes an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature or stratigraphic condition., the surface area, although it may refer to both the surface and the underground productive formations;

"fiscalised crude" means the net quantity of crude oil produced in a batch or cargo ready for export after the removal of solid and liquid impurities of the crude;

Or
the total quantum of crude oil at standard temperature and pressure that is produced and metered at all export terminals in Nigeria or at the delivery point to the refinery in Nigeria, multiplied by the official selling prices;

"Foreign Company" means a company incorporated outside Nigeria and having an established place of business in Nigeria;

"frontier acreages" means any or all licenses or leases located in the Anambra, Benue Trough, Bida, Chad, Dahomey, and Sokoto Basins of Nigeria;

"gas" or **"natural gas"** means wet gas, dry gas, lean gas, all other gaseous hydrocarbons, and all substances contained therein, which are produced along with crude oil or gas, excluding those condensed or extracted liquid hydrocarbons that are liquid at normal temperatures and pressure conditions such as stabilized or field condensate, including the residue gas remaining after the condensation or extraction of the liquid hydrocarbon from gas;

"gas allowance" means the allowance pursuant to subsection 453(2) of this Act;

"Gazette" means the Gazette of the Federal Government of Nigeria;

"Government" means the government of the Federal Republic of Nigeria;

"indigenous oil company" means a company:

(a) engaged in the exploration for and production of crude oil and natural gas of which fifty five (55) per cent or more of its shares are beneficially owned directly or indirectly by Nigerian citizens or associations of Nigerian citizens;
(b) which meets the requirements of any guidelines or regulations that may be issued by the Directorate or the Inspectorate; and
(c) which is accredited as an indigenous oil company by the Directorate or Inspectorate;

"industry" means the petroleum industry in Nigeria;

"Inland Basin" means any of the following basins, namely; Anambra, Benin, Benue, Chad, Bida, Dahomey, Gongola, Sokoto and such other basins as may be determined by from time to time, by the Minister;

"Institutions" or "Institution" refers to the National Petroleum Directorate, the Nigerian Petroleum Inspectorate , the Petroleum Products Regulatory Authority, the National Midstream Regulatory Agency, the Nigerian Petroleum Research Centre, the National Frontier Exploration Service, the Petroleum Equalisation Fund, and the Petroleum Technology Development Fund, either jointly, any two or more of the said Institutions, or singly, as the case may be;

"LIBOR" means, as of any date of determination, the per annum rate of interest, based on a three hundred sixty (360) day year, rounded downwards, if necessary, to the nearest whole multiple of one-sixteenth of one percent (l/16th%), determined as the simple average of the offered quotations appearing on the display referred to as the "LIBOR Page" (or any display substituted therefore) of Reuters Monitor Money Rates Service or, if such "LIBOR Page" shall not be

available, the simple average of the offered quotations appearing on page 3750 of the AP/Dow Jones Telerate Systems Monitor (or any page substituted therefore) for deposits in U.S. Dollars for a three month period, at or about 11:00 a.m. (London, England time) on the first London Banking Day of the calendar quarter in which the date of determination occurs (or, if the first day of such calendar quarter in which the date of determination occurs is not a London Banking Day, the immediately preceding London Banking Day). If neither such "LIBOR Page" nor such page 3750 or any successor page is available, or if for any reason a rate of interest cannot be determined as aforesaid, then the Parties shall designate an alternative mechanism consistent with Eurodollar market practices for determining such rate. For purposes of this definition, a "London Banking Day" is a day on which dealings in deposits in Dollars are transacted on the London interbank market;

"Liquified natural gas" means natural gas in its liquid state at approximately atmospheric pressure;

"**local distribution zone**" means an authorized area as specified in regulations issued under this Act, within which one distributor of downstream natural gas may operate;

"marginal field" means a field that is operated by a marginal field operator at the commencement of this Act;

"measurement point" means a point or points in the petroleum mining lease where crude oil, condensates or natural gas are being measured prior to transportation from the petroleum mining lease and shall generally be downstream of any upstream petroleum operations;

"midstream crude oil operations" means activities downstream of the measurement point(s) of petroleum mining leases or unrelated to petroleum mining leases with respect to the construction and operation of upgrading facilities for heavy oil or bitumen; construction and operation of crude oil transport pipelines, including the related pumping stations; acquisition, operation, leasing, rental or chartering of barges, coastal or ocean going tankers, rail cars and trucks for the transport of crude oil; construction, leasing and operation of crude oil tank farms and other storage facilities; construction and operation of refineries; other construction and activities incidental thereto and related administration and overhead;

"midstream domestic gas operations" means the same operations as midstream export gas operations, but where 60% or more than 60% of the BTU content of the gas being transported, stored, processed, extracted, converted or liquefied is dedicated to domestic use in Nigeria as determined from time to time by the Agency, subject to the domestic gas supply obligations that may be imposed by the Minister;

"midstream export gas operations" means activities downstream of the measurement points of petroleum mining leases or unrelated to petroleum mining leases with respect to the construction and operation of natural gas transport or transmission pipelines, including the related compressor stations; construction and operations of facilities to compress, transport and deliver compressed natural gas ("CNG"), construction and operations of gas processing facilities, producing ethane, propane, butane and natural gas liquids and marketable natural gas; construction and operation of underground or above ground facilities for the storage of natural gas; ethane extraction plants; construction and operation of gas to liquids ("GTL") plants; construction and operation of liquified natural gas ("LNG") plants, and related LNG terminals; acquisition, operation or

chartering of LNG tankers for coastal and marine transportation; other construction and activities incidental thereto and related administration and overhead and where more than 40% of the BTU content of the gas being transported, stored, processed, extracted, converted or liquefied is dedicated to exports from Nigeria as determined from time to time by the Agency, subject to the domestic gas supply obligations that may be imposed by the Minister;

"midstream petroleum operations" means midstream crude oil operations and midstream domestic and export gas operations;

"Minister" means the Minister in charge of petroleum resources and overseeing the Petroleum industry in Nigeria , provided, however, that for the interpretation of Chapter 2 and 4 of Part VIII of this Act **Minister** means the Minister of Finance;

"MMcf" means one million cubic feet;

"Natural gas liquids" means hydrocarbons liquefied at the surface in separators, field facilities or in gas processing plants and include but are not limited to ethane, propane, butanes, pentanes, and natural gasoline, may or may not include condensate;

"Natural Gasoline" means a mixture of hydrocarbons extracted from natural gas, which meet vapour pressurs end point and other specifications for natural gasoline, as adopted by the GPSA with 69, 83, 97, 138, and 179 kPa(abs) being common specifications;

"**Network Code**" means the code developed by the transportation network operators in respect of downstream natural gas;

"**Nigerian company**" means any company incorporated pursuant to subsection 271(5) of this Act and the control and management of whose activities are exercised in Nigeria and references to a trade or business shall include references to any part thereof;

"Non-associated gas" means natural gas accumulation which does not occur with crude oil;

"official selling price" means the price at which comparable crude oil or condensate of similar quality could be sold on similar terms at similar times by parties under no compulsion to buy or sell and whereby none of such parties exerts or is in a position to exert influence on the other party having regard to all relevant factors;

"Person" means any individual, company or other juristic person;

"petroleum" means mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata, and includes tar sands, heavy oils, bituminous and other stratified deposits from which oil can be extracted by destructive distillations but does not include coal;

"petroleum exploration operations" means any geological, geophysical, geochemical and other surveys and any interpretation of data relating thereto, and the drilling of such shot holes, core holes, stratigraphic tests, exploration wells for the discovery of petroleum, appraisal of discoveries and other related operations;

"petroleum mining lease" means a lease granted to a company pursuant to Section 280 of this Act;

"petroleum operations" means upstream petroleum operations, midstream petroleum operations and downstream petroleum operations;

"petroleum prospecting license" means a license pursuant to Section 275 of this Act;

"Petroleum products" include motor spirit, gas oil, black oil, diesel oil, automotive gas oil, fuel oil, aviation oil, kerosene, natural gas liquids, liquefied petroleum gases and any lubrication oil or grease or other lubricant;

"resident in Nigeria", in relation to a company, means a company the control and management of the business of which are exercised in Nigeria;

"royalties" means royalties as defined in section 434 of this Act;

"refining company" means a body corporate having been licensed by the appropriate authorities to either take over an existing refinery or refineries at the inception of this Act, or to establish new refineries in Nigeria;

"regulation" means the use of laws or rules stipulated by any of the Institutions, in accordance with the provisions of this Act to provide orderly procedures and enforce standards and best practices for the activities to which the rules apply;

"**regulatory institutions**" or "**regulatory institution**" means the:

(a) Nigerian Petroleum Inspectorate ("Inspectorate") with respect to upstream petroleum operations;

(b) the National Midstream Regulatory Agency ("Agency") with respect to midstream petroleum operations; and

(c) the Petroleum Products Regulatory Authority (Authority) with respect to downstream petroleum operations, or two of these institutions or all three insitutions, as the case may be;

"Senate" means the Senate of the Federal Republic of Nigeria;

"Service" means the Federal Inland Revenue Service.

"shallow water" means areas in the offshore of Nigeria up to and including a water depth of 200 meters;

"significant gas discovery" means a discovery of natural gas that is substantial in terms of reserves and is potentially commercial, but cannot be declared commercial for one or more of the following reasons:

(a) no markets for natural gas within Nigeria;
(b) export markets need to be identified and developed;

(c) no pipeline, processing or liquefaction capacity is available in existing systems where commercial conditions indicate that the best option for development is based on the future expansion of such systems or the use of such systems when capacity will become available in the future; or

(d) where the natural gas discovery would only be commercial when jointly developed with other existing natural gas discoveries or potential future natural gas discoveries;

"small field allowance" means the allowance for small fields provided for under subsection 453 (1);

'standards' means limits made binding through laws, regulations or guidelines which must be observed within the appropriate regulatory framework in all cases where they are applicable;

"State" means the sovereign state of the Federal Republic of Nigeria, except where the context so admits or where it is specifically stated to mean a state of the Federation;

"technical" refers to matters and issues that derive their consideration from a structured body of applied scientific knowledge, practical skills and special techniques that are interpreted strictly in accordance with stipulated rules, regulations, and standards;

"technical regulation" means the technical oversight of all activities relating to the exploration, development, production, processing, distribution and disposal of hydrocarbons through standards and best practices as may be prescribed from time to time in laws, regulations or guidelines;

"upstream gas operations" means the winning or obtaining of natural gas in Nigeria by or on behalf of a company on its own account for commercial purposes and shall include any activity or operation related to natural gas that occurs up to the point at which downstream gas begins;

"upstream crude oil operations" means activities upstream of the measurement points of a petroleum mining lease, related to the winning of crude oil and associated gas through wells or mining from petroleum reservoirs; drilling, completing and operation of wells producing crude oil and associated gas; construction and operation of gathering lines and manifolds for crude oil, associated gas and water; construction and operation of high and low pressure separators, separating crude oil, associated natural gas and water; construction and operation of facilities to treat or condition crude oil, associated natural gas and water; flaring of natural gas; compression and reinjection of associated natural gas in reservoirs of the petroleum mining lease; construction and operation of facilities for the production of electricity or heat from associated natural gas or other fuels as energy source for the winning of crude oil; injection or re-injection of water into the reservoirs of the petroleum mining lease; construction and operation of fixed or floating platforms or other vessels required for the winning of crude oil from the petroleum mining lease; construction and operation of fixed or floating storage facilities of crude oil in the lease area; transportation to and from the petroleum mining lease of personnel, goods and equipment; metering of well stream fluids; metering of crude oil at the measurement point prior to transportation from the petroleum mining lease; other construction and activities incidental thereto and related administration and overhead;

"upstream gas operations" means activities upstream of the measurement points of a petroleum mining lease, related to the winning of non-associated gas and condensates through wells from petroleum reservoirs; drilling, completing and operation of wells, producing natural gas and condensates; construction and operation of gathering lines and manifolds for natural gas, condensates and water; construction and operation of separators or condensers, separating natural

gas, condensates and water; construction and operation of facilities to treat or condition natural gas, condensates and water; construction and operation of facilities for the production of electricity or heat from natural gas or other fuels exclusively for the purpose of serving as energy source for the winning of natural gas; injection or re-injection of water into the reservoirs of the petroleum mining lease incidental to the winning of natural gas; construction and operation of fixed or floating platforms or other vessels required for the winning of natural gas from the petroleum mining lease; transportation to and from the petroleum mining lease of personnel, goods and equipment incidental to the winning of natural gas; metering of well stream fluids; metering of natural gas and condensates at the measurement point prior to transportation from the petroleum mining lease; other construction and activities incidental thereto and related administration and overhead;

"upstream gas producer" means a petroleum mining lessee, an incorporated joint venture, a production sharing contractor, or any entity or shareholder comprising lessee, incorporated joint venture or contractor;

"upstream petroleum operations" means upstream crude oil operations, upstream gas operations and petroleum exploration operations.

citation
526. This Act may be cited as the **Petroleum Industry Act 2009.**

NINTH SCHEDULE

SECTION 445, 452, 453 *and* 461

Capital Allowances

1. Interpretation.

(1) For the purposes of this schedule, unless the context otherwise requires –

"CONCESSION" includes a petroleum prospecting licence (PPL), a petroleum mining lease (PML), any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

"LEASE" includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage and all cognate expression including "LEASEHOLD INTEREST" shall be construed accordingly and

(a) where, with the consent of the lessor, a lessee of any assets remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this schedule to continue so long as he remains in possession as aforesaid; and

(b) where, on the termination of a lease of any assets, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of the first lease; **1973 No. 15**

"QUALIFYING EXPENDITURE" means, subject to the express provisions of this schedule, expenditure incurred in an accounting period, which is –

(a) Capital expenditure (hereinafter called "qualifying plant expenditure") incurred on plant, machinery or fixtures;

(b) Capital expenditure (hereinafter called "qualifying pipeline and storage expenditure") incurred on pipelines and storage tanks;

(c) Capital expenditure (hereinafter called "qualifying building expenditure"), other than expenditure which is included in paragraphs (a), (b) or (d) of this interpretation, incurred on the construction of buildings, or works of a permanent nature; or

(d) Capital expenditure (hereinafter called "qualifying drilling expenditure") other than expenditure which is included in paragraph (a) or (b) of this interpretation, incurred in connection with, *Upstream Petroleum Operations* in view on –

(i) the acquisition of, or of rights in or over, petroleum deposits, *excluding Signature Bonuses and Production Bonuses which shall not be deductible against tax*

(ii) searching for or discovering and testing petroleum deposits, or winning access thereto, or

(iii) the construction of any works or buildings which are likely to be of little or no value when the *Upstream Petroleum Operations* for which they were constructed cease to be carried on:

Provided that for the purposes of this definition qualifying expenditure shall not include any sum which may be deducted under the provisions of Section 445 of this Act and provided only eighty percent of qualifying expenditure incurred outside Nigeria shall be allowed for deduction under Section 452 of this Act

(2) For the purposes of this interpretation of qualifying expenditure, where expenditure is incurred by a company before its first accounting period and such expenditure would have fallen to be treated as qualifying expenditure (ascertained without the qualification contained in the foregoing proviso) if it had been incurred by the company on the first day of its first accounting period, and

(a) *that* expenditure is incurred in respect of an asset owned by the company then such expenditure shall be deemed to be qualifying expenditure incurred by it on that day; or

(b)that expenditure is incurred in respect of an asset which has been disposed of by the company before the beginning of its first accounting period then any loss suffered by the company on the disposal of such asset shall be deemed to be qualifying petroleum expenditure incurred by the company on that day and be deemed to have brought into existence an asset owned by the company in use for the purposes of *Upstream Petroleum Operations* carried on by the company any profit realised by the company on such disposal shall be treated as income of the company of its first accounting period for the purposes of subsection (1)(a) of section 444 of this Act.

2. Provisions Relating to Qualifying Petroleum Expenditure 1973. No. 15
(1)For the purposes of this Schedule where-
(a)expenditure has been incurred before its first accounting period and such expenditure would have been treated as such qualifying petroleum expenditure (ascertained without the qualification contained in the proviso in the interpretation of qualifying expenditure) if it had been incurred in that first accounting period; and
(b)such expenditure (ascertained in the case of sub-paragraph (1) (a) of this paragraph without such qualification) shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purposes of such *Upstream Petroleum Operations*.

(2) For the purposes of this Schedule, an asset in respect of which qualifying drilling expenditure has been incurred by any company for the purposes of *Upstream Petroleum Operations* carried on by it during any accounting period of the company, and which has not been disposed of, shall be deemed not to cease to be used for the purposes of such operations so long as such company continues to carry on such operations.

(3) So much of any qualifying petroleum expenditure incurred on the acquisition of rights in or over petroleum deposits and on the purchase of information relating to the existence and extent of such deposits shall not be eligible as qualifying petroleum expenditure.

3. Owner and Meaning of Relevant Interest
(1)For the purposes of this Schedule, where an asset consists of a building structure or works, the owner thereof shall be taken to be the owner of the relevant interest in such building, structure or works.
(2)Subject to the provisions of this paragraph, in this Schedule, the expressions "the relevant interest" means, in relation to any expenditure incurred on the construction of a building, structure or works to which the company which incurred such expenditure was entitled when it incurred the expenditure.
(3)Where, when a company incurs qualifying building expenditure or qualifying expenditure on the construction of a building, structure or works, the company is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

(4) Sale of Buildings, Etc., 1979 No. 24.
Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest company which buys that interest shall be deemed, for all the purposes of this Schedule, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction, whichever is the less:

Provided that -
(a) Where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sale and the original cost of construction shall be taken to be the amount of the purchase price on such sale;
(b) Where, any such relevant interest is sold more than once before the building, structure or works is used, the provisions of sub- paragraph (a) shall have effect only in relation to the last of those sales.

(5) Annual Allowance. 1979 No 95

(1)Subject to the provisions of this Schedule where in any accounting period a company owning any assets has incurred in respect thereof qualifying expenditure, benchmarked by the Regulatory Institution and *verified and approved,* exclusively for the purposes of *Upstream Petroleum Operations* carried on by it, there shall be due to that company as from the accounting period in which such expenditure was incurred an allowance (in this Act referred to as "an annual allowance") at the appropriate rate per centum specified in Tables I and II of this Schedule *except that in the case of PSCs annual allowances shall be restricted to each contract area and that for purposes of monthly estimates the annual allowance shall be allocated monthly.*

(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, there shall be retained in the books, in respect of each asset 1 percent of the initial cost of the asset which may only be written off in accordance with sub-paragraph (3) of this paragraph.

(3) Any asset or part thereof in respect of which capital allowances have been granted may only be disposed of on the authority of a Certificate of Disposal issued by the Minister or any person authorised by him.

(6) Asset to be in use at end of accounting period

An initial or an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be due to a company for any accounting period if at the end of such accounting period it was the owner of that asset and the asset was in use for the purposes of the *Upstream Petroleum Operations* carried on by it.

(7) Balancing Allowances

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of *Upstream Petroleum Operations* carried on by it, disposes of that asset an allowance (hereinafter called "a balancing allowance") shall be due to that company for that accounting period the loss incurred as a result of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be due in respect of such asset if immediately prior to its disposal it was in use by such company for the purposes of the *Upstream Petroleum Operations* for which such qualifying expenditure was incurred.

(8) Balancing Charges.

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of *Upstream Petroleum Operations* carried on by it, disposes of that asset, the excess (hereinafter called "a balancing charge") of the value of that asset, at the date of

its disposal, over the residue of that expenditure at that date shall, for the purposes of subsection (1)(a) of section 444 of this Act, be treated as income of the company of that accounting period;

Provided that a balancing charge in respect of such asset shall only be so treated if immediately prior to the disposal of that asset it was in use by such company for the purposes of the *Upstream Petroleum Operations* for which such qualifying expenditure was incurred and shall not exceed the total of any allowances due under the provisions of this Schedule, in respect of such asset.

(9) Residue

The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of any annual allowances due to such owner, in respect of that asset, before that date.

(10) Meaning of "Disposed of"

Subject to any express provision to the contrary, for the purposes of this Schedule-

(a) a building, structure or works of a permanent nature is disposed of if any of the following events occur-

(i) the relevant interest is sold, or

(ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession, or

(iii) that interest, being a leasehold interest, comes to an end otherwise than on the company entitled thereto acquiring the interest which is reversionary thereon, or

(iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of *Upstream Petroleum Operations* carried on by the owner thereof;

(b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of *Upstream Petroleum Operations* carried on by the owner thereof.

(11) Value of an Asset

(1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or, if it was disposed of without being sold, the amount which, in the opinion of the Service, such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.

(2)For the purpose of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

(12) Apportionment

(1)Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of, or the price paid for, that asset, as the case may be. For the purposes of this sub-paragraph, all the assets which are

purchased or disposed of in pursuance of one bargain shall be deemed to purchased or disposed of together notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

(2) The provisions of sub-paragraph (1) of this paragraph shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in any other asset.

(13) Part of an Asset.
Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Service, be just and reasonable.

(14) Exclusion of Certain Expenditure
Subject to the express provisions of this Schedule, where any company has incurred expenditure which is allowed to be deducted under any provision (other than a provision of this Schedule) of this Chapter 4 of this Part, such expenditure shall not be treated as qualifying expenditure.

(15) Asset Used or Expenditure Incurred Partly for the Purpose of Petroleum Operation.
(1)The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset-
(a) The owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of *Upstream Petroleum Operations* carried on by him and partly for other purposes;
(b) The asset in respect of which the owner has incurred qualifying expenditure thereof is used partly for the purposes of *Upstream Petroleum Operations* carried on by such owner and partly for other purposes.

(2) Any allowances which would be due or any balancing charges which would be treated as income if both such expenditure were incurred wholly and exclusively for the purposes of such *Upstream Petroleum Operations* such asset were used wholly and exclusively for the purposes of such operations shall be computed in accordance with the provisions of this Schedule.

(3) So much of the allowances and charges computed in accordance with provisions of sub-paragraph (2) of this paragraph shall be due or shall be so treated, as the case may be, as in the opinion of the Service is just reasonable having regard to all the circumstances and to the provisions of this Schedule

(16) Disposal without Change of Ownership
Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of that asset after the date of such disposal -
(a) Qualifying expenditure incurred by such owner in respect of such owner in respect of such asset prior to the date of such disposal shall be left out of account; but
(b) Such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by

the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal -

TABLE I
PARAGRAPH 6
For Upstream Crude Oil Operations

Annual Allowance	Rate Per Centum
First year	20
2nd year	20
3rd year	20
4th year	20
5th year	19

TABLE II
PARAGRAPH 6
For Upstream Gas Operations

Annual Allowance	Rate Per Centum
1st year *(from commencement of production)*	25
2nd year	25
3rd year	25
4th year	25

OTHER ALLOWANCES

TABLE III: SMALL FIELD ALLOWANCE - Section 453(1)

Terrain	Allowance	Up to cumulative maximum of:
Onshore	$40/bbl	10mmbbls/ PML
Shallow Water	$40/bbl	20mmbbls/ PML
Deep Waters & Frontier acreages	$40/bbl	40mmbbls/ PML

TABLE IV: GAS ALLOWANCE - Section 453(2)

Terrain	The lower of:	Up to cumulative production of:
Onshore	50% of value of gas production or $1/ million BTU * gas production	100 Bscf/PML
Shallow Water	50% of value of gas production or $1/ million BTU * gas production	200 Bscf/PML
Deep Water & Frontier acreages	50% of value of gas production or $1/ million BTU * gas production	400 Bscf/PML

TABLE V: GAS ALLOWANCE REFUND FEE - Section 453(4)

Terrain	The lower of:	Up to cumulative production of:
Onshore	50% of value of gas production or $1/ million BTU * gas production	100 Bscf/PML
Shallow Water	50% of value of gas production or $1/ million BTU * gas production	200 Bscf/PML
Deep Water & Frontier acreages	50% of value of gas production or $1/ million BTU * gas production	400 Bscf/PML

PETROLEUM INDUSTRY BILL 2009

EXPLANATORY MEMORANDUM

This Bill seeks to establish the legal and regulatory framework, Institutions and Regulatory authorities for the Nigerian Petroleum Industry, establish guidelines for the operation of the Upstream, Midstream and Downstream sectors.