

A BILL

[EXECUTIVE]

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 AND DOWNSTREAM SECTORS, AND FOR PURPOSES CONNECTED WITH THE SAME

[

]

Commencement.

PART I - FUNDAMENTAL OBJECTIVES

2 1. Property and sovereign ownership of petroleum within Nigeria, its
3 territorial waters, the continental shelf, the Exclusive Economic Zone and the
4 extended continental shelf shall vest in the sovereign state of Nigeria for and on
5 behalf of the people of Nigeria.

Vesting of petroleum and natural gas.

6 2. Any company qualified under terms and conditions prescribed from
7 time to time by the relevant Institutions shall be free to apply for the grant or
8 award of a license, lease or contract, as the case may be, for the exploration
9 and production of petroleum.

Allocation of Acreage.

10 3.-(1) The management and allocation of petroleum resources and their
11 derivatives in Nigeria shall be conducted strictly in accordance with the principles
12 of good governance, transparency and sustainable development of Nigeria.

Management of Petroleum Resources.

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

16 4.-(1) The Minister shall grant licences and leases on the recommendation
17 of the Directors General of the Institutions and in accordance with guidelines,
18 impose special terms and conditions that are not inconsistent with the provisions
19 of this Act on any licence or lease to which this Act applies, including terms
20 and conditions as to:

Government Participation.

21 (a) participation by the Federal Government in the venture to which the
22 licence or lease relates, on terms to be negotiated between the Minister and
23 the applicant for the licence or lease; and

24 (b) exploitation of any natural gas discovered.

(2) Subsection (1) of this section shall not apply to any indigenous company
operating in the upstream sector whose aggregate production is less than or
equal to fifty thousand barrels per day of crude oil or natural gas equivalent

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

6.-(1) The Federal Government shall, to the extent practicable, honour
international environmental obligations and shall promote energy efficiency,
the provision of reliable energy, and a taxation policy that encourages fuel
efficiency by producers and consumers.

(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.

7. The Federal Government shall, in co-operation with the state and
local governments and communities, 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.

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 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

Transparency
and Good
Governance.

Environment
and Air
Quality
Emissions.

Community
Development.

Nigerian
Content.

of the petroleum industry;

2 (d) ensure that the government derives maximum advantage from all
3 petroleum contracts and fiscal arrangements that may be entered into by any
4 of the Institutions and companies for the economic benefit of the people of
5 Nigeria;

6 (e) promote competitive trading of Nigerian petroleum in the upstream,
7 midstream and downstream sectors;

8 (j) promote open and competitive processes for-

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

10 (ii) upstream and downstream petroleum quota allocations, for the
11 purpose of the maximisation of benefits to the people of Nigeria;

12 (g) advise the Minister on the allocation of licences, contracts and quota
13 allocations;

14 (h) formulate and promote policies and strategies to-

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

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

18 and

19 Ciii) develop Nigerian content in the industry;

20 (i) promote measures to increase the national reserves base;

21 (j) promote measures to increase productivity in all areas of the petroleum
22 industry;

23 (k) promote the use of locally available raw materials in preference to
24 previously imported materials, without at any time compromising quality,
25 safety and environmental standards in the petroleum industry;

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

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

31 (i) the petroleum producing companies;

- (it") all companies operating in all sectors of the downstream petroleum industry;
- (iii) federal, state and local governments;
- (iv) communities residing or conducting activities in areas where petroleum is produced;
- (v) non-governmental organisations directly involved with matters pertaining to the petroleum industry; and
- (vi) institutions and professional bodies relevant to the petroleum industry including the Nigerian Society of Engineers, the Society of Petroleum Engineers, the Nigerian Mining and Geosciences Society, the Nigerian Economic Society, the Nigerian Bar Association and the Nigerian Institute of Management;
- (n) receive data from the Institutions and all entities operating in the Nigerian petroleum industry for the purpose of formulating appropriate policies for the benefit of the State;
- (o) maintain economic, commercial and technical data relating to all areas of the industry;
- (P) relate with relevant international agencies, in accordance with the directives of the Minister;
- (q) hold, on behalf of the State and people of Nigeria, all unallocated acreages of crude oil and natural gas;
- (r) promote the peaceful development of all sectors of the petroleum industry, in consultation with all stakeholders;
- (s) promote compliance with all legislation by all participants and stakeholders in the industry;
- (t) initiate periodic reviews of existing policies in the petroleum industry in consultation with the Institutions and all other stakeholders;
- (u) initiate periodic reviews of existing laws and regulations in the petroleum industry in consultation with all stakeholders and recommend improvements thereto;
- (v) conduct annual comprehensive assessments of the impact of

development programmes of petroleum companies on communities with a
 2 view to evolving appropriate policies and guidelines for oil companies in
 3 respect of such programmes;

4 (w) initiate measures that promote appropriate and indigenous technology
 5 for the petroleum industry in Nigeria;

6 (x) perform such other functions as the Minister may from time to time
 7 direct, in accordance with the terms prescribed by this Act.

8 **14.-(1)** There is established a Governing Board which shall consist of-

Governing
Board.

9 (a) a chairman, who is the Minister;

10 (b) Directors of the Directorate; and

11 (c) the Director General of the Directorate.

12 (2) The proceedings of the Board of the Directorate and other ancillary
 13 matters shall be regulated by Schedule 1 to this Act.

14 **15.-(1)** There shall be an officer of the Directorate to be known as the
 15 Director-General, who shall be appointed by the President.

Director-
General.

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

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

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

24 **16.-(1)** The Director-General shall hold office for five years in the first
 25 instance which may be renewed for another period of five years only, on such
 26 terms and conditions as may be specified in the letter of appointment.

Tenure,
Remuneration
and
Conditions of
Service.

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

30 **17.-(1)** There shall be appointed Directors who shall assist the Director-
 31 General in managing and discharging the responsibilities of the Directorate.

Directors.

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

(3) The remuneration, tenure and conditions of service of the Directors
4 shall be at a level sufficient to attract qualified professionals within the petroleum
5 industry.
6

Disqualification.

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

9 (a) is a Nigerian citizen;

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

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

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

14 (iii) been declared to be of unsound mind;

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

16 been disqualified by a competent authority from carrying out any assignment,
17 responsibility or function in his or her professional capacity.

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

Vacation of
Office and
Termination.

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

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

23 (b) if he or she becomes disqualified under the provisions of Section 18 of
24 this Act; or

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

26 **20.** The President shall require the Director General to vacate his or her
27 office if he or she:

28 (a) has committed an act of gross misconduct;

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

31 (c) suffers from any mental, physical or legal disability which renders

him or her incapable of executing his or her duties efficiently.

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

4 22.-(1) For the effective exercise of the functions and powers of the
5 Directorate there are established in the Directorate, such departments as may
6 be deemed necessary by the Minister acting upon the advice of the Director-
7 General.

Structure of
the
Directorate.

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

9 23.-(1) The Directorate may, from time to time, appoint such experienced
IO professionals as staff of the Directorate to assist it in the performance of its
11 functions under this Act.

Other Staff.

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

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

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

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

Tenure,
Remuneration
and
Conditions of
Service.

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

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

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

26j 25.-(1) Service in the Directorate shall be approved service for the
Z7 purpose of the Pensions Reform Act Cap. P4, Laws of the Federation of Nigeria
28 2004, and accordingly, officers and other persons employed in the Directorate
29 shall be entitled to pensions and other benefits as are prescribed in the Pensions
30 Reform Act CAP P4, Laws of the Federation of Nigeria 2004.

Pensions.

31 (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
2 or other retirement benefits in respect of that office.

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

Financial
Provisions.

8 **26.-(1)** The Directorate shall, not later than September in each year,
9 present to the Minister, a budget showing the expected income and the expenditure
10 which the Directorate proposes to expend in respect of the next succeeding
11 financial year.

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

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

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

Funding.

20 **27.-(1)** The Directorate shall establish and maintain a fund which shall
21 consist of:

22 (a) such money as may, from time to time, be appropriated to the
23 Directorate by the Federal, State or Local Government;

24 (b) a portion of fiscalised crude and or fiscalised natural gas set aside for
25 the use of the Directorate in accordance with the provisions of section 28 of
26 this Act;

27 (c) money raised for the purposes of the Directorate by way of gifts,
28 loans and grants-in-aid;

29 (d) subscriptions, fees and charges payable to the Directorate; and

30 (e) all other monies that may, from time to time, accrue to the Directorate.

31 (2) The Directorate shall, from time to time, apply the proceeds of the

1 fund established pursuant to subsection (1) of this section:

2 (a) to the costs of administration of the Directorate;

3 (b) to the payment of salaries, wages, fees or other remuneration or
4 allowances, pensions and other retirement benefits payable to staff of the
5 Directorate or employees;

6 (c) for maintenance of any property acquired or vested in the Directorate;

7 (d) for the purposes of investment, as prescribed by the Trustees Investments
8 Act CAP T22 Laws of the Federation of Nigeria, or any other relevant
9 statute; and

10 (e) in connection with all or any of the functions of the Directorate as
11 specified under this Act.

12 28.-(1) A portion of fiscalised crude or fiscalised natural gas, as the
13 case may be and as agreed under the terms of this section, shall be paid by
14 every company engaged in petroleum operations in the upstream sector of the
15 petroleum industry, into an account of the Directorate designated for the sole
16 purpose of collecting the said fiscalised crude or fiscalised natural gas, for the
17 use of, and shared by-

18 (a) the Directorate;

19 (b) the Inspectorate;

20 (c) the Agency;

21 (d) the Centre; and

22 (e) the Frontier Service;

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

25 (2) The exact percentage of fiscalised crude or fiscalised natural gas, as
'fj the case may be, shall be as contained in guidelines that shall be issued by the
1:7 Minister on the advice of the Directorate, three months before the end of the
28 financial year preceeding the year in which the said guidelines will be applicable,
29 and shall be an amount that is-

JJ (a) not greater than 2%; and

31 (b) at least the value of the combined total budgets of the Directorate, the

Funding the
Institutions.

Inspectorate, the Agency, the Centre, and the Frontier Service.

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

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

Insurance
Provisions.

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

Power to
Accept Gifts.

15 30.-(1) The Directorate may accept gifts of money or other property
16 upon such terms and conditions, if any, as may be specified by the person or
17 organisation making the gift provided such gifts are not inconsistent with the
18 Objectives and functions of the Directorate under this Act.

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

Borrowing
Powers.

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

Accounts and
Audits.

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

Annual
Reports.

30 33. The Directorate shall prepare and submit to the Minister not later
31 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
2 year, and shall include in such report a copy of the audited accounts of the
3 Directorate for the year and the Auditor-General's report thereon.

4 34.-1) All income derived by the Directorate from the sources specified
5 in section 27(1) of this Act shall be exempt from income tax.

Exemption
from Income
Tax.

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

9 35.-1) No suit shall be commenced against the Directorate before the
10 expiration of a period of three months after written notice of intention to
11 commence the suit shall have been served on the Directorate by the intending
12 plaintiff or his agent.

Notice.

13 (2) The notice shall clearly state the:

14 (a) cause of action;

15 (b) particulars of the claim;

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

18 (d) relief claimed by the plaintiff.

19 36. The notice referred to in section 35(2) and any summons, notice or
20 other document required or authorised to be served on the Directorate under
21 the provisions of this Act or any other enactment or law, may be served by:

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

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

26 *Chapter III - The Nigerian Petroleum Inspectorate*

27 37.-1) There is established by this Act the Nigerian Petroleum
28 Inspectorate ("the Inspectorate") which shall be a body corporate with perpetual
29 succession and a common seal.

Establishment
of the
Nigerian
Petroleum
Inspectorate.

30 (2) The Inspectorate shall have power to acquire, hold and dispose of
31 property, sue and be sued in its own name and subject to this Act, perform all

acts that corporate bodies may perform by law.

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

Objects of the
Inspectorate.

5 38. The objects of the Inspectorate shall be to-

6 (a) ensure the efficient, safe, effective and sustainable infrastructural
7 development of all sectors of the petroleum industry ~

8 (b) promote the healthy, safe and efficient conduct of all operations in all
9 sectors of the petroleum industry in an environmentally acceptable manner;

10 (c) organise and regulate the technical activities of the Nigerian petroleum
11 industry;

12 (d) ensure the efficient development of the transportation and distribution
13 network infrastructure for downstream gas and downstream products;

14 (e) ensure the maintenance of standards and specifications which apply to
15 the upstream petroleum industry.

Functions of
the
Inspectorate.

16 39. The functions of the Inspectorate shall be to-

17 (a) enforce and administer policies, laws and regulations relating to
18 technical aspects of petroleum industry operations;

19 (b) ensure and enforce compliance with the terms and conditions of all
20 licences and leases issued in respect of the exploration and production of
21 petroleum in Nigeria;

22 (c) ensure and enforce the compliance of all permits issued by the
23 Inspectorate

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

28 (e) at all times keep a register of all licences and leases issued by the
29 Inspectorate and any renewals, amendments, suspensions or revocations
1) thereof;

31 if) carry out enquiries, tests, audits or investigations and take such other

steps as may be necessary to monitor the activities of licencees or lessees
2 and to secure and enforce compliance with licence or lease terms and
3 conditions;

4 (g) set and establish standards relating to technical aspects of the petroleum
5 industry, including environmental standards, which shall be established in
6 collaboration with the Federal Ministry of Environment or any other relevant
7 agency;

8 (h) ensure adherence of all operators and companies involved in any
9 operations pertaining to the petroleum industry to environmental standards
10 that may be established by the government;

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

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

18 (k) administer all licences and leases in the upstream petroleum industry
19 that may be granted by the Minister to any company, in accordance with
~ prescribed terms;

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

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

ZI (n) compute, determine, assess and ensure payment of royalties, rentals,
28 fees, and other charges as stipulated in this Act and any regulations made
'9 hereunder;

~ (o) establish, monitor and regulate technical, health, environmental and
31 safety measures relating to the management of downstream assets, including

but not limited to refineries, petrochemical plants, petroleum depots and pipelines, and downstream gas plants;

(P) supervise and ensure accurate calibration and certification of equipment used for fiscal measures in the industry;

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

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

(s) publish reports and statistics on activities in the Nigerian petroleum industry and related matters that may be required, in the interests of the growth of the industry;

(t) 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;

(u) issue Clean Certificates of Inspection at the oil terminals to exporters of crude oil, natural gas, liquefied natural gas and all petroleum products, upon satisfaction that the requirements as to quality, quantity and price have been complied with;

(v) issue permits, licences and any other authorisations necessary for all technical activities connected with-

(i) petroleum exploration and production;

(U) downstream gas;

(Uj) downstream products;

(iv) refining;

(v) storage;

(vi) retail outlets;

(vii) transportation;

(viii) distribution;

(Lx) processing of petroleum products for import and export;

(x) design and construction of all facilities including those for gas and

petrochemicals, and for the processing of petroleum and its derivatives;

2 (w) to monitor and ensure the quality and process of conversion or blending
3 of whatever material by whatever method to fuels, bio-fuels or derivatives
4 for automotive use in Nigeria;

5 (x) set standards for the design, procurement, construction, operation and
6 maintenance of all plants installations and facilities that pertain to the
7 petroleum industry;

8 (y) establish special laboratories with capabilities for data storage and
9 testing, quality assurance and certification of crude oil, gas and petroleum
10 products and their derivatives, whether for the domestic market or for export;

11 (z) perform technical evaluation and reviews required to evaluate and
12 decide on submissions made to the Inspectorate by petroleum industry
13 operators-

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

17 (ab) ensure the promotion of the safe, orderly and optimal development of
18 the petroleum industry in the overall interest of the people of Nigeria;

19 (ac) undertake by itself or through qualified expertise any of the foregoing
20 and such other activities as are necessary or expedient for giving **full** effect
21 to the provisions of this Chapter.

22 **40.** The Inspectorate shall have power to-

23 (a) enforce the provisions of-

24 (i) this Chapter and any regulations made thereunder;

25 (ii) any enactments prescribing activities of the petroleum industry
26 made prior to this Chapter and any regulations made in pursuance of
27 powers given under them; and

28 (iii) any technical regulations referring to, or formerly administered
29 by the Department of Petroleum Resources of the Ministry of Petroleum
30 Resources or the former Petroleum Inspectorate of the Nigerian National
31 Petroleum Corporation.

Powers of the
Inspectorate.

2 (b) order the sealing up of any premises whatsoever, including any facility
 3 or plant for the transporting, processing, manufacturing, storing, dispensing,
 4 distributing or sale of crude oil, gas, petroleum products or its derivatives,
 5 where there has been a contravention of this Act or any other related law;

6 (c) in respect of the petroleum industry and as and when necessary, issue
 7 technical guidelines on the generation, use, storage and transportation of
 8 radioactive sources and materials, in line with directives from the Nigerian
 9 Nuclear Regulatory Authority;

10 (d) set standards and enforce the application of new technologies in the
 11 petroleum industry;

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

Governing
Board.

14 41.-(1) There is established for the Inspectorate a Governing Board
 15 ("the Governing Board which shall consist of-

16 (a) a Chairman to be appointed by the President;

17 (b) one representative of the Nigerian Petroleum Directorate not below
 18 the rank of Director;

19 (c) one representative of the Petroleum Products Regulatory Authority;

20 (d) one representative of Petroleum and Natural Gas Senior Staff
 ~ Association of Nigeria;

21 (e) five persons to be appointed by the President on the recommendation
 22 of the Minister being persons who by reason of their ability, experience and
 23 specialized knowledge of the petroleum industry are capable of making useful
 24 contributions to work of the Inspectorate;

25 if three Directors who are full time staff of the Inspectorate, to be
 26 appointed to the Board by the President; and

27 (g) the Director-General of the Inspectorate.

28 (2) The persons appointed pursuant to paragraphs (a) (e) and (f) of subsection
 29 (1) of this section shall hold their membership of the Inspectorate for four years
 30 subject to reappointment for another period of four years only on such terms
 31 and conditions as may be specified in their letters of appointment.

<p>(3) Appointments to the Board shall be part-time.</p> <p>2 (4) The proceedings of the Board of the Inspectorate and other ancillary</p> <p>3 matters shall be regulated by the second schedule to this Act.</p> <p>4 42. The Governing Board shall ensure that the Inspectorate performs its</p> <p>5 statutory function contained in this Act. .</p> <p>6 43.-(1) There shall be an officer of the Inspectorate to be known as the</p> <p>7 Director-General, shall be appointed by the President.</p> <p>8 (2) The Director-General shall be a person with cognate experience.</p> <p>9 (3) The Director-General shall be the chief executive and accounting</p> <p>10 officer of the Inspectorate and shall be responsible for running the day-to-day</p> <p>11 affairs of the Inspectorate</p> <p>12 (4) The Director-General shall have the status of a permanent secretary</p> <p>13 of the civil service the Federal Republic of Nigeria.</p> <p>14 (5) The Director-General shall perform such functions as the Board may</p> <p>15 determine.</p> <p>16 44.-(1) The Director General shall hold office for five years in the first</p> <p>17 instance with the possibility of renewal for another period of five years only,</p> <p>18 and on such terms and condition as may be specified in his or her letter of</p> <p>19 appointment.</p> <p>XI (2) The remuneration and conditions of service of the Director General</p> <p>21 shall be at a level sufficient to attract qualified professionals within the oil</p> <p>22 industry.</p> <p>23 45. No person shall be appointed as Director- General or member of the</p> <p>24 Governing Board unless he or she-</p> <p>25 (a) is a Nigerian citizen;</p> <p>26 (b) has not, in terms of the laws in force in any country-</p> <p>T! (i) been adjudged or declared bankrupt or insolvent; or</p> <p>28 (ii) made an assignment to, or arrangement or composition with his</p> <p>29 creditors which has not been rescinded or set aside;</p> <p>30 (iii) been declared to be of unsound mind;</p> <p>31 (iv) been convicted of an offence involving fraud or dishonesty;</p>	<p>Functions of the Governing Board.</p> <p>The Director General.</p> <p>Tenure, Remuneration and Conditions of Service of the Director General.</p> <p>Disqualification.</p>
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- (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.
- 46.** 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 45 of this chapter; and
- (c) on the expiration of his or her appointment.
- 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;
- (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;
- 48.** 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 41 of this Act.
- 49.**-(1) Members 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) any 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) While making such determinations, the Inspectorate 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

Vacation of
Office and
Termination.

Remuneration
of Members
of the Board.

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

2
3 50.-(1) The Inspectorate shall appoint a Secretary who shall keep the Secretary.
4 corporate records and the common seal of the Inspectorate and undertake such
5 other functions as the Director General and the Inspectorate may from time to
6 time direct.

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

9 51.-(1) The Inspectorate may, from time to time, appoint such Other staff.
10 professionals experienced in the petroleum industry and other persons as staff
11 of the Inspectorate to assist it in the performance of its functions under this
12 Act.

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

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

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

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

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

23 (b) the need to ensure financial sufficiency of the Inspectorate; and

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

26 53.-(1) Service in the Inspectorate shall be approved service for the Pensions.
27 purpose of the Pensions Reform Act, Cap. P4 Laws of the Federation of Nigeria
28 2004 and accordingly, officers and other persons employed in the Inspectorate
29 shall be entitled to pensions and other benefits as prescribed in the Pensions
30 Reform Act, Cap. P4 Laws of the Federation of Nigeria 2004.

31 (2) Subsection (1) of this section shall not prohibit the Inspectorate from

1 appointing a person to any office on terms that preclude the grant of a pension
2 or other retirement benefits in respect of that office.

3 (3) In the application of the Pensions Reform Act, Cap. P4 Laws of the
4 Federation of Nigeria 2004 to the Inspectorate, any power exercisable under
5 the Act by a Minister or other authority of the Government of the Federation,
6 other than the power to make regulations is hereby vested in and shall be
7 exercisable by the Inspectorate and not by any other person or authority.

8 (4) Subject to the Pensions Reform Act, Cap. P4 Laws of the Federation
9 of Nigeria 2004 and notwithstanding the provisions of this section, the Inspectorate
10 shall continue to fulfil all obligations in respect of pensions schemes to which
11 the Petroleum Inspectorate of the Nigerian National Petroleum Corporation or
12 the Department of Petroleum Resources of the Ministry of Petroleum Resources
13 was obliged in respect of its employees, prior to the transfer of assets to the
14 Inspectorate.

Financial
Provisions of
the
Inspectorate.

15 54.-(1) The Inspectorate shall, not later than September in each year,
16 present to the Minister, a budget showing the expected income and expenditure
17 which the Inspectorate proposes to expend in respect of the succeeding financial
18 year insofar as the amount so budgeted does not exceed the total amount accruable
19 to the Inspectorate from its sources of funding in any financial year.

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

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

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

Funding.

28 55.-(1) The Inspectorate shall establish and maintain a fund which shall
29 consist of-

30 (a) such monies as may be appropriated to the Inspectorate from time to
31 time by the National Assembly for the purposes of this Act;

(b) a portion 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 petroleum industry;

(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;

(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 established pursuant to 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;

(d) for purposes of investment; as prescribed by the Trustee Investments Act, Cap. T22 of the Laws of the Federation of Nigeria 2004 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
2 such terms and conditions, if any, as may be specified by the person or
3 organisation making the grant, provided such grants are not inconsistent with
4 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
5 general authority given by the Minister of Finance, borrow such sums of money
6 as the Inspectorate may require in the exercise of its functions under this Act
7 or its subsidiary legislation.

Annual
Budget.

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

Account and
Audit.

59. The Inspectorate shall keep proper accounts of its income and
11 expenditure in respect of each year and shall cause its accounts to be audited
12 within six months after the end of each year by auditors appointed in accordance
13 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
15 President a mid-year report of its operations and finances not later than 31 st
16 July of each year and an annual report of its operations, performance and
17 audited financial report of the preceding year not later than 31st July of the
18 following year.

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

Restrictions
on Legal
Proceedings.

61.-(1) Court processes, proceedings or suits, whether civil or criminal,
24 for and against the Inspectorates shall be attended to and handled by the
25 Inspectorate, except where it is otherwise provided by any enactment in force
26 that empowers the Attorney-General of the Federation to direct the said court
27 process, proceeding or suit.

'29 (2) Any suit or proceedings against the Inspectorate, a member of the
30 Governing Board or any employee of the Inspectorate for any act, omission or
31 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.

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-

Service of Documents.

(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.

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 Powers.

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

Special Units, etc.

(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 it in the performance of its functions under this Act.

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

Duties of the Special Units.

1 (a) investigate and prosecute offences under this Act;
 2 (b) collaborate with other government agencies and persons in relation to
 3 the detection or prosecution of offences under this Act;
 4 (c) maintain surveillance on oil and gas installations, premises and vessels
 5 where it has reason to believe that illegal petroleum operations are going
 6 on;
 7 (d) have power to search, seize, detain and recommend for prosecution,
 8 any person suspected to have engaged or be engaged in illegal activities in
 9 relation to petroleum or any petroleum product or in relation to any provision
 10 of this Act or any other enactment administered or enforced by the
 11 Inspectorate.

12 (2) The Prosecution Unit shall-

13 (a) prosecute offenders under this Act;
 14 (b) support the Investigation Unit with legal advice and assistance where
 15 required;
 16 (c) conduct such legal proceedings as may be necessary towards the
 17 enforcement of this Act;
 18 (d) perform such other duties as the Inspectorate may refer to it from
 19 time to time.

Power of
 Search and
 Arrest with
 Warrant.

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

22 (a) enter and search any premises or carrier including vehicles or any
 23 other instrumentalities whatsoever which he has reason to believe is connected
 24 with the commission of an offence;
 25 (b) arrest any person whom he reasonably believes to have committed an
 26 offence in respect of matters under the authority of the Inspectorate;
 27 (c) seize any item or substance which he reasonably believes to have
 28 been used in the commission of an offence under this Act.

Indemnity of
 Governing
 Board and
 Employees.

29 67.-(1) Every member of the Governing Board and every employee of
 30 the Inspectorate shall be indemnified out of the assets of the Inspectorate against
 31 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.

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

Power to
Resolve
Disputes.

(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 will 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.

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.

Notification
of disputes.

(2) The Inspectorate may intervene to resolve a dispute under this Act

1 only if it is notified in writing of the dispute and requested by either or both
2 parties to intervene.

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

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

Resolution of
Disputes.

9 **70.-(1)** In carrying out its functions under subsection (1) of this Section,
10 the Inspectorate-

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

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

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

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

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

Arbitration
and
Mediation.

23 **71.-(1)** For the purpose of the resolution of disputes the Inspectorate
24 may act either as an arbitrator or mediator, except in disputes in which the
25 Inspectorate is a party.

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

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

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

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

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.

Judicial
Review.

(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.

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

Register of
Decisions.

(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.

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.

Enforcement
of Decisions.

(2) No certificate under subsection (1) of this Section is required if the enforcement action is taken by the Inspectorate under this Section.

Chapter IV - The Petroleum Products Regulatory Authority

75.-(1) There is established under this Act the Petroleum Products Regulatory Authority, ("the Authority") Which shall be a body corporate with perpetual succession and a common seal.

Establishment
and Scope of
the Authority.

(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 regulation of commercial aspects of the downstream petroleum industry in Nigeria, including all

commercial aspects relating to downstream petroleum products and downstream
2 natural gas.

Objects.

3 76. The objects of the Authority shall be-

4 (a) to promote the implementation of national commercial policies for
5 the downstream petroleum industry;

6 (b) to promote the efficient, effective and sustainable commercial
7 development and operation of the downstream petroleum industry;

8 (c) to promote the efficient commercial development and operation of the
9 transportation network and distribution network for the downstream products
10 and gas sectors;

11 (d) to encourage and facilitate investments in the downstream petroleum
12 industry;

13 (e) to organise and regulate commercial activities of the downstream
14 petroleum industry;

15 (f) to promote, where appropriate, competitive markets for gas and gas
16 services in the downstream petroleum industry;

17 (g) to promote the supply of gas and petroleum products throughout Nigeria;

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

22 (i) to regulate the prices of downstream gas and petroleum products;

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

Functions.

25 77.-(1) The functions of the Authority shall be-

26 (a) to regulate and co-ordinate the commercial activities of the downstream
27 petroleum sector in Nigeria in a non-discriminatory and transparent manner;

28 (b) the regulation of commercial refining activities which include:

29 (i) establishment of methodology for calculating petroleum products
30 prices; and

31 (ii) setting benchmark prices for petroleum products;

- 2 (c) to regulate on bulk storage and transportation and to set rules for the
3 common carrier systems for crude oil, petroleum products, transportation
4 pipelines and regional storage depots;
- 5 (d) issue and regulate commercial licences and any other authorisations
6 necessary for all commercial activities connected with-
- 7 (i) downstream gas;
 - 8 (ii) downstream products;
 - 9 (iii) refining;
 - 10 (iv) storage;
 - 11 (v) retail outlets;
 - 12 (vi) transportation;
 - 13 (vii) transmission;
 - 14 (viii) distribution;
 - 15 (ix) processing of petroleum and gas products for import and export.
- 16 (e) enforce compliance with the terms and conditions of commercial
17 licences issued by the Authority;
- 18 (j) keep a register of all licences issued and any renewals, amendments,
19 suspensions or revocations thereof;
- 20 (g) carry out enquiries, audits or investigations and take such other steps
21 as may be necessary to monitor the activities of licensees and to secure and
22 enforce compliance with licence terms and conditions;
- 23 (h) ensure security of fuel supply, market development and the development
24 of competition;
- 25 (i) ensure the provision of third party access to the downstream products
26 transportation and distribution networks;
 - 27 (j) at such time as the Authority declares the need to have arisen, to
28 develop market rules for trading in wholesale gas, following consultation
29 with relevant stakeholders;
 - 30 (k) establish customer protection measures in accordance with the
31 provisions of this Act;
 - 32 (l) undertake consultation with customers, licensees and industry

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 whilst also 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, when and where feasible;

(q) make sure that all economical and practical demands for 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 tariffs 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 prices;

(u) to monitor market behaviour including the development and maintenance of competitive markets in the downstream petroleum sector;

(v) to arrest situations of abuse of dominant power and restrictive business

practices in the downstream petroleum sector;

2 (w) to enforce consumer rights in relation to petroleum products and
3 services; and

4 (x) to establish appropriate dispute settlement mechanism relating to the
5 commercial rights and obligations of operators and consumers in the
6 downstream petroleum sector;

7 (2) In furtherance of the functions stated in subsection (1) of this section,
8 the Authority shall:

9 (a) establish parameters and codes of conduct for all operators in the
10 downstream petroleum sector;

11 (b) monitor the financial viability of all operators in the downstream
12 petroleum sector;

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

14 (d) develop and maintain a data base on the downstream petroleum sector
15 particularly such data relating to the construction, conversion and operation
16 of petroleum pipelines, loading and storage facilities and make such
17 information public;

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

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

22 78. In order to fulfil its functions under this Act, the Authority shall have
23 the power:

Powers of the
Authority.

24 (a) to modify, extend, renew, suspend and revoke any licence issued by it
25 pursuant to the provisions of this Chapter;

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

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

31 (d) subject to paragraph (e) of this section, to request and obtain ally

information or any document concerning licensed activities 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;

(j) 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 prescribing activities of the downstream petroleum industry made prior to the commencement of this Act;

Uj) any regulations referring to, or formerly administered by the Petroleum Products Pricing and Regulatory Agency.

Governing
Board of the
Authority.

79.-(1) The Authority shall have 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 of the Nigerian Petroleum Inspectorate

(d) one representative of the National Union of Petroleum and Natural Gas Workers;

(e) five 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;

(j) three Directors who are full-time members of the Authority, to be

appointed to the Board by the President;

(g) the Director General of the Authority;

(2) The persons appointed pursuant to paragraph (a) shall be persons who have served in the Authority for a period of not less than four years immediately preceding their appointment 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, transportation and storage and distribution and marketing of petroleum products; and

(b) accountancy, administration, economics, finance or law,

(4) The proceedings of the Board other than those matters shall be regulated by the Third Schedule to this Act.

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80.-(1) There shall be an officer of the Authority to be known as the Director-General, 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 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 functions as the Board may determine:

81.-(1) The Director-General shall hold office for five years in the first instance which may be extended to a maximum of five years. Such terms and conditions as may be specified in his or her letter of appointment;

Tenure
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Conditions of
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(2) The Director-General shall be a person of high professional standing and shall be at a level sufficient to attract qualified professionals within the petroleum industry,

82. No person shall be appointed Director-General or member of the Governing Board unless he has been disqualified from being a member of the

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(a) is a Nigerian citizen;

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

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

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

6 (iii) been declared to be of unsound mind;

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

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

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

Vacation of  
Office and  
Termination.

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

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

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

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

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

21 (a) has committed an act of gross misconduct;

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

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

26 85. Upon the vacancy of a member's office, the President shall appoint a  
27 candidate to fill the vacancy in accordance with the terms of section 79 of this  
28 Act.

Remuneration  
of Members  
of the Board.

29 86.-(1) Members shall be paid from the funds of the Authority-

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

31 (b) any such allowances as the Authority may determine from time to

time to meet any reasonable expenses incurred by such members in connection  
2 with the business of the Authority.

3 (2) While making such determinations the Authority shall have due regard  
4 to-

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

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

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

9 87.-(1) The Authority shall appoint a Secretary who shall keep the Secretary.  
10 corporate records of the Authority and undertake such other functions as the  
11 Director General and the Authority may from time to time direct.

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

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

15 88.-(1) The Authority may, from time to time, appoint such professionals Other staff.  
16 and persons experienced in the petroleum industry as staff of the Authority to  
17 assist it in the performance of its functions under this Act.

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

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

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

25 **89.** The remuneration, tenure and conditions of service of staff of the Remu 1C11Iriou.  
'2fj Authority shall be at a level sufficient to attract qualified professionals within  
27 the petroleum industry and shall take into account-

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

L9 (ii) the need to ensure financial sufficiency of the Authority; and

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

Pensions.

1 '90.-(1) Service in the Authority shall be approved for the purpose  
 2 of the Pensions Reform Act Cap. P4 Laws of the Federation of Nigeria 2004  
 and accordingly, officers and other persons employed in the Authority shall be  
 4 entitled to pensions, and other benefits prescribed in the Pensions Reform  
 5 Act, Cap. P41 Laws of the Federation of Nigeria 2004.

6 (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,  
 8 gratuity or other retirement benefits in respect of that office,

9 (3) In the application of the provisions of the Pension Reform Act, Cap.  
 10 P41 Laws of the Federation of Nigeria 2004, to the Authority any power  
 11 exercisable under that Act by a Minister or other agency is hereby vested in the  
 12 Authority and shall be exercised by the Authority and not by any other person.

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

Financial Provisions.

18 **92.-(1)** The Authority shall, not later than September of each year,  
 19 present to the Minister, a budget showing the expenditures which the Authority  
 20 proposes to expend in respect of the next financial year, insofar as  
 21 the amount budgeted does not exceed the total amount accruable to the  
 22 Authority from its sources of funding in any financial year.

(2) The Authority may during a financial year present to the  
 24 Minister, a supplementary budget relating to expenditures which were  
 25 originally represented in the annual budget to the Minister.

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

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

Funds.

31 **93.** The Authority shall maintain a fund from which both the capital and

recurrent expenditure of the Authority shall consist

2 of-

3 (a) fees, charges, and other income accruing from things  
4 done by it in terms of this Act-

5 (b) an amount of 3% of the net income of the Authority of annual  
6 average consumption of, in the case of the Authority, to the template;

7 (c) administrative charges to be decided by the Authority in respect of  
8 liquefied petroleum gas and other fuel;

9 (d) fees and charges payable to the Authority in respect of  
10 administrative and  
11 other services that the Authority provides in the discharge  
12 of its functions;

13 (e) rents from the Authority;

14 (f) penalties and fines, payable to the Authority upon any  
15 company or individual in the course of its business;

16 (g) loans and grants from other agencies;  
17 (h) such other income as may be derived from the operations of

18 the Authority or in relation to the operations of the Authority under  
19 this Act

20 (2) The Authority shall, in respect of the operations of the Authority  
21 subsection (1) of this section;

21 (a) to meet the administrative expenses of the Authority;

22 (b) to the payment of-

23 (i) salaries;

24 (ii) fees or other remuneration payable to any person;

25 (iii) pensions or gratuity payable to or in respect of any person  
26 of the Authority or its employees;

27 (c) for the maintenance of the Authority;

28 (d) for purposes of investment; as prescribed by the Trust Investments

29 Act, Cap. 722 of the Laws of the Federation of Nigeria 2004, or any other  
30 relevant statute; and  
31

(e) in connection with carrying out its functions under this Act.

Power to  
Accept  
Grants.

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

Borrowing  
Powers.

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

Accounts,  
Reports and  
Audit.

10 96.-(1) The Authority shall keep proper accounts and other records relating  
11 to such accounts in respect of all of the Authority's activities, funds and property  
12 including such particular accounts and records as may be required.

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

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

18 (4) A summary of the reports mentioned in subsections (1) to (3) of this  
19 section shall be published annually on the website of the Authority and in at least  
20 two newspapers of nationwide circulation in Nigeria for public notice no later than  
21 the 31st of July of each year provided such publication shall exclude confidential  
22 data pertaining to national security, commercial sensitivity or personnel privacy.

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

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

Procedures on  
Decisions,  
Orders,  
Public  
Hearing and  
related  
matters.

28 98.-(1) The Authority shall ensure that all its decisions and orders-

29 (a) contain an explanation or the basis for the decision or order;

30 (b) are properly recorded in writing and other appropriate permanent  
31 forms;

(c) are accessible to the public at reasonable times and places.

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

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

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

8 99.-(1) The Authority may hold a hearing of any matter which under this  
9 Act or any other enactment it is required or permitted to conduct or on which  
10 it is required or permitted to take any action.

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

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

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

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

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

26 102.-(1) The Authority shall have the power to resolve disputes between-

TT (a) persons whose activities are regulated by the Authority; and

28 (b) between such persons and other parties

29 regarding any matter under this Chapter and Chapter VIII of this Part, and in  
30 respect of any subsidiary legislation made by the Minister in respect of activities  
31 of the Authority or the Petroleum Equalisation Fund.

Power to  
Resolve  
Disputes.

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

2 Ca) an attempt has been made by the parties concerned to resolve the  
3 dispute through negotiation:

4 (b) a resolution has not been reached under any other relevant or applicable  
5 dispute resolution procedure prescribed by this part, including but not limited  
6 to those pertaining to the Wholesale Sale Market and the network code; and

7 (c) both parties are granted the opportunity to present their respective  
8 cases to the Authority;

9 (3) For purpose of the resolution of disputes the Authority may act either  
10 as an arbitrator or mediator;

11 (4) When acting as an arbitrator the Authority shall issue a determination  
12 on the matter,

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

Publication of  
Guidelines for  
Dispute  
Resolution,

17 103.-(1) The Authority shall publish guidelines setting out the principles  
18 that it may take into account in resolving disputes.

19 (2) The Authority shall resolve a dispute if it is satisfied  
20 that-

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

23 (b) the resolution of the dispute would be in the interests of this or  
24 any of its subsidiary legislations under this Act pertaining to the  
25 downstream petroleum industry;

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

28 (4) The Authority may issue regulations to issue;  
29 regulations for the discharge of its functions in respect of the proceedings  
30 of the Authority, including but not limited to procedures for participation in the  
31 proceedings of dispute resolution bodies, wholesale



customers and any other persons.

2           104.-(1) Subject to any guidelines that may be issued by the Authority  
3 under this Chapter, the Authority or, if the Authority deems fit, an arbitrator,  
4 may resolve the dispute in accordance with the Arbitration and Conciliation  
5 Act. Cap A IS, Laws of the Federation of Nigeria 2004.

Terms and  
Conditions for  
the Resolution  
of Disputes.

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

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

12           (4) The determination of the Authority shall-

13           (a) be properly recorded in writing;

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

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

16           105.-(1) The Authority shall register all determinations that it makes  
17 pursuant to this Act.

Registration  
of  
Determinations.

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

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

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

21           and

22           (c) the date of the determination.

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

Enforcement  
of  
Determinations.

26           **107.-(1)** An aggrieved person shall have a right of appeal to the Federal  
27 High Court for a judicial review of questions of law and process pertaining to  
28 a determination or other action of the Authority.

Judicial  
Review.

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

|                                                             |    |                                                                                     |
|-------------------------------------------------------------|----|-------------------------------------------------------------------------------------|
|                                                             | 1  | Federal High Court.                                                                 |
| Referrals of Questions of Law to the Federal High Court.    | 2  | 108.-(1) If any question of law arises during a proceeding for a                    |
|                                                             | 3  | determination of the Authority, the Authority may request any person directly       |
|                                                             | 4  | affected by such proceeding to refer that question for the decision of the Federal  |
|                                                             | 5  | High Court.                                                                         |
|                                                             | 6  | (2) Where a question has been reserved in accordance with the provisions            |
|                                                             | 7  | of subsection (1) of this section, it shall be stated in the form of a special case |
|                                                             | 8  | and filed with the Registrar of the Federal High Court.                             |
| Limitation of Suits against the Authority, its Agents, etc. | 9  | 109.-(1) Any suit or proceedings against the Authority, a member of the             |
|                                                             | 10 | Governing Board or any employee of the Authority for any act, omission or           |
|                                                             | 11 | default in respect of its functions and powers under this Act or any other          |
|                                                             | 12 | enactment shall be brought within twelve months after the act, neglect or           |
|                                                             | 13 | default complained of or in the case of a continuance of damage or injury,          |
|                                                             | 14 | within twelve months after such damage or injury may have ceased.                   |
|                                                             | 15 | (2) No suit shall be commenced against the Authority before the expiration          |
|                                                             | 16 | of a period of one month after written notice of intention to commence the suit     |
|                                                             | 17 | has been served upon the Authority by the intending plaintiff or his agent.         |
|                                                             | 18 | (3) The notice shall clearly and explicitly state-                                  |
|                                                             | 19 | (a) the cause of action;                                                            |
|                                                             | 20 | (b) the particulars of the claim;                                                   |
|                                                             | 21 | (c) the name, address of service, and place of-abode of the intending               |
|                                                             | 22 | plaintiff; and                                                                      |
|                                                             | 23 | (d) the relief which he or she claims.                                              |
| Service of Notice on the Authority.                         | 24 | <b>110.</b> Any summons, notice or other document required or authorised to be      |
|                                                             | 25 | served upon the Authority under the provisions of this Act or any other enactment   |
|                                                             | 26 | or law may be served by delivering the same to the Director General of the          |
|                                                             | 27 | Authority or the Secretary to the Authority at the head office of the Authority.    |
| Judgment against the Authority.                             | 28 | 111.-(1) Where a judgment of the Court awards any sums of money                     |
|                                                             | 29 | against the Authority, the said amounts shall be paid from the general reserve      |
|                                                             | 30 | funds of the Authority.                                                             |
|                                                             | 31 | (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  
2 given by the court.

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

8 *Chapter V - The National Petroleum Assets Management Agency*

9 113.-(1) There is hereby established a National Petroleum Assets Establishment  
10 Management Agency ("the Agency") which shall be a body corporate with of the  
11 perpetual succession and a common seal. National  
Petroleum  
Assets  
Management  
Agency.

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

15 114.-(1) The Agency shall be in charge of monitoring and approving Objects.  
16 costs in the upstream petroleum industry of Nigeria with the objective of  
17 maximising the total revenue accruing to the government from the upstream  
18 petroleum industry in Nigeria.

19 (2) The Agency shall ensure that all operations in the upstream petroleum  
20 industry achieve the objective of realising or achieving optimal financial returns.

21 115. The functions of the Agency shall be- Functions.

22 (a) to approve commercial and cost elements of all field development  
23 programmes in the upstream industry in Nigeria;

24 (b) to superintend and oversee the activities of all operators to which this  
25 chapter applies in the upstream petroleum industry in all areas pertaining to  
26 cost control and in pursuance of this, to approve commercial aspects of work  
T7 programmes and field development plans for all operators in the upstream  
28 oil industry, including the National Oil Company;

'9 (c) through the monitoring of costs, encourage and stimulate the activities  
30 of all operators in the upstream petroleum industry so as to-

31 (i) ensure that national reserve objectives are maintained;

(ii) increase national production capacity in accordance with targets set by the Directorate;

(iU) promote increased Nigerian content by utilising indigenous technological capabilities in engineering and construction in all areas of the Nigerian petroleum industry;

(iv) promote technology transfer into the country;

(v) promote the increased participation of Nigerians in accordance with targets set by the Directorate;

(vi) facilitate and promote harmony and maximum cooperation between operators in the upstream petroleum industry and the communities residing or working in areas where petroleum is produced.

(d) to provide regular cost information to the Directorate for the purpose of allocating petroleum quotas to cost effective operators.

(e) to develop cost benchmarks for the evaluation of opportunities in the upstream petroleum industry.

(j) to receive and dispose of petroleum accruing to the federal government which is produced under production sharing contracts, consisting of tax oil and royalty oil but not profit oil;

(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.

Powers of the Agency.

**116.** The Agency shall have the power to-

(a) enforce the provisions of this Chapter and any regulations made thereunder;

(b) enter into contracts with any person which in the opinion of the Agency will facilitate the discharge or exercise of its duties or powers under this Chapter;

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

Governing Board of the Agency.

**117.-(1)** There is established for the Agency a Governing Board ("the Board"), which shall consist of-

(a) a non executive Chairman appointed by the President;

(b) one representative of the National Petroleum Directorate;

(c) one representative of the Nigerian Petroleum Inspectorate;

(d) one representative of the Federal Inland Revenue Service;

(e) five 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;

(f) three Directors who are full time staff of the Agency, to be appointed to the Board by the President; and

(g) the Director-General of the Agency;

(2) The persons appointed pursuant to subsections (a) (e) and (f) of this section shall hold their membership of the Agency for four years subject to re-appointment for another period of four years only on such terms and conditions as may be specified in their letters of appointment.

(3) The proceedings of the Board of the Agency and other ancillary matters shall be regulated by the Fourth schedule to this Act.

118.-(1) The Board shall ensure that the Agency carries into effect its statutory functions as contained in this Act.

Functions and  
Remuneration.

(2) Members of the Board 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.

(3) In determining remunerations and allowances in accordance with subsection (2) of this section, 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.

119.-(1) There shall be an officer of the Agency to be known as the Director-General, who shall be appointed by the President and shall be-

The Director-  
General of the  
Agency.

(a) a person with cognate knowledge and experience in matters pertaining to the petroleum industry; and

(b) the chief executive and accounting officer of the Agency and responsible for running the day-to-day affairs of the Agency.

(2) 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.

120.-(1) The Director-General shall hold office for five years in the first instance, which may be renewed for another period of five 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.

**121.** No person shall be appointed as Director-General or member of the Board unless he or she-

(a) is a Nigerian citizen;

(b) has not, in accordance with the terms of laws in force in any country within which he or she has been working or residing:

(i) been adjudged or declared bankrupt or insolvent;

(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 banned or 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.

Vacation of  
Office and  
Termination.

**122.** The office of the Director General or member of the Board shall become vacant:

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

(b) if he or she becomes disqualified under the provisions of section 121  
2 of this Act;

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

4 123. The President shall require the Director General or member of the  
5 Board to vacate his or her office if he or she:

6 (a) has committed an act of gross misconduct;

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

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

11 124. Where there is a vacancy on the Board, the candidate to fill the said  
12 vacancy shall be appointed in accordance with the provisions of sections 117  
13 and 121 of this chapter.

14 125.-(1) The Agency shall appoint a Secretary who shall keep the corporate Secretary.  
15 records and common seal of the Agency and undertake such other functions as  
16 the Director General and the Agency may from time to time direct.

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

19 126.-(1) The Agency may, from time to time, appoint such professionals Other staff.  
20 experienced in the petroleum industry and other persons as staff of the Agency  
21 to assist it in the performance of its functions under this Act.

22 (2) Staff of the Agency appointed under subsection (1) of this section shall  
23 be appointed on such terms and conditions as the Agency may prescribe under  
24 guidelines to be issued by the Minister.

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

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

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

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

2 (ii) the need to ensure financial self-sufficiency of the Agency; and

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

Pensions.

5 128.-(1) Service in the Agency shall be approved service for the purpose  
6 of the Pensions Reform Act Cap. P4 Laws of the Federation of Nigeria 2004  
7 and accordingly, officers and other persons employed in the Agency shall be  
8 entitled to pensions, gratuity and other benefits as prescribed in the Pensions  
9 Reform Act.

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

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

Financial  
Provisions.

18 129.-(1) The Agency shall, not later than September in each year, present  
19 to the Minister, a budget showing the proposed expenditure of the Agency in  
20 respect of the next succeeding financial year insofar as the amount so budgeted  
21 does not exceed the total amount accruable to the Agency from its sources of  
22 funding in any financial year.

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

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

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



130.-(1) The Agency shall establish and maintain a fund which shall  
2 consist of- Funds of the Agency.

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

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

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

13 (2) The Agency shall apply the proceeds of the fund established pursuant  
14 to subsection (1) of this section-

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

16 (b) to the payment of-

17 (i) salaries;

18 (ii) fees or other remunerations or allowances; and

19 (iii) pensions, gratuities and other retiring benefits payable to members  
Z> of the Agency or its employees;

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

22 (d) for purposes of investment; as prescribed by the Trustee Investments  
23 Act, Cap. 722 Laws of the Federation of Nigeria 2004, or any other relevant  
24 statute; and

25 (e) in connection with carrying out its functions under this Act.

26 131.-(1) The Agency may accept grants of money or other property upon  
Zf such terms and conditions, if any, as may be specified by the person or  
28 organisation making the grants provided such grants are not inconsistent with  
19 the objectives and functions of the Agency under this Act.

:1} (2) Nothing in subsection (1) of this section or in this Act shall be construed  
31 to allow the Director-General and other staff of the Agency to accept grants for

Power to  
Accept  
Grants.

|                      |    |                                                                                   |
|----------------------|----|-----------------------------------------------------------------------------------|
|                      | 2  | their personal use.                                                               |
| Borrowing powers.    | 2  | 132. The Agency may, with the consent of the Minister of Finance and              |
|                      | 3  | the approval of the Governing Board, borrow money required in the exercise of     |
|                      | 4  | its functions on such terms and conditions as the Governing Board, may prescribe. |
| Accounts and Audits. | 5  | 133. The Agency shall keep proper accounts of its income and expenditure          |
|                      | 6  | in respect of each year and shall cause its accounts to be audited within six     |
|                      | 7  | months after the end of each year by auditors appointed in accordance with        |
|                      | 8  | guidelines published by the Auditor-General of the Federation.                    |
| Annual Reports.      | 9  | 134. The Agency shall prepare and submit to the Minister not later than           |
|                      | 10 | the month of July in each year a report in such form as the Minister may direct,  |
|                      | 11 | on the activities of the Agency during the immediately preceding year, and        |
|                      | 12 | shall include in such report a copy of the audited accounts of the Agency for the |
|                      | 13 | year and the Auditor-General's report thereon.                                    |
| Legal Proceedings.   | 14 | 135.-(1) No suit shall be commenced against the Agency before the                 |
|                      | 15 | expiration of a period of one month after written notice of intention to commence |
|                      | 16 | the suit shall have been served on the Agency by the intending plaintiff or his   |
|                      | 17 | agent.                                                                            |
|                      | 18 | (2) The notice shall clearly state the-                                           |
|                      | 19 | (a) cause of action;                                                              |
|                      | 20 | (b) particulars of the claim;                                                     |
|                      | 21 | (c) name, place of abode and address for service of the intending plaintiff;      |
|                      | 22 | and                                                                               |
|                      | 23 | (d) relief claimed by the plaintiff.                                              |
|                      | 24 | (3) The notice referred to in subsection (1) of this section and any summons,     |
|                      | 25 | notice or other document required or authorised to be served on the Agency        |
|                      | 26 | under the provisions of this Act or any other enactment or law, may be served     |
|                      | 27 | by-                                                                               |
|                      | 28 | (a) delivering the same to the Director General or any other principal            |
|                      | 29 | officer of the Agency; or                                                         |
|                      | 30 | (b) sending it by registered post addressed to the Director General at the        |
|                      | 31 | head office of the Agency.                                                        |

*Chapter VI - Nigerian National Petroleum Company Limited*

2           136.-(1) The Nigerian National Petroleum Company Limited ("The  
3 National Oil Company"), shall be a limited liability company and shall be the  
4 successor company to the assets and liabilities of the Nigerian National  
5 Petroleum Corporation ("the Corporation").

The National  
Oil Company.

6           (2) If, on the effective date the National Oil Company has not been  
7 incorporated, within three months of the said effective date, the government  
8 through the Oil and Gas Sector Reform Implementation Committee shall cause  
9 the National Oil Company to be incorporated.

10           (3) The tenure of the initial Board of Directors of the National Oil Company  
11 and subsequent appointments to the Board shall be determined in accordance  
12 with the provisions of the Articles of Association of the National Oil Company.

13           (4) Ownership of the National Oil Company shall be vested solely in the  
14 Federal Government of Nigeria at the time of incorporation.

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

20           137.-(1) On the effective date, if the National Oil Company has been  
21 incorporated before the said effective date, or no later than one month after the  
22 date of incorporation of the National Oil Company, the assets and liabilities of  
23 the former Corporation shall be transferred to the National Oil Company.

Transfer of  
assets and  
liabilities.

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

29           (3) For the avoidance of doubt, all bonds, hypothecations, securities,  
30 deeds, contracts, instruments, documents and working arrangements subsisting  
31 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  
2 favour of the National Oil Company as if, instead of the Corporation, the  
3 National Oil Company had been named therein.

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

7 (5) Notwithstanding the provision of subsection (4) of this section-

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

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

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

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

Guarantees to  
subsist.

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

Transfer of  
employees  
and conditions  
of service.

24 139.-(1) With effect from the transfer date, the employees of the  
25 Corporation shall be deemed to be employees of the National Oil Company on  
26 terms no less favourable than those enjoyed immediately prior to such transfer,  
27 and service with the National Oil Company shall be deemed to be service  
28 qualifying for employment-related-entitlements as may be specified under any  
29 relevant enactment.

30 (2) The National Oil Company shall continue to fulfil all statutory  
31 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  
2 Company.

3       **140.-(1)** The Minister shall by notice published in the Gazette record Notice.  
4 satisfaction that the assets and liabilities of the Corporation have been transferred  
5 to the National Oil Company in accordance with the provisions of this part of  
6 this Act.

7       **141.** Subject to the provisions of this and other relevant laws, members of The Board.  
8 the board of the National Oil Company shall be guaranteed the authority and  
9 resources to fulfil their duties in ~'professional and objective manner without  
10 interference.

11       **142.-(1)** The Board of the National Oil Company shall consist of Composition  
12 Nigerians- of the Board.

13       (a) who have distinguished themselves in their various capacities,  
14       (b) who have unblemished records of honesty and integrity, and  
15       (c) who will be able to exercise independence and objectivity with respect  
16 to the affairs of the National Oil Company.

17       **143.-(1)** Members of the Board shall within the first three months develop Board  
18 a formal and transparent board nomination and selection process for the Committees.  
19 committees of the Board.

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

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

26       (a) ensuring the integrity of financial and non-financial reporting;  
27       (b) nominations of board members and key executives; and  
28       (c) Board remuneration.

29       **144.** Board members shall discharge their responsibilities in accordance  
30 with the best standards, practices and principles of corporate governance and  
31 their actions shall be transparent and fully explained to affected stakeholders

and where necessary, to the general public.

Responsibilities  
of the Board.

- 2           145. The Board of the National Oil Company shall at all times—
- 3           (a) be responsible for the strategic guidance of the National Oil Company
- 4           in accordance with the guidelines established by the shareholders for the
- 5           effective monitoring of the National Oil Company's management by the
- 6           board; and
- 7           (b) be accountable to the National Oil Company and the shareholders.
- 8           (c) act in good faith and on a fully informed basis, and exercise due
- 9           diligence and care in the best interests of the National Oil Company, the
- 10          shareholders and the sustainable development of Nigeria.
- 11          (d) while recognizing that Board decisions may affect the various
- 12          shareholders and stakeholders differently, endeavour to treat different
- 13          shareholders and stakeholders fairly and equally, as the case may be.
- 14          (e) apply high ethical standards in performing its duties to the National
- 15          Oil Company, taking into account the interests of its stakeholders.

Functions of  
the Board.

- 16          146. The functions of the Board shall include—
- 17          (a) reviewing and guiding corporate strategy, major plans of action, risk
- 18          policy, annual budgets and business plans; setting performance objectives;
- 19          monitoring implementation and corporate performance; and overseeing major
- 20          capital expenditures, acquisitions and divestitures.
- 21          (b) monitoring the effectiveness of the National Oil Company's governance
- 22          practices and making changes as required.
- 23          (c) selecting, compensating, monitoring and, when necessary, replacing
- 24          management executives and overseeing succession planning.
- 25          (d) aligning key executive and board remuneration with the longer term
- 26          interests of the National Oil Company, its shareholders and stakeholders.
- 27          (e) monitoring and managing potential conflicts of interest of management,
- 28          board members and shareholders, including misuse of corporate assets and
- 29          abuse in related National Oil Company transactions.
- 30          (f) ensuring the integrity of the National Oil Company's accounting and
- 31          financial reporting systems, including the independent audit, and that

appropriate systems of control are in place, in particular, systems for risk  
2 management, financial and operational control, and compliance with the  
3 law and relevant standards.

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

6 147.-(1) Shareholders of the National Oil Company shall be entitled to  
7 full disclosure about the National Oil Company, which disclosure shall include,  
8 but not be limited to, material information on-

Rights of  
Shareholders.

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

10 (b) National Oil Company objectives.

11 (c) major share ownership and voting rights.

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

16 (e) related National Oil Company transactions.

17 (j) foreseeable risk factors in National Oil Company activities.

18 (g) issues regarding employees and other stakeholders.

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

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

26 (3) An annual audit of the National Oil Company shall be conducted by an  
27 independent, competent, experienced and qualified auditor that shall be  
28 accountable to the shareholders and shall provide an external and objective  
29 assurance to the board and shareholders that the financial statements fairly  
30 represent the financial position and performance of the National Oil Company  
31 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.

*Chapter VII - The Nigerian Petroleum Research Centre*

Establishment  
of the  
Nigerian  
Petroleum  
Research  
Centre.

148.-(1) There is established a body to be known as the Nigerian Petroleum Research Centre ("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.

149. 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;

(b) carry out research and advise the Minister and the Directorate on matters relating to exploration and production outside Nigeria;

(c) advise the Minister, the Directorate and the Inspectorate, as the case may be, on-

(i) the technical evaluation of any acreages whatsoever;

(ii) the value of any licences or leases, particularly during the bidding round process.

(d) collaborate with the Inspectorate and undertake analyses and re-evaluation of any data and information that may be provided by operators;

(e) domesticate and acquire patents on any new technologies that may be discovered or invented and market these new technologies to any person, subject to the approval of the Minister;



- 1 *if*) undertake routine analyses and consultancies for all customers/operators  
2 on a commercial basis;
- 3 *(g)* organise training courses, workshops, seminars and conferences for  
4 the purpose of promoting the functions of the Centre, capacity building,  
5 increasing Nigerian content and sensitising the government and people of  
6 Nigeria on issues relating to the" petroleum industry;
- 7 *(h)* collect and collate independent data from Research Institutes and  
8 Universities locally and abroad;
- 9 *(l)* operate data prying services for other regulatory agencies, government  
10 and potential investors in return for fees chargeable at commercial rates;
- 11 *(j)* collate and review all literature and data on the industry emanating  
12 from universities and research institutes at home and abroad and downsize  
13 these into a data bank;
- 14 *(k)* operate a comprehensive data bank, including seismic data, which  
15 data shall be made available to the Directorate and the Inspectorate on  
16 request, and to operators (including the National Oil Company) on purchase;
- 17 *(1)* carry out environmental impact assessments of any projects in the  
18 petroleum industry for any person in return for fees at commercial rates;
- 19 *(m)* advise government on policy formulation on all issues that are relevant  
20 to increase Nigerian Content levels in the Nigerian petroleum industry;
- 21 *(n)* collaborate with other research institutes within and outside the country  
22 on activities of common interest;
- 23 *(o)* carry out research or investigation into the availability of local raw  
24 materials for use in the petroleum industry;
- 25 *(p)* carry out research on engineering activities as they relate to the  
26 petroleum industry and for operators, either jointly or in collaboration;
- 27 *n* *(q)* where necessary and as requested by the Directorate or the  
28 Inspectorate, to collect samples at well\_sites and to carry out analyses,  
29 either independently or jointly with operators of the licence or lease, as the  
30 case may be;
- 31 *(r)* five years after acquisition, obtain from the operator all seismic data

obtained from any licence or lease in Nigeria; and

2 (s) do any other matters incidental to the functions listed in this section.

Powers of the  
Centre.

3 **150.** The Centre shall have:

4 (a) power to charge fees at commercial rates for its services to any  
5 government or person;

6 (b) access to licence, lease, or contract areas, well-sites, storage depots,  
7 refineries and any other places where activities relating to the petroleum  
8 industry are carried out, for purposes of collecting samples for independent  
9 analyses and for the Centre's research.

Supervisory  
Council.

10 **151.-(1)** There is established for the Centre a Supervisory Council ("the  
11 Supervisory Council") which shall consist of:

12 (a) a Chairman to be appointed by the President;

13 (b) one representative not below the rank of a Director from the:

14 (i) Nigerian Petroleum Inspectorate

15 (ii) Nigerian Petroleum Directorate

16 (iii) Ministry of Science and Technology;

17 (iv) Petroleum Technology Development Fund;

18 (c) one representative of the Nigerian National Petroleum Company  
19 Limited not below the rank of a General Manager;

20 (d) one representative of oil exploration and production companies operating  
21 in Nigeria;

22 (e) two petroleum scientists appointed on the recommendation of the  
23 Council of Registered Engineers of Nigeria and the Council of Nigerian  
24 Mining and Geosciences Society;

25 (f) one representative of the Nigerian Academy of Sciences;

26 (g) three Directors who are full time staff of the Inspectorate, to be  
27 appointed to the Board by the President; and

28 (h) the Director-General of the Centre.

29 (2) The Chairman of the Supervisory Council shall be a person  
30 knowledgeable in the petroleum industry with cognate experience of not less  
31 than 15 years.

(3) A person appointed under subsection (1) (a), (d), (e) and *if* of this section shall hold office for four years in the first instance subject to reappointment for another period of four years only.

(4) Members of the Supervisory Council shall be paid such remuneration and allowances as may be determined from time to time by the Minister.

(5) The proceedings of the Supervisory Council and other ancillary matters shall be regulated by the Fifth schedule to this Act.

152.-(1) The Supervisory Council shall be responsible for determining the overall policy and programmes of the Centre and for ensuring the implementation of such policies and programmes in accordance with the functions of the Centre.

Powers of the Supervisory Council.

(2) Without prejudice to subsection (1) of this section, the Supervisory Council shall-

(a) approve the research and training programmes of the Centre;

(b) determine the fees to be paid for research, consulting, training and other services that may be offered by the Centre;

(c) promote any other activity that in the opinion of the Supervisory Council will help to achieve the objectives of the Centre.

153.-(1) There shall be an officer of the Centre to be known as the Director-General, who shall be appointed by the President.

Director-General of the Centre.

(2) The Director-General shall be an accomplished researcher of national and international repute in the field of engineering, physical sciences or geosciences, with a minimum of fifteen years cognate knowledge and experience in matters pertaining to the petroleum industry.

(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.

154.-(1) The Director-General shall hold office for five years in the first instance subject to re-appointment for another period of five years only, on

Tenure, Remuneration and conditions of Service.

such terms and conditions as may be determined by the Minister or as specified  
2 in his or her letter of appointment.

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

Disqualification.

7 155. No person shall be appointed as Director General or member of the  
8 Supervisory Council unless he or she-

9 (a) is a Nigerian citizen;

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

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

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

14 (iii) been declared to be of unsound mind;

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

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

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

Vacation of  
Office and  
Termination.

20 156. The office of the Director General or member of the Supervisory  
21 Council shall become vacant:

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

24 (b) if he or she becomes disqualified under the provisions of Section 155  
25 of this Act; or

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

27 157.-(1) The President shall require the Director General or member of  
28 the Supervisory Council to vacate his or her office if he or she-

29 (a) has committed an act of gross misconduct;

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

(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;

158. Upon the vacancy of a member's office, the President shall subject to section 151, appoint a candidate to fill the vacancy.

159.-( 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.

Directors 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.

160.-( 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.

Other staff.

(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.

(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.'

161. 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.

Tenure. Remuneration and Conditions of Service.

162. 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,

Provision of library facilities.

for research purposes, and for other purposes concerned with the objects and  
2 functions of the Centre.

Pensions.

3 163.-(1) Service in the Centre shall be approved service for the purpose  
4 of the Pension Reforms Act Cap P4, Laws of the Federation of Nigeria, 2004  
5 and accordingly, officers and other persons employed in the Centre shall be  
6 entitled to pensions, and other benefits as prescribed in the Pension Reforms  
7 Act, Cap. P4, Laws of the Federation of Nigeria, 2004

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

11 (3) In the application of the Pension Reforms Act Cap P4, Laws of the  
12 Federation of Nigeria, 2004 to the Centre, any power exercisable under the  
13 Act by a Minister or other authority of the Government of the Federation, other  
14 than the power to make regulations is hereby vested in and shall be exercisable  
15 by the Centre and not by any other person or authority.

Financial  
Provisions of  
the Centre.

16 164.-(1) The Centre shall, not later than September in each year, present  
17 to the Minister, a budget showing the proposed income and expenditure of the  
18 Centre in respect of the next succeeding financial year, insofar as the amount  
19 so budgeted does not exceed the total amount accruable to the Centre from its  
20 sources of funding in any financial year.

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

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

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

Funds of the  
Centre.

30 165.-(1) The Centre shall maintain a fund from which both the capital  
31 and recurrent expenditure of the Centre shall be defrayed and which shall

consist of-

2 (a) an amount of fiscalized crude from the account of the Directorate  
3 specifically set aside for the collection of fiscalized crude on behalf of the  
4 Institutions that is sufficient to fund the complete budget, or an authorized  
5 portion of the budget of the Centre, in accordance with the provisions of this  
6 Act;

7 (b) money appropriated for that purpose from time to time by the National  
8 Assembly; and

9 (c) fees paid in respect of services rendered by the Centre.

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

14 **166.** The Centre may accept gifts of money or other property, upon such  
15 terms and conditions as may be specified by the person or organisation making  
16 the gift provided such terms and conditions are consistent with the objectives  
17 and functions of the Centre under this Act.

Power to  
accept gifts.

18 **167.** The Centre may, with the consent of the Minister and the approval  
19 of the Supervisory Council, borrow money required in the exercise of its functions  
20 on such terms and conditions as the Supervisory Council may prescribe.

Borrowing  
powers.

21 **168.** The annual budget of the Centre shall be considered by the Supervisory  
22 Council and thereafter placed before the Minister for approval.

Annual  
Budget.

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

Account and  
Audit.

27 **170.**-(1) The Centre shall submit to the President, a mid-year report of  
28 its operations and finances not later than 31 st July of each year and an annual  
29 report of its operations, performance and audited financial report of the preceding  
30 year not later than 31 st July of the following year.

Mid-year and  
Annual  
Reports.

31 (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  
2 widely circulating newspapers in every geopolitical zone of the country for  
3 public notice not later than 31st July of each year.

Restrictions  
on Legal  
Proceedings.

4 171.-(1) Any suit or proceedings against the Centre, a member of the  
5 Supervisory Council or any employee of the Centre for any act, omission or  
6 default in respect of its functions and powers under this Act or any other  
7 enactment shall be brought within twelve months after the act, neglect or  
8 default complained of, or in the case of a continuance of damage or injury,  
9 within twelve months after such damage or injury may have ceased.

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

13 (3) The notice shall clearly and explicitly state-

14 (a) the cause of action;

15 (b) the particulars of the claim;

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

18 (d) the relief which is being claimed.

Service of  
Documents.

19 172. The notice referred to in section 171(2) of this Act and any other  
20 process required or authorized to be served upon the Centre under the provisions  
21 of this Act or any other enactment may be served by-

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

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

Indemnity of  
Supervisory  
Council and  
Employees.

26 173.-(1) Every member of the Supervisory Council and every employee  
27 for the time being of the Centre shall be indemnified out of the assets of the  
28 Centre against any liability incurred in defending any proceeding against the  
29 Centre, whether civil or criminal, if such proceedings are brought against the  
30 person in his or her capacity as a member of the Supervisory Council or employee.

31 (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.

4 *Chapter VIII - National Frontier Exploration Service*

5 174.-(1) There is established by this Act the National Frontier Exploration Establishment  
6 Service ("the Frontier Service") which shall be a body corporate with perpetual of the  
7 succession and a common seal. National  
8 Service.

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

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

13 175.-(1) The Objects of the Frontier Service shall be- Objects of the  
14 Frontier  
15 Service.

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

16 (b) evaluate all unassigned concessions in Nigeria and

17 (c) undertake activities stimulate exploration interest of local and  
18 international oil Companies towards increasing Nigeria's oil and gas reserves.

19 176.-(1) The functions of the Frontier Service shall be to-

XI (a) regulate petroleum exploration activities in all unassigned frontier Functions of  
21 acreages in Nigeria held by the Directorate. the Frontier  
22 Service.

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

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

Z7 (d) promote and stimulate the interest of petroleum exploration and  
28 production companies in all unassigned frontier exploration acreages in  
'19 Nigeria.

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

if> undertake any studies and analyses on all unassigned frontier acreages  
 2 in Nigeria including-

- 3 (i) aeromagnetic and gravity data interpretation;
- 4 (ii) sedimentological studies of any wells previously drilled in the  
 5 frontier acreages using old and newly generated data;
- 6 (iii) high resolution biostratigraphic analysis and the preparation of  
 7 any photocatalogues;
- 8 (iv) sequence stratigraphic analysis, petrophysical analysis, petroleum  
 9 geochemical analysis and any other analysis;
- 10 (v) petrophysical and dipmeter sedimentology studies;
- 11 (vi) petrography and mineralogical studies;
- 12 (vii) digitization of all well logs;
- 13 (viii) scanning, vectorization and workstation interpretation of any  
 14 seismic sections;
- 15 (ix) transcriptions of magnetic seismic tapes;
- 16 (x) basin modelling.

Powers.

17 177. The Frontier Service shall have the power-

- 18 (a) to enter into contracts with any person which in the opinion of the  
 19 Frontier Service will facilitate the discharge or exercise of its duties or  
 20 powers under this Chapter;
- 21 (b) to charge fees at commercial rates for its services to any government  
 22 or person;
- 23 (c) enter any licence, lease, contract, or permit areas within the frontier  
 24 acreages, including well-sites, storage depots, refineries and any other places  
 25 where activities relating to the petroleum industry are carried out, for the  
 1fj purposes of collecting data and samples in pursuance of the functions of the  
 27 Frontier Service.
- 28 (d) do such other things as are necessary and expedient for the effective  
 29 and full discharge of its functions under this Chapter.

The Governing  
 Board of the  
 Frontier  
 Service.

30 178.-(1) There is established for the Frontier Service a Governing Board  
 31 ("the Board") which shall consist of:

a non-executive Chairman, appointed by the President-

2 (a) a Director-General; and

3 (b) the Directors of the Service.

4 (2) The proceedings of the Board of the Frontier Service and other ancillary  
5 matters shall be regulated by Schedule to this Act.

6 179.-(1) There shall be an officer of the Frontier Service to be known as  
7 the Director-General, who shall be appointed by the President. Director-  
General.

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

11 (3) The Director-General shall be the chief executive and accounting  
12 officer of the Frontier Service and shall be responsible for running the day-to-  
13 day affairs of the Frontier Service.

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

16 180.-(1) The Director-General shall hold office for five years in the  
17 first instance which may be renewed for another period of five years only on  
18 such terms and conditions as may be specified in the letter of appointment. Tenure,  
Remuneration  
and  
Conditions of  
Frontier  
Service.

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

22 181.-(1) There shall be appointed, Directors who shall assist the Director-  
23 General in managing and discharging the responsibilities of the Frontier Service. Directors.

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

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

30 **182.** No person shall be appointed a Director-General or Director unless  
31 he or she- Disqualification.

(a) is a Nigerian citizen;

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

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

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

6 (iii) been declared to be of unsound mind;

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

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

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

Vacation of  
Office and  
Termination.

12 183. The office of the Director-General shall become vacant-

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

15 (b) if he or she becomes disqualified under the provisions of Section 181  
16 of this Act; or

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

18 184. The President shall require the Director-General to vacate his or  
19 her office if he or she-

20 (a) has committed an act of gross misconduct;

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

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

25 185. Upon the vacancy of the Director-General's office, the President  
26 shall, subject to the provisions of sections 5 and 6, appoint a candidate to fill  
27 the vacancy.

The Secretary  
of the  
Frontier  
Service.

28 186.-(1) The Board of the Frontier Service shall appoint a Secretary  
29 who shall keep its corporate records and undertake such other functions as the  
30 Director-General and the Frontier Service may from time to time direct.

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

experience.

2           187.-(1) Every member of the Board and every employee of the Frontier  
3 Service shall be indemnified out of the assets of the Frontier Service against  
4 any liability incurred in defending any proceeding against the Frontier Service,  
5 whether civil or criminal, if such proceedings are brought against the person in  
6 his or her capacity as a member of the Governing Board or employee.

Indemnity of  
Governing  
Board and  
Employees.

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

11           188.-(1) The Frontier Service may, from time to time, appoint such  
12 experienced professionals as members of staff to assist it in the performance of  
13 its functions under this Act.

Other Staff.

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

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

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

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

Tenure,  
Remuneration  
and  
Conditions of  
Service.

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

25           (ii) the need to ensure financial sufficiency of the Frontier Service; and

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

28           190.-(1) service in the Frontier Service shall be approved service for  
29 the purpose of the Pensions Reform Act Cap. P4, Laws of the Federation of  
30 Nigeria 2004, and accordingly, officers and other persons employed in the  
31 Frontier Service shall be entitled to pensions and other benefits as are prescribed

Pensions.

in the Pensions Reform Act CAP P4, Laws of the Federation of Nigeria 2004.

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

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

Financial  
Provisions.

10 191.-(1) The Frontier Service shall, not later than September in each  
11 year, present to the Minister, a budget showing the expected income and the  
12 expenditure which the Service proposes to expend in respect of the next  
13 succeeding financial year.

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

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

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

Funding.

22 192.-(1) The Frontier Service shall establish and maintain a fund which  
23 shall consist of-

24 (a) such money as may, from time to time, be appropriated to the Frontier  
25 Service by the Federal, State or Local Government;

26 (b) a portion of fiscalised crude and or fiscalised natural gas set aside for  
27 the use of the Frontier Service in accordance with the provisions of section  
28 28 of this Act;

29 (c) money raised for the purposes of the Frontier Service by way of gifts,  
30 loans and grants-in-aid;

31 (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;

193.-(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.

Power to Accept Gifts.

(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.

194. 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.

Borrowing Powers.

195. 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.

Accounts and Audits.

196. 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.

Annual Reports.

197. All income derived by the Frontier Service from the sources specified in section 192 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.

Exemption from Income Tax.

Restrictions  
on Legal  
Proceedings  
and Notice of  
Suits.

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

7 (2) No suit shall be commenced against the Frontier Service before the  
8 expiration of a period of one month after written notice of intention to commence  
9 the suit shall have been served on the Frontier Service by the intending plaintiff  
10 or his agent.

11 (3) The notice shall clearly state the-

12 (a) cause of action;

13 (b) particulars of the claim;

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

15 and

16 (d) reliefs claimed by the plaintiff.

17 (4) The notice referred to in this Section and any summons, notice or  
18 other document required or authorised to be served on the Frontier Service  
19 under the provisions of this Act or any other enactment or law, may be served  
W by-

21 (a) delivering the same to the Director-General or any Director of the  
22 Frontier Service; or

23 (b) sending it by registered post addressed to the Director-General at the  
24 head office of the Frontier Service.

25 *Chapter IX - Petroleum Equalisation Fund*

Establishment  
of the  
Equalisation  
Fund.

26 199.-(1) There is hereby established a Fund to be known as the Petroleum  
T7 Equalisation Fund ("the Equalisation Fund") into which shall be paid-

28 (a) any net surplus revenue recovered from petroleum products marketing  
19 companies pursuant to this Act; and

:rl (b) such sums as may be provided for that purpose by the Federal  
31 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 his Act perform all acts that corporate bodies may perform by law.

200.-(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.

Establishment  
of the  
Petroleum  
Equalisation  
Fund  
Management  
Board.

(2) The Board shall consist of-

(a) a representative of the National Petroleum Directorate who shall be 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 Secretary.

(3) The Chairman shall hold office for four years subject to re-appointment for another period of four 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.

**201.** The Board shall-

Functions of  
the Board.

(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

*Petroleum Industry*

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.

**202.** 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 moneys collected, paid or otherwise expended in relation to the Equalisation Fund and pursuant to the provisions of this Chapter;

(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.

203. The Equalisation Fund shall be utilized for-

Utilisation of  
the Fund.

- 2 (a) the proper administration of the Equalisation Fund;
- 3 (b) the reimbursement of petroleum products marketing companies for
- 4 any loss sustained by them solely and exclusively as a result of sales by them
- 5 of petroleum products at uniform prices throughout Nigeria, being benchmark
- 6 prices set by the Authority; and
- 7 (c) the management of the Board.

8 204.-(1) There shall be an officer of the Fund to be known as the Executive

9 Secretary, who shall be appointed by the President.

Executive  
Secretary.

10 (2) The Executive Secretary shall be a person with cognate experience in

11 financial and accounting matters relevant to the petroleum industry.

12 (3) The Executive Secretary shall be the chief executive and accounting

13 officer of the Board and shall be responsible for running the day-to-day affairs

14 of the Board.

15 205. The Executive Secretary shall be responsible for-

Functions.

16 (a) the day to day management of the Equalisation Fund, subject to the

17 directives of the Board;

18 (b) determining the net surplus revenue recoverable from any petroleum

19 products marketing company and accruing to that company from the sale by

20 it of petroleum products at such prices, as may be sold in accordance with

21 the methodology established by the Authority;

22 (c) determining the amount of reimbursement due to any petroleum

23 products marketing company which has suffered loss as a result of the operation

24 of the enactment as aforesaid;

25 (d) the payment of all disbursements authorized under or by virtue of this

26 Act;

27 (e) accounting for all monies collected, paid or otherwise expended under

28 this Act and publishing same in the way and manner prescribed by the Board

29 in consultation with the Authority;

30 if carrying out such other functions as may, from time to time, be specified

31 by the Board.

|                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tenure,<br>Remuneration<br>and<br>Conditions of<br>Service. | 206.-(1) The Executive Secretary shall hold office for five years in the<br>2 first instance, which may be renewed for another period of five years, on such<br>3 terms and conditions as may be specified in the letter of appointment.<br>4 (2) The remuneration, tenure and conditions of service of the Executive<br>5 Secretary shall be at a level sufficient to attract qualified professionals within<br>6 the petroleum industry and shall be determined in accordance with guidelines<br>7 prescribed by the Minister.                                                                                                                 |
| Other officers<br>of the Board.                             | 207. The Board may also, on the advice of the Executive Secretary,<br>8 appoint as employees of the Board such number of persons as may be necessary<br>9 for the administration of the Equalisation Fund, who shall be subject to the<br>10 general control of the Executive Secretary and who shall perform such duties<br>11 as the Executive Secretary may direct.<br>12                                                                                                                                                                                                                                                                     |
| Remuneration.                                               | 208. The remuneration, tenure and conditions of service of staff of the<br>13 Board shall be at a level sufficient to attract qualified professionals within the<br>14 petroleum industry and shall be determined in accordance with guidelines<br>15 prescribed by the Minister upon the recommendation of the Board which shall<br>16 take into account-<br>17<br>18 (a) the specialised nature of work to be performed by the staff;<br>19 (b) the need to ensure financial self-sufficiency of the Board; and<br>20 (c) the salaries paid in the private sector to individuals with equivalent<br>21 responsibilities, expertise and skills. |
| Disqualification,                                           | 209. No person shall be appointed as a member of the Board unless he or<br>22 she-<br>23<br>24 (a) is a Nigerian citizen;<br>25 (b) has not, in terms of the laws in force in any country-<br>26 (i) been adjudged or declared bankrupt or insolvent; or<br>27 (ii) made an assignment to, or arrangement or composition with his<br>28 creditors which has not been rescinded or set aside;<br>29 (iii) been declared to be of unsound mind;<br>30 (iv) been convicted of an offence involving fraud or dishonesty; or<br>31 (v) been disqualified by a competent authority from carrying out any                                               |

assignment, responsibility or function in his or her professional capacity.

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

4 **210.** A member's office shall become vacant-

Vacation of  
Office and  
Termination.

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

7 (b) if he or she becomes disqualified under the provisions of Section 209  
8 of this Act; or

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

10 **211.-(1)** The President shall require a member to vacate his or her  
11 office if he or she-

12 (a) has been found to have conducted himself in a manner unbecoming of  
13 a member;

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

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

18 **212.** Net surplus revenue due and payable by petroleum products marketing  
19 companies shall be payable to the Equalisation Fund in accordance with directives  
20 issued by the Board from time to time, and the Equalisation Fund shall have no  
21 obligation to issue a demand notice in respect thereof nor shall the failure to  
22 issue a demand notice constitute a defence for non payment of outstanding  
23 sums.

Collection of  
Net Surplus  
Revenue.

24 **213.** Nothing in section 212 above shall derogate from the right of any  
25 petroleum products marketing companies maintaining storage facilities to collect  
26 bridging and equalization allowances prior to the release of petroleum products  
27 to petroleum products marketing companies and to remit same to the Board in  
28 accordance with such directives as may be issued by the Board.

Bridging and  
Equalisation  
Allowances.

29 **214.-(1)** Petroleum products marketing companies may, as necessary,  
30 bring claims for the recovery of losses sustained under section 203(b) of this  
31 Chapter in the manner prescribed by the Board.

Claims.

(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.

**215.** 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.

**216.-(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 (2) If any sum is not paid within 21 days of the specified date, a sum equal  
3 to ten per centum of the amount unpaid shall be added for each month or part of  
4 a month after the date on which payment should have been made.

5 (3) The Board may for just cause, waive in whole or in part any penalty  
6 imposed under this section ..

7 (4) Where the Board waives a penalty under the provisions of subsection  
8 (3) of this section, the Board shall give its reasons in writing.

9 **217.-(1)** Service in the Board shall be approved service for the purpose Pensions.  
10 of the Pension Reforms Act Cap P4, Laws of the Federation of Nigeria, 2004  
11 and accordingly, officers and other persons employed in the Board shall be  
12 entitled to pensions, gratuity and other benefits as prescribed in the Pension  
13 Reforms Act Cap P4, Laws of the Federation of Nigeria, 2004.

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

17 (3) In the application of the provisions of the Pension Reforms Act Cap  
18 P4, Laws of the Federation of Nigeria 2004 to the Board, any power exercisable  
19 under that Act by a Minister or other agency is hereby vested in the Board and  
20 shall be exercised by the Board and not by any other person.

21 **218.-( 1)** The Board shall, on or before the beginning of a financial year Financial  
22 present to the Minister, a budget showing the proposed income and expenditure Provisions.  
23 of the Board in respect of a particular financial year insofar as the amount so  
24 budgeted does not exceed the total amount accruable to the Board from its  
25 sources of funding in any financial year.

26 (2) The Board may during a financial year prepare and present to the  
27 Minister, a supplementary budget relating to income and expenditure which  
28 were inadequately represented in the annual budget due to unforeseen  
29 circumstances.

30 (3) A supplementary budget shall be deemed to be part of the annual  
31 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.

219.-(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.

220. 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.

221.-(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

(b) produce them for examination by the Executive Secretary or whoever he or she may mandate to perform this function, as may appear to the Executive Secretary necessary for the proper administration of the provisions of this Act.

222. Disputes between a company and the Equalisation Fund in respect of any matter under this Act shall be referred to the Authority and shall be subject to the dispute resolution processes of the Authority.

Dispute  
Settlement.

*Chapter X - The Petroleum Technology Development Fund*

223.-(1) There is established a Fund to be known as the Petroleum Technology Development Fund ("the Development Fund") which shall be a body corporate with perpetual succession and a common seal.

Fund  
Establishment  
of the  
Petroleum  
Technology  
Development  
Fund.

(2) The Development Fund 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.

224. There shall be paid into the Development Fund moneys comprising-

Sources of the  
Development  
Fund.

(a) the balance of monetary assets outstanding at the commencement of this Act in the accounts of the Petroleum Technology Development Fund established by Act No 25 of 1973;

(b) all sums payable to or received by the Government of the Federation on matters contained in terms of any agreement made by the government and any company in relation to petroleum prospecting or mining concessions;

(c) funds and grants accruing from multilateral agencies, bilateral

institutions and related sources dedicated partly or wholly for the development  
2 of technology, capacities and capabilities in the Nigerian petroleum industry;

3 (c) fees payable for services rendered to local and foreign institutions,  
4 agencies and companies in petroleum and management services;

5 (e) penalty fees resulting from:

6 (i) non-compliance with expatriate quota provisions in terms of number  
7 and life-span on quota position for companies operating in the petroleum  
8 industry in Nigeria;

9 (ii) violation of the Nigerian content policy of positions occupied by  
10 expatriates as provided by the Immigration Act, Cap 171, Laws of the  
11 Federation of Nigeria, 1990 and any other relevant law for all companies  
12 operating in the petroleum industry in Nigeria.

13 (f) any other sum, from time to time freely donated or accruing to the  
14 Government or the Development Fund for development of petroleum  
15 technology, capacities and capabilities or the training and education of  
16 Nigerians in the petroleum industry as the Board established under section  
17 227 of this Chapter may direct; and

18 (g) moneys in the said Development Fund together with interest (if any)  
19 payable in respect thereof.

Reserve  
Account.

20 225.-(1) The Inspectorate which is responsible for the collection of such  
21 sums under section 224 above shall ensure the prompt payment of all such sums  
22 directly into the Development Fund's Reserve Account with the Central Bank  
23 of Nigeria not more than 60 days after payment has been received by the  
24 Inspectorate.

25 (2) All monies stipulated under section 224 of this Act shall be collected  
26 and paid into the Development Fund's Reserve Account with the Central Bank  
27 of Nigeria which shall be under the control of the Accountant General of the  
28 Federation.

29 (3) At the beginning of every financial year the Board shall approve the  
30 Development Fund's Programme of Action with its Cost Implications following  
31 which the approved amount shall be released promptly to the Development

Fund by the Accountant General of the Federation to cover its operations for  
2 that financial year.

3 (4) A copy of the approved Programme of Action referred to in subsection  
4 (3) of this section shall be submitted to the relevant committees of the National  
5 Assembly for the purpose of facilitating their oversight functions over the Fund.

6 (5) The monies in the Development Fund's Reserve Account not disbursed  
7 to the Development Fund shall be held or invested in such manner as may be  
8 determined by the Accountant General of the Federation after consultation  
9 with the Minister.

10 (6) Interest accruing from the investments of the undisbursed capital shall  
11 be paid directly to the Development Fund at the beginning of every financial  
12 year.

13 (7) The Development Fund shall maintain operational accounts with any  
14 bank as may from time to time be approved by the Board.

15 (8) The annual account of the Reserve Account with the Central Bank of  
16 Nigeria shall be prepared by the Accountant General of the Federation and  
17 submitted to the Auditor General of the Federation within seven months of the  
18 end of the financial year to which they relate.

19 (9) The certified annual accounts of the Reserve Account and the audit  
~ report thereon, together with a report on the operations of the Development  
21 Fund, shall be submitted to the Federal Executive Council for its approval  
22 annually by the Minister.

23 226.-(1) The funds of the Development Fund shall be used for the purposes  
24 of training Nigerians to qualify as graduates, professionals, technicians and  
25 craftsmen in the fields of engineering, geology, science and management and  
26 other related fields in the petroleum industry in Nigeria or abroad; and in  
27 particular, and without prejudice to the generality of the foregoing, the funds  
28 shall be utilised to-

29 (a) provide scholarships and bursaries, wholly or partially in universities,  
10 institutions, and in petroleum undertakings in Nigeria or abroad;

31 (b) maintain, supplement, or subsidise such training or education as

Purpose of the  
Development  
Fund.

specified in this subsection;

2 (c) make suitable endowments to faculties in Nigerian universities,  
3 colleges, or institutions as may be approved by the Board;

4 (d) initiate, design and implement effective indigenous research and  
5 capacity development for Nigeria's petroleum industry;

6 (e) coordinate with research centres in Nigeria and abroad on the  
7 adaptation of technology and innovations appropriate for the needs of the  
8 Nigerian petroleum industry;

9 (f) use existing human resources development facilities in Nigeria for an  
10 expanded manpower development programme in the petroleum industry;

11 (g) where applicable, support skill acquisition programmes aimed at  
12 enhancing employment in the petroleum industry in Nigeria;

13 (h) periodically compute, evaluate and update the basic needs of Nigeria's  
14 petroleum industry in terms of skills, expertise and know-how;

15 (i) enhance and develop infrastructure in tertiary institutions that provide  
16 courses of study relevant to the oil and gas industry;

17 (j) make available, suitable books and training equipment in the Nigerian  
18 tertiary institutions;

19 (k) as required, sponsor visits to oilfields, refineries and petrochemical  
20 plants for the purpose of arranging any necessary attachments of personnel  
21 to establishments connected with the development of the petroleum industry;

22 (l) finance participation in seminars and conferences which are connected  
23 with the petroleum industry in Nigeria or abroad.

24 (m) promote in-country fabrication and manufacturing of equipment used  
25 in the Nigerian petroleum industry;

26 (n) generally facilitate the attainment of 100 percent Nigerian content in  
27 the petroleum industry; and

28 (o) engage in any other activity incidental to the Development Fund's  
29 mandate as may be approved from time to time by the Board.

Establishment  
of the Board.

30 227.-(1) There is hereby established for the Development Fund, a Board  
31 to be known as The Petroleum Technology Development Fund Board (in this

Chapter referred to as "the Board").

- 2 (2) The Board shall consist of-
- 3 (a) the Minister of Petroleum as Chairman
- 4 (b) one representative each of the-
- 5 (i) Federal Ministry of Finance Incorporated;
- 6 (ii) Federal Ministry of Education;
- 7 (iii) Federal Ministry of Science and Technology;
- 8 (c) one representative each of the-
- 9 (i) Nigerian Petroleum Inspectorate;
- 10 (ii) Petroleum Technology Association of Nigeria;
- 11 (iii) Council or Registered Engineers of Nigeria;
- 12 (iv) Academic Staff Union of Universities,
- 13 (d) two persons of proven integrity and knowledgeable in the field of
- 14 petroleum resources to be appointed by the President;
- 15 (e) two Directors who are **full** time staff of the Inspectorate, to be nominated
- 16 by the members of the Equalisation Fund; and
- 17 (j) the Executive Secretary .
- 18 (3) Membership of the Board shall be part-time basis.
- 19 (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
- 21 matters contained therein.
- 22 228.-(1) The Board shall-
- 23 (a) provide general policy guidelines relating to the functions of the
- 24 Development Fund;
- 25 (b) recommend annual programme of action for the Development Fund to
- 26 be approved by the Minister;
- 27 (c) approve annual budget of the Development Fund;
- 28 (d) approve the appointment, promotion and discipline of management
- 29 staff of the Development Fund;
- 30 (e) update the President on its activities and progress through annual
- 31 audited reports;

Functions of  
the Board.

- 1 if) do such other things as are necessary, expedient, legal, and in conformity  
2 with the provisions of this Act for the efficient performance of and in  
3 connection with all or any of the functions of the Board as specified under  
4 this Chapter.
- 5 (2) The Board may delegate any of its functions to the Executive Secretary.
- Disqualification. 6 229. No person shall be appointed as a member of the Board unless he or  
7 she-
- 8 (a) is a Nigerian citizen;
  - 9 (b) has not, in terms of the laws in force in any country-
    - 10 (i) been adjudged or declared bankrupt or insolvent; or
    - 11 (ii) made an assignment to, or arrangement or composition with his
    - 12 creditors which has not been rescinded or set aside;
    - 13 (iii) been declared to be of unsound mind;
    - 14 (iv) been convicted of an offence involving fraud or dishonesty; or
    - 15 (v) been disqualified by a competent authority from carrying out any
    - 16 assignment, responsibility or function in his or her professional capacity.
  - 17 (c) has not been disqualified by the Securities Exchange Commission
  - 18 from holding a board appointment in any public company.
- Vacation of 19 230. The office of the Executive Secretary or member of the Governing  
Office and 20 Board shall become vacant-  
Termination. 21 (a) three months of his or her giving notice in writing to the President of  
22 his or her resignation;
- 23 (b) if he or she becomes disqualified under the provisions of Section 229
  - 24 of this Act;
  - 25 (c) at the expiration of his or her office.
- 215 231. The President shall require the Executive Secretary or member of  
26 the Governing Board to vacate his or her office if he or she-
- 27 (a) has committed an act of gross misconduct;
  - 28 (b) has failed to comply with the terms and conditions of his or her office
  - 29 as fixed by this Act; or
  - 30 (c) suffers from any mental, physical or legal disability which renders
  - 31

him or her incapable of executing his or her duties efficiently as a member.

2           232.-(1) There shall be an officer of the Development Fund known as  
3 the Executive Secretary who shall be appointed by the President.

The Executive  
Secretary.

4           (2) The Executive Secretary shall be a person with cognate knowledge  
5 and experience in the petroleum industry and who is able to show impartiality  
6 and objectivity without any conflict of interest in the petroleum Industry.

7           (3) The Executive Secretary shall be the chief executive and accounting  
8 officer of the Development Fund and shall be responsible for the day-to-day  
9 affairs of the Development Fund.

10          233. The Executive Secretary shall, subject to the direction of the Board,  
11 be responsible-

Duties of  
Executive  
Secretary.

12           (a) for the day to day administration of the Development Fund;

13           (b) for keeping the books and proper records of the proceedings of the  
14 Board;

15           (c) for the assessment of contributions under this Act and the collection  
16 and payment of moneys to the Development Fund;

17           (d) for payment of all disbursements authorised under or by virtue of this  
18 Act;

19           (e) for accounting for all moneys collected, paid or otherwise expended  
20 under this Act;

21           (f) for ensuring the utilisation of the fund for the purposes set out under  
22 section 226 of this Act;

23           (g) for ensuring a publication in the national press of a notice inviting  
24 applications for scholarship under the Development Fund and giving a list of  
25 eligible courses and the minimum educational requirements;

26           (h) for ensuring that successful applicants who meet the minimum  
27 requirements are notified in writing and their names published in the national  
28 press;

19           (i) for the administration of the secretariat of the Board;

30           (j) for the general direction and control of all other employees of the  
31 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. 234.-(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. 235. 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. 236.-(1) Service in the Development Fund shall be approved service for the purpose of the Pension Reforms Act, Cap P4, Laws of the Federation of Nigeria, 2004 and accordingly, officers and other persons employed in the Development Fund shall be entitled to pensions, and other benefits as prescribed in the Pension Reforms Act, Cap P4, Laws of the Federation of Nigeria, 2004
- (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, Cap P4, Laws of the



Federation of Nigeria, 2004 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.

237.-(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.

Financial Provisions.

(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.

238. 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.

Power to Accept Grants.

239. 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.

Account and Audit.

240.-(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

Mid-year and Annual Reports.

of the preceding year not later than 31st July of the following year.

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

6 (3) Further to the provisions of this section, there shall always be a  
7 presumption in favour of releasing information to the public, which the  
8 Development Fund must rebut by showing good reasons for withholding such  
9 information from the public.

Borrowing  
Powers.

10 241. The Development Fund may, subject to the approval of the Board  
11 and with the consent of, or in accordance with the general authority given by  
12 the Minister of Finance, borrow such sums of money as the Development Fund  
13 may require in the exercise of its functions under this Act or its subsidiary  
14 legislation.

Exemption  
from Income  
Tax.

15 242. All income derived by the Development Fund from the sources  
16 specified in section 224 of this Act shall be exempt from income tax and all  
17 contributions to the fund of the Development Fund made by persons subject to  
18 the payment of tax shall be tax deductible.

19 (3) The Development Fund may, subject to the provisions of this Act and  
20 the conditions of any trust created in respect of any property, invest all or any  
21 of its funds in any security prescribed by the Trustees Investment Act, Cap T 22  
22 Laws of the Federation of Nigeria, 2004 or in such other securities.

Legal  
Proceedings.

23 243.-(1) No suit shall be commenced against the Development Fund  
24 before the expiration of a period of one month after written notice of intention  
25 to commence the suit shall have been served upon the Development Fund by the  
26 intending plaintiff or his agent.

27 (2) The notice shall clearly and explicitly state-

28 (a) the cause of action;

'19 (b) the particulars of the claim;

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

(d) the relief claimed by the plaintiff.

2 (3) The notice referred to in subsection (1) of this section and any summons,  
3 notice or other document required or authorised to be served upon the  
4 Development Fund under the provisions of this Act or any other law may be  
5 served by-

6 (a) delivering the same to the Executive Secretary or any Director of the  
7 Development Fund; or

8 (b) sending it by registered post addressed to the Executive Secretary at  
9 the Headquarters of the Development Fund;

10 **244.** A member of the Board or the Executive Secretary or any officer or Indemnity.  
11 employee of the Development Fund shall be indemnified out of the assets of the  
12 Development Fund against any liability incurred by him in defending any  
13 proceeding, whether civil or criminal, if the proceeding is brought against him  
14 in his capacity as a member, Executive Secretary, officer or other employee of  
15 the Development Fund.

16 **245.** A member of the Board or any officer or employee of the Information.  
17 Development Fund shall, subject to the provisions of the Nigerian Extractive  
18 Industries Transparency Initiative Act 2007 and any law in force in Nigeria  
19 relating to freedom of information-

20 (a) not, for his personal gain, make use of any information which has  
21 come to his knowledge in the exercise of his powers or is obtained by him in  
22 the ordinary course of his duty as a member of the Board or as an officer or  
23 employee of the Development Fund;

24 (b) treat as confidential, any information which has come to his knowledge  
25 in the exercise of his powers or is obtained by him in the performance of his  
26 duties under this Act;

27 (c) not disclose any information referred to under paragraph (b) of this  
28 section, except when required to do so by a court of law or in such other  
29 circumstances as may be prescribed by the Development Fund, from time to  
30 time.

## PART III - UPSTREAM PETROLEUM

|                                    |    |                                                                                     |
|------------------------------------|----|-------------------------------------------------------------------------------------|
| Incorporated<br>Joint<br>Ventures. | 2  | 246.-(1). With effect from the commencement of this Act, the interests              |
|                                    | 3  | held by the Nigerian National Petroleum Corporation in respect of the joint         |
|                                    | 4  | ventures for the exploration and production of petroleum in Nigeria, shall be       |
|                                    | 5  | vested in the National Oil Company.                                                 |
|                                    | 6  | (2) Within twelve months from the commencement of this Act, each joint              |
|                                    | 7  | venture for the exploration and production of petroleum in Nigeria shall be         |
|                                    | 8  | incorporated as a limited liability company.                                        |
|                                    | 9  | (3) Each joint venture company shall be owned by the parties to the                 |
|                                    | 10 | existing joint ventures, in proportion to their existing participating interests,   |
|                                    | 11 | with the exception of the participating interests held by the Nigerian National     |
|                                    | 12 | Petroleum Corporation, which shall henceforth be held by the National Oil           |
|                                    | 13 | Company.                                                                            |
|                                    | 14 | (4) Terms and conditions of each incorporated joint venture shall be agreed         |
|                                    | 15 | upon by the parties.                                                                |
| Objective.                         | 16 | 247. The objective for the incorporation of joint ventures is to create             |
|                                    | 17 | independent entities, capable of being financially self-sufficient.                 |
| Authority.                         | 18 | 248. Subject to the provisions of this and other relevant laws of the State,        |
|                                    | 19 | each incorporated joint venture shall be guaranteed the authority and resources     |
|                                    | 20 | to fulfil their duties in a professional and objective manner without interference. |
| Composition<br>of the Board.       | 21 | 249.-(1) The Board of an incorporated joint venture shall consist of                |
|                                    | 22 | Nigerians and nationals of other countries-                                         |
|                                    | 23 | (a) who have distinguished themselves in their various capacities;                  |
|                                    | 24 | (b) who have unblemished records of honesty and integrity; and                      |
|                                    | 25 | (c) who will be able to exercise independence and objectivity with respect          |
|                                    | 26 | to the affairs of the incorporated joint venture.                                   |
| Board<br>Committees.               | 27 | 250.-(1) Members of the Board of an incorporated joint venture shall                |
|                                    | 28 | within the first three months develop a formal and transparent board nomination     |
|                                    | 29 | and selection process for the committees of the Board.                              |
|                                    | 30 | (2) Further to subsection (1) of this section, the mandate, composition             |
|                                    | 31 | and working procedures of committees of the Board shall be well defined and         |

disclosed by the Board to the National Oil Company, other shareholders and  
2 stakeholders.

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

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

7 (b) nominations of board members and key executives, and

8 (c) board remuneration.

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

13 252. The Board of an incorporated joint venture shall at all times-

Responsibilities  
of the Board.

14 (a) be responsible for the strategic guidance of the incorporated joint  
15 venture in question in accordance with the guidelines established by its  
16 shareholders;

17 (b) be accountable to the National Oil Company, other shareholders and  
18 the Nigerian public;

19 (c) act in good faith and on a fully informed basis, exercise due diligence  
20 and care in the best interests of the incorporated joint venture, its shareholders  
21 and the sustainable development of Nigeria;

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

25 (e) apply high ethical standards in performing its duties to the incorporated  
26 joint venture, taking into account the interests of its shareholders.

27 253. The functions of the Board of an incorporated joint venture shall  
28 include-

Functions of  
the Board.

29 (a) reviewing and guiding corporate strategy, major plans of action, risk  
30 policy, annual budgets and business plans; setting performance objectives;

31 monitoring implementation and corporate performance; and overseeing major

capital expenditures, acquisitions and divestitures.

2 (b) monitoring the effectiveness of the incorporated joint venture's  
3 governance practices and making changes as needed.

4 (c) selecting, compensating, monitoring and when necessary, replacing  
5 key management executives and overseeing succession planning.

6 (d) aligning key executive and board remuneration with the longer term  
7 interests of the incorporated joint venture, and other shareholders and  
8 stakeholders in the petroleum industry.

9 (e) monitoring and managing potential conflicts of interest of management,  
10 board members and shareholders, including misuse of corporate assets and  
11 abuse in related incorporated joint venture transactions.

12 *if* ensuring and guaranteeing the integrity of the incorporated joint  
13 venture's accounting and financial reporting systems, including the independent  
14 audit. and that appropriate systems of control are in place, in particular,  
15 systems for risk management, financial and operational control, and  
16 compliance with the law and relevant standards.

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

Rights of  
Shareholders.

19 254.-( 1) Shareholders of an incorporated joint venture shall be entitled  
20 to full disclosure about the incorporated joint venture, which disclosure shall  
21 include, but not be limited to, material  
22 information on-

23 (a) the financial and operating results of the incorporated joint venture;

24 (b) objectives of the incorporated joint venture;

25 (c) major share ownership and voting rights;

26 (d) members of the board and key executives, including remuneration,  
27 academic and other qualifications, the selection process, membership on the  
28 boards of other companies and whether they are regarded as independent by  
29 the board;

30 (e) transactions of the incorporated joint venture;

31 *if* foreseeable risk factors in activities of the incorporated joint venture;

(g) issues regarding employees and other stakeholders;

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

5 (2) Information relating to the operations and activities of each incorporated  
6 joint venture shall be prepared and disclosed in accordance with high quality  
7 international standards of accounting and financial and non-financial disclosure  
8 requirements.

9 (3) An annual audit of an incorporated joint venture shall be conducted by  
10 an independent, competent, experienced and qualified auditor that shall be  
11 accountable to the shareholders and shall provide an external and objective  
12 assurance to the board and shareholders that the financial statements fairly  
13 represent the financial position and performance of the National Oil Company  
14 in all material respects.

15 (4) External auditors shall be accountable to the shareholders and shall  
16 owe a duty to the incorporated joint venture to exercise due diligence in the  
17 conduct of the audit.

18 255.-(1) All acreages, and licence or lease areas in respect of the  
19 exploration, production and development of petroleum not previously granted  
20 prior to the commencement of this Act are hereby vested in the Directorate on  
21 behalf of the Federal Government of Nigeria.

Vesting of  
Acreages in  
the  
Directorate.

22 (2) All licences and leases previously held by the Corporation, including  
23 oil prospecting licences and oil mining leases in respect of which production  
24 sharing contracts have been awarded shall henceforth be held by the Directorate  
25 on behalf of the federal government of Nigeria.

26 **256.** Upon attainment of commerciality as defined within the production  
27 sharing contracts signed between an exploration and production company and  
28 the former Corporation, the said exploration and production company shall  
29 meet with the Directorate to discuss the terms and conditions for the incorporation  
30 of a company which shall manage and operate the production sharing contract.

Production  
Sharing  
Contracts.

Licences,  
Leases and  
Contracts.

257.-(1) Subject to the provisions of this Act, the Minister on the  
2 recommendation of the Directorate may grant the following licences or leases  
3 to the National Oil Company, or any indigenous oil company-

4 (a) a licence, to be known as a petroleum prospecting licence, to prospect  
5 for either crude oil or natural gas; and

6 (b) a lease, to be known as a petroleum mining lease, to search for, win,  
7 work, carry away and dispose of either crude oil or natural gas.

8 (2) Every petroleum prospecting licence or petroleum mining lease shall  
9 clearly state that it shall be in respect of either crude oil or natural gas, but not  
10 of both crude oil or natural gas.

H (3) Where a company having a licence or lease in respect of crude oil or  
12 natural gas, desires to also engage in operations relating to either crude oil or  
13 natural gas that is not covered under the company's existing licence, that company  
14 may apply to the Minister for the said licence or lease in respect of either  
15 crude oil or natural gas, which application shall not be unreasonably refused.

16 (4) Only companies incorporated under the Companies and Allied Matters  
17 Act CAP C20 Laws of the Federation of Nigeria 2004, and which have complied  
18 with all the conditions that may be prescribed by the Directorate and the  
19 Inspectorate, as the case may be, shall be entitled to be a licensee, lessee or  
20 contractor under the terms of this Part.

Power to  
enter into  
contracts.

21 258.-(1) Where the Minister grants any licence or lease under section  
22 256 of this Act, the National Oil Company or any indigenous oil company, by  
23 such grant and without further assurance, shall be empowered to enter into any  
24 contract for the exploration, prospecting, production and development of oil or  
25 gas, as the case may be, in respect of any licence or lease held by the National  
26 Oil Company or indigenous oil company, upon such terms and conditions as  
27 may be prescribed by the Directorate or the Inspectorate, as the case may be,  
28 and with any person or company qualified under conditions prescribed by this  
29 Act.

30 (2) The contracts referred to in subsection (1) of this section include-

31 (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 275 of this Part.

259.- (1) Confidentiality clauses or other clauses contained within any licenses, leases, agreements or contracts for the exploration and production of petroleum or in any other contract or legal instrument between the state and any company, that are for the purpose of preventing access to information and documents by third parties in respect of-

(a) royalties;

(b) bonus payments of whatever sort;

(c) taxes; and

(d) any other financial matters that directly affect revenues derived by the state from the exploration and production of petroleum, including but not limited to production costs of the operating partner, shall be null, void and of no effect.

(2) Subsection (1) 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) applies, which shall be exempted from

Confidentiality  
Clauses.

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 and that decision shall be final.

Petroleum  
prospecting  
licence.

260. The holder of a petroleum prospecting licence shall-

(a) have the exclusive right to explore and prospect for either crude oil or natural gas as the case may be, 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, subject to the fulfilment of obligations imposed by or under this Act and any other enactment in force at the time.

Duration of  
petroleum  
prospecting  
licence.

261. A petroleum prospecting licence shall be for a duration of-

(a) not more than five years, including any periods of renewal, in the case of land and shallow waters;

(b) not more than ten years, including any periods of renewal, in the case of the inland basin and deep offshore waters.

Petroleum  
mining leases.

262.-(1) A petroleum mining lease may be granted to the holder of a petroleum prospecting licence who has-

(a) satisfied all the conditions imposed on the licence or otherwise imposed on him by this Act; and

(b) made a commercial discovery of crude oil or natural gas or both.

(2) Where the licensee makes a commercial discovery in another area of the petroleum prospecting licence held by it, which is not included within the area that the licensee has applied for a petroleum mining licence in respect of, the said licensee may apply for not more than one additional petroleum mining lease from the same petroleum prospecting licence, which may be granted by the Minister, in accordance with written guidelines issued by the Minister on the advice of the Directorate.

(3) Where there is conversion of a portion of a petroleum prospecting licence to a petroleum mining lease or leases under the terms of this section,

the portion of the petroleum prospecting licence that is not covered by the petroleum mining lease or leases, as the case may be, shall automatically lapse and revert to the Directorate.

263. A petroleum mining lessee shall have the exclusive right to conduct exploration and prospecting operations within the lease area and to win, get work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the said lease area.

Exclusive  
Right to  
Conduct  
Operations.

264. A petroleum mining lease shall be for a term of not more than twenty years, but may be renewed in accordance with this Act for further terms of not more than twenty years for each term of renewal.

Duration and  
Renewal.

265. The lessee of a petroleum mining lease shall be entitled to apply in writing to the Minister, not less than twelve months before the expiration of the lease, for a renewal of the lease either in respect of the whole of the leased area or any particular part thereof and the renewal shall 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.

Conditions for  
renewal of  
lease.

266.-(1) Ten years after the grant of a petroleum mining lease, one-half of the area of the lease shall be relinquished.

Relinquishment.

(2) Where the holder of the petroleum mining lease is the National Oil Company or any other company owned by the state, the provisions on relinquishment contained in this Act shall not apply.

(3) The provisions on relinquishment shall not apply in relation to a lease which has been renewed under the provisions of section 265 above, or to any incorporated joint venture.

(4) Any rent paid in respect of the area of the lease to be relinquished shall not be refundable, and any termination occurring in relation thereto shall otherwise be without prejudice to any obligation or liability imposed by or incurred under the lease or any contract entered in pursuance thereof before the effective date of such termination.

(5) 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.

267.-( 1) Without prejudice to any provisions on relinquishment, a licensee  
2 or lessee shall be entitled at any time to surrender part or whole of the licensed  
3 or leased area provided at least three months notice in writing is given to the  
4 Inspectorate prior to such surrender.

5 (2) No rent paid prior to the surrender shall be refundable, but the surrender  
6 shall otherwise be without prejudice to any obligation or liability imposed by or  
7 incurred under the licence or lease before the effective date of surrender.

Way-leaves.

8 268. Subject to the provisions of all the relevant laws and on such terms  
9 and conditions as may be approved by the Inspectorate, the licensee or lessee  
10 shall be entitled to such way-leaves for the laying, operation and maintenance  
11 of pipelines, telephone lines and the like through or across the surrendered area  
12 or areas as the licensee or lessee may reasonably require-

13 (a) for the carrying on of operations under the licence or lease; or

14 (b) for inter-communication and passage between retained areas and, in  
15 the case of offshore licences or leases, between retained areas and onshore  
16 lands, and any such way-leaves shall form part of or be included in the  
17 calculation of the amount of the retained areas.

Way-leaves  
reserved to  
the  
Inspectorate.

18 269. There shall be reserved to the Inspectorate over the retained area,  
19 such way-leaves, easements or other rights as in its opinion are necessary or  
20 desirable for the laying, operation and maintenance of pipelines, telephone  
21 lines and power lines; and any way-leaves or other rights so reserved shall  
22 continue for the benefit of any person or body to whom the Inspectorate may  
23 subsequently grant the same to the extent that it may so grant them pursuant to  
24 the regulations made by the Minister for that purpose on the advice of the  
25 Inspectorate.

Award  
Process.

26 270.-( 1) The grant of a petroleum prospecting licence, petroleum mining  
27 lease or contract in respect of any territory in, under or upon the territory of  
28 Nigeria shall be by a bidding process conducted by the Directorate, in  
29 consultation with the Inspectorate, which bidding process shall be open,  
30 transparent and competitive.

31 (2) For the avoidance of doubt, no discretionary awards shall be given

under any circumstances whatsoever.

2 (3) The Minister shall direct the Directorate to call for bids in accordance  
3 with a process that shall be made available to the general public through  
4 publications on the website of the Inspectorate and in at least two newspapers  
5 with international and two newspapers with national coverage.

6 (4) The Directorate in consultation with the Inspectorate shall establish  
7 the technical, legal, economic and financial requirements as well as the minimum  
8 experience and capacity necessary for would be licensees, lessees, and  
9 contractors, which shall be contained in guidelines prepared by the Directorate,  
10 and licensees, lessees and contractors shall be chosen in accordance with these  
11 guidelines.

12 **271.-(1)** Where the allocation of a licence or lease includes the right of  
13 the Government to a participating interest in the licence or lease, the Minister  
14 may at any time exercise this right to participate in accordance with the terms  
15 of the said licence or lease.

Right of  
Participation.

16 (2) The right to participate referred to in subsection (1) of this section  
17 shall only be in respect of the interest held by the company to whom the allocation  
18 was made.

19 272.-(1) Where an oil field within an existing licence or lease is  
20 designated as marginal by either the licensee, lessee, the Inspectorate or the  
21 Directorate, the Minister may direct that the said marginal field should be  
22 awarded to another company other than the licensee or lessee. (2) A field that  
23 has not been operated for ten years is deemed to be marginal.

Marginal  
Fields.

24 (3) The award of any marginal field shall be-

25 (a) through an open and transparent process; and

26 (b) by the Minister in consultation with the Directorate and the  
27 Inspectorate.

28 (4) When an award for a marginal field has been made, the marginal field  
29 awardee shall enter into agreement with the holder of the licence or lease, on  
30 terms and conditions as may be agreed between the parties.

31 (5) The terms and conditions of any contract between a marginal field

awardee and the holder of the licence or lease within which the marginal field  
2 is located-

3 (a) shall be in accordance with the terms and provisions of this Act, and

4 (b) shall be communicated to the Directorate and the Inspectorate.

5 (6) Where the holder of the licence or lease within which the marginal  
6 field is located and the marginal field awardee fail to agree on terms and  
7 conditions, the matter shall be referred to mediation or arbitration by the  
8 Inspectorate.

Marginal  
Field  
Operators.

9 273. Every five years the Directorate shall review the existing conditions  
10 for marginal field operators to ensure that they achieve an appropriate rate of  
11 return sufficient for the growth and sustenance of their operations.

Marginal field  
incentives.

12 274. Within six months from the commencement of this Act the Minister  
13 shall, in consultation with existing marginal field operators, initiate and  
14 implement any other necessary incentives that will achieve an appropriate rate  
15 of return for marginal field operators.

Assignment,  
Mergers and  
Acquisitions.

16 275.-(1) A licensee, lessee or contractor shall not assign his licence,  
17 lease or contract, or any right, power or interest therein without the written  
18 consent of the Minister.

19 (2) An application for assignment shall be in accordance with terms and  
~ conditions specified within this Act and any regulations made under it.

21 (3) The Minister shall consent to an assignment if the proposed assignee  
22 is able to show to the satisfaction of the Minister that-

23 (a) the proposed assignee is a company incorporated in Nigeria;

24 (b) the proposed assignee is of good reputation, or is a member of a group  
25 of companies of good reputation, or is owned by a company or companies of  
26 good reputation; and

17 (c) there is likely to be available to the proposed assignee (from his own  
28 resources or through other companies in the group of which it is a member,  
'19 or otherwise) sufficient technical knowledge, experience and financial  
30 resources to enable it to effectively carry out a programme satisfactory to  
31 the Minister in respect of operations under the licence or lease which is to

1 be assigned.

2 (4) Where a licensee, lessee, or contractor is taken over by another  
3 company, or merges, or is acquired by another company either by acquisition  
4 or exchange of shares, it shall be treated as an assignment and shall be subject  
5 to the terms and conditions of this Act and any regulations made under it.

6 276.-(1) The holder of a petroleum prospecting licence or petroleum Termination.  
7 mining lease may, at any time, terminate the licence or lease by giving to the  
8 Minister not less than three months notice in writing.

9 (2) Any party to a contract in respect of a licence or lease may, in  
10 accordance with the terms of the contract, terminate his interest in such contract.

11 277. The Minister may revoke a petroleum prospecting licence or a Grounds for  
12 petroleum mining lease if the licensee or lessee- revocation of  
licence or  
lease.

13 (a) is controlled directly or indirectly by a person who is a citizen of, or  
14 subject of any country which is a country the laws of which do not permit  
15 citizens of Nigeria or Nigerian companies to acquire, hold and operate  
16 petroleum concessions on conditions which the Directorate finds to be  
17 reasonably comparable to the conditions upon which such concessions are  
18 granted to subjects of the country .

19 (b) in the opinion of the Inspectorate and Agency, is not conducting  
20 operations continuously and in a vigorous and businesslike manner and in  
21 accordance with good oil field practice;

22 (c) is not fulfilling his or her obligations under the special conditions of  
23 his or her licence or lease;

24 (d) fails to pay its rent or royalties as they fall due, whether or not they  
25 have been demanded by the Inspectorate, within the period specified by or in  
26 pursuance of this Act;

27 (e) has failed to furnish any reports on its operations that are prescribed  
28 by this Act or any other act in force within the stipulated time;

29 (f) has obtained or acquired the licence or lease on the basis of false  
30 representations or corrupt practices;

31 (g) is owned or controlled by a former or present public officer who has

1 obtained the licence or lease through misuse of public office;  
2 (h) has assigned or otherwise transferred his interest in the licence or  
3 lease to any person or company without the prior consent of the Minister as  
4 is required by section 250 of this Act.

Representation  
permitted  
before  
revocation.

5 278.-(1) Where the Minister receives information from the Inspectorate  
6 and the Agency of any of the acts listed in section 277 above, the Minister shall  
7 within one month of the matter coming to its knowledge, inform the licensee or  
8 lessee of the grounds on which a revocation is contemplated and shall invite the  
9 licensee or lessee to make any representation to the Minister if the licensee or  
10 lessee so desires and if the Minister is satisfied with the explanation, the  
11 licensee or lessee may be asked to rectify the matter complained of within a  
12 specified period.

13 (2) If a licensee or lessee is unable to offer satisfactory explanation as is  
14 required in subsection (1) of this section or does not rectify the matter complained  
15 of within the specified period, the Minister may revoke the licence or lease and  
16 such revocation shall be final.

17 (3) For the avoidance of doubt-

18 (a) the revocation of any licence or lease in accordance with the provisions  
19 of this Act cannot be rectified; and

20 (b) where the grounds of revocation are found to be true, the revocation  
21 shall stand.

22 (4) Notice of revocation sent to the last known address of the licensee or  
23 lessee or his legal representative in Nigeria and published in the Federal Gazette  
24 shall, for all purposes, be sufficient notice of the revocation of the licence or  
25 lease.

26 (5) Revocation shall be without prejudice to any liabilities which the  
27 licensee or lessee may have incurred, or to any claim which may be made by  
28 the Federal Government against the licensee or lessee.

Fees, Rents  
and Royalties.

29 279.-(1) There shall be paid in respect of licences and leases granted  
30 under this Act such application fees and rents as may be contained in this Act  
31 and in any regulations made by the Minister, pursuant to this Act and on the



recommendation of the Inspectorate.

2 (2) Royalties in respect of any petroleum production obtained from any  
3 licence or lease area shall be paid in accordance with the rates prescribed  
4 within any laws and regulations in force at the time.

5 280.-(1) In the course of exploration and production activities in respect  
6 of petroleum, no person shall injure or destroy any tree or object which is-

Protected  
Objects.

7 (a) of commercial value;

8 (b) the object of veneration, to the people resident within the petroleum  
9 prospecting licence or petroleum mining lease area, as the case may be.

10 (2) A licensee or lessee who causes damage or injury to a tree or object  
11 of commercial value or which is the object of veneration shall pay fair and  
12 adequate compensation to the persons or communities directly affected by the  
13 said damage or injury.

14 **281.** The amount of compensation payable under section 280 shall be  
15 determined by the Inspectorate in consultation with designated persons and  
16 representatives which shall include a licensed valuer, in accordance with  
17 regulations prescribed under this Act.

18 282.-(1) Where a licensee or lessee fails to pay compensation, the license  
19 or lease shall be suspended until the amount awarded is paid.

20 (2) Where the licensee or lessee fails to make payment within thirty days  
21 after the suspension of the said licence or lease in accordance with subsection  
22 (1) of this section, the Minister may revoke the said licence or lease.

23 283.-(1) Every licensee or lessee engaged in petroleum operations shall,  
24 within three months of the commencement of this Act, submit an environmental  
25 programme or an environmental quality management plan which shall be  
26 submitted to the Inspectorate for approval and which shall -

Environmental  
Quality  
Management.

27 (a) contain the licensee's written

28 (i) environmental policy, objectives, and targets; and

29 (ii) commitment to comply with relevant laws, regulations, guidelines  
30 and standards;

31 (b) establish 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 programme or the environmental plan if-
- (a) it complies with the subsection (I) 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 programme or the environmental management plan 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 programme or environmental management plan in question be adjusted in such way as the

Inspectorate may require.

2 (5) The Inspectorate may at any time after he or she has approved an  
3 environmental management programme or environmental management plan and  
4 after consultation with the holder of the licence or lease concerned, approve an  
5 amended environmental management plan or environmental management  
6 programme.

7 284.-(1) When considering an environmental management plan or  
8 environmental management programme, the Inspectorate shall consult with the  
9 Federal Ministry of the Environment and the State Ministries of Environment  
10 within which the licence or lease is situated and with any other relevant bodies  
11 within which the licence or lease is situated.

Consultation  
with State  
departments.

12 (2) The federal and state ministries of environment, and any other bodies  
13 that the Inspectorate may consult, shall submit their written comments within  
14 thirty days of the date of request.

15 285.-(1) Prior to the approval of the environmental management plan or  
16 environmental management programme by the Minister, every licensee or lessee  
17 shall pay the prescribed financial provision to the Inspectorate in accordance  
18 with guidelines as may be issued by the Inspectorate from time to time, for the  
19 rehabilitation or management of negative environmental impacts, as a condition  
20 for the grant of the said licence or lease.

Financial  
provision for  
remediation  
of  
environmental  
damage.

21 (2) If the holder of a licence or lease fails to rehabilitate or manage, or is  
22 unable to undertake such rehabilitation or to manage any negative impacts on  
23 the environment, the Minister may, upon written notice to such holder, use all  
24 or part of the financial provisions contemplated in subsection (1) of this section  
25 to rehabilitate or manage the negative environmental impact in question.

26 (3) The holder of a licence or lease must annually assess his or her  
27 environmental liability and increase his or her financial provision to the  
28 satisfaction of the Minister.

29 (4) If the Minister is not satisfied with the assessment and financial  
30 provision contemplated in this section, the Minister may appoint an independent  
31 assessor to conduct the assessment and determine the financial provision.

Financial  
provision by  
State and  
Local  
Governments.

286.-(1) Every state and every local government within which any licence  
2 or lease is located, shall pay a sum equal to 1 % of the state's annual derivation  
3 allocation, and 0.5 % of the local government's annual derivation allocation  
4 into a Remediation Fund which shall be utilised solely and exclusively for the  
5 restoration and remediation of the environment in cases where the said damage  
6 to the environment has been caused by sabotage.

7 (2) The Remediation Fund shall be in the custody of the Inspectorate.

8 (3) The Remediation Fund shall be utilized only in accordance with  
9 prescribed regulations made under this Act.

Abandonment,  
Decanting,  
and Disposal.

287.-(1) The decommissioning and abandonment of onshore and offshore  
11 petroleum installations, structures, utilities and pipelines shall be conducted in  
12 accordance with good oil field practice and in accordance with guidelines issued  
13 by the Inspectorate, provided that such guidelines, standards and regulations  
14 shall be in line with the guidelines and standards set by the International Maritime  
15 Organisation with respect to offshore petroleum installations and structures

16 (2) The Inspectorate shall by written notice, require a licensee or lessee  
17 to commence the decommissioning and abandonment of a project or installation.

18 (3) A licensee or lessee shall by written notice to the Inspectorate, request  
19 to commence the decommissioning and abandonment of a project or installation  
20 within its licence or lease area.

21 (4) Upon such a notice in subsection (2) of this section or where a licensee  
22 or lessee intends or ought to carry out a decommissioning or abandonment of  
23 structures and installations, such will not be carried out unless the licence or  
24 lessee submits to the inspectorate, a programme setting out-

25 (a) an estimate of the cost of the proposed measures;

26 (b) details of measures proposed to be taken in connection with the  
27 decommissioning of disused installations, structures and/or pipelines as the  
28 case may be;

29 (c) vivid descriptions of the methods to be employed to undertake the  
30 work programme, which shall be in line with best oil field practices,  
31 sustainable field and environmental development.

1 (d) steps to be taken to ensure maintenance and safeguard where any  
2 installations, structures or pipelines are to remain disused and in position,  
3 or are to be partly removed;

4 (5) Upon the submission of the decommissioning programme by the licensee  
5 or lessee to the Inspectorate, consultations shall be made with interested parties  
6 and other relevant public authorities and bodies.

7 (6) The programme referred to in subsection (5) of this section shall not  
8 be approved unless all relevant environmental, technical and commercial  
9 regulations or standards are met.

10 (7) Before the Inspectorate approves an application or programme for  
11 decommissioning or abandonment, it shall ensure that-

12 (a) considerations and recommendations are taken in the light of individual  
13 circumstances;

14 (b) the potential for reuse of the pipeline in connection with further  
15 hydrocarbon developments is considered before decommissioning together  
16 with other existing projects.

17 (c) all feasible decommissioning options have been considered and a  
18 comparative assessment made;

19 (d) any removal or partial removal of an installation, structure or pipeline  
20 is to be performed in a manner that guarantees sustainable environmental  
21 development;

22 (e) any recommendation to leave an installation, structure or pipeline in  
23 place is made with regard to its likely deterioration and to the present,  
24 possible, and future effects on the environment;

25 (8) The Inspectorate may, if it do decides, recall any previous owner of  
26 an installation, structure or pipeline to be responsible for the costs associated  
27 with the decommissioning programme.

28 (9) The Inspectorate shall ensure that a list of all the petroleum installations,  
29 structures and pipelines onshore and offshore Nigeria and their current status is  
30 compiled and made available or accessible to the public.



(b) engages in any activity that becomes subject to licensing under subsection (2) or (3) 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 thirty million naira N30,000,000 or to imprisonment for a term of two years, provided that proceedings in respect of any such offence shall be commenced only by the Inspectorate and, provided further that, in addition to the fine, the Inspectorate may, 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.

290.-(1) The Inspectorate may grant, renew, modify or extend individual technical licences issued in pursuance of Section 289.

Modification  
of Licence  
Applications.

(2) An application for the grant, renewal, modification or extension of a technical licence shall be presented to the Inspectorate in the form and manner prescribed by regulations issued by the Minister on the advice of the Inspectorate 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 Inspectorate 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 Inspectorate in its application.

(5) The Inspectorate 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; and shall furnish an applicant for a technical licence with all such information and any other information that may facilitate the filing of an application.

(6) Where the Inspectorate 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 Inspectorate.

(7) Where the Inspectorate has decided to decline an application, it shall inform the applicant of its refusal of the application and 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 Inspectorate 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 Inspectorate in the event that representations in respect of a refusal of an application have been considered and rejected by the Inspectorate.

Advertisement  
of Licence  
Applications.

291.-(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 the form and manner, for as many times, for such period or periods, and in accordance with the period that may be prescribed in any regulations issued by the Minister on the advice of the Inspectorate.

(2) Following the publication of the notification of the application, interested parties may comment on or make representations to the Inspectorate 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 the form and manner in at least two Nigerian newspapers with nationwide circulation, for as many times, for such period or periods and in accordance with such periods of time as may be prescribed in any regulations made by the Minister on the advice of the Inspectorate.

Licence  
Regulations.

292. The Inspectorate shall make recommendations to the Minister to issue regulations applicable to technical licensing procedures under this Act, 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



1 - the grounds on which licences may be recalled.

2 (b) the duration of technical licence and timescale, for their renewal;

3

4 (c) the procedure, form and timescale for application of a

5 technical licence application or renewal;

6 (d) the procedure, form, criteria and conditions for technical licence

7 modifications, including the process for changing a technical

8 licence conditions and the public consultation process required as

9 part of the licence modification procedures;

10 (e) the procedure, form, criteria and timescale for the surrender,

11 suspension or revocation of a technical licence.

12 3.-(1) Conditions included in a technical licence issued pursuant to

13 this Part may require a licensee to -

14 (a) to comply with any directions issued by the Inspector in relation to

15 matters specified in the technical licence;

16 (b) to undertake or refrain from doing anything specified in the

17 technical licence;

18 (c) to secure the approval of the Inspector prior to doing anything

19 specified in the technical licence;

20 (d) to comply with any codes of practice;

21 (e) to provide information to the Inspector;

22 (f) to use of any equipment to be set aside

23 by the Inspector in any well or borehole in the field or in the

24 area of any well or borehole in the field or in the area of any well or

25 borehole in the field or in the area of any well or borehole in the

26 field or in the area of any well or borehole in the field or in the

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Liamee  
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1 or may be modified under circumstances specified in the licence or pursuant to  
2 the provisions of section 290 of this Act.

3 (3) Technical licences granted by the Inspectorate to licensees of the  
4 same class shall contain similar conditions, which shall be standard licence  
5 conditions for that class and any differences in conditions contained in technical  
6 licences issued to licensees of the same class shall only be for objectively  
7 justifiable reasons.

8 (4) Subject to the provisions of this Act, the Inspectorate shall have the  
9 power to include special conditions specific to a particular technical licence.  
10 provided that such special licence conditions shall be designed to meet specific  
11 circumstances and shall not unduly disadvantage one technical licensee in relation  
12 to another.

13 (5) The Inspectorate may specify a date after the grant of a technical  
14 licence on which licensed activities shall commence.

15 (6) The Inspectorate may provide that a licensed facility shall be for-

- 16 (a) the exclusive use of the licensee;
- 17 (b) all or part of the period of the technical licence;
- 18 (c) a specific purpose;
- 19 (d) a specified geographical area, route; or
- 20 (e) any combination of the foregoing.

Duration of  
Licence.

21 294.--(1) A technical licence issued, by the Inspectorate pursuant to this  
22 Chapter shall be for a period of 25 years in the first instance.

23 (2) A technical licence may be renewed for such further periods as the  
24 Inspectorate may determine subject to the following criteria and in accordance with the  
25 procedure prescribed by regulations issued pursuant to this Act, provided however  
26 that any renewal shall not exceed twenty-five years.

27 (3) The Inspectorate may set new or different licence conditions upon the  
28 renewal of a technical licence.

Assignment or  
Transfer.

29 295.--(1) No licensee under this Part shall, directly or indirectly, assign  
30 or transfer its technical licence or any rights or obligations arising from such  
31 technical licence without the prior written consent of the Inspectorate.

2 .shall be made to the... which may be... to publish a  
3 notice of the application in... form and in the... within the period  
4 prescribed in regulations... pursuant to his Act.

5 (3) In determining whether a... may be... Or  
6 transferred, the Inspector shall... with such  
7 modifications as may be appropriate in the... apply the... rules  
8 and criteria, and consider the same issues as if the party to...  
9 licence is being assigned or transferred is itself... for a new technical  
10 licence, and... in so doing; duly consider... representations made to it by  
11 third parties in respect of the application.

12 (4) The Inspector shall... subject to... (3) of...  
13 communicate its... or approval of an application... the assignment or  
14 transfer of a technical licence in writing.

15 (5) The Inspector shall... the... of the... its...  
16 of an application... an assignment... a... licence. and  
17 shall state a reasonable period of time... which...  
18 may be made by the applicant or by third parties in respect of the application.

19 (6) The Inspector shall grant... or transfer  
20 of a technical licence, subject to such conditions as it may...  
21

22 (7) The Inspector may modify... licence  
23 conditions or include... to the... section.

Amendment  
of 1.ken:ce.

24  
25  
26  
27  
28  
29  
30  
31

Contravention  
and  
Enforcement  
of Licence  
Conditions.

1 s~i~ed in regulations issued pur~uanl to this\crwhich shall not be more  
2 than tbrty days fromJhe date ofthe written,DP~ice.

3 (~~The pr~re to be fQ~lowedipmodifying, suspending, revoking or  
4 adding any licence conditiQps shall be as.prescribed in,the regul"ti~ns issued  
5 pursuant 19this Act.

6 297 •....(1) Where it aJ?Pearsto the Inspectorate tha~a technical licensee is  
7 contravemins. has contravened, or is likely to contravene any of the conditions  
8 of the technical Hce~, the Inspectorate may publish a notice in such manner  
9 as it considers appn>l'r~a)e dra~the attention ,Ofother persons affected or  
10 li~ely tq be aff~ted. by the contravention or threatenedcontravention of the  
11 technical licence=

12 (a) specifyi~ the actual or potential contravention;

13 (b) directi~g the licensee ~ do, or not to do, su~h d,lings as it may specify;

14 (c) specifying the remedy and lheperiod of time for compliance;

15 (d) notifying the lice~of its intention to issue an enforcement order.

16 (2).The licensee and ~y other inter~sted party shall be entitled to make  
17 representations ag~inst or iast.lpPOrt of the et,tforcement notice by a date specified  
18 in the potice.

19 (3)If a Jicensee fails to comply with a notice served pursuant to subsection

J) (1) of this section" tl)e Inspectorate may issue.an.epfor~~ment order.

21 ,(4)faiJurefo.~~y w~,~ enf9rcetpentprder shall consti~an offence;

22 (~}Tlw\InspectQrale,may J\ot i,ssue an,enforcemept order if~

23 . (O)dW licensee is ab.l eto demonstllteJoth the satisfacti9D,of t,he Inspectorate  
24 that it is not contravening orabout, to contravene, a ,condition of a technical  
25 . licence; or

26 (b) the licensee has ceased to contrave~ a Fondition of a,techmcal licence  
Z/ provided that if theearlier contravention was. delibeptte, the Inspectorate  
28 may, at its discretion, impose an appropriate penal~y as determined by  
29 regulations made ,ptlrstant to this Act.

:J) (6) If, the licensee fails to comply with the enforcement. order the  
31 Inspectorate may institute legal proceedings against the licensee to ensure

1, c.:oJlIplapce. ',l,',-,:L; ' ",\,,:,, --

2(7) Appeals in respect of legal proceedings under subs\*fiction (6) of tlais ' <

3 section shall be \*\*\*\*\* bt:fore1he0lUrtof Appeal: ,\_.,

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5 may adjust from time to time the penalty memioned insub8ectlOrt(~)(b) of this

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7, '.. \_:(1~IID,a&lcoftilancewithlara, regula&ienslilMclput'Smlnto this Act Surrender of

8 and upon application to the Inspectorate, a licensee l tta,appl)t40surrendef'lts Licence.

21 tec~lliecncce if..... + t): L, '

10, (a)thelicnsetiac.tivityis'hO looger-RIIfUired,:.'

11 (b) in the opinion ofthc~Ncenseettie licerlMlchgativRy's II OteeconomicaJly

.Q., jostle\*\*\*\*\* ;", " '

13 (c) the licensee has failed to commence~aaiv., Within the ti~

14 \_fra\_ spedfJed ip,tbe,tecBJiatUicciJCC;a,';- , !,;~

15 ~, ,(d).-act~,cnoD'fs.ating, "\_toaMWne'tJa,Ii1g11tsand,

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17 and,objeotivcs oHbis, Aet;. A. 2008 No. C-451

18. ,(2) A -lice.- appJyi\*\*\* MuUrrendet\_ \*\*\* ~.IlaJl;w~'applicabh;,

12.Ij&Mlply.,withall requiretllllJbof' the Jaw in\respet'tot,telinq8illuRent aHcf

J); c;lconunjssioniJl,of<i.-11ations andreelatrl8tioftof Wtd., .Ll,

21 (3) Where. the licensee has commenced activltit!f,\_ha8'oogoi-g

22, openuiods, ii-shall.unless a sborter periadis stiputated:ftI;tbtHbmce. give tfii

23 Inspectorate atleasttweiWl~notife.in\Vriu..rc)f,its iI1teAi:iori.~ its

24; activitie\$.

21. **M**TbcJJIspectorate 'IJlI)!\$uspend <rev .• cactechneial.IK:etfse.-

26 (a) ifthe Jjce~ "breaallec!or;eanueslO.tJrealh11OOriditioltbfthe'

27 .',,,,license .•alreplajon.-icJf' a1J)lUrisioll ofitJris;\*cr,wlfercsueh':eondition OF'

28 provisio.o'stipuJa&exlat,~ said breachsbIU'make~dleitehdlttaHiee"

29 lia~lea&USpensioDtJr revocation, as.theIcase,may be;\_ -"

:l) .(b)M the InspoctoJiateba&g;vcmsixmomhs notice"ef:itsinteil tion to'

31 suspend er rev<tidle said-technical licence. -

Surrender of Licence.

Revocation or Suspension of Licence.

Grounds for  
the  
Revocation Of  
Technical  
Licence.

1 •• Subject to section 199 of this Act, a licence may be revoked—  
2 (a) if—  
3 (i) the licensee becomes insolvent; or  
4 (ii) the licensee enters into an arrangement or composition with its  
5 creditors; or  
6 (iii) the licensee is appointed a liquidator for the benefit of its debtors; or  
7 (iv) the licensee is liquidated, except as a part of a scheme of arrangement  
8 or amalgamation;  
9 (b) upon the transferee or dissolution of the licensee unless it is for  
10 the purpose of amalgamation or reconstruction and provided the prior approval  
11 of the Inspector has been obtained; or  
12 (c) if a licensee fails to commence activities within the period of time  
13 prescribed in the licence.

Mandatory  
Registration  
with the  
Inspectorate.

14 **14.** Any person engaged in activities which are required to be licensed  
15 by the Inspectorate under this Chapter shall register with the  
16 Inspectorate and provide such information concerning the activities of the  
17 undertaking as may be prescribed by regulations issued under this Act.

Register of  
Licences.

18 **15.** (1) The Inspectorate shall establish, maintain and make publicly  
19 available a register of all technical licences issued, revoked, suspended,  
20 surrendered or withdrawn and all modifications and exemptions granted for the  
21 purposes of this Act.  
22 (2) The officer registering the issuance of a technical licence or any  
23 modifications or exemptions as a condition of a licence under subsection (1) of this section  
24 shall require an acknowledgment of the receipt of a copy of the licence  
25 modification or exemption from the Inspectorate in such form as may be  
26 prescribed by Regulations issued pursuant to this Act.

Preparation Of  
Licences and  
DuplicateS.

27 **16.** (1) All technical licences or exemptions granted by the Inspectorate  
28 under this Chapter shall be prepared in duplicate, one copy being delivered by  
29 the Inspectorate to the technical licensee and the other retained by the Inspectorate  
30 to be bound up in a book of the appropriate series and serially numbered.  
31 (2) The Inspectorate shall not cause any technical licence to be prepared

1 umilthe. requisite, fees' have, been. paid.

2 ~The InspectOrate shall enter\_the appropriate registeu'memorial  
:t of the, extensions; transfers, surrenders •revocabons; exemptions, forfeiwre5,  
4 changes of address, changes of name or any other matter affectingthestaws of  
5 Qfany interest linany technical-ijcenceregistered:under this part together with  
6 the date of such entry.

RegiseCJof  
Memorials.

7' \_\_.The regis&ratioofaDytechnicallicenceregistered,under this Part  
8 shall be conclusive evidence:

Effect of  
Registration.

9 .(8) that the rights described thereid m.'Vestedin the person named as the  
10 licensee withiMhesaid techRicalliconse,,and'i "

11 (b) of the conditions and other provisions to whiCblthe licenseei\$ subject.

12 306.-0) The registry, aJKhhe registers required under sections 301artl  
13 302 shall be accessible;IO'thepublic; . , ,t:

Pubnc Access  
10 the  
Registry.

14 '.(2) Upon the payment of the prescribed fee, a member.orthe publiuhalf  
15. be eptitJed,toiobtam a certif\_~copy ufr liJl)'~torirecotdcontained

'16 in the registers referred to insections302and304 ofthis ACT. ", ' :

17 ~~307.-(1) Where~~

DisclOSure Or "  
confidential

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, 3), or to anycommereial.secreuor

21 . (b) any othepersonindirecdyacqutfeSsueh,or.rififonnationt,equired

22 IObe Iceptcnfidential undet.tM pmvision&of dtisAotfJ;tJJ,Il,any, etnploee of  
23 the Inspectorate; he or sheIshalk,notmake,use,of..SU<dlinfoomatitln, nor  
24 di~itto,any.other~~underthetOJlditions\$statedin subsection.

25 (2).of this sectiOn:

4S ~2)Subsection(1) ofthi\$sectionsballnot prohibit any ~licensee~pseron

1J from disclosing any informationrequiredJobckpt cOORdentiaJ.--" ;~

~ .' (~for the p\lrpbseofl~galpweeediogsUndeFthis partaJ' any other. Jawt

29 (1) to the .extentbatit maybe;necessary ,to~closo for dae.purposeof this  
:DActor anyodler law; or.

31 (c) to anotheremplyeeof~InspedOI'ate.

1 (3) No member or employee of the Inspectorate shall, for personal gain,  
 2 make use of any information acquired by him in the course of his duties for a  
 3 period of five years after the date on which he ceased to be a member or  
 4 employee.

5 (4) Any person who contravenes subsections (1) and (3) of this section  
 6 shall be guilty of an offence and liable on conviction to-

7 (a) the forfeiture of any proceeds accruing to him or her as a result of the  
 8 said offence; and

9 (b) a fine not exceeding 5,000,000 subject to regulations made by the  
 10 Minister or to imprisonment for a period not exceeding two years or to both  
 11, such fine and imprisonment.

#### 12 Chapter 11- Commercial licensing

Activities  
 requiring a  
 Commercial  
 Licence.

13 11-(1) No person shall, except in accordance with a commercial licence  
 14 issued by the Authority"-

15 (a) own and operate a petroleum downstream pipeline transportation  
 16 business-

17 (b) own and run a downstream petroleum transportation network business;

18 (c) undertake the supply of downstream products or natural gas; or

19 (d) own and run a downstream production or distribution network  
 ~ business.

21 (2) No person shall engage in refining, marketing, or operating any  
 22 petroleum processing or transmitting plant or premises without a  
 23 commercial licence issued by the Authority.

24 (3) Subject to a formal consultation process held between industry  
 25 participants, stakeholders and the Authority, the Authority may, by regulations  
 26 issued pursuant to this Act, prescribe additional activities to be undertaken  
 27 only on the basis of a commercial licence.

28 (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 Authority for the issuance of an appropriate commercial  
 31 licence for the transportation, distribution or supply of gas, as the case may be.



(5) Any person who-

2 (a) engages in any of the activities set out in subsection (1) and (2) of this  
3 section without a commercial licence; or

4 (b) engages in any activity that becomes subject to licensing under  
5 subsection (3) or (4) of this section without a commercial licence; or

6 (c) in applying for a commercial licence, knowingly makes a statement  
7 which is false or misleading in any material particular;

8 shall be guilty of an offence and liable to a fine of N30,000,000 subject to  
9 regulations made by the Minister, or if a natural person, to imprisonment for a  
10 term of two years, and, after due enquiry and arrangements to ensure that  
11 customers will not be adversely affected, the Authority may, in addition, suspend  
12 or revoke the licence in question.

13 (6) Proceedings in respect of any subsection (4) of this section shall be  
14 commenced only by the Authority.

15 (7) For the purpose of this chapter, the term "operator" shall refer to any  
16 company licensed by the Authority to operate in the downstream petroleum  
17 sector.

18 309.-(1) Subject to section 308 of this Part, and upon the approval of the  
19 Authority of an application by a qualified person and the payment of the  
20 prescribed fee, the Authority may grant and issue to that person a transportation  
21 pipeline owner licence with the exclusive right to own, operate and maintain a  
22 transportation pipeline within a route as defined in the licence.

Transportation  
Pipeline  
Owner."

23 (2) In considering an application for a transportation pipeline owner licence  
24 in respect of the downstream petroleum sector, the Authority shall consider the  
25 economic viability of, and the potential demand for the use of a transportation  
26 pipeline.

Z/ 310. The transportation pipeline owner licensee shall undertake the  
28 activities contemplated by the transportation pipeline owner licence in a manner  
29 best calculated to comply with the obligations to-

Obligations of  
a  
Transportation  
Pipeline  
Owner.

30 (a) operate and maintain economical, safe and reliable transportation  
31 infrastructure, taking into account any strategic plans that may be formulated

by the Authority;

2 (b) manage supply shortfalls and where feasible, meet requests of customers  
3 for transportation above contractual volumes;

4 (c) shut down its transportation systems in emergencies and in order to  
5 carry out maintenance;

6 (d) manage the transportation pipelines as a reasonable and prudent  
7 operator; and

8 (e) do nothing that, in the opinion of the Authority, prevents, restricts or  
9 distorts competition.

Conditions  
Applicable.

10 311. In addition to such conditions as may be imposed by the Authority  
11 under the terms of this Act, a transportation pipeline owner licence shall-

12 (a) not supply petroleum products or gas to customers directly on its own  
13 account;

14 (b) conduct its licensed activities safely and reliably in compliance with  
15 any law then in force and prescribed health and safety regulations made  
16 pursuant to this or any other Act;

17 (c) have due regard for the effect of its licensed activities on the  
18 environment and comply with requirements for environmental protection,  
19 management, and restoration under this Act and any law in force at the  
20 time; and

21 (d) mark, maintain and secure the boundaries of any pipelines and  
22 associated infrastructure constructed under the terms of its licence and any  
23 law then in force.

Transport  
Network  
Operator  
License.

24 312.-(1) Subject to the provisions of section 308 of this Part, and upon  
25 approval by the Authority of an application by a qualified person and the payment  
26 by such person of the prescribed fee, the Authority may grant and issue to that  
27 person a transportation network operator licence authorizing the conduct of  
28 activities specified in the licence, including-

29 (a) the conveyance of gas through the transportation network;

30 (b) balancing the inputs and off takes from the transportation network;

31 (c) providing third party access to the transportation network; and

(d) charging for the use of the transportation network.

2 (2) The Authority shall grant only one transportation network operator  
3 licence within a geographically defined area to a single network operator;  
4 provided however, that the Authority may issue similar licenses to other parties  
5 for the operation of isolated or dedicated pipelines.

6 313. The transportation network operator shall exercise the rights and  
7 obligations imposed on it in a manner best calculated to-

General  
Duties of a  
Transportation  
Network  
Operator.

8 (a) operate an efficient and economical transportation network for the  
9 safe and reliable conveyance of gas in such a manner as is designed to meet  
10 all reasonable demands for gas;

11 (b) operate nominations and balancing mechanisms and an equitable  
12 curtailment of gas transportation whenever technical or operational  
13 expediencies so require;

14 (c) ensure equitable and transparent access to the transportation network;

15 (d) establish and publish terms and conditions for access to the network;

16 (e) enter into agreements with transportation pipeline owners, distributors,  
17 and, where appropriate, wholesale customers, for connection to and operation  
18 of the transportation network.

19 314. Subject to the provisions of this Act and to facilitate the conduct of  
20 its licensed activities, the Authority may grant to a transportation network  
21 operator-

Powers of a  
Transportation  
Network  
Operator.

22 (a) the power to request for and obtain from all licensees, information  
23 required to operate the nominations and balancing mechanism, to operate  
24 the network or to facilitate competition;

25 (b) subject to any restrictions or conditions imposed by the Authority  
26 with respect to both the level and structure of its charges, the right to  
27 recover, on the basis of an invoice, expenses reasonably incurred in undertaking  
28 its licensed activities; and

19 (c) the right to purchase gas for its own operations for purposes such as  
30 testing and commissioning of facilities, for compression purposes and for  
31 line fill.

|                                                                     |      |                                                                                   |
|---------------------------------------------------------------------|------|-----------------------------------------------------------------------------------|
| Conditions applicable to a Transportation Network Operator Licence. | 1    | 315. In addition to such conditions as may be imposed by the Authority            |
|                                                                     | 2    | pursuant to this part, a Transportation Network Operator Licence may include      |
|                                                                     | 3    | an obligation to develop market rules in accordance with the provisions of this   |
|                                                                     | 4    | part.                                                                             |
| Supply Licence.                                                     | 5    | 316.-(1) Subject to section 308 of this Act, and upon the approval by the         |
|                                                                     | 6    | Authority of an application made by a qualified person and the payment of the     |
|                                                                     | 7    | prescribed fee, the Authority may grant and issue to that person a supply licence |
|                                                                     | 8    | to supply gas into the downstream sector.                                         |
|                                                                     | 9    | (2) A producer of gas intending to supply gas into the downstream sector          |
|                                                                     | 10   | shall be a qualified person within the meaning of the provisions of this part and |
|                                                                     | 11   | shall be entitled to apply for and be issued a supply licence by the Authority.   |
|                                                                     | 12   | (3) A supply licence shall authorise the licensee ("supplier") to sell and        |
|                                                                     | 13   | deliver gas to purchasers of gas at any location in Nigeria.                      |
| General Duties of a Supplier.                                       | 14   | 317.-(1) A supplier shall undertake the activities contemplated by the            |
|                                                                     | 15   | supply licence in a manner best calculated to comply with the obligations to-     |
|                                                                     | 16   | (a) provide a reliable supply of gas to purchasers on request, provided           |
|                                                                     | 17   | that it is economically feasible to do so; and                                    |
|                                                                     | 18   | (b) do nothing that, in the opinion of the Authority, may prevent, restrict       |
|                                                                     | 19   | or distort competition.                                                           |
| Rights of a Supplier.                                               | 20 " | 318.-(1) Subject to the provisions of this part and in order to facilitate        |
|                                                                     | 21   | the conduct of its licensed activities, the Authority may grant to a supplier     |
|                                                                     | 22   | specific rights and powers which shall include-                                   |
|                                                                     | 23   | (a) the right to terminate gas supply to a customer in the event of non-          |
|                                                                     | 24   | payment, following a notice period and disconnection procedure specified in       |
|                                                                     | 25   | prescribed regulations;                                                           |
|                                                                     | 26   | (b) the right to recover from a customer, on the basis of an invoice, and         |
|                                                                     | 27   | subject to any restrictions or conditions imposed by the Authority with respect   |
|                                                                     | 28   | to both the level and structure of a licensee's charges,                          |
|                                                                     | 29   | (i) all costs reasonably incurred in the supply of gas, inclusive of the          |
|                                                                     | 30   | cost of gas, the cost of transportation and distribution of gas; and              |
|                                                                     | 31   | (ii) licence fees;                                                                |

2 (c) the right to enter a premises to remove its meters, for the purpose of  
3 reading meters, to test metering equipment and to disconnect customers,  
4 such entry to be undertaken in accordance with a metering code which shall  
5 be issued by the Authority.

6 (2) The sale of gas to wholesale customers by the holder of a supply  
7 licence shall be subject to the provisions of this Act.

8 319.-(1) In addition to such conditions as may be imposed by the Authority  
9 pursuant to this part, a Supply Licence shall-

Conditions  
Applicable to  
a Supply  
Licence.

10 (c) ensure a reliable and efficient supply of gas to customers on request,  
11 provided that it is economical to do so;

12 (b) request security or apply a credit scoring methodology approved by  
13 the Authority in deciding whether supply is economical;

14 (c) subject to safety and network capacity constraints, supply gas on request  
15 to a customer who is willing and able to pay for connection to the  
16 transportation network;

17 (d) conduct licensed activities safely and reliably in compliance with any  
18 law in force and any health and safety regulations issued pursuant to this or  
19 any other Act;

20 (e) comply with customer protection measures in accordance with the  
21 provisions of of this part.

22 320.-(1) Subject to section 308 of this Act, and upon approval by the  
23 Authority of an application made by a qualified person and the payment of the  
24 prescribed fee, the Authority may grant and issue to that person a distribution  
25 licence granting the exclusive right to own and operate a distribution system  
26 and to distribute gas within a local distribution zone.

Distribution  
Licence.

27 (2) The holder of a distribution licence shall be entitled to apply for, hold  
28 and operate a license for the exclusive supply of gas within the local distribution  
29 zone to customers that are not wholesale customers.

30 (3) In considering an application for a distribution licence, the Authority  
31 shall consider the economic viability of, and the potential demand for its use.

(4) The geographical limits of each local distribution zone shall be defined

|                                               |     |                                                                                   |
|-----------------------------------------------|-----|-----------------------------------------------------------------------------------|
|                                               |     | in the relevant distribution licence.                                             |
| Obligations of<br>a Distribution<br>Licensee. | 2   | 321. The holder of a distribution licence shall undertake the activities          |
|                                               | 3   | contemplated by the distribution licence in a manner best calculated to comply    |
|                                               | 4   | with the obligations-                                                             |
|                                               | 5   | (a) to develop, operate and maintain an economical distribution network           |
|                                               | 6   | for the safe and reliable conveyance of gas;                                      |
|                                               | 7   | (b) to ensure a reliable and efficient distribution of gas to customers on        |
|                                               | 8   | request, provided that it is economical to do so;                                 |
|                                               | 9   | (c) subject to safety and network capacity constraints, to distribute gas on      |
| ID                                            |     | request to any customer who is willing and able to pay for connection to the      |
|                                               | 11  | distribution network;                                                             |
|                                               | 12  | (d) to conduct licensed activities safely and reliably, in compliance with        |
|                                               | 13  | any law in force and any health and safety regulations issued pursuant to this    |
|                                               | 14  | or any other Act;                                                                 |
|                                               | 15  | (e) to connect all customers within its local distribution zone in accordance     |
|                                               | 16  | with prescribed regulations, if it is economically practicable to do so;          |
|                                               | 17  | if) to co-operate with the Authority in the development of the network            |
|                                               | 18  | code;                                                                             |
|                                               | 19  | (g) to offer and publish terms and conditions of access to its distribution       |
|                                               | XI  | network as required;                                                              |
|                                               | 21  | (h) to comply with customer protection measures in accordance with the            |
|                                               | 22  | provisions of this Act; and                                                       |
|                                               | 23  | (i) to do nothing to prevent, restrict or distort competition.                    |
| Rights of the<br>Distribution<br>Licensee.    | 24  | 322.-(1) Subject to the provisions of this Act and in order to facilitate         |
|                                               | 25  | the conduct of its licensed activities, the Authority may grant the holder of a   |
|                                               | 26  | distribution licence the right-                                                   |
|                                               | '/  | (a) to enter the premises of a customer in order to read meters, to test          |
|                                               | 28  | metering equipment or to disconnect customers and remove meters;                  |
|                                               | '19 | (b) to recover, on the basis of an invoice, costs reasonably incurred in the      |
|                                               | 30  | provision of appropriate infrastructure, subject to any restriction or conditions |
|                                               | 31  | imposed by the Authority with respect to both the level and structure of a        |

Distributor's charges.

2 (2) Reasonably incurred costs referred to in subsection (1) of this section  
3 shall include any amounts paid to the Authority as fees.

4 323.-(1) In addition to such conditions as may be imposed by the Authority  
5 pursuant to this Act, or that may be prescribed by regulations issued pursuant to  
6 this Act, each distribution licensee shall-

Conditions  
Applicable to  
a Distribution  
Licence.

7 (a) conduct its licensed activities in accordance with safe and reliable  
8 standards and in compliance with prescribed management, health, and safety  
9 regulations issued pursuant to this Act or any other Act;

10 (b) having due regard to the effect of its licensed activities on the  
11 environment, comply with any requirements for environmental protection,  
12 management, and restoration under this Act and any law in force;

13 (c) mark, maintain and secure the boundaries of the pipelines constructed  
14 as prescribed;

15 (d) comply with customer protection measures set out in chapter 2 of Part  
16 V of this Act.

17 (2) The holder of a distribution license shall connect customers within its  
18 local distribution zone in the manner prescribed by regulations issued pursuant  
19 to this Act, provided that it is economical and practical to do so.

20 (3) The Authority shall settle any disputes that may arise in relation to  
21 the distribution network.

22 324. The holder of a distribution licence shall consult stakeholders on  
23 proposed development projects within its local distribution zone and shall duly  
24 consider all representations received.

Arrangements  
for Gas  
Distribution.

25 325.-(1) The Authority may grant, renew, modify or extend commercial  
26 licenses issued further to Section 308 of this chapter.

Matters  
Relating to  
Licence  
Applications.

27 (2) An application for the grant, renewal, modification or extension of a  
28 commercial licence shall be presented to the Authority in the form and manner  
29 and accompanied with the prescribed fee, if any, and any other information or  
30 documents that may be prescribed under any regulations issued by the Authority.

31 (3) The Authority may furnish any person applying for the grant, renewal

or extension of a commercial licence with such non-confidential information as  
2 the applicant may request which may facilitate the filing of the application.

3 (4) An applicant for a commercial licence who is an affiliate of a body  
4 corporate that has applied for or holds any other licence shall disclose such  
5 interest to the Authority in its application.

6 (5) The Authority shall consider all information presented in respect of  
7 an application for a commercial licence including representations uo~ interested  
8 parties in favour of or against the granting, extension or renewal of the said  
9 commercial licence; and shall furnish any applicant for a licence with any  
10 other information that may facilitate the filing of an application.

11 (6) Where the Authority has decided to grant a commercial licence it  
12 shall publish a notice of its decision in the form and in the manner prescribed in  
13 regulations issued by the Minister on the recommendation of the Authority, for  
14 the purpose of regulating the commercial aspect of downstream gas and products  
15 as the case may be.

16 (7) Where the Authority has decided to decline an application, it shall  
17 inform the applicant of its refusal of the application and its reasons for such  
18 refusal, and shall state a reasonable period of time within which the applicant  
19 in respect of the application can make further representations in respect of the  
20 decision.

21 (8) The Authority shall duly consider any representation made by an  
22 applicant for a licence in respect of the refusal of a licence application.

23 (9) No further application or representation shall be made by an applicant,  
24 or considered by the Authority in the event that representations in respect of a  
25 refusal of an application have been considered and rejected by the Authority.

Advertisement  
of Licence  
Applications.

26 326.-(1) When an application is made for a commercial licence under  
27 the provisions of this chapter, the applicant shall publish a notification of the  
28 application in at least two Nigerian newspapers with nationwide circulation, in  
29 the form and manner, for as many times, for such period or periods and in  
30 accordance with any periods of time that may be prescribed in any regulations  
31 issued by the Minister on the recommendation of the Authority.



(2) Following the publication of the notification of the application, interested parties may comment on or make representations to the Authority 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, for as many times, for such period or periods that the Authority may prescribe in accordance with the prescribed regulations.

327.-(1) The Authority shall make recommendations to the Minister to issue regulations applicable to the commercial licensing of downstream products or gas as the case may be, which regulations shall include, but shall not be limited to-

Licence  
Regulations.

(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.

328.-(1) Conditions included in a commercial licence issued pursuant to this chapter may require the licensee to-

Licence  
Conditions.

(a) comply with any directions given by the Authority in relation to matters specified in the commercial licence;

- 2           (b) undertake or refrain from undertaking anything specified in the  
commercial licence;
- 3           (c) secure the approval of the Authority prior to undertaking anything  
4 specified in the commercial licence;
- 5           (d) comply with industry codes, standards and market rules;
- 6           (e) comply with price or revenue restrictions imposed by the Authority in  
7 accordance with the provisions of this Act;
- 8           *if*) provide information to the Authority;
- 9           (g) restrict the use of certain types of sensitive information;
- 10          (h) prepare and submit to the Authority true and sufficient annual  
11 statements of accounts for each licensed activity in such form, and containing  
12 such particulars as the Authority may require and produce such books upon  
13 the request of duly authorized officers of the Authority;
- 14          (i) adhere to undertakings made within a business plan submitted as part  
15 of the commercial licence application process;
- 16          (j) prepare and submit to the Authority such information and periodical  
17 reports as the Authority may require;
- 18          (k) publish terms of access to its transportation or distribution pipeline or  
19 network as the case may be;
- 20          (l) operate its licence according to the standard of a reasonable and prudent  
21 operator.
- 22          (2) Conditions applicable to a commercial licence may cease to have  
23 effect or may be modified under circumstances specified in the commercial  
24 licence.
- 25          (3) Commercial licenses granted by the Authority to licensees of the  
26 same class shall contain similar conditions, which shall be standard licence  
27 conditions for that class.
- 28          (4) Any differences in conditions contained in commercial licenses issued  
29 to licensees of the same class shall only be for objectively justifiable reasons,  
30 which shall be communicated to the licensees if they so request.
- 31          (5) Subject to the provisions of this Act, the Authority 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 Authority may specify a date after the grant of a commercial licence on which licensed activities shall commence.

(7) The Authority may provide that a licensee's activities for all or part of the period of the licence, for a specific purpose, geographical area or route, or for any combination of the foregoing:

329.(1) Subject to the approval of the Minister and as the Authority determines that it is practical and necessary to facilitate the Authority may introduce licence conditions requiring separation of licensed activities, which conditions may prohibit a licensee from also holding commercial licenses of another type.

Separation of Certain Licensed Activities.

(2) Sales between a licensee and an affiliate of that licensee shall be undertaken in a manner that-

(a) ensures that the transfer 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 Authority.

330. 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 Authority.

Non-discrimination.

331.(1) A commercial Licence issued pursuant to this chapter shall be valid for a period of 25 years in the first instance and may be renewed for such further periods as the Authority may determine, subject to the criteria and in

Duration of Licence.

accordance with the procedure prescribed by regulations issued pursuant to this  
2 Act, provided however that anyone extension shall not exceed twenty-five years.

3 (2) The Authority may set new or different licence conditions upon the  
4 renewal of a commercial licence.

Assignment or  
Transfer of  
Licence.

5 332.-(1) A licensee shall not, directly or indirectly, assign or transfer  
6 its commercial licence or any rights or obligations arising from such licence  
7 without the written consent of the Authority.

8- (2) An application for the assignment or transfer of a commercial licence  
9 shall be made to the Authority, in accordance with prescribed regulations.

10 (3) In determining whether a commercial licence may be assigned or  
11 transferred, the Authority shall follow the same procedures, with such  
12 modifications as may be appropriate in the circumstances, and apply the same  
13 rules and criteria and consider the same issues as if the party to whom the  
14 commercial licence is being assigned or transferred is itself applying for a new  
15 commercial licence, and shall, in so doing, duly consider the representations  
16 made to it by third parties in respect of the application .

17 (4) Subject to subsection (3) of this section, the Authority shall  
18 communicate its refusal or approval of an application for the assignment or  
19 transfer of a commercial licence to the licensee in writing.

20 (5) The Authority shall advise the applicant of the reasons for its refusal  
21 of an application for an assignment or a transfer of a commercial licence, and  
22 shall state a reasonable timescale within which further representations may be  
23 made by the applicant or by third parties in respect of the application.

Amendment  
of Licence.

24 333.-(1) The Authority may modify, suspend or revoke any commercial  
25 licence conditions or include additional conditions, subject to the provisions of  
26 this Act.

27 (2) The Authority shall not modify, suspend, revoke or include additional  
28 conditions to a commercial licence unless it has-

29 (a) consulted with the Minister, industry participants and stakeholders,  
30 giving reasons for the proposed modification, suspension, removal or addition  
31 and having properly considered any representations or objections raised;

1 (b) given the affected licensee written notice of its intention to do so  
 2 together with a draft copy of the proposed licence modification; and

3 (c) given the licensee an opportunity to make written submissions to the  
 4 Authority within the time period specified in regulations issued pursuant to  
 5 this Act but within thirty days from the date of the written notice.

6 (3) The Authority shall not modify, suspend, revoke or include additional  
 7 conditions to the licence conditions of any type of licence if-

8 (a) such modification, suspension, revocation or inclusion would adversely  
 9 interfere with the performance of contractual obligations assumed by the  
 10 licensee with customers on the basis of such licence; or

11 (b) result in any licensee being unduly disadvantaged in competing with  
 12 another licensee or licensees of the same type or with suppliers of competing  
 13 fuels, in the case of a supply licence.

14 (4) The procedure to be followed in modifying, suspending, revoking or  
 15 adding any Licence conditions shall be as contained in the prescribed regulations.

16 (5) A licensee may appeal against a proposed licence modification subject  
 17 to the provisions of this chapter.

18 334.-( 1)Where it appears to the Authority that a licensee is contravening,  
 19 has contravened or is likely to contravene any of the conditions of the commercial  
 aJ licence, the Authority may publish a notice in such manner as it considers  
 21 appropriate to draw the attention of other persons affected or likely to be  
 22 affected by the contravention or threatened contravention of the said commercial  
 23 licence-

Contravention  
 and  
 Enforcement  
 of Licence  
 Conditions.

- 24 (a) specifying the actual or potential contravention;
- 25 (b) directing the licensee to do, or not to do, such things as it may specify;
- 26 (c) specifying the remedy and the timescale for compliance; and
- 27 (d) notifying the licensee of its intention to issue an enforcement order.

28 (2) The licensee and any other interested party shall be entitled to make  
 29 representations against or in support of the enforcement notice by a date specified  
 30 in the notice.

31 (3) If a licensee fails to comply with a notice served pursuant to subsection \

(1) of this section, the Authority may issue an enforcement order. Failure to  
2 comply with an enforcement order shall constitute an offence.

3 (4) The Authority shall not issue an enforcement order if~

4 (a) the licensee is able to demonstrate to the satisfaction of the Authority  
5 that it is not contravening or about to contravene a condition of a commercial  
6 licence; or

7 (b) where the contravention was not intentional and deliberate, the licensee  
8 has ceased to contravene a condition of a commercial licence.

9 (5) Where it is found that the licensee deliberately contravened a provision  
10 of the license the Authority may, if it so wishes, impose an appropriate penalty  
11 in accordance with prescribed regulations.

12 (6) If the licensee fails to comply with an enforcement order the Authority  
13 may institute legal proceedings against the Licensee and before the Federal  
14 High Court to ensure compliance.

15 (7) The Authority may, subject to the regulations made pursuant to this  
16 Act, adjust from time to time the penalty mentioned in subsection (b) of this  
17 section in order to reflect current rates of inflation.

Surrender of  
Licence.

18 335.-(1) The licensee may, in accordance with conditions prescribed by  
19 regulations issued pursuant to this Act, surrender the commercial licence if-

20 (a) the licensed activity is no longer required;

21 (b) the licensed activity is not economically justifiable;

22 (c) the licensee has failed to commence licensed activity within the time  
23 frame specified in the commercial licence;

24 (d) another qualified person is willing and able to assume the rights and  
25 obligations of the licensee concerned in accordance with the requirements  
26 and objectives of this chapter; and

27 (e) where applicable, the licensee has complied with all requirements of  
28 the law in respect of relinquishment and decommissioning of installations  
29 and reclamation of land.

30 (2) Where the licensee has commenced activities and has ongoing  
31 operations, it shall, unless a shorter period is stipulated in the commercial

licence, give the Authority at least twelve months notice in writing of its  
2 intention to cease its activities.

3 336. The Authority may after giving (six) months notice of its intention,  
4 suspend or revoke a commercial licence if the licensee has breached or continues  
5 to breach a condition of the licence or a regulation or a provision of this Part,  
6 where such condition or provision stipulates that a breach thereof shall make  
7 the licence liable to revocation or suspension, as the case may be.

Revocation or  
Suspension of  
Licence.

8 337. A licence may be revoked-

9 (a) if the licensee becomes insolvent or bankrupt or enters into an  
10 agreement or composition with its creditors or takes advantage of any  
11 enactment for the benefit of its debtors or goes into liquidation, except as  
12 part of a scheme for an arrangement or amalgamation;

Grounds for  
the  
Revocation of  
a Licence.

13 (b) upon the transformation or dissolution of the company or corporation  
14 unless it is for the purpose of amalgamation or reconstruction and provided  
15 the prior consent of the Authority has been obtained; or

16 (c) if a licensee fails to commence activities within the period of time  
17 prescribed in the licence.

18 ... 338. Any person engaged in activities in the downstream petroleum industry  
19 which are required to be licensed by the Authority pursuant to this part shall  
20 register with the Authority and provide such information concerning the activities  
21 of the undertaking as may be prescribed by regulations issued pursuant to this  
22 Act.

Mandatory  
Registration  
with the  
Authority.

23 339.-(1) The Authority shall establish, maintain and make publicly  
24 available a register of all commercial licenses issued, revoked, suspended,  
25 surrendered or withdrawn and all modifications and exemptions granted for the  
26 purposes of this Act.

Register of  
Licenses.

27 (2) The officer registering the issuance of a commercial licence or any  
28 modifications or exemption as contemplated under subsection (1) of this section  
29 shall require an acknowledgment of the receipt of a copy of the licence  
30 modification or exemption from the person accepting it in such form as may be  
31 prescribed by Regulations issued pursuant to this Act.

Preparation of  
Licenses and  
Duplicates.

340.-( 1) All commercial licenses or exemptions granted by the Authority  
2 under this chapter shall be prepared in duplicate, one copy being delivered by  
3 the Authority to the licensee and the other retained by the Authority to be bound  
4 up in a book of the appropriate series and serially numbered.

5 (2) The Authority shall not prepare a licence until the prescribed fees  
6 have been paid.

Fiscal Reliefs  
for a Project  
of Strategic  
National  
Importance.

7 341.-(1) Where a project is approved by the Federal Government as a  
8 project of strategic national importance, the Authority may recommend to the  
9 Minister to issue regulations for appropriate fiscal reliefs to such project.

10 (2) Any fiscal reliefs given under subsection (1) of this section shall be  
11 limited to the specific project and may be subject to such specified conditions  
12 as may be deemed necessary.

13 (3) Where a project that has been given fiscal relief in accordance with  
14 the provisions of this section undergoes expansion, the said fiscal relief shall  
15 not be deemed to extend to such project expansion.

Register of  
Memorials.

16 342.-(1) The Authority shall maintain a registry within which registers  
17 of memorials of all commercial licenses issued by it are kept.

18 (2) The memorial of any commercial license shall contain entries of  
19 extensions, transfers, surrenders, revocations, exemptions, forfeitures, changes  
20 of address, changes of name or any other matter affecting the status of or any  
21 interest in any licence given by the Authority in respect of this Part, in addition  
22 to the dates of such entries.

Effect of  
Registration.

23 343. The memorial of any commercial license, as contained in the registry  
24 maintained by the Authority in accordance with the provisions of section 342 of  
25 this Act shall be conclusive evidence-

26 (a) that the rights described therein are vested in the person named as the  
27 licensee; and

28 (b) of the conditions and other provisions to which the licensee is subject,  
29 so far as the same are required by any provision of this Act to be specified  
30 in the document.



344.-(1) The registry and the registers required under sections 339 and 342 shall be readily accessible to the public during the hours and upon the days designated by the Authority.

Public Access to the Registry.

(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 Authority in accordance with the provisions of this Act.

345.-(1) Where-

Disclosure of Confidential or Other Information.

(a) any member of the Board or employee of the Authority in the course of his or her duties, acquires information relating to the financial affairs of any person, 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 member of the Board or employee of the Authority,

he or she shall not for make use of such information, nor disclose it to any other person.

(2) The provisions of subsection (1) of this section shall not prohibit a person from disclosing information referred to in that subsection except-

(a) for the purpose of legal proceedings under this Act or any other law; or

(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 member of the Board or employee of the Authority.

(3) No member of the Board or employee of the Authority 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 of the Board or employee of the Authority.

(4) Any person who contravenes this section shall be guilty of an offence and liable on conviction to the forfeiture of any proceeds accruing to him on account of the contravention and to a fine not exceeding M5,000,000 or to imprisonment for a period not exceeding two years or to both fine and

imprisonment.

2 PART V - DOWNSTREAM PRODUCTS

3 *Chapter I - Operations*

4 346. In this Part, "operator" means a company working in the downstream  
5 petroleum industry .

Refining. 6 347. The principal operators in the refining sector of the downstream  
7 sector shall be the refining companies.

8 348. Every refining company shall-

9 (a) supply to the domestic market refined petroleum products of such  
10 quantities as may be specified by the Authority, at the benchmark price set  
11 by the Authority.

12 (b) undertake whatever investments that are required to upgrade its refinery  
13 and to increase its refining capacity in order to fulfil its obligations to the  
14 Authority under this section;

15 (c) from the inception of its licence, have open access to logistics facilities  
16 such as harbours, petroleum bulk storage and transportation facilities and  
17 pumping installations at any refinery not operated by, or transferred to it, in  
18 accordance with the terms of this part, and at prices approved by the Authority;

19 (d) own any and all depots attached to the refinery that it operates.

National 20 349.-(1) On the effective date, or no later than one month after the date  
Transport  
Logistics 21 of incorporation, the Minister shall transfer-

22 (c) the ownership of the product pipelines and depot systems formerly  
23 owned by the Petroleum Products Marketing Company; and

24 (b) the ownership of the gas transportation pipelines formerly owned by  
25 the Nigerian Gas Company to a limited liability company to be known as the  
26 National Transport Logistics Company.

27 (2) The National Transport Logistics Company shall be wholly owned by  
28 the Nigerian state.

29 (3) The Authority shall issue a transportation pipeline owner license to  
30 the National Transport Logistics Company.

31 (4) The product pipelines and depot systems transferred to the National

Transport Logistics Company in accordance with the provisions of subsection  
2 (1) of this section, shall be divided into segments and each segment concessioned  
3 out to facility management companies, who shall be selected in accordance  
4 with guidelines to be specified by the Minister on the recommendation of the  
5 Authority and who shall be in charge of the management and operation of the  
6 segment of the said product pipelines and depot systems that has been concessioned  
7 out to them.

8 (5) The gas pipeline system transferred to the National Transport Logistics  
9 Company in accordance with the provisions of subsection (1) of this section,  
10 shall be licensed out to a gas facility management company which shall be in  
11 charge of the said gas transportation pipeline system.

12 350.-(1) The Authority shall grant a facility management company only  
13 one transportation pipeline license in respect of a geographically defined segment  
14 of the downstream products pipeline and depot system owned by the National  
15 Transport Logistics Company, as specified in Schedule of this Act, and in  
16 accordance with agreed terms and conditions, which shall include an obligation  
17 on the part of the facility management company to repair and maintain the  
18 pipeline and depot system to which this Act applies.

Facility  
Management  
Companies.

19 (2) Each facility management company shall operate the regional storage  
20 X) depots which are adjacent to the product pipelines network operated by it.

21 (3) The Authority shall grant one transportation pipeline license in respect  
22 of the gas transportation pipeline system, as specified in the Eighth Schedule of  
23 this Act.

24 (4) Transport facility management companies shall possess-

25 (a) in the case of downstream products, a storage network that has the  
26 capacity, capabilities and geographic scope to meet in a cost-effective manner  
27 the storage and depot loading and off-loading needs of oil marketing companies  
28 in the regional downstream petroleum market it serves;

'19 (b) the possession of requisite facilities at its marine jetties to meet the  
30 import reception needs of the oil marketing companies in a cost-effective  
31 manner; and

(c) in the case of gas transportation, the capacity, capability and geographic scope to meet the needs of the downstream gas market.

(5) 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.

351.-(1) A licensed petroleum marketing company and a refining company shall be given access to the regulated petroleum pipelines system operated by the facility management companies-

(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.

(2) A licensed petroleum marketing and refinery company shall be given access to all regulated jetties and loading facilities and storage depots operated by the facility management companies and any other licensed regional storage depot companies-

(a) in the manner prescribed by this Act and other regulations and directives from the Authority; and

(b) on commercially viable terms as may be determined by the Authority from time to time.

(3) Access to the petroleum pipelines system and to the jetties loading facilities referred to in subsections (1) and (2) of this section shall be subject to-

(a) the capacity in the petroleum products pipeline system which shall be shared among licensed petroleum marketing and refining companies in proportion to their needs;

(b) the capacity in all the jetties, import terminals, loading facilities and storage depots to which this Act, regulations, guidelines and directives emanating thereof apply, which shall be shared among the licensed marketing and refining companies in proportion to their needs;

(4) Where any licensed petroleum marketing company or refining company

is given contracted capacity for a period to be set by the Authority and fails to  
2 utilise all or part of the contracted capacity, the said marketing or refining  
3 company shall forfeit such unutilised capacity where there are other parties  
4 willing and capable of utilizing such capacity;

5 (5) Where any licensed petroleum marketing company is given contracted  
6 capacity in any jetty, import terminal, or storage depot operated by a regional  
7 storage depot company and fails to utilise all or part of the contracted capacity  
8 for a period to be set by the Authority, such petroleum marketing company  
9 shall forfeit such unutilised capacity where there are other parties willing and  
10 capable of utilising such capacity

11 352.-(1) Licensed petroleum marketing companies shall have equal access  
12 to all jetties loading facilities and storage depots owned by the refining companies  
13 which are designated as regulated open access facilities by the Authority-

14 (a) in the manner prescribed by this Act and other regulations, guidelines  
15 and directives from the Authority; and

16 (b) on commercially viable terms as may be determined by the Authority  
17 from time to time.

18 (2) Access to the jetties, loading facilities and storage depots referred to  
19 in subsection (1) of this section shall be subject to these terms and conditions:

20 (a) the existing capacity in the said jetties and storage depots shall be  
21 shared amongst licensed oil marketing and refining companies in proportion  
22 to their needs;

23 (b) Licensed oil marketing companies that have contracted capacity in  
24 the jetty and storage facilities of a refining company and which fail to utilise  
25 all or part of such contracted capacity for a period to be set by the Authority  
1fJ or more shall forfeit such unutilised capacity where there are other parties  
27 willing and capable of utilising such capacity.

28 353.-(1) Every licensed petroleum marketing company shall contract  
19 for pipeline capacity with a facility management company-

:D (a) in proportion to the petroleum marketing company's shares of the  
31 domestic petroleum market;

(b) in the manner prescribed by this Act and other regulations, guidelines  
2 and directives from the Authority; and

(c) on commercially viable terms as may be determined by the Authority  
3 from time to time.  
4

(2) Every licensed petroleum marketing company shall contract loading  
5 and storage capacity with the regional storage depot company operating in the  
6 region where the oil marketing company operates-  
7

(a) in proportion to the petroleum marketing company's share of the  
8 regional petroleum products market;  
9

(b) in the manner prescribed by this Act and other regulations and directives  
10 from the Authority; and  
11

(c) on commercially viable terms as may be determined by the Authority  
12 from time to time.  
13

Non-  
Discrimination.

14 354. The National Transport Logistic Company and regional storage depot  
15 companies shall not discriminate between customers or classes of customers  
16 regarding access, tariffs, prices, conditions or services, except on grounds  
17 defined as justifiable and identifiable by the Authority.

Rights to  
Uncommitted  
Capacity in  
Private  
Facilities.

18 355.-(1) Licensed petroleum marketing companies shall have rights of  
19 access to uncommitted capacity in-

(a) petroleum pipelines that are controlled by private domestic or foreign  
20 operators but deemed to be strategic to the national interest;  
21

(b) storage facilities that are controlled by private domestic or foreign  
22 operators but deemed by the Authority to be strategic to the national interest;  
23

(c) petroleum pipelines operated by any of the facility management  
24 companies.  
25

(2) The rights to uncommitted capacity in subsection (1) of this section  
26 shall be-  
27

(rz) in the manner prescribed by this Act and other regulations, guidelines  
28 and directives from the Authority; and  
'19

(b) on commercially viable terms as may be determined by the Authority  
30 from time to time.  
31

356. The Transport logistic companies shall allow interconnections with Interconnections.  
 2 the facilities of another licensee, provided that-  
 3 (a) the interconnection is technically feasible, and  
 4 (b) the company requesting the interconnection bears the costs of creating  
 5 the interconnection.

357. The national transport logistic company and regional storage depot Indemnification,  
 7 companies shall indemnify all users of their open access facilities against all  
 8 losses and incidental expenses arising from the poor technical integrity of their  
 9 facilities.

358.-(1) Nothing in this Act shall preclude any licensed oil marketing Independent  
 Pipelines and  
 11 company or bulk consumer of petroleum products from constructing and operating Depots.  
 12 independent pipelines and depots for its exclusive usage.

(2) The pipelines and depots referred to in subsection (1) of this section  
 14 shall not be subject to the commercial regulation of the Authority, with the  
 15 exception of section 355 which shall apply to the said pipelines and depots.

(3) Notwithstanding the provisions of subsection (2) of this section, where  
 17 operators of independent pipelines and depots enter into open access agreements  
 18 with third parties, such pipelines and depots shall be subject to the commercial  
 19 regulation and supervision of the Authority.

359.-(1) The Authority shall prescribe benchmark prices for- Tariff  
 Methodology.

- 21 (a) transportation by pipelines;
- 22 (b) bulk storage of crude oil and petroleum products in depots designated
- 23 by the Authority as open access facilities;
- 24 (c) distribution of petroleum products;
- 25 (d) marketing of petroleum products; and
- 'lfj (e) retail supply of petroleum products.

TI (2) Benchmark prices for activities referred to in subsection (1) of this  
 28 section shall be set according to one or more tariff methodologies adopted by  
 19 the Authority for regulating prices and such tariff methodologies shall-

30 (a) allow an operator that operates efficiently to recover the full cost of  
 31 its business activities including a reasonable return on the capital invested

in such business;

2           (b) provide incentives for continued improvement of the technical and  
3 economic efficiency of the business;

4           (c) provide incentives for the continued improvement of quality of services;

5           (d) avoid undue discrimination among categories of consumers; and

6           (e) gradually reduce cross-subsidies among different categories of  
7 consumers.

8           (3) In establishing tariff methodologies, the Authority shall take into  
9 account the existence of any subsidy given to the operators from which they  
10 directly benefit, any favourable financing terms, and any other matter that  
11 impacts directly or indirectly on tariff methodologies.

12           (4) Notwithstanding subsection (2) of this section, the Authority shall  
13 have the power to establish pricing methodologies that reflect the terms and  
14 conditions of a contract between operators or between an operator and one or  
15 more eligible customers.

16           (5) Prior to approving a tariff methodology the Authority shall give notice  
17 in the official Gazette and in at least two newspapers of nationwide circulation  
18 of the proposed establishment of a pricing methodology and such notice shall-

19           (a) indicate a period within which any aggrieved person may raise  
20 objections on the proposed methodology, and

21           (b) the date of a public hearing the Authority shall conduct for discussion  
22 of that methodology.

23           (6) Prior to the establishment of the tariff methodology, the Authority  
24 shall-

25           (a) consider any representations made by applicants, operators, consumers,  
26 prospective customers, consumers associations, associations of prospective  
27 customers and such other persons reasonably interested; and

28           (b) obtain evidence, information or advice from any person possessing  
29 relevant expert knowledge.

30           (7) The Authority shall fix a date upon which the tariff methodology shall  
31 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.

2 (8) If it appears to the Authority that a tariff methodology should be  
3 changed, it shall conduct a public hearing on the proposal to change the  
4 methodology and give notice of it in accordance with the terms of subsection (5)  
5 of this section, indicating the period within which any persons may make  
6 representations to the Authority in connection with the proposal.

7 (9) The Authority may confirm the proposed changes to tariff methodology  
8 after taking into account any objections or representations received in response  
9 to notices issued under subsection (8) and shall comply with the provisions of  
10 subsection (7).

11 (10) Every person upon whom any duty has been imposed in connection  
12 with setting tariffs shall be so bound by the operative tariff methodology adopted  
13 through the method prescribed in this section.

14 (11) Every downstream operator shall display at its office a current copy  
15 of the tariff methodology applicable to such operator.

16 (12) No downstream operator shall pass the costs of any fines or penalties  
17 incurred under this Act or any other law on to the consumers as an operational cost.

18 360. The Authority shall-

19 (a) administer and ensure compliance, distribution and storage of the  
20 national strategic stocks of petroleum products in accordance with guidelines  
21 set by the Minister on the recommendation of the Authority;

22 (b) determine the amount to be charged as a levy for the financing of the  
23 national strategic stock, which shall form part of the retail price of each  
24 petroleum product; and

25 (c) designate, in conjunction with the appropriate authorities and national  
Ifj security agencies, the strategic points across the country where the national  
Tl strategic stocks shall be distributed and maintained.

28 361. The Authority shall ensure that all oil marketing companies maintain  
'9 operating stocks in accordance with guidelines set by the Authority.

30 362.-(1) The Authority shall monitor-

31 (a) the prices of petroleum products applied in the domestic market to

National  
Strategic  
Stock.

Operating  
Stock.

Price  
Monitoring.

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 coordinate with the Inspectorate and other relevant authorities to-

(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.

363.-(1) The Authority 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 Chapter.

(2) In the exercise of the functions contained in subsection (1) of this section the Authority shall have the power to summon any witness to appear before it.

364.-(1) Any person(s) authorised by the Authority 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 Authority with such information, returns or other particulars as may be necessary for the proper administration

of this Chapter.

2 (2) The Authority may require that the accuracy of any information,  
3 return or particulars furnished pursuant to subsection (1) of this section be  
4 •verified by an affidavit.

5 (3) No information obtained by the Authority under this section of the Act  
6 and that is non-generic, confidential, personal, commercially sensitive or  
7 proprietary in nature may be made public or otherwise disclosed to any person  
8 without the permission of the person to whom that information relates or by an  
9 order of the Federal High Court.

10 365. No person or company shall-

Offences.

11 (a) obstruct or assault any officer of the Authority or any person authorised  
12 by the Authority in pursuance of the powers given to the Authority under this  
13 Act;

14 (b) refuse any officer of the Authority access to any premises, facilities  
15 or retail outlets, or refuse to submit to a search of any, premises, facilities  
16 or retail outlets by any authorised officer or agent of the Authority;

17 (c) refuse to acknowledge the receipt of any summons by the Authority  
18 issued and duly delivered to any person;

19 (d) fail to comply with any lawful demand, notice, order or requirement  
:D of an officer or authorised person of the Authority in the execution of his or  
21 her duties under this Act.

22 366. No person or company shall-

23 (a) engage in refining, marketing, distributing or operating any petroleum  
24 or gas processing or transmitting plant, terminal or premises without a valid  
25 license;

1fJ (b) remove, destroy or damage any pipeline or other works or installations  
Zl utilised for the purpose of supplying petroleum products;

28 (c) sell petroleum products above the benchmark prices set by the  
79 Authority;

~ (d) furnish a statement or incomplete information calculated to mislead  
31 or wilfully delay or obstruct the Authority and its officers in the exercise of

their duties;

2 (e) fail to cooperate with the Authority in its investigation of any suspected  
3 crime or corrupt practice;

4 (f) discriminate among third parties in the allocation of capacity, access  
5 to open access facilities and payment of regulated prices and tariffs.

6 (g) use or permit its pipelines, equipment, or other facilities to be used  
7 for or in relation to the commission of any criminal or civil offence.

8 367.-(1) Any person who violates the provisions of Section 365 and 366  
9 of this Act shall-

10 (a) be liable to payment of a fine which shall be as prescribed by the  
11 Authority.

12 (b) reimburse any affected downstream operator for injuries suffered as a  
13 result of the said violation of the provisions of this Chapter, which  
14 reimbursement shall include, where applicable, the replacement of any  
15 petroleum products illegally taken or of any damaged equipment.

16 (2) Where such company or person is unable to pay the penalty or to  
17 reimburse the downstream operator as prescribed under subsection (1) of this  
18 section, he, or in the case of a company, every officer responsible for the  
19 management of the company, shall be liable to imprisonment for a period of not  
20 less than two years and not more than five years.

21 (3) With respect to subsection (2) of this section where an officer proves  
22 that he had taken all reasonable precautions and exercised due diligence to  
23 prevent the said violations, the officer shall be liable to pay half the fine  
24 stipulated for such offence.

25 368. Where an offence has been committed under the provisions of section  
26 365 and 366 of this Act the affected company or person shall discontinue the  
27 supply of petroleum products until any damage, alteration, malfunction or loss  
28 has been rectified and all safety issues have been resolved.

29 369. The Authority shall be responsible for the resolution of disputes  
30 between downstream operators or between downstream consumers and  
31 downstream operators in the downstream petroleum sector in respect of all

Dispute  
Settlement.

1 matters to which this Act pertains and in accordance with the provisions of this  
2 Act.

3 *Chapter II- Specific Provisions Applicable to Downstream Gas*

4 370.-(1) In consultation with licensees and other stakeholders, the Authority shall establish a network code governing the operation of the  
5 downstream gas network;  
6

Network  
Code.

7 (2) The network code shall include but shall not be limited to-

8 (a) a connection policy, standard terms for connection to the transportation  
9 network and distribution network, and a statement of the connection charging  
10 methodology;

11 (b) a mechanism by which users reserve capacity in the transportation  
12 network or distribution network, and, in the event that at any time there is a  
13 greater demand for access than there is available capacity, a mechanism for  
14 allocating capacity between users; and

15 (c) the nomination of-

16 (i) the seller of the wholesale gas being conveyed;

17 (ii) the purchaser of the wholesale gas being conveyed; or

18 (U) a willing third party to take responsibility for matters that may  
19 arise with respect to gas in transit through the network, such matters to  
20 include but not be limited to the amount of gas injected into or withdrawn  
21 from the network, nominating volumes, payment for the use of the network  
22 and payment for overruns and shortfalls of gas.

23 (d) requirements for the provision of information to the transportation  
24 network operator and the distributor about the volume, timing and flow rate  
25 of injections into and withdrawals from the transportation network or  
26 distribution network, as the case may be;

27 (e) the structure of charges and the applicable tariffs charged for using  
28 the transportation network and distribution networks;

29 (j) where required, arrangements for balancing the wholesale gas being  
30 conveyed;

31 (g) registration arrangements;

(h) metering, allocation and settlement arrangements;

2 (i) governance arrangements;

3 (3) The Authority shall make copies of the network code available to  
4 interested parties upon payment of a prescribed fee.

Wholesale  
Gas Market.

5 371.-(1) Following consultations with interested stakeholders, the  
6 Authority shall make recommendations to the Minister to issue regulations-

7 (a) defining the class or classes of customers that, from time to time,  
8 shall constitute wholesale customers under this Act; and

9 (b) specifying the qualifying criteria for such classification.

10 (2) Regulations made under subsection (1) of this section may be amended  
11 as necessary to facilitate and encourage competition among suppliers, and any  
12 amendment of such regulations which results in a change in the class of customers  
13 shall not affect the rights and obligations of parties under gas supply contracts  
14 entered into prior to such amendment.

Wholesale  
Customers.

15 372. Wholesale customers shall be entitled to secure gas from any holder  
16 of a licence to supply gas.

Trading and  
Settlement of  
Wholesale  
Gas.

17 373.-(1) Where the Authority determines that there is a need for formal  
18 arrangements for the trading of wholesale gas, the Authority may require the  
19 transportation network operator to develop arrangements for the safe and efficient  
:X| trading of wholesale gas.

21 (2) In pursuance of subsection (1) of this section, the transportation network  
22 operator shall make arrangements for the trading and settlement of wholesale  
23 gas in consultation with industry participants and interested stakeholders and  
24 subject to the approval of the Authority.

25 (3) The arrangements for the trading of wholesale gas may include, but  
'}fj shall not be limited to-

T/ (a) the designation of a market operator by the Authority to facilitate gas  
28 trading;

'}9 (b) the levying of charges on market participants to recover the costs of  
:D market operation, and the level of charges to be subject to the approval of  
31 the Authority;

2 (c) arrangements by which the purchasers of wholesale gas have access to  
offers to sell, and the sellers of wholesale gas have access to offers to  
3 purchase gas;

4 (d) arrangements for settling the volumetric or monetary accounts for  
5 purchases and sales of gas between parties; and

6 (e) rules of participation in the wholesale gas market including governance  
7 arrangements for overseeing their implementation and amendment.

8 (4) The wholesale gas trading arrangements-

9 (a) may be compulsory or optional; and

10 (b) shall be incorporated into the network code developed in accordance  
11 with the provisions of section 370 of this Act.

12 (5) Once the arrangements and applicable rules have been approved, the  
13 Authority shall-

14 (a) publish a notification in the form and manner prescribed by regulations  
15 issued pursuant to this Act, indicating that the wholesale gas trading  
16 arrangements have been approved and stating the date on which they will be  
17 implemented; and

18 (b) make copies available to members of the public upon payment of the  
19 prescribed fee.

20 374.-(1) Any person shall be permitted access to a transportation pipeline,  
21 a transportation network or a distribution network, as the case may be, for the  
22 purpose of having gas transported to points of consumption, subject to compliance  
23 with the prescribed terms and conditions for access stated in the network code.

Third Party  
Access.

24 (2) The Authority shall be primarily responsible for the development of a  
25 network code that shall set out standard terms and conditions for connection to,  
26 access and use of the transportation and distribution networks.

27 (3) Where a transportation or distribution pipeline is isolated from the  
28 main transportation network or distribution, the Authority shall develop separate  
19 terms of access for such isolated transportation or distribution pipeline.

30 375.-(1) Third party access to the transportation network and distribution  
31 network shall be-

2 (a) on a non-discriminatory basis between system users with similar characteristics;

3 (b) in respect of any available capacity, provided that such capacity is not  
4 subject to a previous contractual commitment;

5 (c) in accordance with and governed by the terms and conditions of the  
6 network codes approved by the Authority;

7 (d) on the condition that the applicant for access is or becomes a party to  
8 and undertakes to comply with the applicable network code; and

9 (e) subject to the pricing principles in sections 377 and 378 of this part.

10 (2) Connection agreements may be entered into between-

11 (a) a customer and a distributor; or

12 (b) a transportation pipeline owner and a transportation network operator,

13 or

14 (c) a distributor and the transportation network operator, when a distribution  
15 network connects to the main transportation network, or

16 (d) a supplier and a transportation pipeline owner or transportation network  
17 operator.

Disputes in  
Respect of  
Third Party  
Access.

18 376.-(1) Disputes in respect of third party access shall be resolved by a  
19 determination of the Authority.

20 (2) Appeals against determinations made by the Authority in connection  
21 with third party access may be referred to arbitration in accordance with the  
22 procedure specified in the Arbitration and Conciliation Act Cap 19 Laws of the  
23 Federation of Nigeria VoU, 1990.

Pricing.

24 377.-(1) Where the Authority determines-

25 (a) that a particular licensed activity is a monopoly service; or

26 (b) that competition has not yet developed to such an extent as to protect  
27 the interests of customers; or

28 (c) that a particular licensee is a dominant provider, then the Authority  
29 shall have the power to regulate the prices charged or the revenues earned  
30 by licensees in respect of such activities, in a manner consistent with the  
31 Authority's duties under this Act and in accordance with the pricing principles



set out in section 379 of this part

2 (2) The Authority shall consult with licensees, industry participants and  
3 stakeholders before undertaking a pricing review or establishing a methodology  
4 for regulating prices and revenues earned by licensees providing monopoly or  
5 dominant services.

6 **378.** In the exercise of its powers to regulate prices charged for downstream  
7 gas and the revenues earned by downstream gas licensees, the Authority shall  
8 at all times be guided by the following principles-

Pricing  
Principles.

9 (a) gas prices shall be disaggregated into the component elements of the  
10 supply chain, including the costs of wholesale gas, transportation, distribution  
11 and supply;

12 (b) the prices charged for each licensed activity shall reflect the costs  
13 incurred for the efficient provision of that activity;

14 (c) prices charged shall permit a reasonable return for licensees on their  
15 investments; and

16 (d) prices shall not discriminate between customers with similar  
17 characteristics, such as similar size or a similar consumption profile.

18 **379.** Subject to price or revenue regulations issued pursuant to this Act  
19 all licensees in the downstream gas sector shall-

Approval and  
Publication of  
Charging  
Structures.

20 (a) propose tariffs and tariff methodologies for the approval of the  
21 Authority, prior to the application of such charges;

22 (b) impose tariffs in accordance with such approval; and

23 (c) publish such tariffs in a manner that ensures that the customers of  
24 such licensees are able to identify and calculate the full extent of all charges  
25 for which they will become liable.

26 **380.** Tariffs charged for the use of the gas transportation network shall  
27 reflect-

Transportation  
Tariffs.

28 (a) efficient investment and capital costs;

29 (b) efficient operating and maintenance expenses; and

30 (c) a reasonable return to licensees on their investments.

Distribution  
Tariffs.

381. The tariff charged for the use of the gas distribution network shall  
2 reflect-  
3 (a) efficient investment and capital costs;  
4 (b) efficient operating and maintenance expenses; and  
5 (c) a reasonable return to licensees on their investments.

Regulation of  
Customer  
Prices.

382. Regulated customer prices shall reflect-  
6 (a) the reasonable costs incurred in the purchase of wholesale gas;  
7 (b) the transportation tariff;  
8 (c) the distribution tariff, if the customer is connected to a distribution  
9 network;  
10 (d) efficient supply charges covering billing, metering and other services  
11 relating to gas supply; and  
12 (e) a reasonable return for the supplier.

Wholesale  
Gas Prices.

383.-(1) Notwithstanding the provisions of section 373, wholesale gas  
14 supply between a supplier and a customer shall be negotiated directly between  
15 the parties on an arms length basis and the gas transfer price between an  
16 upstream gas producer and a downstream purchaser shall be transparent and  
17 shall reflect the costs of transfer between the parties, in line with the provisions  
18 of section 378 of this Chapter.

(2) The Authority shall have power to monitor wholesale gas supply  
20 transactions in order to ensure that the transfer price between the wholesale  
21 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  
23 supplier shall provide the Authority with information relating to the transaction  
24 including, where applicable, the cost incurred by the gas producer in the  
25 production and supply of the gas and all other information relevant to the price  
26 at which the gas is sold.

(4) The information provided to the Authority by the supplier in compliance  
28 with the provisions of subsection (3) of this section shall be classified by the  
29 Authority as confidential information and may not be disclosed to any persons  
30 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  
2 Authority.

3 (5) The supplier shall be guilty of an offence and liable to a fine not  
4 exceeding M50,000,000 if he or she-

5 (a) knowingly conceals information required under subsection (3) of this  
6 section; or

7 (b) provides information which is false or misleading in any material  
8 particular with respect to the information required in subsection (3) of this  
9 section.

10 384.-(1) A transitional pricing plan setting out temporary or transitional  
11 pricing arrangements that allow for a gradual transition towards pricing  
12 arrangements that comply with the pricing principles outlined in section 378  
13 shall be introduced and implemented by the Authority.

Transitional  
Pricing  
Arrangements.

14 (2) The transitional pricing plan shall be formulated by the Authority in  
15 consultation with the Ministers in charge of petroleum resources, finance,  
16 industries and power and steel; and with gas producers, electricity producers,  
17 the National Electricity Regulatory Authority and other key stakeholders.

18 (3) The transitional pricing plan shall-

19 (a) address cross-subsidies existing within the downstream gas sector  
20 between customers, between classes of customers, and between the gas sector  
21 and the power and other industrial sectors at the date of the coming into  
22 force of this Act;

23 (b) include, but not be limited to, such matters as:

24 (i) arrangements for eradicating the cross-subsidies referred to in  
25 subsection (3) (a) of this section;

26 (ii) the prescription of the period(s) during which transitional pricing  
27 arrangements will apply;

28 (Uj) implications for other parties and sectors;

19 (iv) actions required to implement the plan; and

30 (v) identification of the parties responsible for particular actions.

31 (4) Where the Authority considers it necessary in order to facilitate the

implementation of the transitional pricing plan, the Authority may impose special  
2 temporary licence conditions on licensees during the transitional period, which  
3 conditions shall not disadvantage any licensee in relation to another licensee of  
4 the same class.

Determinations.

5 385.-(1) The Authority shall investigate any case of suspected anti-  
6 competitive behaviour and make necessary determinations thereon as  
7 contemplated in sections 390 to 392 of this part. (2) The Authority may impose  
8 penalties if the licensee is adjudged to have conducted its activities in a non-  
9 competitive manner.

10 (2) A determination made by the Authority in respect of any matter within  
11 this Part shall be legally binding and subject to appeal before the Federal High  
12 Court in the manner prescribed in this Act.

Customer  
Protection.

13 386.-(1) In order to protect the interests of customers, the Authority  
14 may make recommendations to the Minister to issue regulations requiring  
15 suppliers or distributors, as the case may be, and by such means as the regulations  
16 may specify-

17 (a) to publish their terms of supply or distribution;

18 (b) to establish or to facilitate the establishment of a forum at which  
19 customers are able to express their views and to raise concerns;

20 (c) to formulate and adhere to such standards of performance as are, in  
21 its opinion, necessary to ensure the safety, reliability and quality of supply  
22 and distribution services to customers; and set penalties for failure to comply;

23 (d) to prepare and submit reports to the Authority indicating their  
24 performance levels and the status of their operations in respect of licensed  
25 activities, at such times as may be prescribed by regulations or in their  
26 respective licences, and at least on an annual basis; .

27 (e) to develop and adhere to customer service codes, setting out the  
28 practices and procedures to be followed in the conduct of specified licensed  
29 activities including but not limited to practices and procedures for-

30 (i) the installation, testing, maintenance and reading of meters;

31 (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 Authority prior to publication and may be reviewed at intervals as may be considered necessary by the Authority.

(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 Authority shall-

(a) consult with suppliers, distributors, and interested stakeholders; and

(b) take into account existing procedures, practices and standards.

**387.** 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-

Provision of  
Service 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 Inspectorate.                             |
| Transfer of Customers.             | 2   | 388. Where the designation of a supplier of last resort requires the transfer   |
|                                    | 3   | of customers from one licensee to another, the Authority shall prepare, or      |
|                                    | 4   | require the supplier of last resort to prepare-                                 |
|                                    | 5   | (a) procedures to secure the effective transfer of customers; and               |
|                                    | 6   | (b) a statement of any costs reasonably incurred in undertaking the transfer,   |
|                                    | 7   | and such costs, if approved by the Authority, shall be recoverable by the       |
|                                    | 8   | supplier of last resort.                                                        |
| Public Service Obligations.        | 9   | 389.-(1) The Authority may, following consultations with licensees,             |
|                                    | 10  | customers, and other interested stakeholders, make recommendations to the       |
|                                    | 11  | Minister to issue regulations imposing public service obligations on licensees  |
|                                    | 12  | in relation to matters including, but not limited to-                           |
|                                    | 13  | (a) security of supply;                                                         |
|                                    | 14  | (b) economic development and the achievement of wider economic policy           |
|                                    | 15  | objectives;                                                                     |
|                                    | 16  | (c) environmental protection; and                                               |
|                                    | 17  | (d) health and safety.                                                          |
| Public Service Levy.               | 18  | 390.-(1) Where the Authority considers that it is in the wider public           |
|                                    | 19  | interest, the Authority shall make recommendations to the Minister to issue     |
|                                    | 20  | regulations providing for the recovery of any additional costs incurred in      |
|                                    | 21  | complying with the public service obligations, through a public service levy,   |
|                                    | 22  | which may be imposed on customers                                               |
|                                    | 23  | (2) The amount of and mechanism for the collection and remittance of            |
|                                    | 24  | the public service levy imposed on each customer shall be set out in guidelines |
|                                    | 25  | issued pursuant to this section.                                                |
| Competition and Market Regulation. | 26J | 391. No licensee or any other person having the ability to influence the        |
|                                    | 27  | terms and conditions on which licensed activities are performed and the price   |
|                                    | 28  | at which petroleum products are supplied shall-                                 |
|                                    | 29  | (a) make it a condition for the provision or supply of a product or service     |
|                                    | 30  | that any person acquiring such a product or service will be required to         |
|                                    | 31  | 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 legal ly 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 it>ivities, 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.

392.-(1) The Authority shall have the responsibility to prevent and take action against anti-competitive behaviour in the 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; and

(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

Power of the Authority to Determine Abuse of Market Power.

exists a likelihood of, anti-competitive behaviour and in particular an abuse of  
2 market power, the Authority may-

3 (a) issue cease and desist orders as may be required;

4 (b) require and compel the disclosure of information from such licensees;

5 (c) undertake inquiries and investigations;

6 (d) levy fines which shall be set out in regulations issued pursuant to this  
7 Act from time to time, provided that such fines shall not exceed 10% of the  
8 annual turnover of the affected person or company for the preceding year.

9 (3) Notwithstanding the provisions of this section, where there is an  
10 application by a licensee or other person with the ability to influence the price  
11 of gas in the downstream gas sector, and where the Authority considers that it  
12 would be in the national interest or that it would be necessary to preserve or  
13 promote the benefits of a properly functional and effectively competitive  
14 downstream gas market, the Authority-

15 (a) may give written approval for a specific activity upon such terms and  
16 conditions as the Authority shall deem appropriate;

17 (b) in issuing the approval, may impose such requirements as it deems fit  
18 and require such undertakings as it deems appropriate from the applicant as  
19 a condition precedent to the issuance of the said approval;

20 (c) may withdraw an approval of a specific activity that it has granted  
21 subject to such terms and conditions as it may, in its absolute discretion,  
22 designate; and

23 (d) issue Directions to prevent or mitigate any conduct that shall or is  
24 likely to lead to unlawful exercise of market power that will prevent  
25 Customers from obtaining the benefits of a properly functioning and  
26 competitive Downstream Gas market.

27 (4) Nothing in subsections (1) (2) and (3) of this section shall be construed  
28 to preclude or restrict the right of the Authority or any person to seek an  
29 injunction against any conduct prohibited in this Chapter.

30 (5) Any person who wishes to proceed to court or to arbitration for the  
31 enforcement of any of the provisions of this chapter shall first notify the Authority.



(6) The Authority 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 Authority 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 Authority deems relevant.

393.-(1) The Authority shall have responsibility to monitor the state of the gas market so as-

Competition  
and Market  
Monitoring.

(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;

1 (d) to determine whether there is any anti-competitive activity being  
2 carried on, in which case the Authority would be required to exercise its  
3 powers under this Act to prevent the continuance of such activity;

4 (e) to determine any pre-conditions and any transitional arrangements  
5 required for any services to be offered competitively.

6 (2) To enable the Authority to discharge its responsibilities under sub-  
7 section (1) above and in particular, to determine whether there is, or may be,  
8 an abuse of market power, the Authority shall have power to-

9 (a) require and compel the disclosure of information from licensees; and

10 (b) undertake inquiries and investigations.

11 (3) If, in the opinion of the Authority there has been an abuse or a threatened  
12 abuse of market power, the Authority may serve a notice on such company or  
13 person specifying the abuse or threatened abuse, and of its intention to issue a  
14 cease and desist order.

15 (4) The Authority shall publish a notice-

16 (a) specifying the actual or threatened contravention;

17 (b) directing the company or person to whom the notice is issued to, or  
18 not to do, such things as it may specify;

19 (c) specifying the remedy and the timescale for compliance; and

20 (d) notifying the company or person to whom the notice is issued of its  
21 intention to issue a cease and desist order or to levy a fine not exceeding  
22 N50,000,000, provided that such fine shall not exceed 10% of the annual  
23 turnover of the company or Person for the preceding year.

24 (5) The Authority shall publish the notice in the form and manner specified  
25 in the prescribed regulations and shall invite the company or person to whom  
26 the notice is issued and any other interested parties to make representations  
27 against or in support of the notice by a specified date.

28 (6) If the company or person to whom the notice is issued fails to comply  
29 with a notice served pursuant to subsection (1) of this section, the Authority  
30 may issue a cease and desist order.

31 (7) Failure to comply with an order issued under subsection (6) of this

section shall be an offence punishable by a fine not exceeding N50,000,000 or  
2 the revocation of the relevant licence where that company or person is a licensee.

3 (8) A cease and desist order may not be issued nor a fine imposed if~

4 (a) the company or person to whom the notice is issued is able to  
5 demonstrate to the satisfaction of the Authority that it has not abused or is  
6 not threatening to abuse its market power; or

7 (b) "the company or person to whom the notice is issued has ceased to  
8 . abuse or has ceased from the threat to abuse its market power.

9 (9) Where a person has ceased to abuse or has ceased from the threat to  
10 abuse its market power, if it is found that the said threat or threat of abuse was  
11 deliberate, the Authority may impose an appropriate penalty which shall be  
12 prescribed in the regulations issued pursuant to this Act.

13 394.-(1) No person shall-

14 (a) cause damage to any infrastructure, plant or equipment belonging to a  
15 downstream products or gas licensee, including but not limited to fittings,  
16 meters, apparatus or equipment;

17 (b) alter the operation of any meter, equipment or apparatus including but  
18 not limited to those used for measuring the quantity or quality of petroleum  
19 products or gas supplied;

20 (c) prevent any such meter, equipment or apparatus including but not  
21 limited to all such items used for measuring or registering the quantity of  
22 petroleum products or gas supplied from functioning accurately or properly  
23 such as or registering the quantity of petroleum products or gas supplied; or

24 (d) otherwise destroy, interfere with or remove the meters, equipment or  
25 apparatus of a licensee without the permission of the licensee.

26 (2) Any person convicted for intentionally committing any offence listed  
11 in subsection (1) of this section shall be liable to-

28 (a) pay a penalty not exceeding N100,000,000; and

29 (b) reimburse the licensee for any petroleum products or gas illegally  
30 taken and for any damage to the licensee's equipment; provided that-

31 (i) where such person is unable to pay the penalty or to reimburse the

Offences and  
Penalties.

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

(i) the Authority 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 N2,000,000 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 Authority 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.

395. 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-

2 (a) upon a written request from the Authority or any other lawful or duly  
3 empowered authority, assist the Authority or such lawful authority, in  
4 preventing the commission or attempted commission of any criminal offence  
5 under this Act or any other statute in force in the Federal Republic of  
6 Nigeria, including but not limited to those affecting the public revenue and  
7 the preservation of national security.

8 (b) not be liable for any act or for any omission done in good faith, in  
9 respect of any act or omission arising from the performance of a duty or  
10 obligation imposed by the Authority or other lawful authority.

11 396.-(1) Where no specific penalty is prescribed in respect of any offence  
12 under this part, any person who contravenes any of the provisions of this part or  
13 any regulations issued in respect of this Part and is guilty of an offence shall be  
14 liable-

Penalty not  
Prescribed.

15 (a) as a first offender, to-

16 (i) a fine not exceeding ₦2,000,000 or to such other amount as may be  
17 prescribed in regulations issued pursuant to this Part; or

18 (ii) imprisonment for a period not exceeding two years; or

19 (iii) both fine and imprisonment.

20 (b) for subsequent convictions, to-

21 (i) a fine not exceeding ₦10,000,000 or such other amount as may be  
22 prescribed in regulations issued pursuant to this part; or

23 (ii) imprisonment for a period not exceeding five years; Or

24 (iii) both fine and imprisonment;

25 (2) The Authority may, as necessary, adjust the amount of the penalty  
26 stipulated in subsection (1) of this section through prescribed regulations, in  
27 order to reflect current rates of inflation.

28 397. Any person who-

29 (a) fails or refuses to furnish a return or to supply information to the  
30 Authority or any other duly empowered lawful authority at the time and in  
31 the manner prescribed; or

Penalty for  
Refusal to  
Furnish  
Return or  
Supply  
Information.

(b) who furnishes a false or incomplete return; or

(c) supplies false or incomplete information; or

(d) wilfully delays or obstructs the Authority, its officers, an inspector or police officer in the exercise of the powers or duties conferred or imposed on the Authority 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 N20,000,000 or to imprisonment for a period not exceeding one year or to both fine and imprisonment

(2) The Authority may, as necessary, adjust the amount of the penalty stipulated in this section by prescribed regulations, in order to reflect current rates of inflation.

#### PART VI - INDIGENOUS OIL COMPANIES AND NIGERIAN CONTENT

##### *Chapter I - Indigenous Oil Companies*

398. This chapter shall apply to-

(a) oil prospecting licenses and oil mining leases held, whether at or before the commencement of this act, by indigenous oil companies; and to

(b) petroleum operations undertaken pursuant to such licenses and leases.

399. 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 fifty thousand barrels per day of crude oil or its natural gas equivalent.

**400.** An indigenous oil company whose aggregate production of crude oil is not more than fifty 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.

**401.** The Minister shall, in consultation with the Directorate or Inspectorate, as the case may be, shall issue regulations or guidelines prescribing

clearly defined targets and programmes for continuously increasing the level of indigenous participation in the Nigerian petroleum industry (to generally give effect to the provisions of this Act which regulations or guidelines 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.

**402.** With reference to section 401 of this Part, 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.

#### *Chapter II - Nigerian Content*

403.-(1) The holder of a petroleum mining lease shall ensure that-

- (a) the number of Nigerian citizens employed by him in connection with the lease in its managerial, professional and supervisory grades or any other corresponding grades designated by him shall not be less than ninety five per cent 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 anyone such grade shall not be less than 60 % 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) An indigenous company that is holder of a petroleum mining lease, which has less than fifty employees and which is unable to comply with the provisions of subsection (1) of this section may apply to the Inspectorate for a written waiver of the said provisions, giving reasons for its inability to comply with the said provisions, and this request shall not be unreasonably refused.

(3) With reference to subsection (2) of this section, where the Inspectorate

General  
Terms.

refuses an application it shall give its reasons in writing to the applicant.

2           404.-( I) A licensee of a petroleum prospecting licence shall within twelve  
3 months of the grant of his licence, and the lessee of a petroleum mining lease  
4 shall on the grant of his lease, submit for the Minister's approval, a detailed  
5 programme for the recruitment and training of Nigerians.

6           (2) The programme shall provide for the training of Nigerians in all  
7 phases of petroleum operations whether the phases are handled directly by the  
8 licensee or lessee or through their agents and contractors.

9           (3) Any scholarship schemes prepared and any scholarships proposed to  
10 be awarded by the licensee or lessee, whether or not related to the operations  
11 of the licensee or lessee or to the petroleum industry generally shall be submitted  
12 to the Directorate for recommendation to the Minister for approval.

13           (4) Once a programme stated in subsection (1) above or a scholarship  
14 scheme stated in subsection (3) above has been approved by the Minister upon  
15 the recommendation of the Directorate, it shall not be varied without the written  
16 permission of the Minister.

17           (5) A report on the execution of the programme mentioned in subsection  
18 (3) above and the level of Nigerian content shall be submitted by the licensee or  
19 lessee to the Directorate at the end of every financial year or about the end of  
20 June and December in every calendar year.

21                                           PART VII - HEALTH, SAFETY AND ENVIRONMENT

Responsibility  
over the  
Environment.

22           405.-(1) Without prejudice to the overall responsibility of the Federal  
23 Ministry of Environment for the environment of Nigeria, the Inspectorate shall  
24 have responsibility over all aspects of health, safety and environmental matters  
25 in respect of the petroleum industry.

26           (2) The Inspectorate shall at all times ensure that any regulation or directive  
27 in respect of the petroleum industry, made in pursuance of subsection (1) of this  
28 section, shall not conflict with any regulation or directive issued by the Federal  
29 Ministry of the Environment in respect of the environment of Nigeria.

30           (3) For the avoidance of doubt the Inspectorate shall, in consultation with  
31 the Ministry of Environment, make regulations and issue directives specifically



relating to environmental aspects of the petroleum industry.

2 (4) In the event of a conflict between the regulations or directives of the  
 3 Inspectorate and the Federal Ministry of the Environment, representatives of  
 4 the Inspectorate and the said Ministry shall meet to resolve and agree on the  
 5 areas of conflict within thirty days from the date of the first meeting, and the  
 6 agreement between the representatives shall be in writing and duly signed by  
 7 the representatives of the Inspectorate and the Ministry.

8 (5) With reference to subsection (4) of this section, where there is no  
 9 agreement between representatives of the Inspectorate and the Federal Ministry  
 10 of the Environment, the regulations or directives of the Federal Ministry of the  
 11 Environment shall prevail.

12 406. Every company engaged in any activities requiring a licence, lease  
 13 or permit in the Upstream and downstream sectors of the petroleum industry in  
 14 Nigeria, shall comply with all environmental and safety laws, regulations,  
 15 guidelines or directives as may be issued by the Minister of Environment, the  
 16 Minister, or the Inspectorate, as the case may be.

17 407. Every company engaged in any activities requiring a licence, lease  
 18 or permit in the upstream and downstream petroleum industry in Nigeria shall  
 19 conduct its operations in accordance with internationally accepted principles of  
 20 sustainable development which include the necessity to ensure that the  
 21 constitutional rights of present and future generations to a healthy environment  
 22 is protected and

Conduct of  
Operations.

23 408. Every company engaged in any activities requiring a licence, lease  
 24 or permit in the upstream and downstream petroleum industry  
 25 shall

Obligations of  
Licensee,  
Lessee and  
Contractors.

26 (a) uphold the freedom of association and effective recognition of the  
 27 right of collective bargaining of its employees.

28 (6) not utilise on its own behalf or encourage the utilisation of all forms  
 29 of forced and compulsory labour by any of its contractors.

30 (c) not employ or engage the services of any person below the age of  
 31 eighteen years old.

2 (d) ensure that decisions in respect of employment and occupation are not  
discriminatory against gender or ethnicity.

3 (e) support a precautionary approach to environmental challenges.

4 (f) encourage the development and use of environmentally friendly  
5 technologies for exploration and development in Nigeria.

Duty to  
Restore.

6 409.-(1) Any person engaged in activities requiring a license, lease or  
7 permit in the upstream and downstream petroleum industry shall-

8 (a) manage all environmental impacts in accordance with the licensee or  
9 lessee's environmental management plan or programme, as the case may  
10 be;

11 (b) as far as it is reasonably practicable, rehabilitate the environment  
12 affected by exploration and production operations, whenever environmental  
13 impacts occur as a result of licensees and lessees operations-

14 (i) to its natural or pre-existing state before the operations or activities  
15 as a result of which the environmental impact occurred; or

16 (ii) to a state that is in conformity with generally accepted principles  
17 of sustainable development;

18 (c) be responsible for any environmental damage, pollution or ecological  
19 degradation occurring within the license or lease area as the result of  
20 exploration and production activities in the case of upstream operations and  
21 as a result of any licensed activity in the case of downstream activities

22 (2) In respect of subsection (1) of this section, the licensee or lessee shall  
23 not be liable for, or under an obligation, to rehabilitate where the act adversely  
24 affecting the environment has occurred as a result of sabotage of petroleum  
25 facilities, which also includes tampering with the integrity of any petroleum  
26 pipeline and storage systems.

27 (3) Where there is a dispute as to the cause of an act that has resulted in  
28 harm to the environment, the licensee, lessee or any affected person or persons  
29 shall refer the matter to the Inspectorate for a determination and the  
30 determination of the Inspectorate shall be final.

31 (4) Where the act referred to in subsection (3) of this section is found to

have occurred as a result of sabotage, costs of restoration and remediation shall be borne by the local government and the state governments within which the said act occurred.

410. From the commencement of this Act, the Inspectorate 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.

Development Programmes.

411. 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.

Utilisation of Good Oil Field Practices.

412.-(1) The holder of a petroleum exploration licence, petroleum prospecting licence or petroleum mining lease shall, 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 other 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 Inspectorate.

Compensation.

(2) The rates of compensation contained in the guidelines referred to in subsection (1) of this section shall be amended through a consultative process and the Inspectorate shall update the said guidelines annually so as to reflect rates of inflation and any other salient factors.

413. Every year, all licensees, lessees and contractors and service companies in the upstream petroleum industry shall publish the criteria used for the location of community development projects and other Social investment initiatives within their respective areas of operation.

Publications.

PART V - FISCAL PROVISIONS

414. In this Part,...

Definitions.

(a) "Contract area" means the contract area as defined in the Production Sharing Contract;

(b) «Foreign Company" means a company incorporated outside Nigeria

and having an established place of business in Nigeria;

2 (c) "Minister" means the Minister of Finance;

3 (d) "Nigerian company" means any company, the control and management  
4 of whose activities are exercised in Nigeria and references to a trade or  
5 business shall include references to any part thereof;

6 (e) "petroleum operations" does not include upstream gas operations and  
7 means the winning or obtaining and transportation of chargeable oil in Nigeria'  
8 by or on behalf of a company for its own account by any drilling, mining,  
9 extracting or other like operations or process, not including refining at a  
10 refinery, in the course of a business carried on by the company engaged in  
11 such operations, and all operations incidental thereto and any sale of or any  
12 disposal of chargeable oil by or on behalf of the company;

13 (f) "Service" means the Federal Inland Revenue Service;

14 (g) "upstream gas operations" means the winning or obtaining of natural  
15 gas in Nigeria by or on behalf of a company on its own account for commercial  
16 purposes and shall include any activity or operation related to natural gas  
17 that occurs up to the point at which downstream gas begins.

18 (2) This part shall apply to companies engaged in petroleum operations  
19 which shall include:

20 (a) the incorporated joint venture company;

21 (b) the National Oil Company

22 (c) a holder of the petroleum prospecting license or petroleum mining  
23 lease that is being developed under a production sharing contract.

24 (d) marginal field operators, to the extent stated within this Part; and

25 (e) indigenous oil companies, to the extent stated within this Part.

Powers and  
Duties.

26 415.-(1) The due administration of this Part and the tax payable under  
27 the terms of this Part shall be under the care and management of the Board who  
28 may do all such acts as may be deemed necessary and expedient for the  
29 assessment and collection of the tax and shall account for all amounts so collected  
30 in a manner to be prescribed by the Minister;

31 (2) Whenever the Board shall consider it necessary with respect to any

tax due, the Board 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 Board may sue and be sued in its official name and, subject to any express provision under any subsidiary legislation or otherwise, the Board may authorise any person to accept service of any document to be sent, served upon or delivered to the Board and to represent the Board in any proceedings;

(4) Subject to such conditions as the Board may specify, the Board may by notice in the Federal Gazette direct that any information, return or documents required to be supplied, forwarded or given to the Board may be supplied to such other person whether within or without Nigeria as the Board may direct;

(5) The Board 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 Board, any power or duty conferred upon the Board other than the powers or duties specified in this Act;

(b) receive any notice or other document to be given, delivered or served upon the Board 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 Board, the Board shall be subject to the authority, direction, and control of the Minister and any written direction, order or instruction given by him or her after consultation with the Chairman of the Board shall be carried out by the Board:

(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 Board 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

2 (c) do anything which would have the effect of altering the normal course  
3 of any proceedings, whether civil or criminal, relating either to the recovery  
4 of any tax or penalty or to any offence relating to tax;

5 (8) Every claim, objection, appeal, representation or the like made by  
6 any person under any provision of this part or of any subsidiary legislation made  
7 thereunder shall be made in accordance with the provisions of this part and any  
8 subsidiary legislation to this Act; and

9 (9) In any claim or matter or upon any objection or appeal under this  
10 Part, any act, matter, or thing done by or with the authority of the Board, in  
11 pursuance of any provisions of this Part shall not be subject to challenge on the  
12 ground that such act, matter, or thing was not or was not proved to be in  
13 accordance with any direction, order or instruction given by the Minister.

Signature and  
Execution of  
Powers and  
Duties.

14 416.-(1) Anything required to be done by the Board, in relation to the  
15 powers or duties specified in the Ninth Schedule of this Act, may be signified  
16 under the hand of the Chairman of the Board, or of an officer of the Federal  
17 Inland Revenue Department who has been authorised by the Board to signify  
18 from time to time, anything done or to be done by the Board in respect of such  
19 powers or duties.

20 (2) Any authorisation given by the Board under or by virtue of this Part  
21 shall be signified under the hand of the Chairman of the Board unless such  
22 authority is notified in the Federal Gazette.'

23 (3) Subject to subsection (1) of this section, any notice or other document  
24 to be given under this Act shall be valid if-

25 (a) it is signed by the Chairman of the Board or by any person authorised  
26 by him; or

11 (b) such notice or document is printed and the official name of the Board  
28 is duly printed or stamped thereon.

19 (4) Every notice, authorisation or other document purporting to be a notice,  
:D authorisation or other document duly given and signified, notified or bearing  
31 the official name of the Board, 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.

417.-(1) Where a notice is sent by registered post it shall be deemed to have been served on the next succeeding 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:

Service and Signature of Notices.

(2) Provided that 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

(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 CapC20 Laws of the Federation of Nigeria, 2004, 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 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.

418. There shall be levied upon the profits of a company engaged in petroleum operations or in upstream gas operations for any accounting period from such source of its profits during that period a tax to be charged, assessed and payable in accordance with the provisions of this Part,

Charge of Tax ..

419.-(1) In relation to any accounting period, the income from petroleum operations of that period of a company shall be taken to be the aggregate of-

Ascertainment of Profits.

(a) the proceeds of sale of all chargeable oil and condensates spiked with crude oil sold by the company in that period;

2 (b) the value of all chargeable oil and condensates spiked with crude oil  
disposed of by the company in that period; and

3 (c) all income of the company from that accounting period incidental to  
4 and arising from one or more of its petroleum operations, with the exception  
5 of-

6 (i) any income arising from petroleum operations or upstream gas  
7 operations of that accounting period from any production sharing contracts  
8 of which the company is the contractor; and

9 (ii) any income derived from upstream gas operations.

10 (2) In relation to any accounting period, the income from upstream gas  
11 operations of that period of a company shall be taken to be the aggregate of-

12 (a) the proceeds of sale of all chargeable natural gas sold by the company  
13 in that period;

14 (b) the value of all chargeable natural gas arising from upstream gas  
15 operations in that period as determined in accordance with the provisions of  
16 the Ninth Schedule of this Act;

17 (c) All income of the company arising from that accounting period  
18 incidental to and arising from one or more of its upstream gas operations  
19 (including casing head petroleum splits) with the exception of-

20 (i) any income arising from petroleum operations or upstream gas  
21 operations of that accounting period from any production sharing contracts  
22 of which the company is the contractor; and

23 (ii) any income derived from petroleum operations.

24 (3) Income derived from natural gas shall be treated separately from  
25 income derived from crude oil for the purposes of computing profits of the  
26 company for the relevant accounting period, with the exception of profits of an  
27 accounting period for production sharing contracts.

28 (4) For any accounting period -

29 (a) deductions and adjustments relating to petroleum operations may be  
30 made in respect of only the profits of such petroleum operations; and

31 (b) deductions and adjustments relating to upstream gas operations may



be made in respect of only the profits of upstream gas operations with the exception of production sharing contracts under which deductions and adjustments relating to both petroleum operations and upstream gas operations shall be made from each contract area.

(5) With respect to subsection (1)(b) and 2(b) of this section, the value of any chargeable oil or chargeable natural gas so disposed of shall be taken to the aggregate of-

(a) the value of that oil or gas as determined, for the purpose of royalty, in accordance with the provisions of this and any other enactment in force, and any financial agreement or arrangement between the Federal Government of Nigeria and the company which shall be published in the Gazette within thirty days from the date that such agreement or arrangement enters into force, less-

(i) any approved cost of extraction of that oil or gas deducted in determining its value as referred to in this subsection; and

(ii) any approved cost incurred by the company in transportation and storage of that oil or gas between the field of production and the place of its disposal.

(6) The adjusted profit of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 420 of this Act and any adjustments shall be made in accordance with section 422 of this Part.

(7) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed under section of this Act.

(8) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by this Act.

**420.** In computing the adjusted profit of any company of any accounting period from its petroleum operations or upstream gas operations, as the case may be, there shall be deducted all benchmarked, verified and approved expenditure incurred within Nigeria, or 80% of all benchmarked, verified and approved expenditure incurred in another country during the said accounting period including but without otherwise expanding or limiting the generality of

Deductions.

the foregoing-

2 (a) rents incurred by the company for that period in respect of land or  
3 buildings occupied under a petroleum prospecting license or a petroleum  
4 mining lease for disturbance of surface rights or any other like disturbances;

5 (b) all non-productive refts, the liability for which was incurred by the  
6 company during that period;

7 (c) all royalties the liability for which was incurred by the company  
8 during that period in respect of crude oil or natural gas, or of casing head  
9 petroleum spirit won in Nigeria, including condensate injected into such  
10 crude oil;

11 (d) all sums payable by the companies into the Oil and Gas Field  
12 Abandonment Fund, under the terms of this Act;

13 (e) all sums the liability for which was incurred by the company to the  
14 Federal Government of Nigeria during that period by way of customs or  
15 excise duty or other like charges levied in respect of machineries, equipment  
16 and goods used in the company's petroleum operations or upstream gas  
17 operations; and

18 if> any expense incurred for repair of premises, plant, machinery, or  
19 fixtures employed for the purpose of carrying on petroleum operations or  
20 upstream gas operations, or for the renewal, repair or alteration of any  
21 implement, utensils or articles so employed;

22 (g) debts directly incurred to the company and proved to the satisfaction  
23 of the Board to have become bad or doubtful in the accounting period for  
24 which the adjusted profit is being ascertained notwithstanding that such bad  
25 or doubtful debts were due and payable prior to the commencement of that  
26 period:

27 Provided that-

28 (i) the deduction to be made in respect of a doubtful debt shall not  
29 exceed that portion of the debt which is proved to have become doubtful  
30 during that accounting period, nor in respect of any particular debt shall  
31 it include any amount deducted under the provisions of this paragraph in

determining the adjusted profit of a previous accounting period;

2           (ii) all sums recovered by the company during that accounting period  
3           on account of amounts previously deducted in respect of bad or doubtful  
4           debts shall, for the purposes of subsection (1 ) (c) of section 419 of this  
5           Act, be treated as income of that company for that period; and

6           (iii) it is proved to the satisfaction of the Board that the debts in  
7           respect of which a deduction is claimed were either-

8           (a) included as a profit from the carrying on of petroleum operations  
9           or upstream gas operations in the accounting period in which they  
10          were incurred; or

11          (b) advances made in the normal course of carrying on petroleum  
12          operations or upstream gas operations not being advances on account  
13          of any item falling within section 421 of this Act;

14          (h) Any other expenditure, including tangible costs directly incurred in  
15          connection with drilling and appraisal of development wells, but excluding  
16          an expenditure which is qualifying expenditure for the purpose of the Ninth  
17          Schedule to this Act, and any expense or deduction in respect of a liability  
18          incurred which is deductible under any other provision of this section;

19          (i) Any expenditure, tangible or intangible directly incurred in connection  
20          with the drilling of an exploration well and the next two appraisal wells in  
21          the same field whether the wells are productive or not;

22          Provided that where a deduction may be given under this section in  
23          respect of any such expenditure that expenditure shall not be treated as  
24          qualifying drilling expenditure for the purpose of the Ninth Schedule to  
25          this Act.

26          (j) Any contribution to a pension, provident or other society, scheme or  
27          fund which may be approved, with or without retrospective effect, by the  
28          Board subject to such general conditions or particular conditions in the case  
29          of any such society, scheme or fund as the Board may prescribe:

30          Provided that any sum received by or the value of any benefit obtained  
31          by such company, from any approved pension, provident or other society,

2 scheme, or fund, in any accounting period of that company shall, for the  
3 purposes of this Part, be treated as income of that company of that  
4 accounting period;

5 (k) all sums donated to a university or other tertiary or research  
6 institution-

7 (i) for research or any other developmental purpose; or

8 (ii) as an endowment out of the profits of the accounting period of the  
9 company;

10 notwithstanding that the donation is of a capital or revenue nature, provided  
11 that the said donation shall not exceed an amount which is equal to 2 per  
12 cent of chargeable profit;

13 (I) All sums, the liability of which was incurred by the company during  
14 that period to the Federal Government, or to any State or Local Government  
15 Council in Nigeria by way of duty, customs and excise duties, stamp duties,  
16 education tax, tax (other than the tax imposed by this Act) or any other rate,  
17 fee or other like charges.

18 (m) Such other deductions as may be prescribed by any regulation made  
19 under this Act.

20 (2) Where a deduction has been allowed to a company under this section  
21 in respect of any liability of the company and such liability or any part thereof  
22 is waived or released the amount of the deduction or the part thereof  
23 corresponding to such part of the liability shall, for the purposes of subsection  
24 (1) (c) of section 419 of this Part, be treated as income of the company of its  
25 accounting period in which such waiver or release was made or given.

Deductions  
not Allowed.

26 421.-(1) Subject to the express provisions of this part, for the purpose of  
27 ascertaining the adjusted profit of any company of any accounting period from  
28 its petroleum operations or upstream gas operations, no deduction shall be  
29 allowed in respect of-

30 (a) any disbursement or expenses not being wholly and exclusively laid  
31 out or expended, or any liability not being a liability wholly or exclusively  
incurred, for the purpose of those operation;

- 2       (b) any capital withdrawn or any sum employed or intended to be employed  
3       as capital;
- 4       (c) any capital employed in improvement as distinct from repairs;
- 5       (d) any sum recoverable under any insurance or contract of indemnity;
- 6       (e) rent or cost of repair to any premises or part of any premises not  
7       incurred for the purpose of those operations;
- 8       (f) any amount incurred in respect of any income tax, profit tax, or similar  
9       tax whether charged within Nigeria or elsewhere;
- 10       (g) the depreciation of any premises, buildings, structures, work of a  
11       permanent nature, plant, machinery or fixtures;
- 12       (h) any payment to any provident, savings, widows, orphans or other  
13       society, scheme or fund except such payments are allowed under section 420  
14       of section 420 of this Part;
- 15       (i) any customs duty on goods (including articles or any other thing)  
16       imported by the company-
- 17       or
- 18       (ii) where goods of the same quality to those so imported are produced  
19       in Nigeria and are available, at the time the imported goods were ordered  
20       by the company for sale to the public at prices less or equivalent to the  
21       cost to the company of the imported goods.
- 22       (j) any expenditure for the purchase of information relating to the existence  
23       and extent of petroleum deposits;
- 24       (k) any expenditure for the purpose of paying the gas flare penalty or  
25       domestic market obligations as may be imposed by the Minister of Petroleum  
26       Resources;
- 27       (l) any demurrage and surcharges incurred at the ports or fines and  
28       penalties paid with respect to commercial transactions between parties;
- 29       (m) all work over expenditure except intangible drilling costs as defined  
30       in this Act;
- 31       (n) any signature or production bonuses.

(2) Notwithstanding the provisions of subsection (1) of section 420 of this Act, in computing the adjusted profit of any company of any accounting period no deduction shall be allowed in respect of sums incurred by way of interest during that period upon any borrowed money where such money was borrowed from a second company if during that period-

(a) either company has an interest in the other company; or

(b) both have interests in another company either directly or through other companies; or

(c) both are subsidiaries of another company.

(3) For the purposes of subsection (2) of this section-

(a) a company shall be deemed to be a subsidiary of another company if and so long as an interest in it is held by that other company either directly or through any other company or companies;

(b) an interest means a beneficial interest in issued share capital, by whatever name called; and

(c) the Board shall disregard any such last mentioned interest which in its opinion is insignificant or remote, or where in its opinion that interest arises from a normal market investment and the companies concerned have no other dealings or connection between each other.

Exclusion of  
Certain  
Profits. etc.

**422.** Where a company engaged in petroleum operations or upstream gas operations is engaged in the transportation of chargeable oil or chargeable natural gas by ocean going oil-tankers operated by or on behalf of the company from Nigeria to another territory then such adjustments shall be made in computing an adjusted profit or a loss as shall have the effect of excluding there from any profit or loss attributable to such transportation.

Artificial  
Transaction,  
etc.

423.-(1) Where the Board 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 Board may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as the Board 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. 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 Board, 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 Board in the exercise of any discretion given to the Board by this section from being questioned in an appeal against an assessment in accordance with the provisions of section 453 of this Part and on the hearing of any such appeal the appropriate Appeal Commissioners or the Court may confirm or vary any such decision including any directions made under this section.

2424.-(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:

Assessable  
Profits and  
Losses.

(a) the amount of any loss incurred by that company during any previous accounting period; and

(b) in a case to which section 425 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 Board 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.

425.-(1) Without prejudice to section 437 of this Act, where a trade or  
business of petroleum operations or upstream gas 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  
Board 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.

(2) The Board may-

(a) if, on or before the date on which the trade or business is so sold or  
transferred, the first sale of or bulk disposal of chargeable oil or chargeable  
natural gas by or on behalf of the company selling or transferring the trade  
or business has occurred, but the first sale of or bulk disposal of chargeable  
oil or chargeable natural gas by or on behalf of the Nigerian company acquiring  
that trade or business has not occurred-

(i) direct that the first accounting period of the Nigerian company  
shall be the period of twelve months commencing on the date on which  
the sale or transfer of the trade or business takes place, or commencing  
on such date within the calendar month in which the sale or transfer takes  
place as may be selected by the Nigerian company with the approval of  
the Board, and

(ii) for the purposes of subsection (2)(a)(i) of this section, an accounting  
period as respects the Nigerian company shall be a period of twelve  
months commencing on the date on which the sale or transfer of the trade  
or business to the Nigerian company takes place, or commencing on such



date within the calendar month in which the sale or transfer takes place  
as may be selected by the Nigerian company with the approval of the  
Board, and the definition of "accounting period" in (the interpretation  
section) of this Act shall be construed accordingly, but without prejudice  
to the continued application in respect of the Nigerian company of the  
provisions of paragraphs (b), (c) and (d) of that definition;

(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

(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 Board 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 Board, 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 Board 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.

426.-(1) Where in pursuance of the provisions of Part A of the Companies  
and Allied Matters Act Cap. C20 Laws of the Federation, 2004, a company  
("the reconstituted company") is incorporated under that Act to carry on any

Trade or  
Business  
Transfer-ed  
under the  
Companies  
Act.

trade or business of petroleum operations or upstream gas operations previously  
2 carried on in Nigeria by a foreign company and the assets employed in Nigeria  
3 by the foreign company in that trade or business vest in the reconstituted company,  
4 then, if the Board is satisfied that the trade or business carried on by the  
5 reconstituted company immediately after the incorporation of that company  
6 under that Act is not substantially different in nature from the trade or business  
7 previously carried on in Nigeria by the foreign company, the provisions of this  
8 section shall have effect, notwithstanding anything stated to the contrary in this  
9 part-

10 (a) if as respects the trade or business previously carried on in Nigeria by  
11 the foreign company the first sale of or bulk disposal of chargeable oil or  
12 chargeable natural gas by or on behalf of the foreign company has occurred  
13 on or before the date on which the reconstituted company is incorporated-

14 (i) the first accounting period of the reconstituted company shall be  
15 the period of twelve months commencing on the date on which that company  
16 is incorporated, or commencing on such date within the calendar month  
17 in which the company is incorporated, as may be selected by the company  
18 with the approval of the Board, and

19 (ii) an accounting period in respect of the reconstituted company shall  
20 be a period of twelve months commencing on the date on which that  
21 company is incorporated, or commencing on such date within the calendar  
22 month in which the reconstituted company is incorporated as may be  
23 selected by the company with the approval of the Board, and the definition  
24 of "accounting period" in this Act shall be construed accordingly, but  
25 without prejudice to the continued application in respect of the  
26 reconstituted company of the provisions of paragraphs (b), (c) and (d) of  
27 that definition;

28 (b) for the purposes of the Ninth Schedule to this Act, the assets so vested  
29 in the reconstituted company shall be deemed to have been sold to it on the  
30 day of its incorporation, for an amount equal to the residue of the qualifying  
31 expenditure thereon on the day following the day on which the trade or

business previously carried on, in Nigeria by the foreign company ceased;

2 (c) the reconstituted company shall not be entitled to any initial allowances  
3 in respect of those assets, and shall be deemed to have received all allowances  
4 given to the foreign company in respect of those assets under the Tenth  
5 Schedule and any allowances deemed to have been received by the foreign  
6 company under the provisions of this paragraph or section 425 of this Act;  
7 and

8 (d) the amount of any loss incurred during any accounting period by the  
9 foreign company in the said trade or business previously carried on by it in  
10 Nigeria, being a loss which has not been allowed against any assessable profits  
11 of any accounting period of that foreign company, shall be deemed to be a loss  
12 incurred by the reconstituted company in its trade or business during its first  
13 accounting period; and the amount of that loss shall, in accordance with the  
14 provisions of section 444 of this Act, be deducted from the adjusted profits of  
15 the reconstituted company:

16 **427.** For the purpose of sections 425 and 426 of this Act, the Board may  
17 by notice require any person, (including a company to which any assets are sold  
18 or transferred, or in which any assets have vested in pursuance of Part A of the  
19 Companies And Allied Matters Act Cap C20 Laws of the Federation of Nigeria  
20 2004, to complete and deliver to the Board any returns specified in the notice or  
21 any such information as the Board may require about the assets; and it shall be  
22 the duty of that person to comply with the requirements of any such notice  
23 within the period specified in the notice, which shall be a period of not less than  
24 twenty-one days from the service thereof.

Call for  
Returns and  
Information  
relating to  
Certain  
Assets.

25 **428.-(1)** The chargeable profits of any company of any accounting period  
26 shall be the amount of the assessable profits of that period after the deduction of  
27 any amount to be allowed in accordance with the provisions of this section.

Chargeable  
Profits and  
Capital  
Allowances.

28 (2) There shall be computed the aggregate amount of all allowances due  
29 to the company under the relevant provisions of the ninth Schedule to this Act  
30 for the accounting period except that for production sharing contracts, the  
31 aggregate amount of all allowances due to the company shall be restricted to

each contract area.

2 (3) In calculating the amount of the deduction to be allowed under this  
3 section for the accounting period, the limitation imposed by subsection (4) of  
4 this section shall be applied to ensure that the amount of any tax chargeable on  
5 the company for that period shall be not less than fifteen per cent of the tax  
6 which would be chargeable on the company for that period if no deduction were  
7 to be made under this section for that period.

8 (4) The amount to be allowed as a deduction under subsection (1) in respect  
9 of the said allowances shall be--

10 (a) the aggregate amount computed under subsection (2) of this section;

11 or

12 (b) a sum equal to eighty-five per cent of the assessable profits of the  
13 accounting period less one hundred and seventy per cent of the total amount  
14 of the deductions allowed as petroleum investment allowance computed under  
15 the relevant provisions of the Tenth schedule to this Act for that period,  
16 whichever is the less.

17 (5) Where the total amount of the allowances computed under subsection  
18 2 of this section cannot be deducted under subsection (1) of this section owing  
19 to-

20 (a) there being an insufficiency of or no assessable profits of the accounting  
21 period; or

22 (b) the limitation imposed by subsection (4) of this section, such total  
23 amount or the part thereof which has not been so deducted, shall be added to  
24 the aggregate amount to be computed under subsection (2) of this section for  
25 the following accounting period of the company, and thereafter shall be  
26 deemed to be an allowance due to the company, under the relevant provisions  
27 of the Tenth Schedule to this Act for that following accounting period.

Assessable  
Tax.

28 429.-(1) The assessable tax for any accounting period of a company  
29 engaged in petroleum operations shall be an amount equal to eighty five per  
30 cent of the chargeable profit of that period.

31 (2) The assessable tax of any accounting period of a company engaged in

upstream gas operations shall be an amount equal to forty-five percent of the chargeable profit of that period, with the exception of upstream gas operations in a production sharing contract area or a deep offshore contract area for which the tax rate shall be thirty-five percent of the chargeable profit of that period.

(3) Where a company engaged in petroleum operations has not yet qualified for treatment under paragraph 7(4) of the Tenth Schedule to this Act, its assessable tax for any accounting period during which the company has not fully amortized all pre - production capitalised expenditure due to it less the amount to be retained in the book as provided for in paragraph 7 of the Tenth Schedule to this Act, shall be 65.75% of the chargeable profit for that period.

(4) Where a company carries on petroleum operations by production sharing contract or any similar arrangement in the deep offshore and inland basin, the assessable tax for any accounting year on the profits derived from the contract areas shall be an amount equal to 50 per cent of its chargeable profits from the contract area:

(S) Where a company transfers, or disposes of gas to a gas utilization project in Nigeria as defined under Section 28G or Section 39 of the Companies Income Tax Act, Cap .. .Law of the Federation of Nigeria 2004, the assessable tax from the sale, transfer, or disposal of the gas shall be at a rate equal to that specified in subsection (2) of this section.

(6) Where a company sells, transfers or disposes of gas to any other person outside Nigeria, the assessable tax from the sale of gas shall be an amount equal to the tax rate specified in subsections (2) of this section.

430.-(1) The assessable tax for any accounting period of an indigenous company that is engaged in petroleum productions and with an aggregate production of not more than fifty thousand barrels of oil or gas equivalent per day shall be 60% of the chargeable profit for that period.

Indigenous  
Companies.

(2) Nothing contained in this act shall be construed as having exempted an indigenous oil company from the payment of any other taxes imposed by the Federal Government under any existing law in force.

(3) The payment of royalty for petroleum operations carried out by an

indigenous oil company in areas less than 200 meters water depth shall be graduated according to the production branches and zones of operation as set out in the Tenth Schedule to this Act.

(4) The fiscal terms applicable generally to companies engaged in upstream petroleum operations shall apply to an indigenous oil company with an aggregate production of above fifty thousand Barrels of oil or its gas equivalent per day.

Investment  
Tax Credit.

431.-(1) A petroleum producing company which executes a production sharing contract with the Nigerian National Oil Company or any other company shall, throughout the duration of the production sharing contract, be entitled to claim a Petroleum Investment Allowance in accordance with the relevant provisions of the ninth- Schedule of this Act.

(2) The Petroleum Investment Allowance applicable shall be restricted to each contract area.

(3) The chargeable tax computed shall in respect of the said production sharing contract be split between the National Oil Company or any other company or companies as the case may be and the crude oil producing company in accordance with the proportion of the percentage of profit oil split of each.

Additional  
Chargeable  
Tax Payable  
in Certain  
Circumstances.

432.-(1) If, for any accounting periods of a company, the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Act other than this section, is less than the amount mentioned in subsection (2) of this section, the company shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between two amounts.

(2) The amount referred to in the foregoing subsection is, for any accounting period of a company, the amount which the chargeable tax for that period, calculated in accordance with the provisions of this Act, would come to if, in the case of crude oil exported from Nigeria by the company, the reference in section 419 of this Act to the proceeds of sale thereof were a reference to the amount obtained by multiplying the number of barrels of that crude oil by the relevant sum per barrel.

(3) For the purposes of subsection (2) of this section the relevant sum per barrel of crude oil exported by a company is the posted price applicable to that

1 crude oil reduced by such allowances (if any) as may from time to time be  
2 agreed in writing between the Government of Nigeria and the company.

3 (4) The whole of any additional chargeable tax payable by a company by  
4 virtue of this section for any accounting period shall be payable concurrently  
5 with the final instalment of the chargeable tax payable for that period apart  
6 from this section, and shall be assessed and be paid by the company accordingly  
7 under the provisions of this Act.

8 (5) In this section-

9 (a) "posted price", in relation to any crude oil exported from Nigeria by  
10 a company, means the price F.O.B. at the Nigerian port of export for crude  
11 oil of the gravity and quality in question which is from time to time established  
12 by the company, after agreement with the Government of Nigeria as to the  
13 procedure to be followed for the purpose, as its posted price for Nigerian  
14 crude oil of that gravity and quality.

15 (b) References in this section to crude oil include references to casing  
16 head petroleum spirit, which has been injected into crude oil.

17 (6) Every posted price established as aforesaid must bear a fair and  
18 reasonable relationship-

19 (a) to the established posted prices of Nigerian crude oils of comparable  
20 quality and gravity, if any; or

21 (b) if there are no such established posted prices for such Nigerian crude  
22 oils, to the posted prices at main international trading export centres for  
23 crude oil of comparable quality and gravity,  
24 due regard being had in either case to freight differentials and all other relevant  
25 factors.

26 (7) Where any crude oil which in relation to a particular company is  
27 chargeable oil is exported from Nigeria otherwise than by that company, that  
28 crude oil shall for the purposes of this section be deemed to be exported from  
29 Nigeria by that company.

30 433.-(1) Where two or more companies are engaged in petroleum  
31 operations or upstream gas operations either in partnership, in a joint adventure

Partnership,  
etc.

or in concert under any scheme or arrangement the Minister may make rules  
2 for the ascertainment of the tax to be charged and assessed upon each company  
3 so engaged, which may necessarily-

4 (a) provide for the apportionment of any profits, outgoing, expenses,  
5 liabilities, deductions, qualifying expenditure and the tax chargeable upon  
6 each company, or

7 (b) provide for the computation of any tax as if the partnership, joint  
8 adventure, scheme or arrangement were carried on by one company and  
9 apportion that tax between the companies concerned or

10 (c) accept some other basis of ascertaining the tax chargeable upon each  
11 of the companies which may be put forward by those companies

12 (d) contain provisions which have regard to any circumstances whereby  
13 such operations are partly carried on for any companies by an operating  
14 company whose expenses are reimbursed by those companies

15 (2) The rules referred to in Subsection (1) of this section-

16 (a) may be expressed to be of general application for the purposes of this  
17 section and Act or of particular application to a specified partnership, joint  
18 adventure, scheme or arrangement.

19 (b) may be amended or replaced from time to time as may be necessary.

20 (3) Rules made under this section shall not impose a greater burden of tax  
21 upon any company so engaged in any partnership, joint adventure, scheme or  
22 arrangement than would have been imposed upon that company under this Act if  
23 all things enjoyed, done or suffered by such partnership, joint adventure, scheme  
24 or arrangement had been enjoyed, done or suffered by that company in the  
25 proportion in which it enjoys, does or suffers those things under or by virtue of  
26 that partnership joint adventure, scheme or arrangement.

27 (4) Notwithstanding the provisions of subsection (3) of this section, each  
28 company shall be responsible for reporting its own petroleum operations or  
29 upstream gas operations, profits, outgoings, expenses, qualifying expenditure  
30 and the tax chargeable on its petroleum operations or upstream gas operations.



434.-(1) A company not resident in Nigeria which is or has been engaged  
 2 in petroleum operations or upstream gas operations ("non resident company")  
 3 shall be assessable and chargeable to tax, either directly or in the name of its  
 4 manager, or in the name of any other person who is resident in Nigeria and  
 5 employed in the management of the petroleum operations or upstream gas  
 6 operations carried on by such non-resident company, as such non- resident  
 7 company would be assessed and charged if it were resident in Nigeria.

Companies  
not Resident  
in Nigeria.

8 (2) The person in whose name a non-resident company is assessable and  
 9 chargeable to tax shall be answerable-

10 (a) for all matters required to be done by virtue of this Part for the  
 11 assessment of the tax as might be required to be done by such non-resident  
 12 company if it were resident in Nigeria; and

13 (b) for paying any tax assessed and charged in the name of such person by  
 14 virtue of subsection (1) of this section

15 **435.** The manager or any principal officer in Nigeria of every company  
 16 which is or has been engaged in petroleum operations or upstream gas operations  
 17 shall be answerable for doing all such acts as are required to be done by virtue  
 18 of this Act for the assessment and charge to tax of such company and for  
 19 payment of such tax.

Manager of  
Companies,  
etc. to be  
Answerable.

20 436.-(1) Where-

21 (a) a company is being wound up or

22 (b) where in respect of a company a receiver has been appointed by any  
 23 Court, by the holders of any debentures issued by the company or otherwise,  
 24 the company may be assessed and charged to tax in the name of the liquidator  
 25 of the company or the receiver or any agent in Nigeria of the liquidator or  
 26 receiver and may be so assessed and charged to tax for any accounting period  
 27 whether before, during or after the date of the appointment of the liquidator or  
 28 receiver

Company  
Wound Up,  
etc.

29 (2) Any such liquidator, receiver or agent shall be answerable for doing  
 30 all such acts as are required to be done by virtue of this Act for the assessment  
 31 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.

437. Where a company which is or was engaged in petroleum operations or upstream gas 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 Board 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 459 of this Part, subject to any necessary modification of that section.

Indemnification  
of  
Representative.

438. 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.

439.-(1) Every company which is or has been engaged in petroleum operations or upstream gas 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 particulars following particulars-

(a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;

(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;

2 (d) a statement of other sums, deductible under the liabilities for which  
3 were incurred during that period;

4 (e) a statement of all amounts repaid, refunded, waived or released to it,  
5 during that period; and

6 ~~if~~ a computation of its estimated tax for that period.

7 (2) Every company which is or has been engaged in petroleum operations  
8 or upstream gas operations shall, with respect to any accounting period of the  
9 company, within five months after the expiration of that period or within five  
10 months after the date of publication of this Act in the Federal Gazette upon  
11 enactment (whichever is later) deliver to the Board a copy of its accounts  
12 (bearing an auditor's certificate) of that period, made up in accordance with the  
13 provisions of subsection (1) of this section .. and copies of the particulars referred  
14 to in that subsection relating to that period; and such copies of those accounts  
15 and each copy of those particulars (not being estimates) shall contain a declaration  
16 which shall be signed by a duly authorised officer of the company or by its  
17 liquidator, receiver or the agent of such liquidator or receiver •.that the same is  
18 true and complete and where such copies are estimates each copy shall contain  
19 a declaration, similarly signed, that such estimate was made to the best of the  
XI ability of the person signing the same.

21 440.-(1) The Agency, the National Oil Company, and the Inspectorate  
22 shall, as necessary, provide information to the Service on-

Roles of  
Agency,  
National Oil  
Company  
Inspectorate.

23 (a) the approved budget of joint venture and production sharing contracts,  
24 pre-audit and post- audit joint venture accounts, benchmarked, verified and  
25 approved by NAPIMS or its successor organisations or agencies;

26 (b) production, lifting or exported crude, realisable prices, American  
27 Petroleum Institute gravity of various crude oil blends, schedule of shipping  
28 agents or companies involved in lifting crude oil, stating names, addresses,  
29 quantity and value of crude oil lifted by COMD or its successor organisations  
~ or agencies;

31 (c) names and addresses of licensed companies in the oil and gas industry,

1 schedule and approved cost of all exploration and first two appraisals, wells,  
2 schedule of licenses or concessions granted categorised as to petroleum  
3 prospecting licences and oil mining leases and payments made thereon,  
4 production and lifting of crude oil specifying the affected terminals by the  
5 DPR or its successor organisations or agencies; and

6 (d) any other information that the Service may, by regulations, require,  
7 from time to time.

8 (2) The information specified in subsection (1) (a) of this section shall be  
9 delivered to the Service as follows-

10 (a) approved budget shall be delivered not later than 30 days after the  
11 approval;

12 (b) pre-audit joint venture account shall be delivered not later than 30  
13 days after the accounting year; and

14 (c) post-audit joint venture accounts shall be delivered not later than 31st  
15 May of the year following the accounting date.

16 (3) The information specified in subsection (1) (b) of this section shall be  
17 delivered to the Service on or before the 30th day of the month following that in  
18 which the production or lifting took place.

19 (4) The information specified in subsection (1) (c) of this section shall be  
20 delivered to the Service as follows:

21 (a) names and addresses of such shall be delivered not later than 15 days  
22 after the issuance of licences to such companies;

23 (b) schedules and approved costs of all exploration and first two appraisals  
24 wells shall be delivered not later than 30 days after the approval; and

25 (c) schedules of licenses/concessions granted shall be delivered on or  
26 before the 30th day of the month following the granting of licenses/concession.

27 **441.** The Board may give notice in writing to any company which is or  
28 has been engaged in petroleum operations or upstream gas operations when and  
29 as often the Board may require, requesting it to furnish within such reasonable  
30 time as may be specified by such notice fuller or further information as to any  
31 of the matters either referred to section 440 of this Act, or as to any other

matters which the Board may consider necessary for the purposes of this Act.

2           442.-(1) For the purpose of obtaining full information in respect of any  
3 company's petroleum operations or upstream gas operations the Board may  
4 give notice to such company requiring it within the time limited by such notice,  
5 which time shall not be less than twenty-one days from the date of service of  
6 such notice, to complete and deliver to the Board any information called for in  
7 such notice and in addition or alternatively requiring an authorised representative  
8 of such company or its liquidator, receiver or the agent of such liquidator or  
9 receiver, to attend before the Board or its authorised representative on such  
10 date or dates as may be specified in such notice and to produce for examination  
11 any books, documents, accounts and particulars which the Board may deem  
12 necessary.

Power to Call  
for Returns,  
Books, etc.

13           (2) If a company assessable to tax under the provisions of this Act fails or  
14 refuses to keep books or accounts which, in the opinion of the Board are adequate  
15 for the purpose of ascertaining the tax, the Board may by notice in writing  
16 require it to keep such records, books and accounts as the Board considers to be  
17 adequate in such form and in such language as the Board may in the said notice  
18 direct and, subject to the provisions of subsections (3) and (4) of this section,  
19 the company shall keep records, books and accounts as directed.

20           (3) An appeal shall lie from any direction of the Board made under this  
21 section to a judge of the High Court.

22           (4) On hearing such appeal the judge may confirm or modify such direction  
23 and any such decision shall be final.

24           443.-(1) Not later than two months after the commencement each  
25 accounting period of any company engaged in petroleum operations or upstream  
26 gas operations, the company shall submit to the Board a return, the form of  
27 which the Board may prescribe, of its estimated tax for such accounting period

Interest on  
shortfall of  
tax paid as  
estimate.

28           (2) If, at any time during any such accounting period the company having  
29 made a return as provided for in subsection (1) of this section is aware that the  
30 estimate in such return requires revision then it shall submit a further return  
31 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 London Inter-Bank Offer Rate plus spread to be determined by the Minister 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 fulfillment of the provisions of this Section shall be subject to review and validation by the Service.

444. The Accountant -General of the Federation shall, every month, convene a meeting of operators in the crude oil and gas sector for the purposes of the reconciliation of all sales, receipts and taxes in respect of crude oil.

Extension of  
Periods for  
Making  
Returns.

445. Where it is shown by any company to the satisfaction of the Board that for some good reason the company is not able to comply with the provisions of section 439 of this Part, within the time limited by that section or any notice given to it under sections 441 or *M2* of this Part, and within the time limited by any such notice, the Board may grant in writing such extension of that time as the Board may consider necessary.

Board to  
make  
Assessments.

446.-(1) The Board 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 in this Part.

2) Where a company has delivered accounts and particulars for any accounting period of the company, the Board 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 439 of this Part within the time limited by that section or has failed to comply with any notice given to it under the provisions of sections 441 or 442 of this Part within the time specified in such notice or within any extended time provided for

within this Act, and the Board is of the opinion that such company is liable to pay tax, the Board 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 Board to make any additional assessment under the provisions of section 448 of this Part.

**447.**-(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 of this Act, 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 Act 2005, and such authority shall be sufficient warrant and authority to levy by distress the amount of tax due.

(3) For the purpose of levying any distress 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 distress and, if necessary, break open any building or place in the daytime for the purpose of levying such distress 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 distress and in levying the distress.

(5) The distress taken pursuant to 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 distress are not paid, the same may be sold.

(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 distress, 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 distress 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.

448.-(1) If the Board 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 Board 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 Board 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  
2 be charged an additional assessment, or an assessment for any such subsequent  
3 accounting period shall be made accordingly, and the provisions of this Act as  
4 to notice of assessment, objection, appeal and other proceedings under this Act  
5 shall apply to any such Assessment or additional assessment and to the tax  
6 charged thereunder.

7 (3) For the purpose of computing under subsection (1) of this section the  
8 amount or the additional amount of tax for any accounting period of a company  
9 which ought to have been charged, all relevant facts consistent with subsection  
10 (3) of section 454 of this Act shall be taken into account even though not known  
11 when any previous assessment or additional assessment on the company for that  
12 accounting period was being made or could have been made.

13 (4) Notwithstanding the other provisions of this section, where any form  
14 of fraud, wilful default or neglect has been committed by or on behalf of any  
15 company in connection with any tax imposed under this Act, the Board may, at  
16 any time and as often as may be necessary, for the purpose of recovering any  
17 loss of tax attributable to the fraud, wilful default or neglect.

18 449.-(1) Assessment of tax shall be made in such form and in such  
19 manner as the Board shall authorise and shall contain the names and addresses  
20 of the companies assessed to tax or of the persons in whose names any companies  
21 (with the names of such companies) have been assessed to tax, and in the case  
22 of each company for each of its accounting periods, the particular accounting  
23 period and the amount of the chargeable profits of and assessable tax and  
24 chargeable tax for that period.

Making of  
Assessments,  
etc.

25 (2) When any assessment requires to be amended or revised, a form of  
26 amended or revised assessment shall be made in a manner similar to that in  
27 which the original of that assessment was made under subsection (1) of this  
28 section but showing the amended or revised amount of the chargeable profits;  
19 assessable tax and chargeable tax.

30 (3) A copy of each assessment, and of each amended or revised assessment  
31 shall be filed in a list which shall constitute the Assessment List for the purpose

Notices of  
Assessment,  
etc.

of this Act.

2           450.-(1) The Board shall cause to be served personally on or sent by  
3 registered post to each person whose name appears on an assessment in the  
4 Assessment List, a notice of assessment stating its accounting period and the  
5 amount of its chargeable profits, assessable tax and chargeable tax charged and  
6 assessed upon the company, the place at which payment of the tax should be  
7 made, and informing such company of its rights under subsection (2) of this  
8 section.

9           (2) If any person in whose name an assessment was made in accordance  
10 with the provisions of this Act disputes the assessment, that person may apply  
11 to the Board, by notice of

12 objection in writing, to review and revise the assessment so made on  
13 him; and such application shall be made within twenty-one days from the date  
14 of service of the notice of such assessment and shall state the amount of chargeable  
15 profits of the company of the accounting period in respect of which the assessment  
16 is made and the amount of the assessable tax and the tax which such person  
17 claims should be stated on the notice of assessment.

18           (3) The Board, upon being satisfied that owing to absence from Nigeria,  
19 sickness or other reasonable cause, the person in whose name the assessment  
20 was made was prevented from making the application within such period of  
21 twenty-one days shall, extend the period as may be reasonable in the  
22 circumstances.

23           (4) After receipt of a notice of objection referred to in subsection (2) of  
24 this section the Board may within such time and at such place as the Board  
25 shall specify, require the person giving the notice of objection to furnish such  
26 particulars as the Board may deem necessary, and may by notice within such  
27 time and at such place as the Board shall specify, require any person to give  
28 evidence orally or in writing respecting any matters necessary for the ascertainment  
29 of the tax payable, and the Board may require such evidence if given orally to  
30 be given on oath or if given in writing to be given by affidavit

31           (5) In the event of any person assessed who has objected to in assessment

made upon him agreeing with the Board as to the amount of tax liable to be 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 Board the amount of the tax, the Board 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 Board 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.

451.-(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.

Errors and defects in assessment and notice.

(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

(U) 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.

452.-(1) Income tax computations made under this Part, including any assessments made under section 446 of this Part, shall be made in the currency

Income tax computation.

Appeals to  
Federal High  
Court against  
Assessments.

in which the transaction was effected.

2           453.-(1) Every company appealing shall appoint an authorised  
3 representative who shall attend before the court in person on the day and at the  
4 time fixed for the hearing of its appeal, but if it be proved to the satisfaction of  
5 the judge that owing to absence from Nigeria, sickness or other reasonable  
6 cause any duly appointed representative is prevented from attending in person  
7 at the hearing of the company's appeal on the day and at the time fixed for that  
8 purpose, the judge may postpone the hearing of the appeal, for such reasonable  
9 time as he thinks necessary for the attendance of the appellant's representative,  
10 or he may admit the appeal to be made by any other agent, clerk or servant of  
11 the appellant, on its behalf or by way of written statement.

12           (2) Twenty-one clear days' notice shall, unless rules made hereunder  
13 otherwise provide, be given to the Board of the date fixed for the hearing of the  
14 appeal.

15           (3) The onus of proving that the assessment complained of is excessive  
16 shall be on the appellant.

17           (4) The judge may confirm, reduce, increase or annul the assessment or  
18 make such order thereon as to him may seem fit.

19           (5) Notice of the amount of tax payable under the assessment as determined  
20 by the judge shall be served by a duly authorised representative of the Board  
21 either personally on or by registered post to, the appellant.

22           (6) Notwithstanding anything contained in this Act, if in any particular  
23 case, the judge from information given at the hearing of the appeal, is of the  
24 opinion that the tax may not be recovered, he may on application being made by  
25 or on behalf of the Board require the appellant to furnish within such time as  
26 may be specified security for payment of the tax and if such security is not  
27 given within the time specified the tax assessed shall become payable and  
28 recoverable forthwith.

29           (7) All appeals shall be heard in camera, unless the judge shall, on the  
30 application of the appellant, otherwise direct.

31           (8) The costs of the appeal shall be in the discretion of the judge hearing

the appeal and the judge shall fix a sum.

2 (9) The Chief Judge of the Federal High Court may make rules providing  
3 for the method of tendering evidence before a judge on appeal, the conduct of  
4 such appeals and the procedure to be followed by a judge upon stating a case for  
5 the opinion of the Court of Appeal.

6 (10) Pending the making of any rules under this subsection, the rules  
7 applicable in civil appeal cases from Magistrates Court to the High Court of  
8 Lagos State shall apply to any appeal or to any such procedure for the purposes  
9 of this section and Act with any necessary modifications.

10 (11) An appeal against the decision of the judge shall lie to the Court of  
11 Appeal-

12 (a) at the instance of the appellant where the decision of the judge is to  
13 the effect that the correct assessment of tax is in the sum of N 100,000 or  
14 upwards; and

15 (b) at the instance of the Service where the decision of the judge is in  
16 respect of a matter in which the Service claimed that the correct assessment  
17 of tax was in the sum of N100,000 or upwards.

18 454.-(1) Where-

19 (a) no valid objection or appeal has been lodged within the time limited  
20 by either sections 450 and 453 of this Act, as the case may be, against an  
21 assessment as regards the amount of the tax assessed thereby, or

22 (b) where the amount of the tax has been agreed to under subsection (5) of  
23 section 450 of this Act, or

24 (c) where the amount of the tax has been determined on objection or  
25 revision under subsection (6) of section 450 of this Act, or

26 (d) on appeal, the assessment as made, agreed to, revised or determined  
27 on appeal, as the case may be, the said assessment shall be final and conclusive  
28 for all purposes of this Act as regards the amount of such tax, and if the full  
29 amount of the tax in respect of any such final and conclusive assessment is  
30 not paid within the appropriate period or periods prescribed in this Act, the  
31 provisions thereof relating to the recovery of tax, and to any penalty under

Assessment to  
be final and  
Conclusive.

section 457. shall apply.

2 (2) Where an assessment has become final and conclusive, any tax overpaid  
3 shall be repaid.

4 (3) Nothing in section 450 of this Part shall prevent the Board from  
5 making any assessment or additional assessment to tax for any accounting period  
6 which does not involve re-opening any issue on the same facts which has been  
7 determined for that accounting period under subsection (5) or (6) of section 450  
8 of this Act, by agreement or otherwise or on appeal.

Procedure in  
Cases Where  
Objection or  
Appeal is  
Pending.

9 455. Collection of tax shall in cases where notice of an objection or an  
10 appeal has been given remain in abeyance, any pending proceedings for any  
11 instalment thereof being stayed until such objection or appeal is determined but  
12 the Board may in any such case enforce payment of that portion of the tax (if  
13 any) which is not dispute

Time within  
which  
Payment is to  
be Made.

14 456.-(1) Subject to the provisions of section 455 of this Part, tax for any  
15 accounting period for petroleum operations as well as upstream gas operations  
16 shall be payable in equal monthly instalments together with a final instalment  
17 as provided in Subsection (4) of this Section.

18 (2) The first monthly payment shall be due and payable not later than the  
19 third month of the accounting period and shall be in an amount equal to one-  
20 twelfth or, where the accounting period is less than a year, in an amount equal  
21 to monthly proportion, of the amount of tax estimated to be chargeable for such  
22 accounting period in accordance with the section 443 of this Part.

23 (3) Each of the remainder of monthly payments to be made subsequent to  
24 the payment under subsection (2) of this section shall be due and, payable not  
25 later than the last day of the month in question and shall be in an amount equal  
26 to the amount of tax estimated to be chargeable for such period by reference to  
27 the latest returns submitted by the company in accordance with subsection (2)  
28 of section 443 of this Part, 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.

31 (4) A final instalment oftax shall be due and payable within twenty-ope

days after the service of the notice of assessment of tax for such accounting  
2 period, and shall be the amount of the tax assessed for that accounting period  
3 less so much thereof as has already been paid under subsection(2) and (3) of  
4 this section or is the subject of proceedings.

5 (5) Any instalments on account of tax estimated to be chargeable shall be  
6 treated as tax charged and assessed for the purposes of sections 457 and 459 of  
7 this Part.

8 (6) The Service shall impose interest at Central Bank of Nigeria minimum  
9 rediscount rate.

10 (7) For the purposes of subsection (1) of this section, the conversion of the  
11 timing of payments of tax to provide for the making of monthly payments shall  
12 be given effect to as set out in the Ninth Schedule of this Act.

13 **457.-**( 1) If any tax is not paid within the period stipulated in this section  
14 and section 456 of this Part-

Penalty for  
Non-Payment  
of Tax and  
Enforcement  
of Payment

15 (a) a penalty equal to 10 per cent per annum of the amount of tax payable  
16 shall be added thereto, and the provisions of this Act relating to the collection  
17 and recovery of tax shall apply to the collection of such sum;

18 (b) the tax due shall incur interest at the prevailing Central Bank of  
19 Nigeria minimum rediscount rate plus spread to be determined by the Minister  
~ from the date when the tax becomes payable until it is paid and the provisions  
21 of this Act relating to collection and recovery of tax shall apply to the  
22 collection and recovery of the interest;

23 (c) the Service shall serve a demand note upon the company or person in  
24 whose name the company is chargeable, and if the payment is not made  
25 within one month from the date of service of such demand note, the Service  
26 may proceed to enforce payment as provided in this Section;

ZI (d) the penalty and interest imposed under this subsection shall not be  
28 deemed to be part of the tax paid for the purpose of claiming relief under any  
'99 of the provisions of this Act.

~ (2) Any company which without lawful justification or excuse fails to pay  
31 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

458. 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 sections 453 of this Part shall apply.

Suit for Tax  
by the Board.

459.-(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 Board 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 Board 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.

460.-(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 Board 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 Board for relief.

2 (2) On receiving any such application the Board shall inquire into the  
3 matter and subject to the provisions of this section shall by way of repayment of  
4 tax give such relief in respect of the error or mistake as appears to the Board to  
5 be reasonable and just.

6 (3) No relief shall be given under this section in respect of an error or  
7 mistake as to the basis on which the liability of the applicant ought to have been  
8 computed where such accounts, particulars or information was in fact made or  
9 given on the basis or in accordance with the practice of the Board generally  
10 prevailing at the time when such accounts, particular or information was made  
11 or given.

12 (4) In determining any application under this section the Board shall have  
13 regard to all the relevant circumstances of the case, and in particular shall  
14 consider whether the granting of relief would result in the exclusion from  
15 charge to tax of any part of the chargeable profits of the applicant, and for this  
16 purpose the Board may take into consideration the liability of the applicant and  
17 assessments made upon him in respect of other years.

18 (5) No appeal shall lie from a determination of the Board under this  
19 section, which determination shall be final and conclusive.

~ 461.-(1) Save as otherwise expressly provided in this Act, no claim for  
21 the repayment of any tax overpaid shall be allowed unless it is made in writing  
22 within six years next after the end of the accounting period to which it relates  
23 and if the Board disputes any such claim it shall give to the claimant notice of  
24 refusal to admit the claim and the provisions of the relevant sections of this  
25 Part shall apply with any necessary modifications.

Repayment of  
Tax.

26 (2) The Board shall give a certificate of the amount of any tax to be repaid  
27 under any of the provisions of this Act or under any order of a court of competent  
28 jurisdiction and upon the receipt of the certificate, the Accountant-General of the  
19 Federation shall cause repayment to be made in conformity therewith.

D 462.;" (1) Any person guilty of an offence against this Act or of any rule  
31 made thereunder for which no other penalty is specifically provided, shall be

Penalty for  
Offences.

1 liable to a fine of N 10,000 (ten thousand naira), and where such offence is one  
 2 under the relevant sections of this Part, under the relevant sections of this Part,  
 3 or is a failure, arising from the provisions of the relevant sections of this Part  
 4 to deliver accounts, particulars or information or to keep records required, a  
 5 further sum of N2,000 (two thousand Naira) for each and every day during  
 6 which such offence or failure continues, and in default of payment to imprisonment  
 7 for six months, the liability for such further sum to commence from the day  
 8 following the conviction, or from such day thereafter as the court may order.

9 (2) Any person who-

10 (a) fails to comply with the requirements of a notice served on him under  
 11 this Act; or

12 (b) having a duty so to do, fails to comply with the provisions of section  
 13 439 of this Part; or

14 (c) without sufficient cause fails to attend in answer to a notice or summons  
 15 served on him under this Act or having attended fails to answer any question  
 16 lawfully put to him; or

17 (d) fails to submit any return required to be submitted by the relevant  
 18 sections of this Part, in accordance with that section or in accordance with  
 19 that section and the relevant sections of this Part shall be guilty of an offence.

:1) (3) Any offence in respect of which a penalty is provided by subsection (1)  
 21 of this section shall be deemed to occur in Lagos,

Deduction of  
 tax from  
 interest. etc.

22 463.-(1) Where any interest other than interest on inter-bank deposits or  
 23 royalty becomes due from one company to another company or to any person to  
 24 whom the provisions of the Personal Income Tax Act apply, the company making  
 25 such payment shall, at the date when payment is made or credited, whichever  
 26 first occurs, deduct therefrom tax at the rate prescribed in subsection (2) of this  
 27 section and shall forthwith pay over to the Board the amount so deducted.

28 (2) The rate at which tax is to be deducted in this section shall be 10 per  
 29 cent.

:n (3) For the purposes of this section, person authorised to deduct tax includes  
 31 government departments, parastatals, statutory bodies, institutions and other

establishments approved for the operation of Pay As You Earn system.

2 (4) The tax, when paid over to the Board, shall be the final tax due from  
3 a non-resident recipient of the payment.

4 (5) In accounting for the tax so deducted to the Board, the company shall  
5 state in writing the following particulars, that is to say-

6 (a) the gross amount of the interest or royalty;

7 (b) the name and address of the recipient; and

8 (c) the amount of tax being accounted for.

9 464.-( 1) Where any rent becomes due from or payable by one company  
10 to another company or to any person to whom the provisions of the Personal  
11 Income Tax Act apply, the company paying such rent shall, at the date when the  
12 rent is paid or credited, whichever first occurs, deduct therefrom tax at the  
13 rate prescribed under subsection (2) of this section and shall forthwith pay over  
14 to the Board the amount so deducted.

Deduction of  
tax on rent.

15 (2) The rate at which tax is to be deducted under this section shall be 10  
16. per cent.

17 (3) For the purposes of this section, person authorised to deduct tax includes  
18 government departments, parastatals, statutory bodies, institutions and other  
19 establishments approved for the operation of Pay As You Earn system.

20 (4) The tax, when paid over to the Board, shall be the final tax due to  
21 a non-resident recipient of the payment.

22 (5) In accounting for the tax so deducted to the Board, the company shall  
23 state in writing the following particulars, that is to say-

24 (a) the gross amount of the rent payable per annum;

25 (b) the name and address of the recipient and the period in respect of  
26 which such rent has been paid or credited;

27 (c) the address and accurate description of the property concerned; and

28 (d) the amount of tax being accounted for.

29 (6) Any reference to rent in this section shall be construed whenever  
~ necessary as including payments for the use or hire of any equipment, payments  
30 for charter vessels, ship or aircraft and all such other payments for the use of or  
31

hire 01 ~~1111~~ -vable and immovable property.

Deduction of  
tax from  
dividend.

2           465. -, 1) Where any dividend or such other distribution becomes due  
3 from or payable by a Nigerian company to any other company or to any person  
4 to whom the provisions of the Personal Income Tax Act apply, the company  
5 paying such dividend or making such distribution shall, at the date when the  
6 amount is paid or credited, whichever first occurs, deduct therefrom tax at the  
7 rate prescribed under subsection (2) of this section and shall forthwith pay over  
8 to the Board the amount so deducted.

9           (2) The rate at which tax is to be deducted under this section shall be 10  
10 per cent.

11           (3) Dividend received after deduction of tax prescribed in this section  
12 shall be regarded as franked investment income of the company receiving the  
13 dividend and shall not be charged to further tax as part of the profits of the  
14 recipient company. However, where such income is re-distributed and tax is to  
15 be accounted for on the gross amount of the distribution in accordance with  
16 subsection (1) of this section, the company may set-off the withholding tax  
17 which it has itself suffered on the same income.

18           (4) The tax, when paid over to the Board, shall be the final tax due from  
19 a non-resident recipient of the payment.

20           (5) In accounting for the tax so deducted to the Board, the company shall  
21 state in writing the following particulars, that is to say-

22           (a) the gross amount of the dividend or such other distribution;

23           (b) the name and address of the recipient;

24           (c) the accounting period or periods of the company in respect of the  
25 profits out of which the dividend or distribution is declared to be payable and  
26 the date on which payment is due; and

27           (d) the amount of tax so deducted.

Deduction of  
tax at source.

28           466.-( 1) Income tax assessable on any company, whether or not as  
29 assessment has been made, shall, if the Service so directs, be recoverable from  
30 any payments made by any person to such company.

31           (2) Any such direction may apply to any person or class of persons specified

in such direction, either with respect to all companies or a company or class of  
2 companies, liable to payment of income tax.

3 (3) Any direction under subsection (1) of this section shall be in writing  
4 addressed to the person or be published in the Federal Gazette and shall specify  
5 the nature of payments and the rate at which tax is to be deducted.

6 (4) In determining the rate of tax to be applied to any payments made to  
7 a company, the Service may take into account-

8 (a) any assessable profits of that company for the year arising from any  
9 other source chargeable to income tax under this Act; and

10 (b) any income tax or arrears of tax payable by that company for any of  
11 the six preceding years of assessment.

12 (5) Income tax recovered under the provisions of this section by deduction  
13 from payments made to a company shall be set-off for the purpose of collection  
14 against tax charged on such company by an assessment, but only to the extent  
15 that the total of such deductions does not exceed the amount of the assessment  
16 and provided the assessment is for the period to which such payments relate  
17 under the provisions of the relevant sections of this Part.

18 467.-(1) Any person who-

19 (a) makes or signs, or causes to be made or signed, or delivers or causes  
20 to be delivered to the Service or any officer of the Service, any declaration,  
21 notice, certificate or other document whatsoever; or

22 (b) makes any statement in answer to any question or enquiry put to him  
23 by an officer which he is required to answer by or under this Act or any  
24 other enactment or law,

25 being a document or statement produced or made for any purpose of tax, which  
26 is untrue in any material particular, commits an offence under this section.

27 (2) Where by reason of any such document or statement required to be  
28 produced under subsection (1) of this section the full amount of any tax payable  
29 is not paid or any overpayment is made in respect of any repayment of tax, the  
30 amount of tax unpaid or the overpayment shall be recoverable as a debt due to  
31 the Service:

False  
Statements  
and Returns.

(3) Any person who commits an offence under this section shall be liable on conviction to a fine of N1,000,000 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.

Penalty for Failure to deduct or remit tax.

§ 468.-(1) Any person who, being obliged to deduct any tax under this Part, fails to deduct or having deducted fails to pay to the Service within 30 days for the date the amount was deducted or the time the duty to deduct arose, commits an offence and shall be liable on conviction to pay the tax withheld or not remitted in addition to a penalty of 10 per cent of the tax withheld or not remitted per annum and interest at Central Bank of Nigeria rediscount rate plus spread to be determined by the Minister.

(2) The Directors or other officers responsible for tax matters in a company that commits the offence in subsection (1) of this section shall be liable on conviction to imprisonment for a term of 3 years.

Penalties for offences by authorised and unauthorised persons.

§ 469. 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

(j) 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 Tax at Source.

:1) 470.-(1) Income 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 (2) Any such directive referred to in subsection (1) of this section may  
3 apply to any person or class of persons specified in such directive, either with  
4 respect to all companies or a company or class of companies, liable to payment  
5 of income tax.

6 (3) Any directive under subsection (1) of this shall be in writing addressed  
7 to the person or published in the Federal Gazette.

8 (4) In determining the rate of tax to be applied to any payments made to  
9 a company, the Service may take into account-

10 (a) any assessable profits of that company for the year arising from any  
11 other source on which income tax is chargeable under this Part; and

12 (b) any income tax or arrears of tax payable by that company for any of  
13 the six preceding years of assessment.

14 (5) Income tax recovered pursuant to this by deduction from payments  
15 made to a company shall be set-off for the purpose of collection against tax  
16 charged on such company by an assessment.

17 (6) For the purposes of this, the rate at which tax is to be deducted and  
18 the nature of activities and the services for which a company making the payment  
19 is to deduct tax and the date when the payment is made or credited which ever  
20 first occurs shall be in accordance with the regulations to be issued by the  
21 Minister responsible for finance acting on the advice of the Service with the  
22 approval of the Federal Executive Council.

23 471. The institution of proceedings for or the imposition of, a penalty,  
14 fine or term of imprisonment under this Part shall not relieve any person from  
25 liability to payment of any tax for which he is or may become liable.

Tax to be payable notwithstanding any proceedings for penalties.

26 472. No prosecution in respect of an offence under sections 457 and 459 of  
27 this Part may be commenced, except at the instance of or with the sanction of  
28 the Board.

Prosecution to be with the sanction of the Board.

19 473. The provisions of this Part shall not affect any criminal proceedings  
>> under any other Act or law.

Savings for criminal proceedings.

Restriction on effects of Personal Income Tax and other Acts.

474. No tax shall be charged under the provisions of the Personal Income Tax Act or any other Act in respect of any income or dividends paid out of any profits which are taken into account, under the provisions of this Act, in the calculation of the amount of any chargeable profits upon which tax is charged, assessed and paid under the provisions of this Act.

Double taxation arrangements with other territories.

475.-(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.

(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;

(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 Board 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.

476.-(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 475 of this Part, 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

Method of  
Calculating  
Relief to be  
Allowed for  
Double  
Taxation.

less of the following amounts, that is to say-

- 2           (a) the amount of the foreign tax payable on the income, or  
3           (b) the amount of the difference between the tax chargeable under this  
4 Act (before allowance of credit under, any arrangements having effect under  
5 the relevant sections of this Part and the tax which would be so chargeable  
6 if the income were excluded in computing profits.

7           (5) Without prejudice to the provisions of subsection (4) of this section,  
8 the total credit to be allowed to a company for any accounting period for  
9 foreign tax under all arrangements having effect under section 475 of this Part  
10 shall not exceed the total tax which would be ultimately borne by that company,  
11 for that accounting period, if no such credit had been allowed

12           (6) Where the income includes a dividend and under the arrangements  
13 foreign tax not chargeable directly or by deduction in respect of the dividend is  
14 to be taken into account in considering if any, and if so what, credit is to be  
15 given against tax in respect of the dividend, the amount of the income shall be  
16 increased by the amount of the foreign tax not so chargeable which falls to be  
17 into account in computing the amount of the credit.

18           (7) Where the amount of the foreign tax attributable to the income exceeds  
19 the credit therefore computed under subsection (4) of this section, then the  
20 amount of that income, to be included in computing profits for any purposes of  
21 this Act other than that of subsection (4) of this section, shall be taken to be the  
22 amount of that income increased by the amount of the credit therefore after  
23 deduction of the foreign tax.

24           (8) Where-

25           (a) the arrangements provide, in relation to dividends of some classes,  
26 but not in relation to dividends of other classes, that foreign tax not chargeable  
27 directly or by deduction in respect of dividends is to be taken into account in  
28 considering if any, and if so what, credit is to be given against tax in respect  
29 of the dividends; and

30           (b) a dividend is paid which is not of a class in relation to which the  
31 arrangements so

provide,

2 then, if a dividend is paid to a company which controls, directly or indirectly,  
3 not less than half of the voting power in the company paying the dividends,  
4 credit shall be allowed as if the dividend were a dividend of a class in relation  
5 to which the arrangements so provide.

6 (9) Any claim for an allowance by way of credit shall be made not later  
7 than three years after the end of the accounting period, and in the event of any  
8 dispute as to the amount allowable the Board shall give to the claimant notice  
9 of refusal to admit the claim which shall be subject to appeal in like manner as  
10 an assessment.

11 (10) Where the amount of any credit given under the arrangements is  
12 rendered excessive or insufficient by reason of any adjustment of the amount of  
13 any tax payable either in Nigeria or elsewhere, nothing in this Act limiting the  
14 time for the making of assessments or claims for repayment of tax shall apply  
15 to any assessment or claim to which the adjustment gives rise, being an  
16 assessment or claim made not later than three years from the time when all  
17 such assessments, adjustments and other determination have been made whether  
18 in Nigeria or elsewhere, as are material in determining whether any, and if so  
19 that, credit falls to be given.

XI (11) Where a company is not resident in Nigeria throughout an accounting  
21 period no credit shall be admitted in respect of any income included in the  
22 profits of that company of that period.

23 **477.** At any time after the enactment of this Act, the Minister may by Power to  
Amend  
Schedules,  
24 order delete any of the powers or duties specified in the Ninth Schedule or  
25 include therein additional powers or duties and may do so by amendment of  
26 such Schedule or by substituting a new Schedule therefore.

II PART IX - REPEALS, TRANSITIONAL AND SAVINGS PROVISIONS

28 478.-(1) From the commencement of this Act the following enactments  
29 and regulations are hereby repealed-

30 (a) Associated Gas Re-injection Act Cap. A25 Laws of the Federation  
31 2004.

- (b) Deep Offshore and Inland Basin Production Sharing Contracts Act  
 2 Cap. D3 Laws of the Federation of Nigeria 2004;
- (c) Hydrocarbon Oil Refineries Act No. 17 of 1965, Cap. H5 Laws of the  
 3 Federation of Nigeria 2004
- (d) Motor Spirits (Returns) Act Cap. M20 Laws of the Federation of  
 4 Nigeria 2004
- (e) Nigerian National Petroleum Corporation Act No. 73 of 1977, Cap.  
 5 123 Laws of the Federation of Nigeria 2004.
- (f) Nigerian National Petroleum Corporation (Projects) Act No. 94 of  
 6 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;
- (1) Petroleum Products Pricing Regulatory Agency (Establishment) Act  
 7 2003;
- (m) Petroleum Equalisation Fund (Management Board, etc.) Act No.9 of  
 8 1975, Cap. PII Laws of the Federation of Nigeria 2004;
- (n) Petroleum Profits Tax Act, Cap. PI3 Laws of the Federation 1990;
- (o) Petroleum (Special) Trust Fund Act, Cap PI'4 Laws of the Federation  
 9 of Nigerian 2004;
- (P) Petroleum Technology Development Fund Act, Cap. PIS Laws of the  
 10 Federation of Nigeria 2004;
- (2) Any subsidiary legislation repealed as a result of the repeal of any of  
 11 the enactments in subsection (1) of this section shall, in so far, as it is not  
 12 inconsistent with this Act, remain in operation until it is revoked or replaced  
 13 by subsidiary legislation made under this Act, and shall be deemed for all  
 14 purposes to have been made under this Act.
- 479.-(1) Any license, lease or contract in respect of the exploration,  
 15 production and, or, development of crude oil or natural gas, granted under the

Petroleum Act 1969, shall continue in force for the remainder of its duration,  
2 as if it had been issued under the provisions of this Act.

3 (2) Any license, permit or other right granted in respect of commercial  
4 activities pertaining to the downstream including refineries, pipelines, storage,  
5 transportation, distribution and retail, under any laws in force at the time in  
6 Nigeria, shall, in accordance with the terms of section 308 (4) apply to the  
7 Authority for the issuance of the appropriate commercial licence, and pending  
8 the issuance of the said appropriate licence, the said licence, .permit, or right  
9 shall continue in force as if it had been issued under the provisions of this Act.

10 (3) Any other licence, permit or other right in respect of any sector of the  
11 petroleum industry in Nigeria to which subsection (1) and (2) of this section  
12 does not apply, and that has been granted by the Department of Petroleum  
13 Resources or the Petroleum Products Pricing and Regulatory Authority, as the  
14 case may be, and which is still in existence on the effective date, shall continue  
15 in force for the remainder of its duration as if it had been issued under the  
16 provisions of this Act.

17 (4) Any tariff, price, levy, or surcharge which was payable to the  
18 Department of Petroleum Resources or the Petroleum Products Pricing and  
19 Regulatory Authority prior to the effective date shall continue in force until the  
20 expiration of the term of the said tariff, price, levy, or surcharge, or until  
21 alternative provisions are made pursuant to the provisions of this Act or any  
22 regulations made under it, whichever is earlier.

23 (5) Within three months from the date of commencement of this Act the  
24 Minister on the advice of the Directorate or the Inspectorate, as the case may  
25 be, may make any further transitional and savings provisions that are considered  
26 necessary or desirable, provided that these provisions are consistent with the  
27 transitional and savings provisions in this Act.

28 **480.** Any staff of the Ministry of Petroleum Resources who are employed  
29 by the Directorate as from the effective date shall be regarded as having  
30 transferred their services to the Directorate with effect from that date, on  
31 terms and conditions no less favourable than those obtaining immediately before

The  
Directorate.

1 the effective date, unless they indicate otherwise before the expiration of three  
2 months next following the effective date, and such services will be regarded as  
3 continuous for the purpose of pensions and gratuities.

4 481.-(1) The provisions of this section shall apply to all contracts or  
5 other instruments subsisting immediately before the effective date and entered  
6 into by the Ministry of Petroleum Resources.

7 (2) By virtue of this Act there is vested in the Directorate as from the  
8 effective date and without further assurance all assets, funds, resources and  
9 other moveable or immovable property which immediately before the effective  
10 date were vested and held by the Ministry of Petroleum Resources on its own  
11 behalf.

12 (3) As from the effective date-

13 (a) The rights, interest, obligations and liabilities of the Ministry of  
14 Petroleum Resources existing immediately before the effective date under  
15 any aforementioned contract or instrument at law or in equity which shall  
16 have been held on its own behalf, or have accrued to or have been incurred  
17 on its own behalf, or for its own benefit or use shall by virtue of this Act be  
18 assigned to and vested in the Directorate;

19 (b) Any such contract or instrument as is mentioned in sub-paragraph (a)  
20 above, shall be of the same force and effect against or in favour of the  
21 Directorate and shall be enforceable as fully and effectively as if instead of  
22 the Ministry of Petroleum Resources, the Directorate had been named therein  
23 or had been a party thereto;

24 (c) Any proceeding or cause of action pending or existing or which could  
25 have been taken by or against the Ministry of Petroleum Resources  
26 immediately before the effective date in respect of any such rights, interest,  
27 obligation or liability of the Ministry of Petroleum Resources may be  
28 commenced, continued or enforced or taken by or against the Directorate as  
29 if this Act had not been made.

The  
Inspectorate.

30 **482.** All staff of the former Petroleum Inspectorate in the Nigerian National  
31 Petroleum Corporation or the Department of Petroleum Resources in the

Ministry of Petroleum Resources on the effective date shall be regarded as  
2 having transferred their services to the Inspectorate with effect from that date  
3 on terms and conditions no less favourable than those obtaining immediately  
4 before the effective date, unless they indicate otherwise before the expiration  
5 of three months next following the effective date, and such services will be  
6 regarded as continuous for the purpose of pensions and gratuities.

7       483. Every person whose service has been transferred to the Inspectorate  
8 from the former Petroleum Inspectorate in the Nigerian National Petroleum  
9 Corporation or the Department of Petroleum Resources in the former Ministry  
10 of Petroleum Resources under this Act shall cease to be in the employment of  
11 the Nigerian National Petroleum Corporation or the Ministry of Petroleum  
12 Resources on the day preceding the effective date and shall be deemed to be  
13 employed by the Inspectorate with effect from the effective date.

14       484. No liability shall attach to the Inspectorate or to any employee or  
15 agent of the Inspectorate or to a member for any loss or damage sustained by  
16 any person as a result of the lawful exercise or performance of any function  
17 which in terms of this Act is conferred or imposed upon the Inspectorate or the  
18 members.

19       485.-(1) The provisions of this section shall apply to all contracts or  
20 other instruments subsisting immediately before the effective date and entered  
21 into by the former Nigerian National Petroleum Corporation or the former  
22 Ministry of Petroleum Resources for or on behalf of the former Petroleum  
23 Inspectorate or the former Department of Petroleum Resources.

24       (2) By virtue of this Act there is vested in the Inspectorate as from the  
25 effective date and without further assurance all assets, funds, resources and  
26 other moveable or immovable property which immediately before the effective  
27 date were vested and held by the Nigerian National Petroleum Corporation or  
28 the Ministry of Petroleum Resources for and on behalf of, or for the use of the  
29 former Petroleum Inspectorate or the Department of Petroleum Resources.

30       (3) As from the effective date-

31       (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;

(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.

**486.** From the date of commencement of this Act the staff of the former Petroleum Products Pricing Regulatory Authority 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 propose of pensions and gratuities.

**487.** 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



1 result of the lawful exercise or performance of any function which by or in  
2 terms of this Act is conferred or imposed on the Authority.

3 **488.-(1)** The provisions of this section shall apply to all contracts or  
4 other instruments subsisting immediately before the effective date and entered  
5 into by the former Petroleum Products Pricing Regulatory Authority.

6 (2) By virtue of this Act there is vested in the Authority as from the  
7 effective date and without further assurance all assets, funds, resources and  
8 other moveable or immovable property which immediately before the effective  
9 date were vested and held by the Petroleum Products Pricing and Regulatory  
10 Authority.

11 (3) As from the effective date-

12 (a) The rights, interest, obligations and liabilities of the Petroleum Products  
13 Pricing and Regulatory Authority existing immediately before the effective  
14 date under any aforementioned contract or instrument at law or in equity  
15 which shall have been held on behalf of or have accrued to or have been  
16 incurred for its own benefit or use, shall by virtue of this Act be assigned to  
17 and vested in the Authority;

18 (b) Any such contract or instrument as is mentioned in sub-paragraph (a)  
19 above, shall be of the same force and effect against or in favour of the  
20 Authority and shall be enforceable as fully and effectively as if instead  
21 of the Petroleum Products Pricing and Regulatory Authority, the Authority had  
22 been named therein or had been a party thereto;

23 (c) Any proceeding or cause of action pending or existing or which could  
24 have been taken by or against the Petroleum Products Pricing and Regulatory  
25 Authority immediately before the effective date in respect of any such rights,  
26 interest, obligation or liability of the Petroleum Products Pricing and  
27 Regulatory Authority, may be commenced, continued or enforced or taken  
28 by or against the Authority as if this Act had not been made.

29 **489.** From the effective date of this Act any staff of the former Nigerian The Agency.  
30 National Petroleum Corporation that are employed by the Agency shall be  
31 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.

490. Any contract entered into by the Corporation, for the benefit of, or with respect to the functions of the National Petroleum Investment Management Services or the Crude Oil Marketing Department, 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.

491. 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.

492. 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.

493. 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  
2 effect from that date, on terms and conditions no less favourable than those  
3 obtaining immediately before the effective date, and such services will be  
4 regarded as continuous for the purpose of pensions and gratuities.

5 PART X - INTERPRETATION AND CITATION

6 **494.** In this Act unless it is specifically stated otherwise- Interpretation.

7 "Act" means the Petroleum Industry Act 2008;

8 "accounting period", in relation to a company engaged in petroleum  
9 operations or upstream gas operations; means

10 (a) a period of one year commencing on 1st January and ending on 31st  
11 December of the same year; or

12 (b) any shorter period commencing on the day the company first makes  
13 a sale or bulk disposal of Chargeable Oil or Chargeable Natural Gas  
14 under a programme of continuous production and sales, domestic, export  
15 or both, and ending on 31 st December of the same year; or

16 (c) any period of less than a year being a period commencing on 1 st  
17 January of any year and ending on the date in the same year when the  
18 company ceases to be engaged in Petroleum Operations or Upstream Gas  
19 Operations;

20 "adjusted profit" means adjusted profit as stated in Part VII of this Act;

21 "assessable profits" means assessable profits as stated in Part VII of this  
22 Act;

23 "assessable tax" means assessable tax as stated in Part VII of this Act;

24 "Associated gas" means-

25 (a) natural gas, commonly known as gas-cap gas, which overlies and is  
26 on contact with crude oil in a reservoir; and

27 (b) solution gas dissolved in crude oil in a reservoir;

28 "Attorney-General" means the Attorney-General of the Federation;

L9 "benchmark prices" means:

30 (a) a price set by the Authority as a basis for comparison; or

31 (b) a price set by the Authority to be used as a reference point for

petroleum products;

2 "board" means the governing board of the Institution or any other entity  
3 that is the subject matter of the chapter within which the word has been  
4 used, unless it is specifically stated otherwise;

5 "casing head petroleum spirit" means any liquid hydro-carbons obtained  
6 in Nigeria from natural gas by separation or by any chemical or physical  
7 process but before the same has been refined or otherwise treated;

8 "chargeable natural gas" in relation to a company engaged in petroleum  
9 operations or upstream gas operations means natural gas actually delivered  
10 by such company to the National Oil Company or to any other company  
11 under a gas sales contract but does not include natural gas taken by or on  
12 behalf of the Government of the Federation in pursuance of this Act;

13 "chargeable oil" in relation to a company engaged in petroleum operations  
14 or upstream gas operations, means casing head petroleum spirit and crude  
15 oil won or obtained by the company from such operations; (1979 No. 95)

16 "chargeable profits" means chargeable profits as stated in Part VI of this  
17 Act;

18 "chargeable tax" means chargeable tax as stated in Part VI of this Act  
19 and imposed under this Act;

20 "fertilizer, but excludes pipelines for the transportation of natural gas  
21 from producing wells to facilities producing pipeline specification gas;

22 "effective date" means the date on which this Act comes into force;

23 "energy efficiency" means a change to energy use that results in an  
24 increase in net benefits per unit of energy;

25 "enforcement order" means an order issued by the Inspectorate; Authority  
26 or Agency;

27 "ex-pump" means the price of petroleum products at the retail pumps;

28 "ex-refinery" means the price of petroleum products at the refinery gate;

29 "Exclusive Economic Zone" shall have the same meaning as defined in  
30 the Exclusive Economic Zone Act' Cap. 350, Laws of the Federation of  
31 Nigeria;

"explore" means to make a preliminary search by surface geological and geophysical methods, including aerial surveys but excluding drilling below 91.44 metres;

"farm out" means an agreement between the holder of an oil prospecting license or an oil mining lease, and a third party which permits the third party to explore, prospect, win, work and carry away any petroleum encountered in a specified area during the validity of the license or lease;

"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 posted prices;

"fiscalised natural gas" means:

"first class commercial bank" refers to a bank which has had a rating of not less than "AA" by an internationally acceptable rating agency for the oil and gas industry for more than ten years;

"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;

"Gazette" means the Gazette of the Federal Government of Nigeria;

"good oilfield practice" refers to a wide variety of internationally

1 recognised and accepted petroleum development approaches which are not  
2 deleterious to the environment, health and safety of, and which conform to  
3 principles of sustainable development that do not compromise the future of  
4 succeeding generations of the people of Nigeria;

5 "Government" means the government of the Federal Republic of Nigeria;

6 "indigenous oil company" means a company-

7 (a) engaged in the exploration for and production of crude oil and  
8 natural gas of which sixty per cent or more of its shares are beneficially  
9 owned directly or indirectly by Nigerian citizens or associations of  
10 Nigerian citizens;

11 (b) which meets the requirements of any guidelines or regulations that  
12 may be issued by the Directorate or the Inspectorate; and

13 (c) which is accredited as an indigenous oil company by the Directorate  
14 or Inspectorate;

15 "industry" means the petroleum industry in Nigeria;

16 "Inland Basin" means any of the following basins, namely; Anambra,  
17 Benin, Benue, Chad, Bida, Dahomey, Gongola, Sokoto and such other basins  
18 as may be determined by from time to time, by the Minister;

19 "intangible drilling costs" means all expenditure for labour fuel, repairs,  
20 maintenance, hauling, and supplies and materials (not being supplies and  
21 materials for well cement, casing or other well fixtures) which are for or  
22 incidental to drilling, cleaning, deepening or completing wells or the  
23 preparation thereof incurred in respect of -

24 (a) determination of well locations, geological studies and topographical  
25 and geographical surveys preparatory to drilling

26 (b) drilling, shooting, testing and cleaning wells;

27 (c) cleaning, draining and levelling land, road building and the laying  
28 of foundations;

29 (d) erection of rigs and tankage assembly and installation of pipelines  
30 and other plant and equipment required in the preparation or drilling of  
31 wells producing petroleum;

2 "Institutions" or "Institution" refers to the National Petroleum  
3 Directorate, the Nigerian Petroleum Inspectorate, the Petroleum Products  
4 Regulatory Authority, the National Petroleum Assets Management Agency,  
5 the Petroleum Equalisation Fund, The Petroleum Technology Development  
6 Fund, and the Nigerian Petroleum Research Centre, either jointly, any two  
7 or more of the said Institutions, or singly;

8 "Liquefied natural gas" means natural gas in its liquid state at  
9 approximately atmospheric pressure;

10 "local company" has the meaning assigned to it under any law enacted in  
11 respect of Nigerian content in the petroleum industry in Nigeria;

12 "local distribution zone" means an authorized area as specified in  
13 regulations issued under this Act, within which one distributor of downstream  
14 natural gas may operate;

15 "loss" means a loss ascertained in like manner as an adjusted profit;

16 "Marginal field" means a field:

17 with low recoverable reserves and comparatively high development  
18 costs under present economic and technological conditions; and

19 that is designated as a marginal field by the Nigerian Petroleum  
20 Inspectorate;

21 "Midstream sector" means the sector of the petroleum industry which  
22 processes, stores, markets and transports commodities such as crude oil,  
23 natural gas, natural gas liquids (NGLs, mainly ethane, propane and butane)  
24 and sulphur; or refers to those industry activities that fall between exploration  
25 and production, that is the upstream; and refining and marketing, that is, the  
26 downstream, and includes pipeline transportation of crude oil and natural  
27 gas and gas derivatives;

28 "Minister" means the Minister in charge of petroleum resources and  
29 overseeing the Petroleum industry in Nigeria;

30 "MMcf" means one million cubic feet;

31 "Natural gas liquids" means hydrocarbons liquefied at the surface in  
separators, field facilities or in gas processing plants and include but are not

1 limited to ethane, propane, butanes, pentanes, and natural gasoline, may or  
2 may not include condensate;

3 "Natural Gasoline" means a mixture of hydrocarbons extracted from  
4 natural gas, which meet vapour pressure end point and other specifications  
5 for natural gasoline, as adopted by the GPSA with 69,83,97, 138, and 179  
6 kPa(abs) being common specifications;

7 "Network Code" means the code developed by the transportation network  
8 operators in respect of downstream natural gas;

9 "Nigeria" includes the submarine areas beneath the territorial waters of  
10 Nigeria and the submarine areas beneath any other waters which are or at  
11 any time shall in respect of mines and minerals become subject to the  
12 legislative competence of the National Assembly;

13 "Nigerian Content" has the meaning assigned to it under any law enacted  
14 in respect of national or local content in the petroleum industry in Nigeria;

15 "Nigerian company" means a company incorporated in Nigeria;

16 "Non-associated gas" means natural gas accumulation which does not  
17 occur with crude oil;

18 "Non-productive rents" means and includes the amount of any rent as to  
19 which there is provision for its deduction from the amount of any royalty  
20 under a petroleum prospecting licence or oil mining lease to the extent that  
21 such rent is not so deducted;

22 "Oil and Gas Policy" means the policy of the government for the time  
23 being in force on the petroleum sector;

24 "Person" means any individual, company or other juristic person;

25 "petroleum" means mineral oil (or any related hydrocarbon) or natural  
26 gas as it exists in its natural state in strata, and includes tar sands, heavy  
27 oils, bituminous and other stratified deposits from which oil can be extracted  
28 by destructive distillations but does not include coal;

29 "petroleum mining lease" means a lease granted to a company, under the  
30 Minerals Act, for the purpose of winning petroleum or any assignment of  
31 such lease;



1 "petroleum operations" means the winning or obtaining and transportation  
2 of petroleum chargeable oil in Nigeria by or on behalf of a company for its  
3 own account by any drilling, mining, extracting or other like operations or  
4 process, not including refining at a refinery, in the course of a business  
5 carried on by the company engaged in such operations, and all operations  
6 incidental thereto and any sale of or any disposal of chargeable oil by or on  
7 behalf of the company;

8 "Petroleum products" include motor spirit, gas oil, black oil, diesel oil,  
9 automotive gas oil, fuel oil, aviation oil, kerosene, liquefied natural gas,  
10 compressed natural gas, natural gas liquids, liquefied petroleum gases and  
11 any lubrication oil or grease or other lubricant;

12 "profits" means profits as stated in Part VII of this Act;

13 "resident in Nigeria", in relation to a company, means a company the  
14 control and management of the business of which are exercised in Nigeria;

15 "royalties" means and includes—

16 (a) the amount of any rent as to which there is provision for its deduction  
17 from the amount of any royalties under an oil prospecting licence or oil  
18 mining lease to the extent that such rent is so deducted; and

19 (6) the amount of any royalties payable under any such licence or lease  
20 less any such rent deducted from those royalties;

21 "refining company" means a body corporate having been licensed by the  
22 appropriate authorities to either take over an existing refinery or refineries  
23 at the inception of this Act, or to establish new refineries in Nigeria;

24 "regulation" means the use of laws or rules stipulated by any of the  
25 Institutions, in accordance with the provisions of this Act to provide orderly  
26 procedures and enforce standards and best practices for the activities to  
27 which the rules apply;

28 "Senate" means the Senate of the Federal Republic of Nigeria;

29 "standards" means limits made binding through laws, regulations or  
30 guidelines which must be observed within the appropriate regulatory  
31 framework in all cases where they are applicable;

1 "State" means the sovereign state of the Federal Republic of Nigeria,  
2 except where the context so admits or where it is specifically stated to mean  
3 a state of the Federation.

4 "tax" means chargeable tax;

5 "technical" refers to matters and issues that derive their consideration  
6 from a structured body of applied scientific knowledge, practical skills and  
7 special techniques that are interpreted strictly in accordance with stipulated  
8 rules, regulations, and standards;

9 "technical regulation" means the technical oversight of all activities  
10 relating to the exploration, development, production, processing, distribution  
11 and disposal of hydrocarbons through standards and best practices as may be  
12 prescribed from time to time in laws; regulations or guidelines;

13 "upstream" refers to all activities entered into for the purpose of finding  
14 and developing crude oil or natural gas and includes all activities involved  
15 in exploration and in all stages through, up to the production and transportation  
16 of crude oil and natural gas from the area of production to the terminal;

17 "upstream gas operations" means the winning OF obtaining of natural gas  
18 in Nigeria by or on behalf of a company :6n its own account for commercial  
19 purposes and shall include any activity cooperation related to natural gas  
20 that occurs up to the point at Which downstream gas begins;

Short Title.

21 **495.** This Act may be cited as the Petroleum Industry Bill, 2008.