



(4) Any person who obstructs or interferes with the Minister, his servants or agents in the exercise of the powers conferred on the Minister under paragraph 8 of the First Schedule to this Act, shall be guilty of an offence and is liable on conviction to forfeiture of the petroleum products and facilities subject of the offence and to imprisonment for a period not exceeding ten years.

### PART III - NIGERIA PETROLEUM REGULATORY COMMISSION

4. (1) There is established under this Act the Nigeria Petroleum Regulatory Commission ("the Commission") as a body corporate with perpetual succession and a common seal and which may sue or be sued in its corporate name. Establishment of the Nigeria Petroleum Regulatory Commission.
- (2) The Commission shall have power to –
- (a) enter into contracts and incur obligations;
- (b) acquire, hold, mortgage, purchase and deal with property, whether movable or immovable, real or personal; and
- (c) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Act.
- (3) From the Effective Date, without further assurance, the Commission shall be vested with all assets, funds, resources and other movable and immovable properties which immediately before the Effective Date were held by the Petroleum Inspectorate, the Department of Petroleum Resources and the Petroleum Products Pricing Regulatory Agency.
- (4) As from the date of commencement of this Act –
- (a) the rights, interests, obligations and liabilities of the Petroleum Inspectorate, Department of Petroleum Resources and the Petroleum Products Pricing Regulatory Agency existing immediately before the Effective Date under any contract or instrument or law or in equity shall by virtue of this Act be assigned to and vested in the Commission;
- (b) any such contract or instrument covered by subsection 4(a) of this section shall be of the same force and effect against or in favour of the Commission and shall be enforceable as fully and effectively as if instead of the Petroleum Inspectorate, Department of Petroleum Resources or the Petroleum Products Pricing Regulatory Agency, the Commission had been named therein or had been a party thereto; and
- (c) the Commission shall be subject to all the obligations and liabilities to which the Petroleum Inspectorate, Department of Petroleum Resources and the Petroleum Products Pricing Regulatory Agency were subject immediately before the Effective Date and all other persons shall as from the Effective Date have the same rights, powers and remedies against the Commission as they had against the Petroleum Inspectorate, Department of Petroleum Resources and the Petroleum Products Pricing Regulatory Agency immediately before the Effective Date.
- (5) The Commission shall be structured into departments as its Board may, from time to time, deem appropriate for the effective discharge of its functions under this Act.
- (6) the headquarters of the Nigeria Petroleum Regulatory Commission shall be located in Abuja.
5. The Commission shall – Objectives of the Commission.
- (a) promote the healthy, safe and efficient conduct of all petroleum operations in an environmentally friendly and sustainable manner;
- (b) promote the efficient, safe, effective and sustainable infrastructural development of the petroleum industry;
- (c) ensure compliance with all applicable laws and regulations governing the petroleum industry;
- (d) determine and ensure the implementation and maintenance of technical standards, codes and

specifications applicable to the petroleum industry in line with global best practice;

(e) subject to the provisions of this Act, execute Government policies for the petroleum industry assigned to it by the Minister;

(f) promote an enabling environment for investments in the petroleum industry;

(g) ensure that regulations are fair and balanced for all classes of lessees, licensees, permit holders, consumers and other stakeholders;

(h) in consultation with the Federal Ministry of Environment, ensure strict implementation of environmental policies, laws and regulations as pertains to oil and gas operations; and

(i) implement such other objectives as are consistent with the provisions of this Act.

6. (1) The Commission shall –

Functions of the Commission.

(a) administer and enforce policies, laws and regulations relating to all aspects of petroleum operations which are assigned to it under the provisions of this Act or any regulations made in pursuance of this Act or under any other enactment;

(b) monitor and enforce compliance with the terms and conditions of all leases, licences, permits and authorisations issued in respect of any petroleum operations;

(c) define and enforce approved standards for design, construction, fabrication, operation and maintenance for all plants, installations and facilities utilized or to be utilized in petroleum operations;

(d) in consultation with the Ministry of Environment or any other agency in charge of environmental issues, ensure adherence to applicable national and international environmental and other technical standards by all persons involved in petroleum operations;

(e) establish, monitor, regulate and enforce health and safety measures relating to all aspects of petroleum operations;

(f) keep public registers of all leases, licences, permits and other authorizations issued by the Commission or the Minister and any renewals, amendments, extensions, suspensions and revocations thereof;

(g) monitor the activities of the holders of leases, licences, permits and other authorizations issued by the Commission or the Minister to secure and enforce compliance with the terms and conditions thereof and carry out enquiries, tests, audits, investigations and any other undertakings deemed necessary for performance of this responsibility;

(h) publish reports and statistics on the petroleum industry;

(i) develop and publish methodologies for tariffs and pricing relating to third party access to petroleum facilities from time to time by regulation ;

(j) establish the framework for the validation and certification of national hydrocarbon reserves;

(k) advise the Minister on fiscal and other issues pertaining to the petroleum industry.

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

(m) conduct regular audits of the activities of operators engaged in petroleum operations and oil service companies in order to ensure compliance with Nigerian laws and requirements for petroleum operations;

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

(o) supervise and ensure accurate calibration and certification of equipment used for fiscal

measures for upstream and downstream petroleum operations;

(p) issue licences or permits and any other authorisations necessary for all activities connected with, but not limited to the following:

(i) seismic;

(ii) drilling ;

(iii) design, fabrication, construction, commissioning and decommissioning of all facilities for upstream and downstream petroleum operations; and

(iv) maximum efficiency rate test and other well test/production related activities.

(q) manage and administer all unallocated acreage of crude oil and natural gas and all upstream petroleum data;

(r) conduct bid rounds or other processes for the award of any licence or lease required for petroleum exploration or production;

(s) issue, modify, amend, extend, suspend, review, cancel and reissue, revoke and / or terminate upstream licences made in compliance with applicable laws and regulations;

(t) approve all field development programmes;

(u) allocate petroleum production quotas in a non-discriminatory manner;

(v) develop benchmarks and cost management strategies for petroleum operations performance monitoring;

(w) compute, assess and ensure payment of royalties, rentals, fees, and other charges for upstream petroleum operations; and

(x) issue clean certificates of inspection at the oil terminals to exporters of crude oil upon satisfaction that the requirements as to quality and quantity have been complied with;

(y) regulate and co-ordinate the activities of the industry in a non-discriminatory and transparent manner;

(z) establish the methodology for determining appropriate tariffs for gas processing, gas transportation, transmission and transportation of crude oil and bulk storage of oil and gas.

(2)(a)develop cost benchmarks for key elements of midstream & downstream petroleum operations;

(b) regulate bulk storage, transportation and transmission of crude oil and gas and set rules for the common carrier systems for crude oil and gas;

(c) promote the principles of sustainable infrastructural development;

(d) promote competition and private sector participation;

(e) ensure that all economic and strategic demands for gas in the domestic economy are met;

(f) monitor and enforce the actual application of tariffs and pricing frameworks;

(g) monitor market behaviour including the development and maintenance of competitive markets;

(h) arrest situations of abuse of dominant power and restrictive business practices;

(i) provide the standard for metering, inspect the metering of pumps and all other facilities and ensure their compliance with safety standards as prescribed by the Commission;

(j) grant, issue and renew licences, permits and authorisations including but not limited to licences, permits or authorisations for downstream gas, petroleum products, storage depots, retail outlets, transportation and distribution facilities for the petroleum industry and the design, fabrication, construction, commissioning and decommissioning of all facilities and prescribe requirements to be satisfied by applicants for these purposes.

(k) modify, amend, extend, suspend, review, cancel and reissue, revoke and / or terminate licences, permits and authorisations;

(l) establish framework for calculating the fair market value of petroleum products;

(m) regulate and set rules for petroleum products distribution, petroleum product pipelines, retail outlets, trucking of petroleum products and storage depots;

(n) ensure security of petroleum products supply, market development and the development of competition;

(o) develop market rules for trading in wholesale gas supplies to downstream gas distributors;

(p) establish customer protection measures;

(q) undertake consultation with customers, licensees and other industry participants, where necessary, for purpose of:

(i) promote and protecting the interests of consumers; and

(ii) promote the principles of sustainable resource and infrastructural development through the efficient supply and use of downstream gas and other petroleum products.

(r) regulate and ensure the supply, distribution, marketing and retail of petroleum products;

(s) administer and monitor the national operating and strategic stocks as set by the Minister;

(t) monitor and enforce the actual application of petroleum product pricing formulae or framework for petroleum products;

(u) enforce consumer rights in relation to petroleum products and services;

(v) establish appropriate dispute settlement mechanisms relating to the commercial rights and obligations of operators and customers pursuant to the provisions of this Act or any other enactment or regulation, provided that operators and customers shall reserve the right to resolve disputes in accordance with the terms of their contracts or approach a court with jurisdiction in the matter;

(w) inspect the metering of pumps and any other facilities at downstream retail outlets to ensure compliance with safety, measurement and technical standards;

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

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

(z) monitor and ensure the quality of petroleum products sold in Nigeria.

(3) In addition to the functions specified above, the Commission shall-

(a) develop open access rules applicable to crude oil and petroleum products and natural gas transportation pipelines, strategic depots, loading facilities, transportation, transmission and bulk storage facilities;

(b) notwithstanding the provisions of any other law or regulations, exclusively supervise and

ensure accurate calibration and certification of equipment used for fiscal measures in the industry;

(c) undertake by itself or through qualified expertise such other activities as are necessary or expedient for giving full effect to the provisions of this Act; and

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

(4) The Commission shall, in addition to its other functions-

(a) promote the exploration of the frontier basins of Nigeria;

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

(c) identify opportunities and increase information about the petroleum resources base within all frontier acreages in Nigeria; and

(d) undertake studies, analyse and evaluate all unassigned frontier acreages in Nigeria.

(5) Collaboration and Consultation with other Agencies-

(a) in performing its functions as provided in this section, the Commission shall, where applicable, collaborate with other relevant Government agencies;

(b) notwithstanding the provisions of any other law or regulation, no Government agency shall exercise any powers and functions in relation to the petroleum industry in conflict with the powers and functions of the Commission;

(c) all Government agencies exercising any lawful powers and functions in relation to the petroleum industry shall consult with the Commission in the issuance of any regulations, guidelines and in the issuance of enforcement orders or directives which may impact the petroleum industry.

Responsibility for Environmental Matters in the Petroleum Industry

(6) (a) The Commission shall have responsibility over all aspects of health, safety and environmental matters in respect of the petroleum industry.

(b) The Commission shall at all times ensure that any regulation or directive in respect of the petroleum industry, made in pursuance of subsection (6) (a) of this section, shall not conflict with any regulation or directive issued by the Federal Ministry of Environment.

(c) For the avoidance of doubt the Commission shall, in consultation with the Federal Ministry of Environment, make regulations and issue directives specifically relating to environmental aspects of the petroleum industry.

(d) In exercising its functions in subsection (5)(a) of this section, the Commission may in conjunction with the Federal Ministry of Environment establish a joint committee to facilitate collaboration.

7. In carrying out its functions under this Act, the Commission shall have power to -

Powers of the Commission.

(a) modify, extend, renew, suspend and revoke any licence or permit issued by it pursuant to the provisions of this Act;

(b) in accordance with the provisions of this Act, designate facilities in the petroleum industry as third party access facilities, determine tariff methodology and pricing framework applicable to same, monitor and enforce the application of such tariff and pricing framework and mediate disputes in respect of third party access as may be determined by any regulation made pursuant to this Act;

(c) request and obtain any information or any document concerning licensed activities in the

petroleum industry from any licensee, lessee or permit holder;

(d) where it considers it to be in the public interest:

(i) publish information relating to petroleum operations provided by lessees, licensees and permit holders; and

(ii) require lessees, licensees and permit holders to publish particular information relating to petroleum operations subject to the provisions of Regulation 7(5) of the National Data Repository Regulation 2007.

(e) enforce relevant lease, licence or permit conditions and the specific requirements of this Act or any other enactment or regulation;

(f) issue penalties and fines in accordance with the provisions of this Act or any other enactment or regulation;

(g) enforce the provisions of any enactments or regulations applicable to petroleum operations made prior to the Effective Date or any other enactment or regulation;

(h) institute legal proceedings against any lessee, licensee or permit holder for failure to comply with lease, licence or permit conditions or other requirements of this Act or any other enactment or regulation;

(i) make and enforce regulations and prescribe fees in line with the provisions of this Act or any other enactment or regulation; and

(j) issue guidelines in line with the provisions of this Act or any other enactment or regulation.

8. (1) The Commission may subject to the provisions of subsections (2) and (3) of this section, make regulations necessary to give proper effect to the provisions of this Act. Regulations.

(2) The Commission shall prior to making any regulation under this Act, conduct a public hearing in the manner specified in subsection (4) of this section on the subject matter of the proposed regulation.

(3) The Commission shall, in making any regulation, take into consideration the findings of the public hearing conducted in pursuance of subsection (2) of this section.

(4) Before holding a public hearing in pursuance of subsection (2) of this section, the Commission shall publish in at least two national newspapers and its website, notice of-

(a) the fact that it is holding the public hearing;

(b) invitation to major stakeholders and members of the public to participate in the public hearing;

(c) the venue and period during which the public hearing is to be held;

(d) the nature of the matter to which the public hearing relates;

(e) the matters that the Commission would like the submissions to deal with;

(f) the form in which members of the public are to make submissions to the Commission on the subject matter of the public hearing;

(g) the period of public notice for the commencement of the public hearing, which shall not be less than twenty-one days; and

(h) the address or addresses to which the submissions may be sent.

(5) Notwithstanding the provision of subsection (2) of this section, the Commission may, due to the exigency of the circumstances, make any regulation without conducting a public hearing, where it deems it necessary to do so.

- (6) Any regulation made pursuant to sub-section (5) of this section shall be valid for not longer than six months with effect from its commencement date, unless it is confirmed after a public hearing.
- (7) For the purpose of this section, a public hearing may take the form of an electronic consultation. After such consultation, the Commission shall issue a summary of the views expressed and how it has addressed them in the proposed regulations.
9. (1) The Commission shall ensure that any decision or order made by the Commission:
- (a) contains the basis for the decision or order;
- (b) are properly recorded in writing; and
- (c) are accessible to the public at reasonable times and places.
- (2) The Commission shall issue written reasons in respect of any decisions or orders affecting the existing rights of any person, if the affected person requests such written reasons.
- (3) The Commission may issue written reasons in respect of any other decision or order as the Commission deems necessary.
- (4) Every recommendation, declaration, decision or order of the Commission, if purporting to be signed by a person describing himself as the Chief Executive Commissioner of the Commission or by a person describing himself as a Commissioner acting in the capacity of the Chief Executive Commissioner, shall unless the contrary is shown, be deemed to be made by the Commission and to have been so signed and may be proved by the production of a copy thereof purporting to have been so signed.
- (5) The Commission may make interim orders pending the final disposition of a matter before it.
10. (1) The Commission may hold a hearing on any matter, which under this Act or any other enactment is required or permitted to be conducted or on which it is required or permitted to take any action and the Commission shall hold public hearing on matters which the Commission determines to be of significant interest to the general public.
- (2) Where the Commission is required to or otherwise decides to hold a hearing, all persons having an interest in such matter shall, as far as reasonably practicable, be notified of the questions at issue and given opportunities to make representations, if they so wish.
- (3) The Commission shall take into consideration the findings of any public hearing conducted in pursuance of subsection (1) of this section.
11. When any matter arises which entails the consideration of any professional or technical question, the Commission may consult such persons or institutions as may be qualified to advise thereon.
12. (1) If any question of law arises from an order or decision of the Commission, the Commission may, on its own initiative or at the request of any person directly affected by such order, reserve that question for the decision of the Federal High Court.
- (2) Where a question has been reserved under subsection (1) of this section, the Commission shall state the question in the form of a special case and file it with the Registrar of the Federal High Court.
13. (1) There shall be established for the Commission a governing Board (in this Act referred to as the "Board") which shall, be responsible for the policy and general administration of the Commission.
- (2) The Board shall consist of the following members-
- (a) a non-executive Chairman;
- (b) two non-executive Commissioners;

Decisions and orders made by the Commission.

Commission to give notice to interested parties.

Engagement of Expertise Support.

Question of law may be referred to the Federal High Court.

Governing Board of the Commission.



- (c) the Chief Executive Commissioner;
- (d) four other Executive Commissioners;
- (e) a representative of the Ministry of Petroleum Resources who shall not be below the rank of director;
- (f) a representative of the Ministry of Finance who shall not be below the rank of director;
- (g) a representative of the Ministry of Environment who shall not be below the rank of director;

(3) The appointment to the Board in respect of persons appointed pursuant to paragraphs (a) to (d) of subsection (2) of this section shall be made by the President subject to confirmation of the Senate.

(4) The board members shall be persons of high integrity and relevant experience and their appointment or replacement shall be in accordance with the principles of Federal Character;

(5) The Commissioners shall be persons chosen for their expertise, experience or professional qualifications in the following fields or areas of competence-

(a) the planning, development, production, gathering, processing, transportation, distribution or supply of petroleum, petroleum products and gas; or

(b) the generation, transmission or distribution of electricity or other forms of power; or

(c) law, regulation, accountancy, economics, finance, engineering or geo-sciences particularly where such qualifications have been developed in connection with activities related to the petroleum industry; provided that a person shall not be appointed as a Commissioner unless he has graduated from a tertiary institution and possesses a university degree or its equivalent and a minimum of fifteen (15) years post-qualification experience.

(6) The persons appointed in paragraphs (a) and (b) of subsection (2) of this section shall hold office for a term of four years in the first instance, which term may be renewed for another term of four years only on such terms and conditions as may be specified in their letters of appointment.

(7) Appointment to the Board in respect of persons appointed pursuant to paragraphs (a) and (b) of subsection (2) of this section shall be in a non-executive and part-time basis.

(8) For the avoidance of doubt, the non-executive commissioners appointed pursuant to paragraphs (a) and (b) of subsection (2) of this section and nominated under paragraphs (e) to (g) of subsection (2) shall not participate in the day to day operations of the Commission;

(9) The proceedings of the Board and other ancillary matters shall be in accordance with the provisions of the Second Schedule to this Act.

(10) Subject to subsection (5) of this section, the Board shall have the power to make standing orders for the regulation of its proceedings and meetings.

(11) The conflict of interest provisions contained in the Third Schedule to this Act shall apply to all members of the Board.

14. (1) The Board shall-

- (a) be responsible for the general direction and supervision of the Commission;
- (b) provide general guidelines for the carrying out of the functions of the Commission;
- (c) review and approve the business, strategic and operating plans of the Commission;

Functions of the  
Governing Board.

- (d) consider and approve the budget of the Commission prior to the submission to the National Assembly for appropriation and monitor its performance;
- (e) approve the management accounts and audited accounts of the Commission and undertake consideration of the management letter from the external auditors;
- (f) determine the terms and conditions of service of employees of the Commission;
- (g) stipulate remuneration, allowances, benefits and pensions of staff and employees of the Commission in consultation with the National Salaries, Incomes and Wages Commission;
- (h) structure the Commission into such number of departments as it deems fit for the effective discharge of the functions of the Commission; and
- (i) carry out such other functions and undertake such other activities which in the opinion of the Board are necessary to ensure the efficient and effective administration of the Commission in accordance with the provisions of this Act or as may be delegated to the Commission by the Minister.
- (2) In carrying out their functions all members of the board shall have a duty to exercise independent judgment.
15. (1) The Minister may issue general policy directions to the Commission on matters concerning the petroleum industry and the Commission shall implement such directions provided that the directions are not in conflict with the provisions of this Act. General policy directions.
- (2) The Minister shall cause a copy of any directions given to the Commission in pursuance of subsection 1 of this section to be published in the Gazette.
- (3) The Commission shall, subject to subsection (1) of this section, be independent in the performance of its functions, duties and the exercise of its powers.
16. (1) Members of the Board shall be paid from the funds of the Commission such remuneration and allowances as the Commission may from time to time determine, in consultation with the National Salaries, Incomes and Wages Commission. Remuneration and allowances of Members of the Board.
- (2) While making recommendations, the National Salaries, Incomes and Wages Commission shall have due regard to the following principles-
- (a) the specialised nature of work to be performed by the Commission;
- (b) the need to ensure the financial self-sufficiency of the Commission; and
- (c) the remuneration and allowances paid in the private sector to individuals with equivalent responsibilities, expertise and skills.
17. (1) A member of the Board may be suspended or removed from office by the President if the member- Disqualification and cessation of appointment.
- (a) is found to have been unqualified for appointment as a member of the Board pursuant to the provisions of section 22 of this Act, or becomes so unqualified subsequent to his appointment, or is in a breach of the conflict of interest provision set out in the Third Schedule to this Act after his appointment;
- (b) if he ceases to be an employee of the ministry which he represents on the Board;
- (c) has demonstrated inability to effectively perform the duties of the office;
- (d) has been absent from three consecutive meetings of the Board without the consent of the Chairman or when the Chairman is involved without the consent of the President except good reason is shown for such absence;
- (e) is guilty of serious misconduct.

- (2) The suspension of a Commissioner under subsection (1) of this section shall not exceed ninety days.
- (3) The removal of a Commissioner under subsection (1) of this section shall be subject to the approval of the Senate.
18. A non-executive member of the Board may resign his appointment by giving two months' written notice addressed to the President. Resignation of a Non-Executive Member of the Board.
19. (1) A vacancy on the Board shall occur if a member of the Board— Vacancy on the Board.
- (a) dies;
- (b) is removed from office in accordance with section 17 of this Act;
- (c) resigns from office;
- (d) completes his tenure of office; or
- (e) where the member is incapacitated.
- (2) A vacancy on the Board shall be filled by the appointment of another person by the President in accordance with section 13 of this Act.
20. (1) There shall be for the Commission a Chief Executive Commissioner who shall be the chief executive and accounting officer of the Commission responsible for the day-to-day running of the affairs of the Commission. The Chief Executive Commissioner and Executive Commissioners.
- (2) There shall be for the Commission four Executive Commissioners.
- (3) The persons to be appointed Chief Executive Commissioner and Executive Commissioners shall have extensive technical or professional knowledge of the petroleum industry with a minimum of fifteen years' experience with relevant cognate experience at management level.
21. (1) The Chief Executive Commissioner and Executive Commissioners shall be appointed by the President subject to confirmation by the Senate on such terms and conditions as may be set out in their respective letters of appointment. Appointment, tenure, remuneration and conditions of service of the Chief Executive Commissioner and the Executive Commissioners.
- (2) The Chief Executive Commissioner shall be appointed in the first instance for a term of five years and shall be eligible for re-appointment for another term of five years, and no more.
- (3) The Executive Commissioners shall be appointed in the first instance for a term of four years and shall be eligible for re-appointment for another term of four years and no more.
- (4) No later than three months prior to the expiration of the tenure of the Chief Executive Commissioner or any of the Executive Commissioners, the President shall appoint or re-appoint such Chief Executive Commissioner or Executive Commissioners in accordance with the provisions of section 13.
22. A person shall not be appointed as a Commissioner if he or she- Disqualification from appointment.
- (a) has a financial interest in any business connected, either directly or indirectly with the Nigerian petroleum industry, or is engaged in any activity (whether for remuneration or otherwise) connected with the petroleum industry, provided that such person may be appointed if he or she declares their interest and makes the appropriate arrangements that ensures the avoidance of a conflict of interest, or is a relative of a person who has such an interest or is engaged in such an activity, unless the President is satisfied that the interest or activity is in effect passive and will not interfere with the person's impartial discharge of his duties as a Commissioner or unless the financial interest is terminated prior to the appointment taking effect; or
- (b) has, in terms of the laws in force in any country-

- (i) been adjudged or declared bankrupt or insolvent and has not been rehabilitated or discharged; or
  - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside; or
  - (iii) been declared to be of unsound mind; or
  - (iv) been convicted of any criminal offence by a court of competent jurisdiction except for traffic offences or contempt proceedings arising in connection with the execution or intended execution of any power or duty conferred under this Act; or
  - (v) been disqualified or suspended from practising his profession by the order of a competent authority made in respect of him personally.
23. (1) The Board may appoint for the Commission such number of persons as employees of the Commission as it may deem necessary. Other staff, etc.
- (2) The employment of the Commission's staff shall be subject to such terms and conditions as may from time to time be stipulated by the Board and contained in the respective employment contracts.
- (3) The Board shall determine and review from time to time, the remuneration and allowances payable to the Commission's staff, having regard to the recommendation of the National Salaries, Incomes and Wages Commission.
- (4) While making recommendations, the National Salaries, Incomes and Wages Commission shall have due regard to the following principles-
- (a) the specialised nature of work to be performed by the Commission;
  - (b) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.
- (5) The Board shall make staff regulations generally relating to the conditions of service of its employees and, in particular, but without prejudice to the generality of the foregoing, such regulations may provide for -
- (a) the appointment, promotion, dismissal and discipline of employees;
  - (b) appeals by the employees against dismissal or other disciplinary measures; and
  - (c) the grant of pensions, gratuities and other retirement allowances to the employees.
- (6) Staff of the Commission shall be public officers as defined in the Constitution of the Federal Republic of Nigeria, 1999.
- (7) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.
24. (1) Employment in the Commission shall be subject to the provisions of the Pensions Reform Act and officers and employees of the Commission shall be entitled to pension and other retirement benefits as prescribed under the Pensions Reform Act. Pensions.
- (2) Nothing in subsection (1) of this section shall prohibit the Commission 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) Subject to the Pensions Reform Act, and notwithstanding the provisions of this section, the Commission shall continue to fulfil all obligations in respect of pensions schemes to which the Department of Petroleum Resources and the Petroleum Products Price Regulatory Agency were obliged in respect of its employees, prior to the transfer of assets and liabilities to the Commission.

25. (1) The Commission shall not later than 30th September or such other date to be determined by the Ministry responsible for Budgets in each financial year, prepare and present for appropriation to the National Assembly through the Federal Ministry responsible for Budgets, a statement of estimated income and expenditure for the following financial year. Financial provisions.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Commission may also, in any financial year, submit to the National Assembly through the Federal Ministry responsible for Budgets, supplementary or adjusted statements of estimated income and expenditure for appropriation.
- (3) The financial year of the Commission shall be a period of twelve calendar months commencing on the 1st of January in each year.
26. (1) The Commission shall establish and maintain a fund ('the Fund') from which all expenditures incurred by the Commission shall be defrayed. Funding.
- (2) The Fund shall comprise monies derived from the following sources-
- (a) such moneys as may be determined and appropriated to the Commission from time to time by the National Assembly for its personnel cost;
- (b) fees charged for services rendered to holders of licences, permits or other authorizations;
- (c) income derived from publications produced by the Commission and from reviews, and other related activities;
- (d) fees for services rendered to non-petroleum producing companies and service companies and for other services performed generally;
- (e) grants, loans, grants-in-aid or grants of land from communities for facilities for use by the Communities.
- (3) Such moneys which shall be ten percent of the revenue generated by the Commission for the Government of the Federation as may be determined and appropriated to the Commission by the National Assembly.
- (4) Without prejudice to subsection (1), (2) and (3) of this section, the Commission may from time to time impose a special levy on licensees and/or lessees for the implementation of any project that is of common benefit and value to the oil and gas industry;
- (5) The Commission 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 Commission;
- (b) to provide for the payment of salaries, wages, fees or other remuneration or allowances, pensions and other retirement benefits payable to staff or employees of the Commission;
- (c) for the acquisition and maintenance of property acquired by or vested in the Commission;
- (d) for purposes of investment, as prescribed by the Trustee Investments Act, or any other relevant legislation subject to the approval of the Minister responsible for finance; and
- (e) generally, in connection with the carrying out of any of its functions under this Act.
- (6) The Commission shall ensure that all monies accruing from upstream leases, bonuses, lease renewal fees, assignment fees and concession rentals charged under this Act or any other enactment, or any subsidiary legislation or regulation made pursuant to such legislation are paid into the Federation Account.
- (7) For any particular year, if monies accruing to the Fund from appropriation established pursuant to subsection (2) of this section, have not been fully applied for the purposes provided

- for in subsection (3) of this section, such monies shall be paid into the Consolidated Revenue Fund.
27. (1) The Commission may accept grants of money or other property upon such terms and conditions as may be specified by the person or organisation making the gift provided, such gifts are not-
- Power to accept grants.
- (a) inconsistent with the objectives and functions of the Commission under this Act;
- (b) accepted from persons or organizations regulated by the Commission.
- (2) Nothing in subsection (1) of this section or in this Act shall be construed to allow any member of the Board or staff of the Commission to accept grants for their personal use.
28. The Commission shall keep proper accounts of its income and expenditure in respect of each financial year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed by the Commission from a list and in accordance with the guidelines supplied by the Auditor-General of the Federation.
- Accounts and Audit.
29. (1) The Commission shall submit to the Minister, a mid-year report of its operations and finances not later than 31st August of the following year and an annual report of its operations, performance and audited financial account of the preceding year not later than 31st March of the following year.
- Mid-year and Annual Reports.
- (2) A summary of the annual report and audited financial account of the Commission for the preceding year shall be published on the website of the Commission for public notice not later than 31st of March of following year and submitted to the National Assembly.
30. The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Commission.
- Exemption from Income Tax.
31. (1) The provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Commission, any member of the board, an officer or employee of the Commission.
- Limitation of suits against the Commission, etc.
- (2) No suit shall lie against the Commission, any member of the board, or any other officer or employee of the Commission for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced-
- (a) within twelve months next after the act, neglect or default complained of; or
- (b) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.
- (3) No suit shall be commenced against the Commission, any member of the board, or any official or employee of the Commission before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Commission by the intending plaintiff or his agent.
- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.
32. A notice, summons or other document required or authorised to be served on the Commission under the provisions of this Act or any other law or enactment may be served by delivering it to the office of the Chief Executive Commissioner of the Commission or any of its Commissioners.
- Service of court process on the Commission.
33. (1) In any action or suit against the Commission, no execution or attachment of its physical property shall be issued. Any judgment against the Commission may be enforced through garnishee proceedings provided that not less than three months' notice of the intention to commence the garnishee proceedings shall have been given to the Commission.
- Restriction on execution against the Commission's property.

(2) Any sum of money which may by the judgment of any court be awarded against the Commission shall, subject to any direction given by the court where no notice of appeal against the judgment has been given, be paid from the Fund of the Commission.

34. (1) For the effective conduct of its functions, the Commission shall have a Special Investigation Unit. Special Investigation Unit.

(2) The Special Investigation Unit or an officer authorized on its behalf shall have powers, with respect to matters under the authority of the Commission in this Act, to-

(a) investigate acts which may constitute offences under this Act or any other law relating to petroleum operations;

(b) collaborate with other Government agencies and persons in relation to the detection or prosecution of offences under this Act or any other law relating to petroleum operations;

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

(d) in conjunction with the Nigerian Police and other relevant law enforcement agencies arrest with a warrant obtained from a judicial officer, any person reasonably believed to have committed an offence under this Act.

35. (1) Every member of the Board and every employee of the Commission shall be indemnified out of the assets of the Inspectorate against any liability incurred in defending any proceeding against the Commission, whether civil or criminal, if such proceedings are brought against the person in the person's capacity as a member of the Board or employee. Indemnity of Board Members and Employees.

(2) Notwithstanding the provisions of subsection (1) of this section, the Commission shall not indemnify any member of the Board or employee of the Commission for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be, or conduct or acts which such person knew or ought to have known to be unlawful.

#### PART IV - ESTABLISHMENT OF PETROLEUM EQUALISATION FUND

36. (1) There shall be established the Petroleum Equalisation Fund ("the Equalisation Fund") into which shall be paid all monies payable to the Equalisation Fund- Establishment of the Petroleum Equalisation Fund.

(a) by way of a 5% fuel levy in respect of all fuel sold and distributed within the Federation which shall be charged subject to the approval of the Minister;

(b) all subventions, fees and charges for services rendered or publications made by the Fund;

(c) all other funding which may, from time to time, accrue to the Fund;

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

(e) such sums as may be provided for purpose of the Equalisation Fund by the Federal Government.

(2) The Equalisation Fund shall be a body corporate with perpetual succession, a common seal and may sue and be sued in its corporate name.

(3) The Equalisation Fund shall have power to –

(a) enter into contracts and incur obligations;

b) acquire, hold, mortgage, purchase and deal with property, whether movable or immovable, real or personal; and

(c) do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Act.

(4) From the date of the commencement of this Act, without further assurance, the Equalisation Fund shall be vested with all assets, funds, resources and other movable and immovable properties which immediately before the commencement of this Act were held by the Petroleum Equalisation Fund.

(5) As from the date of commencement of this Act –

(a) the rights, interests, obligations and liabilities of the Petroleum Equalisation Fund existing immediately before the commencement Date under any contract or instrument or law or in equity shall by virtue of this Act be assigned to and vested in the Equalisation Fund ;

(b) any such contract or instrument covered by subsection 4(a) of this section shall be of the same force and effect against or in favour of the Equalisation Fund and shall be enforceable as fully and effectively as if instead of the Petroleum Equalisation Fund, the Commission had been named therein or had been a party thereto; and

(c) the Equalisation Fund shall be subject to all the obligations and liabilities to which the Petroleum Equalisation Fund were subject immediately before the commencement Date and all other persons shall as from the Effective Date have the same rights, powers and remedies against the Equalisation Fund as they had against the Petroleum Equalisation Fund immediately before the commencement date.

(6) The Equalisation Fund shall be structured into departments as its Board may, from time to time, deem appropriate for the effective discharge of its functions under this Act.

37. The objectives of the Equalisation Fund shall be to:

Objectives of the  
Petroleum  
Equalisation Fund.

(a) enhance development of all regions of the federation by ensuring economic balance in the price of petroleum products;

(b) collect and provide funding for infrastructural development and support economic development of critical domestic gas infrastructure (excluding pipelines) throughout the Federation;

(c) ensure efficient distribution of petroleum products throughout the Federation.

38. The Equalisation Fund shall perform the following functions-

Functions of the  
Equalisation Fund.

(a) collecting all revenues and levies charged pursuant to the provisions of this Act;

(b) determining, at such intervals as the Board may direct, the net surplus revenue recoverable from any oil marketing company and accruing to that company from the sale by it of petroleum products at such uniform prices as may be fixed by the Minister;

(c) determining the amount of reimbursement due to any oil marketing company for purposes of equalisation of price of products;

(d) the payment of all disbursements authorised under or by virtue of this Act;

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

(f) carrying out such other duties as may, from time to time be specified by the Board.

39. (1) the Equalisation Fund shall ensure that any decision or order made by it:

Decisions and orders  
made by the  
Equalisation Fund.

(a) contains the basis for the decision or order;

(b) are properly recorded in writing; and

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



(2) the Equalisation Fund shall issue written reasons in respect of any decisions or orders affecting the existing rights of any person, if the affected person requests such written reasons.

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

(4) Every recommendation, declaration, decision or order of the Equalisation Fund, if purporting to be signed by a person describing himself as the Executive Secretary of the Equalisation Fund or by a person describing himself as a Director acting in the capacity of the Executive Secretary, shall unless the contrary is shown, be deemed to be made by the Equalisation Fund and to have been so signed and may be proved by the production of a copy thereof purporting to have been so signed.

(5) The Equalisation Fund may make interim orders pending the final disposition of a matter before it.

40. (1) The Equalisation Fund may hold a hearing on any matter, which under this Act or any other enactment is required or permitted to be conducted or on which it is required or permitted to take any action and the Equalisation Fund shall hold public hearing on matters which the Equalisation Fund determines to be of significant interest to the general public. Equalisation Fund to give notice to interested parties.

(2) Where the Equalisation Fund is required to or otherwise decides to hold a hearing, all persons having an interest in such matter shall, as far as reasonably practicable, be notified of the questions at issue and given opportunities to make representations, if they so wish.

(3) The Equalisation Fund shall take into consideration the findings of any public hearing conducted in pursuance of subsection (1) of this section.

41. When any matter arises which entails the consideration of any professional or technical question, the Equalisation Fund may consult such persons or institutions as may be qualified to advise thereon. Engagement of expertise support.

42. (1) If any question of law arises from an order or decision of the Equalisation Fund, the Equalisation Fund may, on its own initiative or at the request of any person directly affected by such order, reserve that question for the decision of the Federal High Court. Question of law may be referred to the Federal High Court.

(2) Where a question has been reserved under subsection (1) of this section, the Equalisation Fund shall state the question in the form of a special case and file it with the Registrar of the Federal High Court.

43. (1) There shall be established for the Equalisation Fund a governing Board (in this Act referred to as the "Equalisation Fund Board") which shall, be responsible for the policy and general administration of the Equalisation Fund. Governing Board of the Equalisation Fund.

(2) The Board shall consist of the following members-

(a) the Chairman who shall be appointed by the President;

(b) a representative of the Federal Ministry in charge of Petroleum Resources;

(c) a representative of the Federal Ministry in charge of Industry, Trade and Investment;

(d) one representative of the National Petroleum Company;

(e) a representative of the Commission;

(f) two representatives of petroleum marketing associations;

(g) three other executive directors;

(h) two persons to be appointed by the President who shall possess a minimum of fifteen years relevant professional experience ten of which shall be at senior management level;

(i) the Executive Secretary of the Equalisation Fund who shall serve as Secretary.

(3) Membership of the Board shall be on a part-time basis.

(4) Appointment to the Board in respect of persons appointed pursuant to subsection 2 (a) and (b) of this section shall be in a non-executive and part-time basis.

(5) The provisions of the Second Schedule to this Act shall have effect with respect to the proceeding of the Board and other matters contained therein.

44. The Board shall-

Functions of the  
Governing Board.

(a) be responsible for the general direction and supervision of the Equalisation Fund;

(b) oversee the operations of the Equalisation Fund;

(c) provide general guidelines for the carrying out of the functions of the Equalisation Fund;

(d) review and approve the business, strategic and operating plans of the Equalisation Fund;

(e) consider and approve the budget of the Equalisation Fund and monitor its performance;

(f) approve the audited accounts and management accounts of the Equalisation Fund and undertake consideration of the management letter from the external auditors;

(g) determine the terms and conditions of service of employees of the Equalisation Fund;

(h) stipulate remuneration, allowances, benefits and pensions of staff and employees of the Equalisation Fund in consultation with the National Salaries, Incomes and Wages Equalisation Fund;

(i) structure the Equalisation Fund into such number of departments as it deems fit for the effective discharge of the functions of the Equalisation Fund;

(j) carry out such other functions and undertake such other activities which in the opinion of the Board are necessary to ensure the efficient and effective administration of the Equalisation Fund in accordance with the provisions of this Act or as may be delegated to the Equalisation Fund by the Minister; and

(k) in carrying out their functions all members of the board shall have a duty to exercise independent judgment.

45. (1) The Minister may issue general policy directions to the Equalisation Fund on matters concerning the functions of the Equalisation Fund and the Commission shall implement such directions provided that the directions are not in conflict with the provisions of this Act.

General policy  
directions.

(2) The Minister shall cause a copy of any directions given to the Equalisation Fund in pursuance of subsection 1 of this section to be published in the Gazette.

(3) The Equalisation Fund shall, subject to subsection (1) of this section, be independent in the performance of its functions, duties and the exercise of its powers.

46. (1) Members of the Board shall be paid from the funds of the Equalisation Fund such remuneration and allowances as the Equalisation Fund may from time to time determine, in consultation with the National Salaries, Incomes and Wages Equalisation Fund.

Remuneration and  
allowances of  
Members of the  
Board.

(2) While making recommendations, the National Salaries, Incomes and Wages Equalisation Fund shall have due regard to the following principles-

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

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

- (c) the remuneration and allowances paid in the private sector to individuals with equivalent responsibilities, expertise and skills.
47. (1) A member of the Board may be suspended or removed from office by the President if the member-
- Disqualification and cessation of appointment.
- (a) is found to have been unqualified for appointment as a member of the Board pursuant to the provisions of section 44 of this Act or is in a breach of the conflict of interest provision set out in the Third Schedule to this Act after his appointment;
- (b) if he ceases to be an employee of the ministry which he represents on the Board and has demonstrated inability to effectively perform the duties of the office;
- (c) has been absent from three consecutive meetings of the Board without the consent of the Chairman or when the Chairman is involved without the consent of the Minister except good reason is shown for such absence;
- (d) is guilty of serious misconduct.
- (2) Prior to the suspension or removal of a director under subsection (1) of this section, the President shall inform the Director by written notice, as soon as practicable, of his intention to suspend or remove the Director from office and the reasons therefor.
- (3) The affected Equalisation Fund under subsection (1) of this section shall be given a reasonable opportunity to make written submissions to the Minister within a time period specified in the notice and such time period shall not be less than 14 days from the date of the notice.
- (4) The affected Director may, within the time period specified in the notice, submit a written submission and the Minister shall consider the submission in making his final decision on the Director's suspension or removal from office.
48. A Non-Executive Member of the Board may resign his appointment by giving two months written notice addressed to the President. Resignation of a Non-Executive Member of the Board.
49. (1) A vacancy on the Board shall occur if a Member of the Board-
- Vacancy on the Board.
- (a) dies;
- (b) is removed from office in accordance with section 47 of this Act;
- (c) resigns from office; or
- (d) completes his tenure of office.
- (2) A vacancy on the Board shall be filled by the appointment of another person by the President in accordance with section 44 of this Act.
- (3) If a Member of the Board dies, resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, there shall be appointed a fit and proper person in the manner prescribed by section 44 of this Act to take his place on the Board.
50. (1) There shall be for the Equalisation Fund an Executive Secretary who shall be the chief executive and accounting officer of the Equalisation Fund responsible for the day-to-day running of the affairs of the Equalisation Fund. The Executive Secretary and Executive Directors.
- (2) There shall be for the Equalisation Fund three Executive Directors who shall be specifically assigned with the responsibility for core activities of the Equalisation Fund.
- (3) The persons to be appointed Executive Secretary and Executive Director shall have a minimum of ten years relevant cognate experience at management level.
51. (1) The Executive Secretary and Executive Directors shall be appointed by the President on such Appointment, tenure,

- terms and conditions as may be set out in their respective letters of appointment.
- (2) The Executive Secretary shall be appointed in the first instance for a term of four years and shall be eligible for re-appointment for another term of four years, and no more.
- (3) The Executive Directors shall be appointed in the first instance for a term of four years and shall be eligible for re-appointment for another term of four years and no more.
52. A person shall not be appointed as an Executive Secretary or Executive Director if he-
- (a) has a financial interest in any business connected, either directly or indirectly with the functions of the Equalisation Fund or is engaged in any activity (whether for remuneration or otherwise) connected with the functions of the Equalisation Fund, provided that such person may be appointed if he declares their interest and makes the appropriate arrangements that ensures the avoidance of a conflict of interest or if the President is satisfied that the interest or activity is in effect passive and will not interfere with the person's impartial discharge of his duties as Executive Secretary or Executive Director; or
- (b) has, in terms of the laws in force in any country-
- (i) been adjudged or declared bankrupt or insolvent and has not been rehabilitated or discharged, or
- (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside;
- (iii) been declared to be of unsound mind;
- (iii) been convicted of any criminal offence by a court of competent jurisdiction except for traffic offences or contempt proceedings arising in connection with the execution or intended execution of any power or duty conferred under this Act; or
- (iv) been disqualified or suspended from practising his profession by the order of a competent authority made in respect of him personally.
53. (1) The Board may appoint for the Equalisation Fund such number of persons as employees of the Equalisation Fund as it may deem necessary.
- (2) The employment of the Equalisation Fund's staff shall be subject to such terms and conditions as may from time to time be stipulated by the Board and contained in the respective employment contracts.
- (3) The Board shall determine and review from time to time, the remuneration and allowances payable to the Equalisation Fund's staff, having regard to the recommendation of the National Salaries, Incomes and Wages Equalisation Fund.
- (4) While making recommendations, the National Salaries, Incomes and Wages Equalisation Fund shall have due regard to the following principles-
- (a) the specialised nature of work to be performed by the Equalisation Fund;
- (b) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.
- (6) The Board shall make staff regulations generally relating to the conditions of service of employees of the Equalisation Fund and, in particular, but without prejudice to the generality of the foregoing, such regulations may provide for -
- (a) the appointment, promotion, dismissal and discipline of employees;
- (b) appeals by the employees against dismissal or other disciplinary measures; and
- (c) the grant of pensions, gratuities and other retirement allowances to the employees;
- remuneration and conditions of service of the Executive Secretary and the Directors.
- Disqualification from appointment.
- Other staff, etc.

- (7) Staff of the Equalisation Fund shall be public officers as defined in the Constitution of the Federal Republic of Nigeria, 1999.
- (8) For the purpose of this section, appointment shall include secondment, transfer and contract appointments.
54. (1) Employment in the Equalisation Fund shall be subject to the provisions of the Pensions Reform Act and officers and employees of the Equalisation Fund shall be entitled to pension and other retirement benefits as prescribed under the Pensions Reform Act. Pensions.
- (2) Nothing in subsection (1) of this section shall prohibit the Equalisation 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) Subject to the Pensions Reform Act, and notwithstanding the provisions of this section, the Equalisation Fund shall continue to fulfil all obligations in respect of pensions schemes to which the Petroleum Equalisation Fund was obliged in respect of its employees, prior to the transfer of assets and liabilities to the Equalisation Fund.
55. (1) The Equalisation Fund shall not later than 30th September or such other date to be determined by the ministry responsible for finance and budgets in each financial year, prepare and present for appropriation to the National Assembly through the Federal ministries responsible for finance and budgets, a statement of estimated income and expenditure for the following financial year. Financial provisions.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Equalisation Fund may also, in any financial year, submit to the National Assembly through the Federal ministry responsible for Budgets, supplementary or adjusted statements of estimated income and expenditure for appropriation.
56. (1) The Equalisation Fund shall utilise the funds received pursuant to section 36 in the following manner- Utilisation of the Fund.
- (a) for reimbursement of oil marketing companies for any loss sustained by them solely and exclusively as a result of the sale by them of petroleum products at uniform prices throughout Nigeria as may be fixed by the Minister pursuant;
- (b) for the provision of financing for infrastructural development throughout the Federation;
- (c) the provision of financial and other financial support as may from time to time be determined by the Minister.
- (2) The financial year of the Equalisation Fund shall be a period of twelve calendar months commencing on the 1st of January in each year.
57. (1) The Equalisation Fund may accept grants of money or other property upon such terms and conditions as may be specified by the person or organisation making the gift provided, such gifts are not- Power to accept grants.
- (a) inconsistent with the objectives and functions of the Equalisation Fund under this Act;
- (b) accepted from persons or organizations regulated by the Equalisation Fund.
- (2) Nothing in subsection (1) of this section or in this Act shall be construed to allow any member of the Board or staff of the Equalisation Fund to accept grants for their personal use.
58. The Equalisation Fund shall keep proper accounts of its income and expenditure in respect of each financial year and shall cause its accounts to be audited within six months after the end of each year by auditors appointed by the Equalisation Fund from a list and in accordance with the guidelines supplied by the Auditor-General of the Federation. Accounts and Audit.
59. (1) The Equalisation Fund shall submit to the Minister, a mid-year report of its operations and finances not later than 31st August of each year and an annual report of its operations, performance and audited financial report of the preceding year not later than 31st March of the Mid-year and Annual Reports.

following year.

(2) A summary of the annual report and audited financial report of the Equalisation Fund shall be published on the website of the Equalisation Fund for public notice not later than 31st of July of each year.

60. The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Equalisation Fund. Exemption from Income Tax.
61. (1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Equalisation Fund, any member of the board, an officer or employee of the Equalisation Fund. Limitation of suits against the Equalisation Fund, etc.
- (2) No suit shall lie against the Equalisation Fund, any member of the board, or any other officer or employee of the Equalisation Fund for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duty or authority, or be instituted in any court unless it is commenced-
- (a) within twelve months next after the act, neglect or default complained of; or
- (b) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.
- (3) No suit shall be commenced against the Equalisation Fund, any member of the board, or any official or employee of the Equalisation Fund before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Equalisation Fund by the intending plaintiff or his agent.
- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.
62. A notice, summons or other document required or authorised to be served on the Equalisation Fund under the provisions of this Act or any other law or enactment may be served by delivering it to the office of the Executive Secretary of the Equalisation Fund or any of its Executive Directors. Service of court process on the Equalisation Fund.
63. (1) In any action or suit against the Equalisation Fund, no execution or attachment of its physical property shall be issued. Any judgment against the Equalisation Fund may be enforced through garnishee proceedings provided that not less than three months' notice of the intention to commence the garnishee proceedings shall have been given to the Equalisation Fund. Restriction on execution against the Equalisation Fund's property.
- (2) Any sum of money which may by the judgment of any court be awarded against the Equalisation Fund shall, subject to any direction given by the court where no notice of appeal against the judgment has been given, be paid from the Fund of the Equalisation Fund.
64. (1) Every member of the Board and every employee of the Equalisation Fund shall be indemnified out of the assets of the Inspectorate against any liability incurred in defending any proceeding against the Equalisation Fund, whether civil or criminal, if such proceedings are brought against the person in the person's capacity as a member of the Board or employee. Indemnity of board members and employees.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Equalisation Fund shall not indemnify any member of the Board or employee of the Equalisation Fund for any liability incurred as a result of the wilful negligence of the member or employee, as the case may be, or conduct or acts which such person knew or ought to have known to be unlawful.
65. (1) There shall be for the Equalisation Fund an Executive Secretary, appointed by the President on the recommendation of the Minister. Executive Secretary.
- (2) The Executive Secretary shall be a person with vast knowledge and cognate professional experience in management and selected through a transparent merit-based recruitment process.
- (3) The Executive Secretary shall be the chief executive and accounting officer of the Board

and shall be responsible for running the day-to-day administration of the Equalisation Fund under the direction of the Board.

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|-----|---|---|
| 66. | The Executive Secretary shall –   | Responsibilities of the Executive Secretary.      |
|     | (a) determine the net surplus revenue recoverable from any petroleum products marketing company and accruing to such company from the sale by the company of petroleum products at such prices, as may be sold in accordance with the methodology established by the Agency;  |   |
|     | (b) determine the amount of reimbursement due to any petroleum products marketing company which has suffered loss as a result of the operation of any enactment or law;   |   |
|     | (c) ensure the disbursements of all authorized payments under of this Act;  |   |
|     | (d) account for all monies collected, paid or otherwise expended under this Act and publish same in the way and manner prescribed by the Board in consultation with the Agency; and   |   |
|     | (e) carry out such other functions as may, from time to time, be specified by the Board.  |   |
| 67. | The Board may, on the advice of the Executive Secretary, appoint as employees of the Equalisation Fund such number of persons as may be necessary for the administration of the Equalisation Fund, who shall be subject to the general control of the Executive Secretary and perform such duties as the Executive Secretary may direct.  | Other officers of the Board.                      |
| 68. | (1) Net surplus revenue due and payable by petroleum products marketing companies shall be payable to the Equalisation Fund in accordance with directives issued by the Board from time to time.  | Collection of net surplus revenue.                |
|     | (2) The Equalisation Fund shall have no obligation to issue a demand notice in respect of the outstanding net surplus revenue and the failure to issue a demand notice shall not constitute a defence for non-payment of outstanding sums.  |   |
| 69. | Nothing in section 103 of this Act shall derogate from the right of any petroleum products marketing company maintaining storage facilities to collect bridging and equalization allowances prior to the release of petroleum products to petroleum products marketing companies and to remit same to the Board in accordance with such directives as may be issued by the Board.   | Bridging and equalisation allowances.             |
| 70. | (1) Petroleum products marketing companies may, as necessary, bring claims for the recovery of losses sustained under paragraph (b) of section 106 of this Act in the manner prescribed by the Board.   | Claims by petroleum products marketing companies. |
|     | (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 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; and  |   |
|     | (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 decision.  |   |

- (6) Where a claim is successful and the Board fails to pay the claim to the company in accordance with the terms and conditions of this section, the Board shall pay a penalty to be prescribed by the Minister.
71. 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. Calculation of surplus revenue recoverable.
72. (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. Prescribed dates for payment and penalty for non-payment.
- (2) If any sum is not paid within twenty-one days of the specified date, a sum equal to ten percent of the amount unpaid shall be added for each month or part of a month after the date on which payment should have been made.
- (3) The Board may for just cause, waive in whole or in part any penalty imposed under this section.
- (4) Where the Board waives a penalty under the provisions of subsection (3) of this section, the Board shall give its reasons in writing.
73. 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 maybe, of the debt to the Board by any petroleum products marketing company. Certificate as evidence.
74. (1) All petroleum product importers, including the National Oil Company, and petroleum products marketing companies shall, prior to but not later than twenty-one days following each importation, report details of all petroleum products imported into Nigeria to the Equalisation Fund, and the reports shall include quantities, date of delivery and place of discharge. Reporting obligations.
- (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, dates and times of loading and discharge to the Board.
- (4) The Executive Secretary may, with the approval of the Board-
- (a) require any petroleum products marketing company to furnish returns and keep records or any other relevant information as may be determined to be necessary for the proper administration of the provisions of this Act; and
- (b) produce the records for examination by the Executive Secretary or any authorized officer of the Board necessary for the proper administration of the provisions of this Part.
75. (1) Disputes between a company and the Equalisation Fund in respect of any matter under this Part shall be referred to the Agency and shall be subject to the dispute resolution mechanism referred to in subsection (2) of this section. Dispute resolution.
- (2) Where the Equalisation Fund is a party to a dispute under this Part, the relevant provisions of the Arbitration and Conciliation Act, shall apply.

#### PART V- ESTABLISHMENT OF COMMERCIAL ENTITIES



76. (1) The Ministry of Petroleum Incorporated is hereby established as a corporation sole. Establishment of the Ministry of Petroleum Incorporated ("MOPI").
- (2) The Ministry of Petroleum Incorporated may sue and be sued in its said name and shall have perpetual succession and a corporate seal which may from time to time be broken, changed, altered and made anew as the Ministry of Petroleum Incorporated seems fit, and, until a seal is provided under this section, a stamp bearing the inscription "Federal Ministry of Petroleum" may be used as the corporate seal.
- (3) The Ministry of Petroleum Incorporated shall hold on behalf of the Government shares in the successor commercial entities incorporated pursuant to the provisions of this Act.
- (4) The Ministry of Petroleum Incorporated shall have powers to do all such other things as are incidental to and necessary for the performance of its functions under this Act.
- (5) All deeds and other instruments requiring the seal of the corporation shall be sealed, with the seal of the Ministry of Petroleum Incorporated in the presence of the Permanent Secretary and signed by the Permanent Secretary, and such signing shall be sufficient evidence that the said seal was duly and properly affixed and that the same is the lawful seal of the Ministry of Petroleum Incorporated.
- (6) Any other document requiring the signature of the Ministry of Petroleum Incorporated shall be signed by the Permanent Secretary.
- (7) The Minister may, by order, vest in any other authority or company any property, movable or immovable, for the time being vested in the Ministry of Petroleum Incorporated and, upon the coming into operation of any such order, the property to which such order relates shall, without any conveyance, assignment or transfer whatever, vest in such company or authority for the like title, estate or interest and on the like tenure and for the like purposes as the same was vested or held immediately before the coming into operation of the order.
- PART VI – NIGERIA PETROLEUM ASSETS MANAGEMENT COMPANY
77. (1) The Minister shall, within six months after the Effective Date, take such steps as are necessary under the Companies and Allied Matters Act to incorporate two entities – the first may be called the Nigeria Petroleum Assets Management Company, or such other name as may be available and the other may be called the National Petroleum Company, or such other name as may be available, as companies limited by shares, which shall be vested with certain assets and liabilities of the Nigerian National Petroleum Corporation ("NNPC"). Incorporation of the Nigeria Petroleum Assets Management Company and the National Petroleum Company.
- (2) Upon incorporation and the transfer of assets pursuant to this Act-
- (a) the Nigeria Petroleum Assets Management Company (hereinafter called the "Management Company" in this Act) shall be responsible for the management of assets currently held by the Nigeria National Petroleum Corporation (NNPC) under the Production Sharing Contract and back-in right assets;
- (b) the National Petroleum Company shall be responsible for the management of all other assets held by NNPC except the Production Sharing Contract assets currently held by the NNPC;
- (3) The Minister shall put in place a clear plan and timeline for transitioning into the new entities to prevent disruption of industry operations.
78. (1) At the time of its incorporation, the initial shares of the National Petroleum Company shall be held in the ratio of 20% by the Bureau for Public Enterprises, 40% by the Ministry of Finance Incorporated and 40% by the Ministry of Petroleum Incorporated on behalf of the Government. Shareholding of the Nigeria Petroleum Assets Management Company.
- (2) The Minister shall cause an order to be published in the Gazette stating the date on which the assets of the Management Company are transferred.
79. The Minister shall ensure that the Memorandum of Association of the Management Company includes the following objects-
- (a) to hold and manage certain petroleum assets on behalf of the government of the Federation;
- Business or objects of the Management Company.

(b) to ensure maximum value (in terms of return on investments) for the government of the Federation through prudent management of the assets;

(c) to negotiate and enter into new exploration and production agreements with other petroleum companies as may be required by the government of the Federation;

(d) to monitor the revenue and cost elements of the operation and the production output of its petroleum contracts and undertake the sale of crude oil or other petroleum derivatives produced from the assets.

80. In carrying out its business or objects, the Management Company shall have the power to enter into any arms-length arrangement with the National Petroleum Company incorporated pursuant to the provisions of this Act, or any other reputable petroleum company or service company to provide the Management Company with technical support and expertise in relation to the performance of its functions including the marketing and sale of the Management Company's share of petroleum received in kind, pursuant to the provisions of its petroleum contracts. Engagement of technical support.
81. (1) The Minister shall, within twelve months of incorporation of the Management Company, by an order as provided in subsection (2) of section 78, require the NNPC to transfer some employees, assets, liabilities, rights and obligations of the NNPC to the Management Company, as specified in the order. Transfer of employees, assets and liabilities.
- (2) A transfer order shall be binding on the NNPC, the Management Company and all other persons.
- (3) Subsection (2) of this section applies despite any general or special Act or any rule of law, including an Act or rule of law that requires notice or registration of transfers.
- (4) A transfer order may specify and describe employees, assets, liabilities, rights or obligations to be transferred-
- (a) by reference to specific employees, assets, liabilities, rights or obligations;
- (b) by reference to any class of employees, assets, liabilities, rights or obligations; or
- (c) partly in accordance with subsection (4)(a) of this section and partly in accordance with subsection (4)(b) of this section.
- (5) With effect from the date specified in the relevant transfer order, all bonds, loans, financing agreements, alternative financing agreements, Production Sharing Contracts, hypothecations, securities, deeds, contracts, instruments, documents and such other working arrangements subsisting prior to the transfer date and relating to the assets to be transferred pursuant to this section and to which the NNPC was a party shall, on and after the Effective date, be as fully effective and enforceable against or in favour of the Management Company as if, instead of the NNPC, the Management Company had been named therein.
- (6) A transfer order may-
- (a) specify the date that the transfer takes effect and any interest in property that is transferred by the order shall vest in the Management Company on that date;
- (b) provide that the transfer shall be deemed to have taken effect on a date earlier than the date the transfer order is made, but the transfer date shall not be earlier than the day on which the Management Company was incorporated;
- (c) provide that the transfer specified in the order and other transactions associated with the transfers shall be deemed to have occurred in a sequence and at times specified in the order;
- (d) require the NNPC or the Management Company-
- (i) to enter into any written agreement or execute any instrument specified in the order; and
- (ii) to register in accordance with the order any agreement or instrument entered into or executed

under subsection 6(d)(i) of this section.

(e) provide that any liability or obligation that is transferred by the order may be enforced against the NNPC or any relevant successor, the Management Company, or both of them; and that any right that is transferred by the order may be enforced against the NNPC, the Management Company or both of them; or

(f) impose conditions on the exercise of powers by the Management Company that are related to employees, assets, liabilities, rights or obligations transferred by the transfer order.

(7) A transfer order may contain provisions dealing with other matters not specifically referred to in this Part that the Minister considers necessary or advisable in connection with a transfer.

(8) The Government may thereafter vest in the Management Company any further assets as the Government may from time to time deem fit.

(9) The Minister may by order require the NNPC to transfer certain employees, assets, liabilities, rights and obligations to any other successor entity incorporated by the Minister pursuant to subsection (3) of Section 37 of this Act. Such transfer order shall be binding on the NNPC, such successor entities and all other persons.

82. (1) A statement, in a registered document to which the Management Company is a party, that land described in the document was transferred to it from the NNPC by or pursuant to a transfer order, or any other statement in the document relating to the transfer order, shall be deemed to be conclusive evidence of the facts stated. Conclusive evidence.
- (2) Nothing in subsection (1) of this section shall create for any person an interest in land that the NNPC did not have.
83. Subject to subsection (6) (e) of section 81 of this Act, the transfer of liability or obligation under this section without any further assurance other than this section releases the NNPC from any further liability or obligation in respect of the assets or liabilities. Release from liability or obligation.
84. (1) Subject to subsection (6) (e) of Section 81 of this Act, the Management Company shall without further assurance be entitled to enforce or defend all obligations for or against the NNPC in respect of the portion of interests transferred pursuant to section 81(1) as if the Management Company were the original party to such obligations. Enforcement or continuation of any cause of action or proceedings.
- (2) Any pending action or proceedings in relation to the transferred assets, brought by or against the NNPC immediately before the initial transfer date may be enforced or continued, as the case may be, on and after that date by or against the Management Company in the same way as if this Act had not been enacted.
85. (1) Notwithstanding the provisions of section 43- Transfer not deemed to constitute a breach of contract.
- (a) no action or other proceeding shall be commenced against the Management Company in respect of any employee, asset, liability, right or obligation if, had there been no transfer, the time for commencing the action or other proceeding would have expired; and
- (b) the transfer of employees, assets and liabilities to the Management Company by or pursuant to a transfer order shall not be deemed to -
- (i) constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance;
- (ii) constitute a breach of any Act, regulation or by-law;
- (iii) constitute an event of default or force majeure;
- (iv) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;
- (v) give rise to any right to terminate or repudiate a contract, licence, permit or other right; or

- (vi) give rise to any estoppel.
- (2) Subsection (1)(b) of this section shall not apply to such contracts as may be prescribed by any regulation made for that purpose.
- (3) Subject to subsection (2) of this section, nothing in this Act and nothing done as a result of a transfer by or pursuant to a transfer order, shall create any new cause of action in favour of-
- (i) a holder of a debt instrument issued by the NNPC before the transfer date; or
- (ii) a party to a contract with the NNPC that was entered into before the transfer date.
86. Any guarantee or surety which was given or made by the Government or any other person in respect of any debt or obligation of the NNPC and which was effective immediately before the transfer of the principal debt or obligation to the Management Company, shall remain fully effective against the guarantor or surety on and after the transfer date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the Management Company. Guarantee or surety.
87. (1) The dividend policy of the Management Company shall be as determined by the Board of Directors in accordance with the provisions of the Companies and Allied Matters Act and shall be approved by the shareholders. Dividend policy.
- (2) All dividends accruable in respect of the shares held on behalf of the Government shall be paid directly into the Federation Account.
88. (1) Not later than 6 months from the date of incorporation of the Management Company, the Minister, after consultation with the Ministers responsible for finance and budget, shall present a request for the appropriation of funds for the initial capitalisation of the Management Company. Funding.
- (2) The Management Company shall pay from its revenue, reasonable operational expenses which shall be detailed in each annual budget and operating plan (and annual reports made by the Management Company as set out in section 98(d) of this Act) to be approved by the shareholders and which shall at all times be in line with international best practices for efficiency and creation of value for the Shareholders and the Government. The surplus funds after deducting such reasonable operational expenses shall be paid as dividends to the Federation Account in accordance with the dividend policy established pursuant to section 87.
89. The NNPC shall provide the Management Company with all records or copies of records, that are in its custody or control and that relate to an officer, employee, asset, liability, right or obligation that is transferred by or pursuant to a transfer order, including personal information. Provision of records etc. to the Management Company.
90. The Minister may, at any time within one year after making a transfer order, make a further order amending the transfer order in any way that the Minister considers necessary or advisable, including such order or orders as may be necessary to rectify the transfer of any of the employees, assets, liabilities, rights and obligations pursuant to a verification or an audit of the employees, assets and liabilities of the Management Company as at the date of the relevant transfer order, and this Part applies with necessary modifications to the amendment. Further order amending a transfer order.
91. Prior to the vesting of assets and liabilities of the NNPC in the Management Company, the Minister may give the Board of Directors of the NNPC directions in writing to ensure the proper transfer of the assets and liabilities of the NNPC to the Management Company, and the Board of Directors shall, without delay, comply with such directions. Directions to the NNPC on matters related to transition.
92. (1) Any employee of the NNPC transferred to the Management Company pursuant to section 81 or 90 of this Act shall be transferred to the service of Management Company on terms not less favourable than those enjoyed by him immediately prior to the transfer. Transfer of employees to the Management Company and conditions of service of transferred employees.
- (2) The service rendered by an employee transferred pursuant to section 81 or 90 of this Act to the NNPC shall be deemed to be service with the Management Company for the purpose of determining employment-related-entitlements as specified by the relevant laws of employment in

Nigeria.

(3) Until such time as conditions of service are drawn up by the Management Company-

(a) the terms and conditions of service applicable to employees of the NNPC shall continue to apply to every person transferred to the Management Company as if every such person were still in the service of the NNPC;

(b) an employee may be permitted to continue to contribute towards a pension he was contributing to when he was in the employment of the NNPC; and

(c) the Management Company shall continue to contribute towards a pension scheme to which the NNPC was contributing in respect of employees in the employ of the NNPC prior to the date of transfer.

93. (1) Stamp duty shall not be chargeable under the Stamp Duties Act in respect of any transfer made or transaction entered into pursuant to this Part on which, except for the exemption granted under this section, stamp duty would have been payable and in particular, and without derogation from the foregoing, no stamp duty shall be chargeable-

Exemption from Stamp Duty & other charges.

(a) during the incorporation of the Management Company, and any successor company created pursuant to section 77(3) or any subsequent increase to their authorised share capital, prior to the transfer of an interest to one or more private investors;

(b) in respect of any security issued in compliance with a transfer order issued under section 41(6);

(c) where any convertible securities were issued in compliance with a transfer order issued under section 41(6), in respect of the exercise of the conversion rights attached to any such security; or

(d) in respect of any other transfer of rights and assets pursuant to this Part.

(2) The Corporate Affairs Commission shall not charge any fees with respect to the incorporation of any company pursuant to this Part or any subsequent increase to their authorised share capital, prior to the transfer of an interest to one or more private investors.

(3) Capital gains tax shall not be chargeable under the Capital Gains Tax Act, in respect of any transfer made or transaction entered into pursuant to this Part on which, except for the exemption granted under this section, capital gains tax would have been payable.

94. (1) Oil pipelines and other installations transferred to the Management Company shall not be regarded as hereditaments or tenements to be valued for rating purposes.

Certain exemption from rates.

(2) For the purpose of this section, the expression "oil pipelines and other installations" include but not limited to floating production, storage and offloading vessels, oil rigs, refineries, processing plants, power generating plants, pumping stations, tank farms and similar installations but shall not include office or residential buildings.

(3) Except as provided in subsection (1) of this section, nothing in this Act shall be deemed to exempt the Management Company from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local; provided that the Management Company shall not be liable to pay any such tax, duty, rate, levy or charge unless every company involved in similar activities as the Management Company is also liable for such payment.

95. (1) The Management Company shall be subject to the Code of Corporate Governance of the Securities and Exchange Commission.

Composition and appointment of the Board.

(2) The Minister shall cause the Articles of Association of the Management Company to provide for the composition of the Board as follows-

(a) a non-executive Chairman who may be the Minister;

(b) the Managing Director of the Management Company who shall possess relevant experience with at least 10 years' experience at a senior management position in a petroleum exploration and production company;

(c) four other Executive Directors of the Management Company who shall possess petroleum exploration and production or other relevant experience with at least 10 years' cognate experience at a senior management position;

(d) four Non-Executive Directors who shall be persons with at least twenty years cognate professional or management experience;

(e) A representative of the Ministry of Petroleum Resources who shall not be below the rank of director.

(3) Notwithstanding the provisions of the Companies and Allied Matters Act or any other enactment, the power of the shareholders to appoint or remove directors, shall be subject to subsections (4) and (5) of this section and the approval of the President.

(4) For the purpose of making appointments to the Board of Directors, the shareholders shall constitute an independent committee ("the Board Nomination Committee") of five persons with proven qualifications and tested industry experience one of which shall include a representative of the Ministry of Petroleum Resources who shall not be below the rank of director, to identify and recommend highly qualified candidates for such positions in a competitive and transparent manner.

96. The Minister shall cause the Articles of Association of the Company to include the following-
- (a) an Executive Member of the Board shall cease to be a Director of the Management Company if he ceases to be an employee of the company for any reason or if otherwise removed in accordance with the provisions of the Companies and Allied Matters Act.
  - (b) the non-executive members of the Board may serve for an initial term of 4 years.
  - (c) upon the expiration of the initial term of any of the non-executive members of the Board appointed, such member may be eligible for re-appointment for another term of 4 years and no more.
97. Upon incorporation of the Management Company in pursuance of the provisions of this Act, the Management Company shall be organized and managed on the basis of the provisions of this Act and its Memorandum and Articles of Association.
98. The Minister shall cause the Articles of Association to provide that the Board of Directors of the Management Company shall submit the following matters to the annual general meeting-
- (a) plans for the coming year, as well as outlook for the intermediate term and significant changes in any of these;
  - (b) main features of the budget for the coming year;
  - (c) principles relating to engagement of managers; and
  - (d) annual report and annual accounts in respect of the interest of the State.
99. The Board of Directors shall cause the annual reports and accounts submitted to the annual general meeting pursuant to section 98 (d) of this Act to be published on its website and at least 3 widely circulating National Newspapers.
100. (1) Land vested in the Management Company shall not be liable to be acquired compulsorily under any enactment or law; and notwithstanding anything in any other enactment or law, no mining operations shall be carried on, in or under any land vested in the Management Company or any land over which the Management Company is entitled to rights of support for the benefit of lands so vested except with the prior consent in writing of the Minister.
- (2) For the purpose of this section, "land" includes any land under water beyond the territorial

Terms of office of Members of the Board.

Management and governance of the Management Company.

Matters reserved for the Shareholders.

Publication of annual report and accounts of the Management Company.

Protection of land belonging to the Management Company.

waters of Nigeria to which Nigeria is for the time being entitled to any exclusive rights.

#### PART VI - NATIONAL PETROLEUM COMPANY

101. At the time of its incorporation, the initial shares of the National Petroleum Company shall be held in the ratio of 20% by the Bureau for Public Enterprises, 40% by the Ministry of Finance Incorporated and 40% by the Ministry of Petroleum Incorporated on behalf of the Government. Shareholding of the National Petroleum Company.
102. The National Petroleum Company shall not be subject to the provisions of the Fiscal Responsibility Act 2007 and the Public Procurement Act 2007. Exemption from certain laws.
103. Not later than 6 months from the date of incorporation of the National Petroleum Company, the Minister, after consultation with the Ministers responsible for finance and budget, shall present a request for the appropriation of funds for the initial capitalisation of the National Petroleum Company. Initial funding of the National Petroleum Company.
104. The Board of Directors of the National Petroleum Company may, with the approval of its shareholders, utilize any appropriate mechanism, including sale of assets and interests, to offset any liabilities of the National Petroleum Company, meet any of its future obligations or to achieve its strategic objectives. Assessment and offset of liabilities of the National Petroleum Company.
105. (1) Notwithstanding the provision of any other law to the contrary, the National Petroleum Company shall be entitled to retain its revenue from its operations and shall be entitled to defray from such revenue all its expenses including its cash call obligations in respect of its joint venture assets and its petroleum operations and its obligations to lenders and financiers. Retention of revenue and dividend policy.
- (2) The dividend policy of the National Petroleum Company shall be as determined by the Board of Directors in accordance with the provisions of the Companies and Allied Matters Act and shall be approved by the shareholders.
- (3) All dividends accruable in respect of the shares held on behalf of the Government shall be paid into the Federation Account.
106. (1) Notwithstanding the provisions of section 61 of this Act, the shareholders shall within five years from the date of incorporation of the National Petroleum Company, divest, in a transparent manner not less than 10% of the shares of the National Petroleum Company and within ten years from the date of incorporation divest not less than an additional 30% of the shares of the National Petroleum Company to the public in a transparent manner. Divestment of shares of the National Petroleum Company and its subsidiaries.
- (3) The Board of the Petroleum Company may divest its shares in any of its subsidiary companies in order to achieve its strategic objectives as laid out by its shareholders.
107. (1) The Minister shall, within twelve months of incorporation of the National Petroleum Company, by an order, require the NNPC to transfer employees, assets, liabilities, rights and obligations of the NNPC (including assets and liabilities held by the NNPC on behalf of the Government) to the National Petroleum Company, as specified in the order. Transfer of employees, assets and liabilities.
- (2) A transfer order shall be binding on the NNPC, the National Petroleum Company and all other persons.
- (3) Subsection (2) of this section applies despite any general or special Act or any rule of law, including an Act or rule of law that requires notice or registration of transfers.
- (4) A transfer order may specify and describe, employees, assets, liabilities, rights or obligations to be transferred-
- (a) by reference to specific employees, assets, liabilities, rights or obligations;
- (b) by reference to any class of employees, assets, liabilities, rights or obligations; or
- (c) partly in accordance with subsection (4)(a) of this section and partly in accordance with subsection (4)(b) of this section.
- (5) With effect from the date specified in the relevant transfer order, all bonds, loans, financing

agreements, alternative financing agreements, joint operating agreements, participation agreements, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements subsisting prior to the transfer date and relating to the assets to be transferred pursuant to this section and to which the NNPC was a party shall, on and after the Effective Date, be as fully effective and enforceable against or in favour of the National Petroleum Company as if, instead of the NNPC, the National Petroleum Company had been named therein.

(6) A transfer order may-

(a) specify the date that the transfer takes effect and any interest in property that is transferred by the order shall vest in the National Petroleum Company on that date;

(b) provide that the transfer shall be deemed to have taken effect on a date earlier than the date the transfer order is made, but the transfer date shall not be earlier than the day on which the National Petroleum Company was incorporated;

(c) provide that the transfer specified in the order and other transactions associated with the transfers shall be deemed to have occurred in a sequence and at times specified in the order.

(d) require the NNPC or the National Petroleum Company-

(i) to enter into any written agreement or execute any instrument specified in the order; and

(ii) to register in accordance with the order any agreement or instrument entered into or executed under subsection 6(d)(i) of this section.

(e) provide that any liability or obligation that is transferred by the order may be enforced against the NNPC, the National Petroleum Company, or both of them; and that any right that is transferred by the order may be enforced against the NNPC, the National Petroleum Company, or both of them; or

(f) impose conditions on the exercise of powers by the National Petroleum Company that are related to employees, assets, liabilities, rights or obligations transferred by the transfer order.

(7) A transfer order may contain provisions dealing with other matters not specifically referred to in this Part that the Minister considers necessary or advisable in connection with a transfer.

(8) The Government may thereafter vest in the National Petroleum Company any further upstream assets as the Government may from time to time deem fit.

108. (1) A statement, in a registered document to which the National Petroleum Company is a party, that land described in the document was transferred to it from the NNPC by or pursuant to a transfer order, or any other statement in the document relating to the transfer order, shall be deemed to be conclusive evidence of the facts stated. Conclusive evidence.
- (2) Nothing in subsection (1) of this section shall create for any person, an interest in land that the NNPC did not have.
109. Subject to subsection 107(6)(e) of this Bill, the transfer of liability or obligation under this section without any further assurance other than this section releases the NNPC from any further liability or obligation in respect of the assets or liabilities. Release from liability or obligation.
110. (1) Subject to subsection 107 (6)(e) of this Act, the National Petroleum Company shall without further assurance be entitled to enforce or defend all obligations for or against the NNPC in respect of the portion of interests transferred in accordance with section 67 as if the National Petroleum Company were the original party to such obligations. Enforcement or continuation of any cause of action or proceedings.
- (2) Any pending action or proceeding in relation to the transferred assets, brought by or against the NNPC immediately before the initial transfer date may be enforced or continued, as the case may be, on and after that date by or against the National Petroleum Company in the same way as if this Act had not been enacted.
111. (1) Notwithstanding the provisions of section 69- Transfer not deemed



to constitute a breach of contract.

(a) no action or other proceeding shall be commenced against the National Petroleum Company in respect of any employee, asset, liability, right or obligation if, had there been no transfer, the time for commencing the action or other proceeding would have expired; and

(b) the transfer of assets and liabilities to the National Petroleum Company by or pursuant to a transfer order, shall not be deemed to -

(i) constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance;

(ii) constitute a breach of any Act, regulation or by-law;

(iii) constitute an event of default or force majeure;

(iv) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

(v) give rise to any right to terminate or repudiate a contract, licence, permit or other right; or

(vi) give rise to any estoppel.

(2) Subsection (1b) of this section shall not apply to such contracts as may be prescribed by any regulation made for that purpose.

(3) Subject to subsection (2) of this section, nothing in this Act and nothing done by or pursuant to a transfer order, shall create any new cause of action in favour of a -

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

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

112. Any guarantee or surety which was given or made by the Government or any other person in respect of any debt or obligation of the NNPC and which was effective immediately before the transfer of the principal debt or obligation to the National Petroleum Company, shall remain fully effective against the guarantor or surety on and after the transfer date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the National Petroleum Company. Guarantee or surety.
113. The NNPC shall provide the National Petroleum Company with all records or copies of records, that are in its custody or control and that relate to an officer, employee, asset, liability, right or obligation that is transferred by or pursuant to a transfer order, including personal information. Provision of Records etc. to the National Petroleum Company.
114. The Minister may, at any time within one year after making a transfer order, make a further order amending the transfer order in any way that the Minister considers necessary or advisable, including such order or orders as may be necessary to rectify the transfer of any of the employees, assets, liabilities, rights and obligations pursuant to a verification or an audit of the employees, assets and liabilities of the National Petroleum Company as at the date of the relevant transfer order, and this Part applies with necessary modifications to the amendment. Further order amending a transfer order.
115. Prior to the vesting of assets and liabilities of the NNPC in the National Petroleum Company, the Minister may give the Board of Directors of the NNPC directions in writing to ensure the proper transfer of the assets and liabilities of the NNPC to the National Petroleum Company, and the Board of Directors shall, without delay, comply with such directions. Directions to the NNPC on matters related to transition.
116. (1) Any employee of the NNPC transferred to the National Petroleum Company pursuant to sections 97 and 114 of this Act shall be transferred to the service of National Petroleum Company, on terms not less favourable than those enjoyed by him immediately prior to the transfer. Transfer of employees to the National Petroleum Company.
- (2) The service rendered by an employee transferred pursuant to sections 97 and 114 of this Act shall be deemed to be service with the National Petroleum Company for the purpose of determining employment-related-entitlements as specified by the relevant laws of employment in Nigeria.

(3) Until such time as conditions of service are drawn up by the National Petroleum Company-

(a) the terms and conditions of service applicable to employees of the NNPC shall continue to apply to every person transferred to the National Petroleum Company as if every such person were still in the service of the NNPC;

(b) an employee may be permitted to continue to contribute towards a pension he was contributing to when he was in the employment of the NNPC; and

(c) the National Petroleum Company shall continue to contribute towards a pension scheme to which the NNPC was contributing in respect of employees in the employ of the NNPC; prior to the date of transfer.

117. The assets or shares of the subsidiaries of the NNPC listed under the Public Enterprises Privatisation and Commercialisation Act shall be de-listed from the Effective Date of this Act and the power of attorney earlier assigned to the Bureau of Public Enterprises shall stand vacated. Delisting of assets.
118. (1) Stamp duty shall not be chargeable under the Stamp Duties Act in respect of any transfer made or transaction entered into pursuant to this Part on which, except for the exemption granted under this section, stamp duty would have been payable and in particular, and without derogation from the foregoing, no stamp duty shall be chargeable- Exemption from Stamp Duty & other charges.
- (a) during the incorporation of the National Petroleum Company, or any subsequent increase to its authorised share capital, prior to the transfer of an interest to one or more private investors;
- (b) in respect of any security issued in compliance with a transfer order issued under section 107(6);
- (c) where any convertible securities were issued in compliance with a transfer order issued under section 107(6), in respect of the exercise of the conversion rights attached to any such security; or
- (d) in respect of any other transfer of rights and assets pursuant to this Part.
- (2) The Corporate Affairs Commission shall not charge any fees with respect to the incorporation of any company pursuant to this Part or any subsequent increase to their authorised share capital, prior to the transfer of an interest to one or more private investors.
- (3) Capital gains tax shall not be chargeable under the Capital Gains Tax Act, in respect of any transfer made or transaction entered into pursuant to this Part on which, except for the exemption granted under this section, capital gains tax would have been payable.
119. (1) The National Petroleum Company shall be subject to the Code of Corporate Governance issued by the Securities and Exchange Commission. Composition and Appointment of the Board.
- (2) The Minister shall cause the Articles of Association of the National Petroleum Company to provide for the composition of the Board as follows-
- (a) a Non-Executive Chairman;
- (b) the Managing Director of the National Petroleum Company shall be a person with at least 10 years' experience in a senior management position in the petroleum industry;
- (c) four other Executive Directors of the National Petroleum Company shall be persons with at least 10 years' experience in a senior management position in petroleum exploration and production company;
- (d) four non-executive directors provided that one of the non-Executive Directors shall be a person with at least 20 years cognate professional or management experience;
- (e) a representative of the Ministry of Petroleum Resources who shall not be below the rank of director.

(3) Notwithstanding the provisions of the Companies and Allied Matters Act or any other enactment, the power of the shareholders to appoint or remove the initial directors, shall be subject to subsections (4) and (5) of this section and the approval of the President.

(4) For the purpose of making appointments to the Board of Directors, the shareholders shall constitute an independent committee ("the Board Nomination Committee") of five persons with proven qualifications and tested industry experience one of which shall include a representative of the Ministry of Petroleum Resources who shall not be below the rank of director, to identify and recommend highly qualified candidates for such positions in a transparent manner.

(5) The provisions of subsection (2) to (5) of this section shall cease to have effect upon the divestment by the Government of 10% of its shares in the company to the public.

120. (1) Upon incorporation of the National Petroleum Company pursuant to the provisions of this Act, the National Petroleum Company shall be organized and managed on the basis of the provisions of this Act, the Companies and Allied Matters Act and its Memorandum and Articles of Association, code of corporate governance of the Nigerian stock exchange and applicable rules of any other stock exchange where its shares are listed. Management and governance of the National Petroleum Company.
- (2) In addition to the Companies and Allied Matters Act as well as the respective Memorandum and Articles of Association, each subsidiary company of the National Petroleum Company shall be governed in accordance with the code of corporate governance of the Nigerian Securities and Exchange Commission.
121. The Minister shall cause the Articles of Association of the Company to include the following- Terms of office of Members of the Board.
- (a) an Executive member of the Board shall cease to be a Director of the National Petroleum Company if he ceases to be an employee of the company for any reason or if otherwise removed in accordance with the provisions of the Companies and Allied Matters Act;
- (b) the Non-Executive Members of the Board may serve for an initial term of 4 years;
- (c) Upon the expiration of the initial term of any of the non-executive members of the Board appointed, such member may be eligible for appointment for another term of 4 years and no more.
122. The Minister shall cause the Articles of Association to provide that the Board of Directors of the National Petroleum Company shall submit the following matters to the annual general meeting- Matters reserved for the Shareholders.
- (a) plans for the coming year, as well as outlook for the intermediate term and significant changes in any of these;
- (b) main features of the budget for the coming year;
- (c) principles relating to engagement of managers; and
- (d) annual report and annual accounts in respect of the participating interests of the State.
123. The Board of Directors shall cause the Annual Reports and annual accounts submitted to the annual general meeting pursuant to section 122(d) to be published on its website and at least 3 widely circulating National Newspapers. Publication of Annual Report and annual accounts of the National Petroleum Company.
124. (1) Oil pipelines and other installations belonging to the National Petroleum Company shall not be regarded as hereditaments or tenements to be valued for rating purposes. Certain exemption from rates.
- (2) For the purposes of this subsection, the expression "oil pipelines and other installations" include oil rigs, refineries, power generating plants, pumping stations, tank farms and similar installations but do not include office or residential buildings.
- (3) Except as provided in subsection (1) of this section, nothing in this Act shall be deemed to exempt the National Petroleum Company from liability for any tax, duty, rate, levy or other charge

whatsoever, provided that the National Petroleum Company shall not be liable to pay any such tax, duty, rate, levy or charge unless every company involved in similar activities as the National Petroleum Company is also liable for such payment.

125. (1) Land vested in the National Petroleum Company shall not be liable to be acquired compulsorily under any enactment or law. Protection of National Petroleum Company's land.
- (2) Notwithstanding anything in any other enactment or law, no mining operations shall be carried on, in or under any land vested in the National Petroleum Company or any land over which the National Petroleum Company is entitled to rights of support for the benefit of lands so vested except with the prior consent in writing of the Minister.
- (3) For the purpose of this section, "land" includes any land under water beyond the territorial waters of Nigeria to which Nigeria is for the time being entitled to any exclusive rights.
126. (1) The Minister shall, within six months after the Effective Date, take such steps as are necessary under the Companies and Allied Matters Act to incorporate a company which may be called the Nigeria Petroleum Liability Management Company, or such other name as may be available, as a company limited by shares, which shall be vested with certain liabilities of the Nigerian National Petroleum Corporation and the pensions liabilities of the Department of Petroleum Resources. Incorporation of the Nigeria Petroleum Liability Management Company.
- (2) Upon incorporation and the transfer of liabilities pursuant to this Act, the Nigeria Petroleum Liability Management Company (hereinafter called the "Liability Management Company" in this Act) shall assume and be responsible for the management of the liabilities of the Nigerian National Petroleum Corporation ("NNPC") and the pensions liabilities of the Department of Petroleum Resources transferred to it pursuant to the provisions of this Act.
- (3) The initial shares or other ownership interest of the Liability Management Company shall be held by the National Petroleum Company, the National Asset Management Company and the Nigeria Petroleum Regulatory Commission in the ratio of their respective liabilities.
- (4) The Liability Management Company shall be governed and managed on the basis of the provisions of the Companies and Allied Matters Act and the Securities and Exchange Commission's Codes of Corporate Governance.
- (5) The Minister shall cause the Articles of Association of the Liability Management Company to provide for the composition and appointment of the Board of the entity on terms similar to the composition and appointment of the Board of the Management Company with such modifications as may be necessary or desirable.
- (6) The annual reports and annual accounts submitted to the annual general meeting shall be published on the website of the Liability Management Company and at least 3 widely circulating National Newspapers.
- (7) The Liability Management Company shall ascertain outstanding liabilities of the NNPC within twelve months of the Effective Date and layout a clear plan and timeline for the settlement of such liabilities.
- (8) The Minister shall in consultation with the shareholders of the Liability Management company take all necessary actions to provide the resources required by the Liability Management Company for settlement of the liabilities of the NNPC and the pension liabilities of the Department of Petroleum Resources in their respective ratios.
- (9) The Minister shall undertake the winding up of the Liability Management Company upon confirmation that the Liability Management Company has concluded the settlement of all outstanding liabilities.

#### PART 8 — REPEALS, TRANSITIONAL AND SAVINGS PROVISIONS

127. (1) The enactments specified in the Fifth Schedule to this Bill are hereby amended to the extent specified therein. Adaptation of Laws.

(2) For the avoidance of doubt, the relevant provisions of all existing enactments or laws, including but not limited to the Petroleum Act, Oil Pipelines Act, Hydrocarbon Oil Refineries Act and the Companies and Allied Matters Act, to the extent that they deal with matters provided for in this Bill, shall be read with such modifications as to bring them into conformity with the provisions of this Bill.

(3) If the provisions of any other enactment or law, including but not limited to the enactments specified in subsection (1) of this section, are inconsistent with the provisions of this Bill, the provisions of this Bill shall prevail and the provisions of that other enactment or law shall, to the extent of that inconsistency, be void in relation to matters provided for in this Bill.

(4) Any regulatory functions conferred on the Minister pursuant to the Petroleum Act and the Oil Pipelines Act or on the chief executive of the Inspectorate pursuant to the Nigerian National Petroleum Corporation Act, shall be deemed to have been transferred to the Commission.

128. (1) From the Effective Date, the Petroleum Products Pricing Regulatory Agency (Establishment) Act, CAP P43, Laws of the Federation of Nigeria, 2004 is repealed; and Repeals.

(2) The Nigerian National Petroleum Corporation Act CAP N123, Laws of the Federation of Nigeria, 2004, Nigerian National Petroleum Corporation (Projects) Act CAP N124 Laws of the Federation of Nigeria, 2004 and Nigerian National Petroleum Corporation Amendment Act N123 shall be deemed to be repealed on the date that the Minister signifies by legal notice in the Gazette that the assets and liabilities of the NNPC are fully vested in successor entities.

129. (1) Any licence, lease, certificate, authority or permit which was issued by the Department of Petroleum Resources and which had effect immediately before the Effective Date shall continue to have effect, mutatis mutandis, for the remainder of its period of validity as if it had been issued by the Commission. Savings provisions.

(2) The Minister shall set forward a clear transition plan within 30 days of the Effective Date to prevent disruption of industry operations.

(3) Within three months from the Effective Date, the Minister on the advice of the Commission or the NNPC, as the case may be, may make any further transitional and savings provisions as are consistent with the transitional and savings provisions in this Act.

130. (1) Upon the vesting of assets and liabilities of the Department of Petroleum Resources, Petroleum Products Pricing Regulatory Authority & the Petroleum Equalization Fund Management Board in the Commission, the Minister shall make an order in writing in which he shall give directions to the management of the Department of Petroleum Resources, the Board of Petroleum Products Pricing Regulatory Authority and the Petroleum Equalization Fund Management Board for the transfer of employees of each organisations respectively to the Commission and the Management of the Department of Petroleum Resources, the Board of Petroleum Products Pricing Regulatory Authority and the Petroleum Equalization Fund Management Board shall, without delay, comply with the directions in such order. Transfer of staff, etc.

(2) Any transfer of services by virtue of the provisions of subsections (1) and (2) of this section shall be regarded as continuous for the purposes of pension and gratuity.

131. (1) Every person whose service has been transferred to the Commission from the Department of Petroleum Resources, the Petroleum Products Pricing Regulatory Agency and the Petroleum Equalization Management Board, in pursuance of section 129 of this Act, as the case may be, shall be deemed to be an employee of the Commission or the Equalisation Fund with effect from the date of transfer and shall be deemed to have ceased to be in the employment of the Department of Petroleum Resources, the Petroleum Products Pricing Regulatory Agency or the Petroleum Equalization Management Board forthwith. Cessation of employment.

(2) Every person whose service has been transferred from the NNPC to the Asset Management Company in pursuance of subsection (1) of section 87 of this Act or to the National Petroleum Company in pursuance of subsection (1) of section 107 of this Act, as the case may be, shall be

deemed to be an employee of the Management Company or the National Petroleum Company, as the case may be, with effect from the date of transfer and shall be deemed to have ceased to be in the employment of the NNPC forthwith.

132. (1) The provisions of this section shall apply to all contracts or other instruments subsisting before the Effective Date entered into by the Petroleum Inspectorate, the Department of Petroleum Resources, the Petroleum Products Pricing Regulatory Agency and the Petroleum Equalization Fund Management Board.

Application of  
subsisting contracts .

(2) By virtue of this Act there is vested in the Commission as from the Effective Date and without further assurance all assets, funds, resources and other moveable or immovable property which immediately before the Effective Date were vested in the Petroleum Inspectorate, the Department of Petroleum Resources, the Petroleum Products Pricing and Regulatory Authority and the Petroleum Equalization Fund Management Board.

(3) Any proceedings or cause of action pending or existing or which could have been taken by or against the Petroleum Inspectorate, Department of Petroleum Resources the Petroleum Products Pricing and Regulatory Authority and the Petroleum Equalization Fund Management Board immediately before the Effective Date in respect of any such right, interest, obligation or liability of the Petroleum Inspectorate, the Department of Petroleum Resources the Petroleum Products Pricing and Regulatory Authority and the Petroleum Equalization Fund Management Board may be commenced, continued or enforced or taken by or against the Commission as if this Act had not been made.

(4) As from the Effective Date:

(a) the rights, interest, obligations and liabilities of the Inspectorate, Department of Petroleum Resources, Petroleum Products Pricing and Regulatory Authority & the Petroleum Equalization Fund Management Board existing immediately before the Effective Date under any contract or instrument at law or in equity which shall have been held on behalf of or have accrued to or have been incurred for its own benefit or use, shall by virtue of this Act be assigned to and vested in the Commission;

(b) any such contract or instrument as is mentioned in subsection (5)(a) of this section, shall be of the same force and effect against or in favour of the Commission and shall be enforceable as fully and effectively as if instead of the Petroleum Inspectorate, Department of Petroleum Resources, Petroleum Products Pricing and Regulatory Authority and the Petroleum Equalization Fund respectively, the Commission had been named therein or had been a party thereto; and

(c) any proceeding or cause of action pending or existing or which could have been taken by or against the Petroleum Inspectorate, the Department of Petroleum Resources, the Petroleum Products Pricing and Regulatory Authority and the Petroleum Equalization Fund Management Board respectively immediately before the Effective Date in respect of any such rights, interest, obligation or liability of any of the organisations, may be commenced, continued or enforced or taken by or against the Commission as if this Act had not been made.

133. In this Act unless the context otherwise requires –

Interpretation.

“Authorisation” means any authorisation issued by the Commission for any activity in the petroleum industry;

"Board" means the governing board of any of the entities that is the subject matter of the Part within which the word has been used, unless it is specifically stated otherwise;

“Budget” means estimates of the revenues and expenditure of the Federation for the next following financial year which the President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year pursuant to section 81(1) of the Constitution of the Federal Republic of Nigeria;

“Bureau of Public Enterprises” means the Bureau of Public Enterprises as provided for under the Public Enterprises (Privatisation and Commercialisation) Act CAP P38, Laws of the Federation of Nigeria, 2004;

“Commission” means the “Nigeria Petroleum Regulatory Commission” as provided for in Part 3 of this Act;

“Company” means any entity incorporated under any law in force in Nigeria or elsewhere;

“Companies and Allied Matters Act” means the Companies and Allied Matters Act CAP C20, Laws of the Federation of Nigeria, 2004;

“Consolidated Revenue Fund” means the Consolidated Revenue Fund created by section 80 of the Constitution of the Federal Republic of Nigeria 1999 (as amended);

“Constitution” means the Constitution of the Federal Republic of Nigeria 1999(as amended);

“Court” means Federal High Court established by section 249 of the Constitution of the Federal Republic of Nigeria 1999(as amended);

“Department of Petroleum Resources” means the Department of Petroleum Resources under the Ministry of Petroleum Resources;

“Effective Date” means the commencement date on which this Act comes into force;

“Federal Executive Council” means the Federal Executive Council stated in section 144(5) of the Constitution of the Federal Republic of Nigeria 1999(as amended);

“Federation Account” means the Federation Account stated in section 162 of the Constitution of the Federal Republic of Nigeria 1999(as amended);

“Fiscal Responsibility Act” means the Fiscal Responsibility Act 2007;

“Frontier acreages” means any or all licences or leases located in an area defined as frontier in a regulation issued by the Commission;

“Gazette” means the Official Gazette of the Government;

“Government” means the Federal Government of Nigeria;

“Management Company” means the Nigerian Petroleum Assets Management Company to be incorporated further to the provisions of section 37 of this Act;

“Minister” means the Minister in charge of petroleum resources and overseeing the petroleum industry in Nigeria;

“Ministry” means the Ministry of Petroleum Resources;

“Ministry of Environment” means the federal ministry in charge of environmental matters;

“Ministry of Finance” means the Federal Ministry in charge of finance matters;

“Ministry of Finance Incorporated” means the corporation sole established by the Ministry of Finance Incorporated Act CAP M15 Laws of the Federation of Nigeria, 2004;

“Ministry of Petroleum Incorporated” means the corporation sole to be established by the proposed Ministry of Petroleum Incorporated Act;

“National Petroleum Company” means the National Petroleum Company to be incorporated further to the provisions of section 37 of this Act;

“National Salaries, Incomes and Wages Commission” means the National Salaries, Incomes and Wages Commission established by section 1 of the National Salaries, Incomes and Wages Commission Act CAP N72, Laws of the Federation of Nigeria, 2004;

“National strategic reserve” means the reserve of petroleum products kept in certain storage depots and facilities by the Government or on behalf of the Government to provide for

emergency;

“Nigerian National Petroleum Corporation” or the “NNPC” means the Nigerian National Petroleum Corporation established by section 1 of the Nigerian National Petroleum Corporation Act CAP N123, Laws of the Federation of Nigeria, 2004;

“Nigerian Police” means the Nigeria Police Force established under section 3 of the Police Act CAP P19, Laws of the Federation of Nigeria, 2004;

“Pensions Reforms Act” means the Pensions Reform Act 2014;

"Permanent Secretary" means the Permanent Secretary having supervision over the departments of government under the Minister;

“Petroleum” means hydrocarbons and associated substances as exist in its natural state in strata, and includes crude oil, natural gas, condensate, and mixtures of any of them, but does not include coal, bitumen and tar sands;

“Petroleum Inspectorate” means the Petroleum Inspectorate established under section 10 of the Nigerian National Petroleum Corporation Act CAP N123, Laws of the Federation of Nigeria, 2004;

“Petroleum operations” means upstream, midstream and downstream petroleum operations;

“Petroleum Pricing and Product Regulatory Agency” means the Petroleum Pricing and Product Regulatory Agency established under section 1 of the “Petroleum Pricing and Product Regulatory Agency (Establishment) Act CAP P43, Laws of the Federation of Nigeria, 2004;

“President” means President of the Federal Republic of Nigeria;

“Public hearing” means an organised forum for the discussion of issues relating to a regulation or decision that is to be made by the Commission for the purpose of receiving public or stakeholders input;

“Permit” means an official certificate of permission to undertake an activity issued by the Commission;

“Production Sharing Contract” means a contract between the NNPC and a contractor as defined in the Deep Offshore and Inland Basin Production Sharing Contract Acts (as amended) CAP D3, Laws of the Federation of Nigeria, 2004;

“Public Enterprises Privatisation and Commercialisation Act” means the Public Enterprises (Privatisation and Commercialisation) Act CAP P38, Laws of the Federation of Nigeria, 2004;

“Public Procurement Act” means Public Procurement Act 2007;

“Regulations” mean rules or order having force of law issued by the competent authority in accordance with the provisions of this Act or any other enactment;

“Third party access” means the legal requirement for owners of certain infrastructure facilities to grant access to those facilities to parties other than their own customers, usually competitors in the provision of the relevant services, on terms stipulated in this Act or regulations made pursuant to this Act;

“Trustee Investment Act” means the Trustee Investment Act CAP T22, Laws of the Federation of Nigeria, 2004;

134. This Act may be cited as the Petroleum Industry Governance Act, 2018.

Short title.

FIRST SCHEDULE  
*Right of Pre-emption*

(1) The Minister shall have the right to require the holder of any licence or lease granted under this Act or any other enactment (referred to in this Schedule as "the licensee or lessee") to –



- (a) provide for the Government, to the extent of any refinery or petroleum products storage capacity he may have in Nigeria, petroleum products complying with specification given by the Minister; or
- (b) deliver to any person holding a licence to operate a refinery, such quantity and quality of crude oil as may be specified by the Minister to the extent that the licensee or lessee has crude oil of that quantity and quality.
- (2) The licensee or lessee shall use his best endeavours to increase so far as possible with his existing facilities, the supply of petroleum or petroleum products, or both, for the Government to the extent required by the Minister.
- (3) The licensee or lessee shall, with all reasonable expedition and so as to avoid demurrage on the vessels conveying the same, use his best endeavours to deliver all petroleum or petroleum products purchases by the Minister under the right of pre-emption in such quantities, and at such places of shipment or storage in Nigeria, as may be determined by the Minister.
- (4) If a vessel employed to carry petroleum or petroleum products pursuant to paragraph 3 of this Schedule is detained on demurrage at the port of loading, the licensee or lessee shall pay the amount due for demurrage according to the terms of the charter-party or the rates of loading previously agreed by the licensee or lessee, unless the delay is due to causes beyond the control of the licensee or lessee.
- (5) Any dispute which may arise as to whether a delay is due to causes beyond the control of the licensee or lessee shall be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.
- (6) The price to be paid for petroleum or petroleum products taken by the Minister in exercise of the right of pre-emption shall be -
- (a) the reasonable value at the point of delivery, less discount to be agreed by both parties; or
- (b) if no such agreement has been entered into prior to the exercise of the right of pre-emption, a fair price at the port of delivery to be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.
- (7) To assist in arriving at a fair price for the purposes of paragraph 6(b) of this Schedule, the licensee or lessee shall, if the Minister so requires-
- (a) furnish for the confidential information of the Minister particulars of quantities, descriptions and prices of petroleum or petroleum products sold to other customers and of charters or contracts entered into for their carriage; and
- (b) exhibit original or authenticated copies of the relevant contracts or charter-parties.
- (8) The Minister may take control of any works, plants or premises of the licensee or lessee and if he does so, the licensee or lessee and his servants or agents shall conform to and obey all directions issued by the Minister or on his behalf.
- (9) Reasonable compensation shall be paid to the licensee or lessee for any loss or damage caused to him by reason of the exercise by the Minister of the powers conferred by paragraph 8 of this Schedule.
- (10) Any compensation payable under paragraph 9 of this Schedule shall be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.

## SECOND SCHEDULE

### *Supplementary provisions relating to the proceedings of the Board of the Commission*

- (1) Subject to this Act and the provisions of section 27 of the Interpretation Act, the Board ('the Board') shall have the power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Board may, from time to time, determine.
- (2) (a) There shall be at least one ordinary meeting of the Board in every quarter of the year and subject thereto, the Board shall meet whenever it is summoned by the Chairman and if the Chairman is requested to do so by notice given to him by not less than three other members, the Chairman shall summon a meeting of the Board to be held within fourteen days from the date on which the notice is given.
- (b) Every meeting of the Board shall be presided over by the Chairman and if the Chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of the non-executive commissioners to preside at the meeting.

(3) The quorum at the meeting of the Board shall consist of the Chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and the majority of the other members, as appropriate.

(4) The Board shall meet for the conduct of its business at such places within Nigeria and on such days as the Chairman may appoint.

(5) A question put before the Board at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.

(6) The Chairman shall, in the case of an equality of votes, have the casting vote in addition to his deliberative vote.

(7) Where the Board desires to seek the advice of any person on a particular matter, the Board may co-opt a person as a member for such period it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

(8) The Board may constitute one or more committees for the purpose of carrying out any of its functions as the Board may determine and report on any matter with which the Board is concerned.

(9) A committee appointed under this Schedule shall be presided over by a member of the Board and consist of such number of persons (not necessarily all members of the Board) as may be determined by the Board, and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

(10) A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.

(11) The fixing of the seal of the entity shall be authenticated by the signature of the Secretary or some other person authorized generally by the Board to act for that purpose.

(12) A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the entity by the Chief Executive Commissioner, as the case may be, or any person generally or specially authorized to act for that purpose by the Board.

(13) A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the entity shall be received in evidence and, unless the contrary is proved, be presumed without further proof to have been signed and sealed.

(14) The validity of any proceedings of the Board or its committees shall not be affected by-

(a) any vacancy in the membership of the Board or its committees; or

(b) reason that a person not entitled to do so took part in the proceedings; or

(c) any defect in the appointment of a member.

(15) Any member of the Board and any person holding office on a committee of the Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or a committee shall -

(a) forthwith disclose his interest to the Board or committee, as the case may be; and

(b) not vote on any question relating to the contract or arrangement.

### THIRD SCHEDULE

#### *Conflict of Interest and Corporate Responsibility*

(1) In the discharge of their responsibilities, members of the Board shall act in utmost good faith, with care, skill and diligence.

(2) Members of the Board have fiduciary obligation to the Commission, and shall not be involved in any decision where their interests conflict with the interest of the Commission

(3) Members of the Board shall adhere to all the duties and obligations specified for directors under the Company and Allied Matters Act.

(4) Members of the Board shall submit a written statement of disclosure of interests and a statement of absence of conflicts with the Commission's activities and operations annually to the Board.

FOURTH SCHEDULE

CAP Laws of the Federation of Nigeria 2004	Short title or citation	Amendments
H5	Hydrocarbon Oil Refineries Act	<p>Section 28(1) shall be amended by substituting all references to “Minister” with “Commission”</p> <p>Section 29 shall be amended by inserting the words “Commission” means the “Nigeria Petroleum Regulatory Commission” as established under the Petroleum Industry Governance Act”; and deletion of the definition of Minister</p>
N123	Nigerian National Petroleum Corporation Act	Sections 10 & 11 are hereby repealed.
O7	Oil Pipelines Act	<p>(1) All references to “Minister” under the Oil Pipelines Act Cap 07 of the Laws of the Federation of Nigerian 2004 and any regulations made pursuant thereto shall from the Effective Date be deemed to refer to the Commission and the Commission shall accordingly exercise all the powers and functions of the Minister under the Oil Pipelines Act and all regulations made thereto provided that the Commission shall not be entitled to delegate its powers to make regulations pursuant to the Oil Pipelines Act.</p> <p>(2) Section 31 of the Oil Pipelines Act CAP 07 of the Laws of the Federation of Nigeria is hereby amended by substituting it with the following new section “The fees payable for applications, permits and licences or its variation under this Act shall be prescribed by regulations issued pursuant to this Act.”</p>
P10	Petroleum Act	<p>(1) Section 2(1) shall be amended by including “and the recommendation of the Commission” immediately after the word “Act”.</p> <p>(2) Section 3 shall be amended by substituting all references to “Minister” with “Commission”.</p> <p>(3) Section 4 shall be amended by substituting all references to “Minister” with “Commission”.</p> <p>(4) Section 5(3) shall be amended by substituting “Minister” with “Commission”.</p> <p>(5) Sections 6, 8 and 9 are hereby repealed.</p>

**EXPLANATORY MEMORANDUM**

This Act provides for the governance and institutional framework for the Nigeria petroleum industry and creates clear separation between the policy, regulatory and commercial institutions.

**THIS BILL WAS ADOPTED BY THE SENATE ON WEDNESDAY, 28TH MARCH, 2018.**