

Petroleum Host Community (Commission) Regulations

Under Section 235
Petroleum Industry Act (2021).

Commencement Date: DD/MM/YYYY

1. GENERAL

1. These regulations shall apply to host communities under the jurisdiction of the Commission pursuant to section 234(2) of the Act.
2. Pursuant to section 235(6) of the Act, the Commission shall exercise the following duties in the general administration of host community trust funds:
 - (i) Conduct a yearly assessment of the performance of each trust fund using a performance matrix published on its website
 - (ii). Investigate and report pursuant to section 26 of the Act, established cases of fraud, mismanagement, misappropriation or misapplication of funds of the trust fund to relevant authorities, including the Nigerian Police, Economic and Financial Crimes Commission and the Corporate Affairs Commission.
 - (iii) Initiate prosecution of any member of the board of trustees, management committee, advisory committee, or any person directly or indirectly associated with any case of fraud, mismanagement, misappropriation or misapplication of the funds of the trust.
 - (iv) Initiate action to trace and recover the funds of the trust.
 - (v) Set up a compliance mechanism for members of the communities under a trust to report any incidents of fraud, mismanagement, misappropriation or misapplication of the fund.

(vi) Present a yearly report of the performance of each trust to the Minister

3. The Commission Chief Executive shall be held accountable for any failure of the Commission to carry out any of the duties in sub paragraph 2 above.

Determination of Area of Operation

4. (1) The area of operation of a petroleum prospecting licence or petroleum mining leases, shall be the surface area of the licence or lease.

4(2) The area of operations with respect to an oil prospecting licence or oil mining lease shall be the surface area of the licence or lease.

4(3) Notwithstanding the provisions of sub-paragraph (1) and (2), where operational or ancillary facilities of the Settlor are located outside the areas defined under this paragraph, the area of operations shall be adjusted to include the areas hosting such facilities.

Determination of host Community

5, A host community shall be as defined in section 318 of the Act.

5(1) A host community shall be any of the following:

- (a) A community situated within the area of operation. Provided that a geographical area of community is partly inside and partly outside the area of operation, the entire community shall be considered a host community
- (b) A community situated appurtenant to the area of operation, which is within 5 kilometers from the boundary of the area of operation. Provided that where a community is appurtenant to two or more areas of operations, the Commission shall determine the allocation of such community to a settlor, and in determining such allocation, the Commission shall consider the interest of the community in the longest possible duration of petroleum production in the area of operations.
- (c) A community that is situated littoral to the area of operation, where the area of operation is within shallow water or deep water. Pursuant to section 235(3) of the Act, a littoral

community means a community that is located on the seashore or totally or partially within five (5) kilometers from the seashore bounded to the east and west of the area of operations.

- (d) "Any other community" pursuant to section 235(3) of the Act shall mean a community anywhere in Nigeria. Provided that communities covered by host communities development projects or schemes under its corporate social responsibility established prior to the effective date of the Act shall continue to be host communities for this purpose.

Host Community Status

6. Where a community has been selected as a beneficiary of a host community trust fund under the Act, such a Community shall not be excluded by the Settlor or Commission except in the following circumstances:

6.1. Where the boundaries of the area of operation changes as a result of relinquishment such that a community previously selected as a beneficiary is no longer within the area of operation of the retained area of the lease.

6.2 Where a court of competent jurisdiction has determined that a community previously selected as a beneficiary under a host community trust fund is not qualified as a host community under this Act or any other law.

ESTABLISHMENT OF HOST COMMUNITY DEVELOPMENT TRUST

Settlor submission of request to establish Host Community Development Trust to the Commission.

7 (1). Two months prior to the dates that the host community development trust has to be established pursuant to Section 236 (a) (d) and (e) of the Act, the Settlor shall submit to the Commission the following for each area of its operations:

- a) the outline of the area of operations.
- b) the proposed host communities,
- c) the Board of Trustees,
- d) the draft of the constitution of the host community development trust,
- e) the distribution matrix pursuant to section 245 of the Act, and
- f) whether the settlor already has a program of host community support that is in execution and is supported by the host communities.

7(2) The draft constitution of the host community development trust shall comply with the provisions of sections 239(1), 239(2), 240(1), 241, 242(1), 247(1), 249(1), 254 and 255 of the Act.

8. The Commission shall, upon the receipt of the submission in sub paragraph 7.1 review it and approve or disapprove of the submission not later than one month after the receipt of the submission. Where the Commission disapproves of all or any item(s) in the submission, it shall provide the respective settlor the reasons for the disapproval , and request such settlor to amend the submission within one month after the decision the Commission.

9. Where the Commission does not respond within the time frame established by sub-paragraph (1), the information shall be deemed to have been approved.

Appointment of Board of Trustees and incorporation of the host community development trust

10. Upon the approval of the submission made by the Settlor in accordance with sub paragraph 8 by the Commission, the Settlor shall appoint the Board of Trustees which shall thereafter incorporate the host community development trust and establish the host community development trust fund pursuant to Sections 236 (a), (d) and (e) of the Act.

Annual contribution to the host community development trust fund

11(1). The settlor shall make its first annual contribution to the host community development trust fund within one month after the fund

has been established by the Board of Trustees, and thereafter make contributions on a yearly basis on or prior to the anniversary of the first contribution. Provided that the contribution of the prior year shall not form part of the operating expenses for the determination of the 3% share of the operating costs for the succeeding year.

11(2) Where the settlor is responsible for host communities in different areas of operation, the 3% share of the operating costs shall be determined based on the operating costs that are attributable to each area of operation.

11(3) Where the settlor has established "any other community" as a host community pursuant to 235(3), the settlor shall reasonably allocate the share of the operating costs to the various possible host communities in line with section 245 of the Act.

11(4) The settlor shall provide the Board of Trustees a forecast of the contributions for the subsequent five (5) years together with the payment of each annual contribution.

Operating Expenditures

12. For the purpose of determining operating expenditures pursuant to subsection 240(2) of the Act, the Settlor shall take into consideration all non-capital production costs, all cost of sales, administrative expenses and any other expenses incurred for the operations of the business on a day-to-day basis. Provided that such expenditures shall not include capital expenditures, impairment, depreciation, amortization.

NEEDS ASSESSMENT AND DEVELOPMENT PLAN

Host community needs assessment

13(1). The Settlor shall, pursuant to Section 251 of the Act, carry out host communities needs assessment, within six months following the granting of the lease.

13(2). In the case of existing oil prospecting licences and oil mining leases, the Settlor shall carry out the needs assessment within six month after the Settlor has made the first annual contribution related to its area of operation pursuant to sub paragraph 11 of these Regulations.

13.3 Upon completion of the host community needs assessment, a report shall be submitted to the host community advisory committee, for its review, in order to prepare the host community development plan.

The Host community development plan

14(1). The Settlor shall, pursuant to Section 252 of the Act, carry out the preparation of the host communities development plan within one year following the granting of the lease.

14(2). The preparation of the host communities development plan pursuant to section 252 of the Act, related to areas of operation pursuant to sub paragraph 2(2) of these Regulations shall be carried out within one year after the settlor has made the first annual contribution related to such area of operation pursuant to sub paragraph 12 of these Regulations.

14(3) Upon completion of the host community development plan, the plan shall be submitted to the host community Advisory Committee, for its review, to prepare the final host community development plan within two months after having received the respective reviews..

14(4) With respect to settlers falling within the provisions of section 251, the final host community development plan shall be submitted to the Commission pursuant to section 251(4) of the Act.

14(5) With respect to the final host community development plan, the budget to be provided pursuant to section 252 (d) of the Act shall correspond with the forecasted contributions pursuant to paragraph 12(4), taking into consideration that the development plan will be financed pursuant to the provisions of section 244(a), subject to the provisions of section 234(b).

IMPLEMENTATION OF PROPOSED PROJECTS

15. The Settlor shall, pursuant to Section 255(d) of the Act, not later 31st of May of each year, submit an annual report of the host communities development trust to the Commission. The report shall contain:

- i. The audited account of the host communities development trust,
- ii. List of proposed projects for the host communities for the year

- iii. Status of executed or ongoing projects for the host communities
- iv. cost of the individual projects

GRIEVANCE MECHANISM AND VANDALISM

Grievance Mechanism

16.1 Whenever grievances arise between the host communities and the settlor, the settlor shall as a first instance attempt to resolve the grievances.

16.2 Where the settlor is unable to resolve such grievances, the settlor shall refer the grievance to the Alternative Dispute Resolution Center (ADRC) in the Nigerian Oil & Gas Excellence Center (NOGEC), Lagos, Nigeria or any other Alternative Dispute Resolution for a mediator to settle the grievances.

16.3 Where grievances occur among the host communities, it is the responsibility of the Board of Trustees to resolve such matters. Where the board of trustees is unable to resolve the grievance, the board of trustees shall refer the grievance to the Alternative Dispute Resolution Center (ADRC) in the Nigerian Oil & Gas Excellence Center (NOGEC), Lagos, Nigeria or any other Alternative Dispute Resolution for a mediator to settle the grievances

16.4. Where no settlement is reached after the mediation at the NOGEC (ADRC) or any other ARC, the grievance may be resolved by arbitration.

16(5) Any final resolution by the NOGEC (ADRC) or any other ARC, shall not increase the budget provided under **sub paragraph 19(5)** unless the grievance relates to the fact that the maximum amount of the budget is not properly determined and in this case the increase shall be approved by the Commission.

Vandalism

17(1). Where an act of vandalism, sabotage or civil unrest occurs that causes damage to the petroleum facilities of the settlor within the area of operations, or disrupts production activities ("disruptive act"), the settlor shall notify the the Board of Trustees immediately of such

matter, and the settlor shall prepare a report within one week for submission to the Commission.

17(2) The report shall contain, where applicable:

- (a) a description of the disruptive act,
- (b) an estimate of the cost of repair of the facilities, and where the damage requires a replacement of the facilities, the cost of such replacement,
- (c) the value of crude oil, condensates, natural gas liquids or natural gas that was spilled or otherwise lost as a result of the act,
- (d) in case of a shut-down of the operations, the operating expenditures incurred during the period that the production was shut down, or where a part of the operations is shut down the operating costs of the part that is shut down,
- (e) the reductions that will be obtained in taxation as a result of additional costs that will be charged for tax purposes, and
- (f) a cashflow illustrating how the total costs under sub paragraphs (b), (c) and (d) minus the tax recovery under (e) will be recovered pursuant to section 257(2) of the Act.

17(3) The damage calculated pursuant to section 257(2) of the Act, shall not include loss of profits, losses due to delay of production of reserves, or other losses not specifically included in sub-paragraph (2) hereof, since these losses shall be deemed to be a business risk of the holder.

17(4) The Commission shall review the report submitted by the settlor pursuant to sub- paragraph (1) and shall immediately constitute a joint investigation team (JIT) comprising representatives of the Commission, Settlor, the communities and National Oil Spill Detection and Response Agency to carry out an independent investigation of the occurrence and submit its report to the Commission within fourteen (14) days.

17(5) The Commission shall, based on the joint investigation team report, determined whether the disruptive act was due to technical or natural cause or third-party interference., and also establish the costs

and tax recovery under sub-paragraph (2) and any adjustment required in the cashflow pursuant to sub-paragraph 2(f).

17(5). The decision of the Commission shall be binding on the settlor and the host communities.

ADMINISTRATIVE EXPENDITURES

Administrative costs

18 (1).The administrative costs pursuant to section 244(c) of the Act, shall consist of:

- (a) Sitting allowance for the Board of Trustees pursuant sec 242(3)of the Act.
- (b) Sitting allowance for the management committee pursuant to sec 247(4)(b) of the Act ,

(c) Sitting allowance for the advisory committee pursuant to section 249(b) of the Act

18(2) Where possible, the administration costs shall be reduced by holding meetings on a virtual basis.

18(3). The meeting schedule shall be contained in the constitution which shall be approved by the Commission.

18(4) Pursuant to section 244(c) of the Act, the Board of Trustees shall ensure that the 5% of the fund shall be equally apportioned between the administrative cost for running the trust and to special projects which shall include but not be limited to scholarship schemes and other human capacity development projects.

Reduction of administrative costs

19. Where the administrative costs pursuant to sub-paragraph 18 of these Regulations exceed the budget available for such costs based on the forecast pursuant to sub-paragraph 12(4) of these Regulations, the settlor shall reduce such administrative costs pursuant to the provisions of section 244(c) of the Act.

MANAGEMENT OF THE RESERVE FUND

20(1). Fund managers pursuant to section 243(d) and 246 of the Act, shall be paid a management fee from the interest and profit accruing from the fund in line with guidelines issued by the Securities and Exchange Commission.

20(2) The Fund manager shall be certified and registered by the Securities and Exchange Commission and must have a proven track record in fund management.

CESSATION BY THE SETTLOR

Cessation by the settlor

21(1). Where a lease, OPL or OML is surrendered pursuant to section 237 (2) of the Act or revoked, terminated or expired pursuant to section 237(3) of the Act, the settlor shall fulfil its surviving obligations

and where these obligations have been complied with, the settlor shall have no further obligations either partly or wholly with respect to the area that was surrendered.

21(2) Where an area is surrendered, but not the whole or the lease, OPL or OML, the area of operations shall be considered adjusted as a result of such surrender and the settlor shall inform the Commission for its approval:

- (a) the host communities that the settlor considers no longer its responsibility,
- (b) the revised or new Board or Trustees,
- (c) the revised constitution of the host community development trust,
- (d) the revised forecast of contributions pursuant to section 240(2) of the Act,
- (e) the revised development plan, and
- (f) the amount in the reserve fund that should be allocated to the host communities for which the operations of the settlor have ceased.

21(3) The Commission shall review the information and decide on matters pursuant to paragraph 15 of these Regulations.

21(4) Surviving obligations of the settlor shall not include any matters related to the management of the reserve fund pursuant to section 244(b) of the Act and any utilisation of this fund.

21(5) Where an amount in the reserve fund remaining upon the cessation of activities by the settlor, the Board of Trustees shall continue to manage the funds and report to the Commission in the manner contemplated by the Act as if it were the settlor.

21(6) With respect to the host communities for which the operations of the settlor have ceased pursuant to sub-paragraph (2) hereof, the the Board of Trustees shall continue to manage the funds and report to the Commission in the manner contemplated by the Act as if it were the settlor

TRANSFER OF EXISTING HOST COMMUNITY DEVELOPMENT PROJECTS AND SCHEMES

22(1) Prior to the incorporation of a host community trust pursuant to section 235(1) of the Act, the settlor shall make the following arrangements for the effective transfer of existing host community

development projects and schemes to the trust fund in accordance with section 316 of the Act:

- a) select all the communities under any of its existing MOUs or any other agreements, community development programs and corporate social responsibility schemes as host communities beneficiaries under the applicable trust fund to be established pursuant to this Act.
- b) Transfer any money accrued in any account as its annual payment obligation under such arrangements to the host community trust fund.
- c) Transfer all investable instruments under any existing MOUs or any other agreement to the reserve fund under management by a trust fund established pursuant to this Act.
- d) Transfer all development projects or schemes existing under any MOUs or any other agreement pursuant to section 316 of the Act to the host community trust fund.
- e) Ensure the continued execution of all development projects or schemes in sub paragraph (d) by the trust fund.
- f) In consultation with the host communities under existing MOUs and any other agreement pursuant to section 316 of the Act, ensure that they metamorphose in conformity with the provisions of the Act.

INTERPRETATION

23. In the addition to the definitions contained in section 318 of the Petroleum Industry Act, 2021, in these regulations, unless the context otherwise requires –

“Act” means Petroleum Industry Act, 2021;

“bopd” means barrels of oil per day

“community” means a number of homes or dwellings located within a geographical area;

“disruptive act” means an act pursuant to paragraph 21(1) of these Regulations;

“Dollar” or “\$” or “US \$” or “US Dollar” means United States Dollar;

“holder” means a lessee or a holder of an OPL or OML;

“month” means a period of one month from any date during the month.

“OML” means oil mining lease;

“operator” means a company with the characteristics to be appointed as operator pursuant to the provisions of a joint operating agreement (“JOA”) by the members of the JOA to manage and conduct the petroleum operations in a safe and efficient manner on behalf of the JOA;

“OPL” means oil prospecting licence;

“PML” means petroleum mining lease under the Act;

“PPL” means petroleum prospecting licence under the Act;

“termination,” in relation to a petroleum prospecting license or a petroleum mining lease, OPL or OML, means expiration by effluxion of time or otherwise or any other form of termination (including termination by the licensee or lessee and, in relation to any part of the relevant area in respect of which a lessee surrenders his lease, that surrender).

“year” means a period of a year from any day during the year, in accordance with the Gregorian calendar.

26. These regulations may be cited as the Petroleum Host Community (Commission) Regulations 2022.