



REGULATORY FRAMEWORK IN THE NIGERIAN PETROLEUM INDUSTRY (UPSTREAM SECTOR)

The Nigerian petroleum industry is divided into three sectors: upstream, midstream, and downstream, with numerous participants and regulatory bodies involved throughout the value chain.

The upstream activities encompass the exploration, development, and extraction of crude oil and natural gas reserves. This process involves drilling wells for oil and gas, setting up the necessary infrastructure for resource extraction and overseeing the production process.

This article will provide a brief overview of the regulatory framework (Regulations and Regulatory bodies) along with the key compliance requirements within the upstream petroleum sector.

LAWS AND REGULATIONS GOVERNING THE UPSTREAM SECTOR

1. 1999 Constitution of the Federal Republic of Nigeria (as amended)

Section 44(3) of the Constitution vests the entire property relating to minerals, mineral oils and natural gas within the territory of Nigeria and its exclusive economic zone in the Government of the Federation to be managed in a manner prescribed by the National Assembly. Thus, similar to the Land Use Act 1968 vesting all lands in the State, the 1999 Constitution vested all oil resources found in Nigeria in the Federal Government.

2. The Petroleum Industry Act (PIA) 2021

The PIA establishes a national grid system for managing acreage¹. This grid will delineate license and lease areas, facilitate relinquishments, identify well locations, implement petroleum conservation measures, and govern other regulatory and acreage management processes. Upstream operations will now operate under three new categories of licenses namely:

- **Petroleum Exploration Licence (PEL):** Grants the licensee non-exclusive exploratory rights to carry out petroleum exploration operations within the area in the licence for a single renewable term of three years². Section 71 (3) of the PIA provides that the PEL is for a term of three years and may be renewed for an additional period of three years subject to the fulfilment of prescribed conditions. The right granted under a PEL does not include any right to win, extract, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the licence area. The PEL will be granted at the discretion of the Nigerian Upstream Petroleum Regulatory Commission (the Commission).
- **Petroleum Prospecting Licence (PPL):** Provides exclusive rights to drill exploration and appraisal wells, conduct associated test production, and non-exclusive rights for petroleum exploration for up to six years (comprising an initial exploration period of three years and an operational period of three years) in onshore and in shallow waters, and up to ten years in deep offshore and frontier areas (comprising an initial exploration period of five years and an optional extension period of five years)³.
- **Petroleum Mining Lease (PML):** Awarded to qualified applicants to extract and sell crude oil, condensates, and natural gas for a maximum duration of twenty years subject to renewal and satisfaction of its conditions. A PML is granted to a holder of a PPL who has satisfied the conditions imposed on it under the PIA and obtained approval of the Commission for the applicable field development⁴.

¹ Section 69 (1) of the PIA

² Section 70 (1) of the PIA

³ Sections 70 and 72 of the PIA

⁴ Sections 70 and 73 of the PIA

The PPL and PML will only be awarded following a transparent and competitive bidding process⁵. If the necessary consents and approvals under the Act are not received within the specified timeframe, deemed approvals will take effect⁶.

The Commission and the Minister of Petroleum will manage all aspects of these licenses, including approvals and revocations⁷. The licensing system is designed to facilitate better regulatory oversight and ensure that licenses are granted based on merit.

3. Nigerian Upstream Petroleum Measurement Regulations (NUPMR) 2022

The Nigerian Upstream Petroleum Measurement Regulations, enacted by the Commission, was designed to encourage accelerated Meter roll out in upstream petroleum operations, encourage the development of independent and competitive Meter services in upstream petroleum operations as well as provide for the regulation of the measurement of hydrocarbons produced in upstream petroleum operations. These regulations mandate that lessees and licensees must have a metering plan approved by the Commission, involving licensed metering service providers⁸. This shift opens a new market for third-party metering service providers, previously managed solely by lessees and licensees. The goal is to enforce measurement regulations that ensure accurate crude oil accounting, prevent leakages, and increase government revenue through proper royalty assessment and remittances.

4. The Nigerian Oil and Gas Industry Content Development Act 2010

The Act seeks makes provisions to foster the participation of Nigerian owned businesses in the oil and gas industry⁹. It requires that in any transaction in this industry, Nigerian content/participation shall be an important element and requires that Nigerian independent contractors shall be given first consideration in the award of oil blocks and licenses. It further provides minimum thresholds for use of local services and materials to promote the transfer of technology and skill to Nigerians in the industry. The provisions of this Act are carried out by the Nigerian Content Development and Monitoring Board (NCDMB).

REGULATORS

1. Nigerian Upstream Petroleum Regulatory Commission 2021 (NUPRC)

The PIA establishes a separate regulator known as the Nigerian Upstream Regulatory Commission for the upstream sector. The Commission will be responsible for both the technical and commercial regulation of upstream petroleum operations. The Minister will have general supervisory powers over the industry and retain the right to order cutbacks in crude oil or

⁵ Section 73 of the PIA

⁶ Section 73 (4) of the PIA

⁷ Sections 73 (3) & 95 of the PIA

⁸ Regulation 3(1) of the NUPMR

⁹ Section 12 of the NOGICDA

condensate production in the context of international oil pricing agreements supported by Nigeria.

2. **National Environmental Standards and Regulations Enforcement Agency 2007 (NESREA)**

Established by National Environmental Standards and Regulations Enforcement Agency (Establishment Act), it provides that Licensees or Lessees engaged in upstream and midstream petroleum operations are required within one year of the effective date or 6 months after the grant of the applicable licence or lease, to submit for approval an environmental management plan (EMP) in respect of projects which require environmental impact assessment to the Commission as the case may be and this will be based on the relevant environmental Acts and subsidiary legislations affecting environment in force.

3. **National Oil Spill Detection and Response Agency 2006 (NOSDRA)**

It was established by the National Oil Spill Detection and Response Agency (Establishment) Act 2006, which coordinates and implements the National Oil Spill Contingency Plan (NOSCP) for Nigeria. NOSDRA carries surveillance to ensure compliance with existing environmental legislation with regards to oil spills, receives reports of oil spills and coordinates the implementation of the plan for removal of hazardous substances.

4. **The Nigerian Extractive Industries Transparency Initiative 2007 (NEITI)**

It was established by the Nigerian Extractive Industries Transparency Initiative Act 2007, which ensures transparency and accountability in the industry by imposing reporting and disclosure obligations on all extractive oil and gas companies of revenue paid or due payable to the Federal Government. In carrying out this responsibility, the NEITI in each financial year appoints independent auditors to audit the total revenue which accrued to the Federal Government from the industry to determine its accuracy.

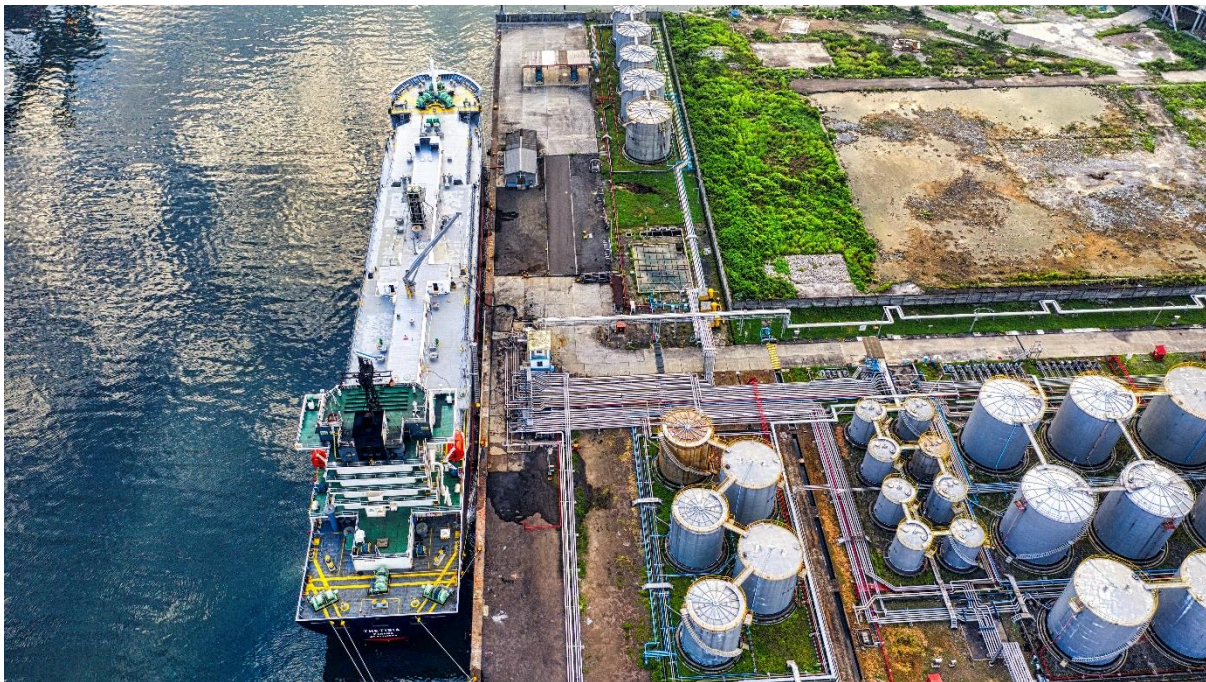
COMPLIANCE REQUIREMENTS FOR PLAYERS WITHIN THE UPSTREAM SECTOR NAMELY:

1. **Regulatory Consents:** The PIA requires a Licensee or Lessee to obtain the prior written consent of the Minister and the Commission in the event of any assignment of legal title or ownership interest, whether direct or indirect, in the License or Lease. This includes transfers, changes of control, novation, or the transfer of any rights, powers, or interests associated with the License or Lease¹⁰.
2. **Host Community Trust Fund Requirements:** The PIA mandates Licensees and Lessees carrying out upstream petroleum operations (Settlors) to incorporate Host Communities Development Trust (HCDT) for the benefit of the host communities where the Settlor is responsible¹¹, after undertaking a needs assessment that will form the basis of the Community Development Plan. The needs assessment is done preparatory to the establishment of the

¹⁰ Section 95 of the PIA

¹¹ Section 234 of the PIA

fund. The legal and equitable interest, rights and obligations of a divesting entity with regards to the Host Community Development Plan (HCDP) and HCDF are deemed transferred to the new entrants to the asset (Licence or Lease). Before approving this transfer, the Commission shall assess the status of the Assignor's HCDF as well as ensure that the successor entity's social inclusion programme complies with the Act. The Assignee is required to make an annual contribution to each HCDF of an amount equal to 3% of its actual annual operating expenditure from the preceding year of the upstream operations that impact the host communities¹². An area which hosts the Licensee or Lessee's facilities used in upstream petroleum operations forms part of its host community.



3. **Decommissioning and Abandonment Obligations:** Licensees and Lessees are required to establish a Decommissioning and Abandonment (D & A) programme in accordance with good international petroleum industry practice. The Commission will grant approval for the D & A, contingent upon compliance with pertinent environmental, technical, and commercial regulations and standards
4. **Taxes:** The PIA establishes a tax framework for the oil and gas sector, which includes the Companies Income Tax and the National Hydrocarbon Tax¹³. These taxes will be applied to the profits of any company involved in upstream petroleum operations concerning crude oil profits derived from those activities¹⁴. Companies operating under Production Sharing Contracts will be taxed separately on the profits from each petroleum mining lease, with the hydrocarbon tax due every accounting period. The PIA also allows for an additional chargeable tax based on the

¹² Section 240 of the PIA

¹³ Sections 260(1)(a) and 260(5) of the PIA

¹⁴ Section 261 of the PIA

fiscal oil price determined by the Commission. The hydrocarbon tax will be assessed on profits and payable during each accounting period (AYB).

Section 256 of the PIA exempts HCDTs from income tax. However, that exemption status does not extend beyond income taxes. HCDTs are required to comply with non-income tax obligations such as obligations relating to withholding taxes, value added tax, employees' personal income tax, stamp duties etc. The contributions payable by settlors into HCDTs are deductible for the purpose of computing hydrocarbon tax and companies income tax.

In conclusion, the regulatory framework for the upstream petroleum sector aims to foster a more competitive, transparent, and accountable environment within the Nigerian petroleum industry. By defining clear roles for regulatory bodies and enacting fiscal reforms, these regulations seek to stimulate growth while addressing long-standing challenges in the sector. However, the successful implementation of these measures will hinge on overcoming current governance and compliance issues.

At First Fiduciary Limited, our primary expertise lies in ensuring regulatory compliance across various industries, including the petroleum sector. We are committed to addressing all your compliance requirements promptly and effectively.

Author



Elizabeth Adedayo

Associate

elizabeth.adedayo@firstfiduciary.ng



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Our mailing address is:

First Fiduciary Limited

3A, Kayode Otitoju Street, Off Admiralty Road,

Lekki Phase1, Lagos