

(i) the holder is owned wholly or in part, directly or indirectly or is controlled by a former or serving public official or member of the Government, who obtained his interest in the applicable licence or lease other than as permitted by applicable law; and

(j) the holder fails to abide by any expert determination, arbitration award or judgment arising from the dispute resolution provisions set forth in a licence or this Act.

(2) Subsection (1) (i) shall apply to a former public official or member of Government only where the applicable interest was acquired while the public official was in office or was a member of the Government.

121. (1) Prior to a decision by the Authority to revoke a licence or permit under section 120 of this Act, the Authority shall —

Notice of default prior to revocation.

(a) serve a notice of default on the holder setting forth in reasonable detail the default of the holder; and

(b) give the holder 60 days within which to remedy the default.

(2) Where the Authority is satisfied with the remedy of the holder under subsection (1) (b), the revocation process shall terminate.

(3) Where, at the expiration of 60 days, the holder fails to remedy the default, the licence or permit shall be terminated.

(4) A notice of default shall be —

(a) sent by the Authority to the last known address of the holder of licence or permit or its legal representative in Nigeria, or

(b) published in the Federal Government Gazette or on the website of the Authority,

each of which shall constitute sufficient notice to the holder of licence or permit of the notice of default.

(5) Revocation shall be without prejudice to any —

(a) liabilities which the holder may have incurred; or

(b) claim, which the Authority, the Government or any third party may make against the holder of licence or permit.

(6) A revocation decision shall be published in the Federal Government Gazette and the Authority shall ensure relevant registers maintained by it reflect the revocation.

122. (1) The Authority shall, in exercising its powers of commercial regulations, be guided by the following principles in designing a pricing framework for transportation, distribution and processing petroleum tariffs —

- (a) for transportation, distribution and processing of petroleum shall be on a cost-reflective basis;
- (b) charged shall permit a reasonable return for licensees on their investments;
- (c) shall not discriminate between customers with similar characteristics under section 116 of this Act; and
- (d) shall be determined in US Dollars or other foreign currency as applicable with a view to attracting foreign investment to midstream and downstream petroleum operations, provided that payments of the tariffs may be made in the respective foreign currency or equivalent value of Naira at the open market rate published by the CBN as applicable under the regulations.

(2) The tariff methodology for tariffs related to new gas transportation pipelines, gas distribution networks and facilities requiring a gas processing licence shall include, that —

- (a) tariffs shall be determined in US Dollars, but may be paid in Naira, where the applicable exchange rate shall be based on the Securities and Exchange Commission over the counter market rate or any successor rate;
- (b) the capital costs may be recovered in equal installments over a period as determined by the Authority;
- (c) the after tax rate of return on equity shall be such that it attracts major investment and the rate of return shall apply during construction;
- (d) where short pipelines connecting producers or consumers to a gas transport pipeline or gas transport pipeline network and in other justified cases, the Authority may approve that capital costs be based on 100% equity, otherwise a reasonable debt or equity ratio shall apply;
- (e) where a debt or equity ratio applies under paragraph (d) of this subsection, the cost of any interest and financing charges shall be recovered.

Operating costs, including depreciation, overhead and profit charge, and other long costs, shall be recovered and the cost shall be allocated proportionately.

(g) line losses and gas energy use shall be taken into account;

(h) any applicable tax, levy and duty shall be recovered;

(i) where capital costs have been fully recovered, the tariff shall no longer include the items under paragraphs (b), (c) and (d);
and

(j) tariffs shall be based on the estimated throughput as estimated by the Authority, notwithstanding the capacity of the gas transportation pipeline, gas distribution network or processing plant.

(3) The Authority may by regulation modify or provide further detail on the provisions of subsection (2) and establish more favorable tariffs for credit worthy shippers willing to commit to long term ship-or-pay agreements facilitating the financing of the respective pipelines or plants.

(4) The Authority may approve negotiated tariffs where one or more wholesale customers connect with a pipeline to a transportation network or transportation pipeline or in other cases where justified in the opinion of the Authority.

123. (1) Tariffs charged by licensees for the use of any facility or infrastructure licenced by the Authority for use in midstream and downstream petroleum operations shall be set according to one or more tariff methodologies adopted by the Authority for a particular set of licences, in conformity with the applicable fiscal regime, provided that the tariff methodologies shall —

Tariff methodology.

(a) allow an operator to recover reasonable cost incurred, benchmarked against industry best practice and a reasonable return on the capital invested in the business;

(b) ensure the efficiency of the business;

(c) ensure the continued improvement of the quality of services;

(d) avoid discrimination between customers with similar characteristics, such as similar size or similar consumption profile under section 116 of this Act;

(e) in case of distribution licences, ensure efficient charges relating to petroleum product or natural gas supply covering Acting, metering and other services;

(f) avoid economic distortions and ensure a competitive market for the sale and distribution of petroleum products and natural gas in Nigeria; and

- (g) avoid cross-subsidies among different categories of consumers.
- (2) Tariffs may differentiate between credit worthy shippers willing to make long term ship-or-pay agreements facilitating the financing of the pipeline or plant and other shippers or users.
- (3) The Authority shall, prior to establishing a tariff methodology, initiate and conduct a stakeholders' consultation in the manner specified in subsection (5) to consult applicants, operators, consumers, prospective customers, consumers associations, associations of prospective customers and any other persons with interest in the subject matter of the proposed tariff methodology.
- (4) The Authority may, in establishing a tariff methodology, take into consideration the submissions of the stakeholders' consultation referred to in subsection (3).
- (5) Prior to holding a stakeholders' consultation referred to in subsection (3), the Authority shall publish in at least two national newspapers with wide coverage and on its website, notice of —
 - (a) the stakeholders' consultation;
 - (b) its invitation to licensees and stakeholders to participate in the stakeholders' consultation;
 - (c) the venue and period during which the stakeholders' consultation is to be held;
 - (d) the nature of the matter to which the stakeholders' consultation relates;
 - (e) the matters upon which the Authority would require submissions;
 - (f) the form in which licensees and stakeholders are to make submissions to the Authority on the subject matter of the stakeholders' consultation;
 - (g) the period of notice for the commencement of the stakeholders' consultation, which shall not be less than 21 days; and
 - (h) the address or addresses to which the submissions may be sent.
- (6) Notwithstanding the requirements under subsection (3), the Authority may, due to the exigency of the circumstances, establish a tariff methodology without conducting a stakeholders' consultation, where it considers it necessary to do so
- (7) A tariff methodology made under subsection (6) shall be valid for six months and shall terminate on the date, except as otherwise provided, a stakeholders' consultation is conducted in accordance with subsection (5).

- (8) The Authority shall fix a date for which the determined tariff methodology shall come into effect and shall cause the notice of the commencement date to be published in at least two national newspapers with wide coverage and its website.
- (9) Where the Authority considers it necessary that an existing tariff methodology or tariff should be amended, the Authority shall conduct a stakeholders' consultation on the proposed amendment in accordance with subsections (4) and (5).
- (10) A person under obligation to set tariffs shall be bound by operative tariff methodology adopted through the method prescribed in this section.
- (11) A holder of a licence engaged in the sale of petroleum products to retail customers or who is subject to third party access or open access obligations under this Act, shall display at its office a current copy of the tariffs applicable to the services provided by the holder.
- (12) A holder of a licence shall not pass the costs of any fine or penalty incurred under this Act or any other law to a consumer.

124. (1) A licensee subject to tariff regulation by the authority shall —

Approval and publication of charging structures.

- (a) propose tariffs for the approval of the Authority prior to the application of the charges;
- (b) impose tariffs in accordance with the approval referred to under paragraph (a); and
- (c) publish the tariffs as required by the Authority in a manner that ensures that the customers of the licensees are able to identify and calculate the charges for which they will become liable.

(2) The Authority shall, within 24 months after the effective date, review, confirm or modify all applicable tariffs including for licences under sections 125 (6) and 174 (6) of this Act.

PART IV — ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM GAS OPERATIONS

125. (1) Except in accordance with an appropriate licence issued by the Authority, a person shall not undertake the following activities with respect to midstream and downstream gas operations —

Activities requiring a licence for midstream and downstream gas operations.

- (a) establish, construct or operate a facility for the processing of natural gas;
- (b) establish, construct or operate a facility for the storage of natural gas;
- (c) establish, construct or operate a facility for the transportation of natural gas;

- (d) engage in bulk transportation of natural gas by rail, barge or other means of transportation;
- (e) operate a gas transportation network;
- (f) establish, construct or operate a terminal, jetty, or other facility for the export or importation of natural gas;
- (g) engage in wholesale gas supply; or
- (h) engage in the construction or operation of petrochemical or fertiliser plants.

(2) Except in accordance with an appropriate licence issued by the Authority, a person shall not undertake the following activities with respect to downstream gas operations —

- (a) retail trading, distribution or supplies of natural gas;
- (b) establishment, construction or operation of a gas distribution network; or
- (c) establishment, construction or operation of a facility for the supply or trading of natural gas.

(3) The Authority may, by regulation, prescribe additional activities to be undertaken only on the basis of a licence or permit and shall have power to issue licences or permits for the activities in accordance with this Act.

(4) Where a person engages in any of the activities set out in subsection (1), (2) or (3) without a licence or permit, the Authority shall —

- (a) seal the premises where the activity is undertaken;
- (b) seize the facilities by which the activities were undertaken;
- (c) confiscate and dispose of equipment or materials employed by the person in the activity in a manner prescribed by regulations under this Act;
- (d) impose penalties as prescribed by regulations under this Act;
or
- (e) impose any combination of the provisions under paragraphs (a), (b), (c) and (d).

(5) Notwithstanding any provision of this Act, a person who engages in any of the activities set out in subsection (1) or (2) without a licence or permit, in contravention of this Act, shall be liable to prosecution under this Act.

(a) one year or to a fine prescribed by regulation, in the case of an activity requiring a licence; or

(b) six months or to a fine prescribed by regulation, in the case of an activity requiring a permit.

(6) A holder of a subsisting lease, licence or permit who is engaged in activities in midstream or downstream gas operations prior to the effective date shall, within 18 months from the effective date, apply to the Authority for, and the Authority may issue the appropriate licence or permit, where applicable.

(7) The provisions of subsections (4) and (5) shall not apply to any person under subsection (6) until the Authority has considered the application and given a decision.

(8) Where any person, in applying for a licence or permit, knowingly makes a false or misleading statement, the Authority may —

(a) suspend or revoke the licence or permit; or

(b) impose a fine on the licensee or permit holder on the basis of the false or misleading information.

126. In addition to any matter provided under section 113 of this Act, the Authority may issue regulations with respect to midstream and downstream gas operations, which shall include —

Special regulations for midstream and downstream gas operations.

(a) the establishment and operation of a wholesale natural gas market scheme to ensure continuity of supply of natural gas to customers, which will apply to the owners and operators of gas transportation pipelines, shippers of natural gas, holders of natural gas storage and distribution licences and gas retailers; and

(b) matters ancillary to or consequential on the activities set out in paragraph (a).

127. Subject to applicable law and the terms and conditions prescribed by the Authority, a licensee or permit holder is entitled to rights of way for the laying, operation and maintenance of pipelines, communication lines and other similar lines through or across the areas the licensee or permit holder may require for carrying on midstream or downstream gas operations under the licence or permit.

Rights of way relating to midstream and downstream gas operations.

128. The Authority may for the purpose of efficiency, preserve in accordance with applicable law, rights of way, easements or other rights over any surface or seabed areas subject to an existing licence or permit, which may be necessary for the laying, operation and maintenance of transportation pipelines, communication lines, power lines and other similar lines and any right of way or other rights reserved shall continue for the benefit of the operations to which the Authority may subsequently grant the same licence or permit as aforesaid.

Surface rights reserved for the Authority relating to midstream and downstream gas operations.

129. (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a gas processing licence, which shall permit the person to install and operate the following facilities, on its own account or on the basis of open access for customers as stipulated in the licence, —

Grant of a gas processing licence.

- (a) gas conditioning plants, to condition natural gas removing CO₂, H₂S or other impurities;
- (b) gas processing plants, to produce ethane, propane, butane, other natural gas liquids and marketable natural gas;
- (c) gas to liquids plants;
- (d) liquefied natural gas (LNG) plants;
- (e) ethane extraction plants; and
- (f) other plants, which in the opinion of the Authority, require a gas processing licence.

(2) The Authority shall, in considering an application for a gas processing licence, take into account the economic case for the specific facility as provided under subsection (1), including the potential demand for its use.

130. The holder of a gas processing licence shall undertake the activities contemplated by the licence in a manner that complies with the following general obligations —

General duties of the holder of a gas processing licence.

- (a) to construct, operate and maintain its gas processing equipment and facilities in an economical, safe, reliable and environmentally sustainable manner;
- (b) shut down its facilities in emergencies and in order to carry out maintenance or in accordance with curtailment directives issued by the Authority;
- (c) manage its facilities as a responsible and prudent operator;
- (d) avoid any act or omission that may affect the compatibility of the processing facility with any natural gas facility or network that is likely to prejudice the public interest or the integrity of network operations;
- (e) operate the facilities in a manner that results in output of products with specifications as determined by the Authority.

- (f) to operate its facilities subject to open access commitments as stipulated in the licence or where the licence is issued for operations on its own account, provide third party access in an equitable manner;
- (g) treat all customers in a non-discriminatory manner under section 116 of this Act, where the licence is issued on an open access basis; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

131. A gas processing licence shall, in addition to the conditions that may be imposed by the Authority under section 114 of this Act, be deemed to be granted subject to the condition that —

Conditions applicable to a gas processing licence.

- (a) the holder shall not process natural gas on its own account, where the licence is issued on an open access basis;
- (b) a licensee operating on its own account, being an affiliate of a lessee, may own, or the affiliate may own, the natural gas in a gas conditioning plant or gas processing plant for the purpose of conditioning or processing natural gas from the fields under lease with the affiliate, subject to such third party access provisions as may be included in the licence;
- (c) a licensee operating on its own account, who is also a wholesale customer or a holder of a gas distributor licence, may own the natural gas in a gas processing plant, ethane extraction plant or other plant requiring a gas processing licence, where the principal user of the natural gas is the wholesale customer or gas distributor, subject to any third party access provisions as may be included in the licence;
- (d) the holder shall conduct its licenced activities safely and reliably in compliance with any law in force and any prescribed health and safety regulations, standards and operating procedures made under this or any other Act;
- (e) the holder shall have regard to the effect of its licenced activities on the environment and comply with the requirements for environmental protection, management and restoration under this Act and any law in force; and
- (f) the holder shall mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and any law in force.

132. (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a bulk gas storage licence authorising the holder to undertake the bulk storage of natural gas either for its own account or on behalf of customers as stipulated in the licence.

Grant of a bulk gas storage licence.

(2) The Authority shall, in considering an application for a bulk gas storage licence, take into account the economic case for a bulk gas storage facility, including the potential demand for its use.

133. The holder of a bulk gas storage licence shall undertake the activities contemplated by the licence in a manner that complies with the following general obligations —

General duties of a bulk gas storage licensee.

(a) establish and make available to the public at its offices, the —

(i) procedure and terms for obtaining third party access or throughput services on an open access basis, and

(ii) method of response to the request for its services;

(b) construct, operate and maintain its facilities in a safe, economical, reliable, and environmentally sustainable manner taking into account any strategic plans formulated by the Authority;

(c) shut down its facilities in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;

(d) where the licensee operates for its own account, grant to third parties the right to use or have access to capacity within its facilities for the purpose of ensuring competitive gas supply;

(e) consult with and obtain from the Authority written permission prior to any modification of technical and operational rule of practice concerning the operation of its facilities;

(f) conduct its licenced activities in a non-discriminatory manner under section 116 of this Act, where the licence is issued on an open access basis;

(g) manage its facilities as a reasonable and prudent operator; and

(h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

134. In addition to the duties of the Authority, may impose under section 114 of this Act, a bulk gas storage licensee shall be deemed to be deemed subject to the conditions of a

grant of a bulk gas storage licence.

- (a) a licensee operating on its own account, being an affiliate of a lessee, may own, or the affiliate may own, the natural gas in the bulk storage facilities for the purpose of storing natural gas from the fields of the affiliate, subject to such third party access provisions as may be included in the licence;
- (b) a licensee operating on its own account, who is also a wholesale customer or holder of a gas distributor licence, may own the natural gas in the bulk storage facilities, where the principal user of the natural gas is the wholesale customer or gas distributor, subject to any third party access provisions as may be included in the licence;
- (c) the holder conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety regulations issued under this or any other Act;
- (d) the holder have regard to the effect of its licenced activities on the environment and comply with the requirements for environmental protection, management, and restoration under this Act and any law in force; and
- (e) the holder mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and any law in force.

135. (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a gas transportation pipeline licence with the exclusive right to own, construct, operate and maintain a gas transportation pipeline within a route as defined in the licence for its own account with third party access provisions or as common carrier as stipulated in the licence.

Grant of gas transportation pipeline licence.

(2) The Authority shall, in considering an application for a gas transportation pipeline licence, take into account the economic case for a gas transportation pipeline, including the potential demand for its use.

136. The holder of a transportation pipeline licence shall undertake the activities contemplated by the licence in a manner that complies with the following general obligations —

General duties of a transportation pipeline owner.

(a) establish and make available to the public at its offices, the —

- (i) procedure for obtaining and terminating transmission and interconnection services for natural gas, on a third party access or open access basis as determined in the licence and publish the tariffs established by the Authority and

- (b) construct, operate and maintain its gas transportation pipeline in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Authority;
- (c) meet on a reasonable endeavours basis requests for transportation above contractual volumes;
- (d) shut down its gas transportation pipeline in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;
- (e) provide access on a non-discriminatory basis under section 116 of this Act, where the licence is granted on a common carrier basis;
- (f) consult with and obtain from the Authority written permission prior to any modification of technical and operational rule of practice concerning the operation of its pipeline;
- (g) manage its gas transportation pipeline as a reasonable and prudent operator;
- (h) where the pipeline is operated on a common carrier basis, ensure development and operation of terms for access to the gas transportation pipeline in conjunction with the natural gas shipping community and where applicable comply with the relevant network code;
- (i) where the pipeline is operated for its own account, operate its facilities subject to third party access obligations under this Act and regulations prescribed by the Authority; and
- (j) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

137. A gas transportation pipeline licence shall, in addition to the conditions that may be imposed by the Authority under section 114 of this Act, be deemed to be granted subject to the condition that —

Conditions applicable to a gas transportation pipeline licence.

- (a) the holder shall not supply natural gas to customers on its own account where the licence is granted on a common carrier basis;
- (b) a licensee operating on its own account, who is an affiliate of a lessee, may own, or the affiliate may own, the natural gas in a gas transportation pipeline, for the purpose of —

(i) connecting marketable natural gas produced in a field under lease with an affiliate to another gas transportation pipeline or gas transportation network;

- (ii) transporting natural gas to a plant for conditioning or processing natural gas from fields under lease with an affiliate,

subject to third party access provisions as may be included in the licence;

- (c) a licensee operating on its own account, who is also a wholesale customer or holder of a gas distributor licence, may own the natural gas in a gas transportation pipeline, where it is the principal user of the natural gas, subject to any third party access provisions as may be included in the licence;
- (d) a licensee operating on its own account, who is also a holder of a wholesale gas supply licence, may own the natural gas in a gas transportation pipeline, for the purpose of connecting a lessee or wholesale customer to or from a gas transportation network or gas transportation pipeline, subject to such third party access provisions as may be included in the licence;
- (e) the holder shall conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety regulations issued under this or any other Act;
- (f) the holder shall have regard to the effect of its licenced activities on the environment and comply with the requirements of environmental protection, management and restoration under this Act and any law in force;
- (g) the holder shall mark, maintain and secure the boundaries of the pipelines and associated infrastructure constructed under the terms of its licence and any law in force;
- (h) a pipeline transporting un-processed gas to a gas processing plant or gas conditioning plant shall require a gas transportation pipeline licence and the Commission shall -
 - (i) determine and advise the Authority on the characteristics of the gas to be transported, and
 - (ii) cooperate with the Authority in determining possible third party access to the pipeline; and
- (i) the gas transportation pipeline may, with the approval of the Authority, be in whole or in part, a low-pressure pipeline at the request of the licensee.

18. Subject to sections 11 and 125 of this Act, the Authority may, with approval of the Commission, grant a licence to a person to construct, install, maintain or operate a gas transportation pipeline.

19. The Authority may, with approval of the Commission, grant a licence to a person to construct, install, maintain or operate a gas transportation pipeline.

gas transportation network operator licence authorising the conduct of activities specified in the licence, which shall include —

- (a) conveyance of natural gas through the gas transportation network on an open access basis;
- (b) balancing the inputs and off takes from the gas transportation network;
- (c) providing access to shippers based on the gas network code under section 160 of this Act to the gas transportation network; and
- (d) charging for the use of the gas transportation network based on tariffs established by the Authority.

(2) The Authority shall grant only one gas transportation network operator licence within a geographically defined area to a single network operator, provided that the Authority may at its discretion, issue licences to other parties for the operation of isolated or dedicated gas transportation pipelines and for connecting to the gas transportation network.

139. The gas transportation network operator shall exercise the rights and obligations imposed on it in a manner that complies with the following general obligations —

General duties of a gas transportation network operator.

- (a) establish and make available to the public at its offices, the —
 - (i) procedure, terms and conditions for obtaining and terminating access and interconnection services to the transportation network, and
 - (ii) method of response to the request for its service;
- (b) operate an efficient and economical gas transportation network for the safe and reliable conveyance of natural gas in such a manner that is designed to meet all reasonable demands for natural gas transportation;
- (c) operate a nomination and balancing mechanism and an equitable curtailment of natural gas transportation whenever technical or operational expediencies requires;
- (d) consult with and obtain from the Authority written permission prior to any modification of technical and operational rule of practice concerning the operation of its gas transportation network;

ensure the development and operation of the network code and terms of access to the gas transportation network.

collaboration with the Authority, natural gas shippers, all licensees and permit holders operating essential infrastructure;

- (f) ensure equitable and transparent access to the transportation network;
- (g) manage the gas transportation network as a reasonable and prudent operator;
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition; and
- (i) enter into agreements with gas transportation pipeline owners, gas distributors and wholesale customers for connection to and operation of the gas transportation network.

140. Subject to this Act, the Authority may grant the following special powers or authority to a gas transportation network operator to facilitate the conduct of its licenced activities

Powers of a transportation network operator.

- (a) the power to request for and obtain from the relevant shippers, information required to operate the nominations and balancing mechanism, to operate the network or to facilitate competition;
- (b) the right to recover on the basis of an invoice, expenses reasonably incurred in undertaking its licenced activities, subject to any restrictions or conditions imposed by the Authority with respect to both the level and structure of its charges; and
- (c) to purchase natural gas for its own operations for purposes such as testing and commissioning of facilities, compression and line fill, but shall not supply natural gas to customers on its own account.

141. (1) In addition to the conditions as may be imposed by the Authority under section 114 of this Act, a transportation network operator licence may include an obligation to develop market rules in accordance with this Act.

Conditions applicable to a gas transportation network operator licence.

- (2) A gas transportation network operator may be an owner of any or all of a gas transportation pipelines in a gas transportation network.
- (3) Where a third party is the owner of a gas transportation pipeline in a gas transportation network, the owner shall be paid the tariffs determined by the Authority for non-operating owners of the pipelines by the gas transportation network operator.
- (4) A gas transportation network operator shall not misuse its monopoly position in the geographical area to charge franchise or other access charges for providing access to the gas transport network other than the charges specifically permitted under this Act and regulations made under this Act.

142. (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a wholesale gas supply licence to a qualified person. Grant of a wholesale gas supply licence.
- (2) A company who is a lessee producing natural gas is a qualified person for the purpose of subsection (1) and shall be entitled to apply for and be issued with a wholesale gas supply licence by the Authority.
- (3) A wholesale gas supply licence authorises the supplier to —
- (a) purchase natural gas directly from any lessee or third party; and
 - (b) sell and deliver wholesale gas to wholesale customers and gas distributors at any location in Nigeria.
143. A wholesale gas supplier shall undertake the activities contemplated by the wholesale gas supply licence in a manner that complies with the following general obligations, to — General duties of a wholesale gas supplier.
- (a) provide a reliable supply of wholesale gas to wholesale customers who have entered into a gas purchase and sale agreement with the supplier; and
 - (b) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.
144. Subject to the provisions of this Act, the Authority may grant the following specific powers or authority to a wholesale gas supplier to facilitate the conduct of its licenced activities, the right to — Rights of a wholesale gas supplier.
- (a) terminate wholesale gas supply to a wholesale customer in the event of non-payment, following a notice period;
 - (b) recover from a customer, on the basis of an invoice and subject to any conditions imposed by the Authority on the level and structure of a licensee's charges and costs reasonably incurred in the supply of wholesale gas, including the cost of natural gas incurred by the supplier, the cost of transportation of natural gas; and
 - (c) enter a premises, in accordance with a metering code issued by the Authority, for the purpose of reading the meters, testing and maintaining metering equipment, disconnecting customers and to remove the meters.
145. (1) In addition to conditions the Authority may impose under section 114 of this Act, a wholesale gas supply licence shall be deemed to be granted subject to the supplier Conditions applicable to a wholesale gas supply licence.

- (a) requesting security or applying a credit scoring methodology approved by the Authority in deciding whether supply is economical;
- (b) supplying marketable natural gas to a wholesale customer with whom the supplier has entered into a gas purchase and sale agreement and who in order to connect to a gas transportation network or gas transportation pipeline is willing and able to —
 - (i) pay for the connection,
 - (ii) construct its own gas transportation pipeline under section 137 (c) of this Act, or
 - (iii) pay the respective tariff to the supplier for the gas transportation pipeline owned by the supplier,
 subject to safety and network capacity constraints;
- (c) conducting its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety regulations issued under this or any other Act; and
- (d) complying with customer protection measures in accordance with sections 164, 165 and 166 of this Act.

(2) A wholesale gas supplier shall undertake its licenced activities in a manner that complies with the conditions of the licence.

146. (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a retail gas supply licence authorising the holder to —

Grant of retail gas supply licence.

- (a) sell or retail compressed or liquefied marketable natural gas to customers based on being a wholesale customer or third party access to gas distribution systems of gas distributors; and
- (b) establish, construct and operate facilities to deliver compressed natural gas and small scale facilities for LNG, not requiring a gas processing licence, for transportation by truck, railcar or marine vessel to customers in compressed or liquefied form, including customers using LNG as marine bunker fuel.

(2) A company who is a lessee producing natural gas is a qualified person for the purpose of subsection (1) and shall be entitled to apply for and be issued with a retail gas supply licence by the Authority

- (a) purchase marketable natural gas directly from a lessee, wholesale gas supplier or third party on a free market basis; and
- (b) sell and deliver compressed or LNG to customers at any location in Nigeria on a free market basis.

147. In addition to conditions the Authority may impose under section 114 of this Act or that may be prescribed by regulation, a retail gas supply licence shall be deemed to be granted subject to the duty of the holder to —

General duties of gas retailer.

- (a) develop and maintain a safe, efficient, reliable and economical service for the retailing of marketable natural gas;
- (b) carry on its business in a manner that shall promote competition and avoid monopoly in the natural gas market in Nigeria;
- (c) construct, operate and maintain its gas compression and liquefaction facilities in a safe, economical, and reliable manner taking into account any strategic plans formulated by the Authority;
- (d) shut down its gas compression and liquefaction facilities in emergencies in order to carry out maintenance or respond to curtailment directives issued by the Authority;
- (e) conduct its activities in a safe and reliable standard in compliance with prescribed environmental, health and safety-related regulations issued under this or any other Act;
- (f) publish the prices to be charged and to be paid by a person to whom the gas retailer sells natural gas in a manner to ensure adequate publicity unless the Authority direct otherwise; and
- (g) comply with customer protection measures set out in sections 164, 165 and 166 of this Act.

148. (1) Subject to sections 111 and 125 of this Act or regulations made under this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person gas distribution licence with rights to establish, construct, and operate a gas distribution system and to distribute and sell its natural gas without discrimination to consumers in a local distribution zone.

Grant of gas distribution licence.

(2) Notwithstanding the rights of a gas retailer under this Act, the holder of a gas distribution licence shall be entitled to sell natural gas to customers that are not wholesale customers.

(3) The Authority shall, in considering an application for a gas distribution licence, take into account the circumstances for the licence, including the potential demand for gas.

(4) The geographical limit of a local distribution zone shall be defined in the relevant gas distribution licence.

(5) The rights and duties under a gas distribution licence shall be exclusive to the gas distributor for the validity period of the distribution licence.

(6) A gas distribution licence may –

(a) include provisions for providing third party access to the gas distribution network to a gas retailer or gas distributor on its own initiative; and

(b) permit access to a gas retailer to the gas distribution network under terms and conditions agreed to by the parties.

(7) Subject to subsection (6), the gas distributor shall own the marketable natural gas in the gas distribution network.

149. A gas distributor shall undertake the activities contemplated by the gas distribution licence in a manner that complies with the following general obligations, to –

General duties of a gas distributor.

(a) develop, operate and maintain an economical gas distribution network for the safe and reliable conveyance of natural gas;

(b) ensure a reliable and efficient distribution of natural gas to customers on request, provided that it is economical to do so;

(c) distribute and sell natural gas on request to a customer who is willing and able to pay for connection to the gas distribution network, subject to safety and network capacity constraints;

(d) conduct licenced activities safely and reliably in compliance with any law in force and any health and safety-related regulations issued by the Authority under this or any other Act;

(e) connect all customers within its local distribution zone in accordance with regulations if economically practicable to do so;

(f) offer and publish terms and conditions of access to its gas distribution network as required and publish gas prices applicable to different classes of customers, which have been approved by the Authority;

(g) comply with customer protection measures set out in sections 164, 165 and 166 of this Act;

(h) prepare a distribution development plan within a period after the commencement of operations, or as may be required by the Authority, for the construction, operation, maintenance and distribution of the gas

any amendments as a result of economic or social developments in the zone for the consideration and approval of the Authority; and

- (i) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

150. Subject to the provisions of this Act, the Authority may, in order to facilitate the conduct of its licenced activities, grant the gas distributor the right to — Rights of the gas distributor.

- (a) enter a premises for the purpose of reading the meters, testing and maintaining metering equipment, disconnecting customers and to remove its meters; and
- (b) recover, on the basis of an invoice, costs reasonably incurred in the provision of appropriate infrastructure, subject to any conditions imposed by the Authority to both the level and structure of a distributor's charge, provided that reasonably incurred costs shall include any amount paid to the Authority as a licence fee.

151. In addition to conditions the Authority may impose under section 114 of this Act or that may be prescribed by regulation, a distribution licence shall be deemed to be granted subject to the distributor — Conditions applicable to a gas distribution licence.

- (a) conducting its licenced activities in a safe and reliable standard in compliance with prescribed management, health and safety related regulations issued under this or any other Act;
- (b) having regard to the effect of its licenced activities on the environment and complying with the requirements for environmental protection, management, and restoration under this Act and any law in force; and
- (c) marking, maintaining and securing the boundaries of the distribution pipelines constructed or other distribution infrastructure as prescribed.

152. A gas distributor shall consult stakeholders on the proposed distribution development plan and any amendments within its local distribution zone and consider all representations received. Arrangements for gas distribution.

153. (1) Subject to sections 111 and 125 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a domestic gas aggregation licence. Domestic gas aggregation licence.

- (2) The duration of the domestic gas aggregation licence shall be for a period of two years effective from the date of the grant of the licence.

(3) The domestic gas aggregation licence may be renewed by the Authority for further period of two years in each instance until the attainment of liquidity in the domestic gas market pursuant to the criteria of section 167 (3) of this Act, whereupon gas aggregation shall cease and the domestic gas aggregation licence shall be terminated by the Authority.

(4) The board of domestic gas aggregator shall determine the fees for the services of the domestic gas aggregator and the fees shall be paid by the producer clients and customer clients in order to ensure self-financing of the domestic gas aggregator.

154. The domestic gas aggregator shall —

Functions of the domestic gas aggregator.

- (a) support the implementation of the domestic gas delivery obligation;
- (b) implement a natural gas management model, through which the demand and supply of natural gas for use in the strategic sectors shall be monitored;
- (c) operate a nomination and balancing mechanism for equitable curtailment of natural gas deliveries in cooperation with the Authority, whenever demand and supply expediencies require;
- (d) ensure transparency of dealing between natural gas suppliers and wholesale customers of the strategic sectors;
- (e) conduct its operations in a business-like and transparent manner and shall not engage in any anti-competitive behaviour and practices;
- (f) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition;
- (g) establish an escrow account into which customer clients shall contribute their payments for the marketable natural gas received and from which the domestic gas aggregator shall pay the producer clients for their supplies of natural gas under this Act; and
- (h) do other things as are necessary or incidental to the carrying out of its functions and duties under this Act.

155. (1) The domestic gas aggregator shall be a not-for-profit company limited by guarantee established under the Companies and Allied Matters Act.

Establishment of the aggregator.

Act No 3, 2020

(2) The company under subsection (1) shall not be a company that is controlled by licensees or lessees of upstream petroleum operations or by wholesale customers or is an affiliate of such entities, provided that ownership of the company may be by a combination of such licensees or lessees, wholesale customers, and other interested

parties, such as licensees of gas transportation pipelines and gas transportation networks.

156. The domestic gas aggregator shall issue a gas purchase order to a producer client where a customer client requires a specific volume of marketable natural gas, which is included in the domestic gas demand requirement under section 173 of this Act, provided, however, that where the producer client and customer client have entered into a gas purchase and sale agreement, the domestic gas delivery obligation shall be dealt with pursuant to such agreement which may continue to use the escrow account mechanism as provided for under section 154 (g) of this Act and where such agreement is concluded under section 110 (2) of this Act, there shall be no further involvement of the aggregator. Gas purchase orders.
157. The gas purchase order under section 156 of this Act and the escrow mechanism of under 154 (g) of this Act shall be based on the prices for marketable natural gas established by the Authority under section 167 of this Act. Price conditions of gas purchase orders.
158. (1) The Authority shall, following consultations with interested stakeholders, issue regulations — Wholesale customers.
- (a) defining the class or classes of customers that shall constitute eligible wholesale customers under this Act, and
 - (b) specifying the qualifying criteria for the classification:
- Provided that the regulations may be amended from time to time to facilitate the introduction of competition in supply and any amendment of the regulations resulting in a change of the class of customers shall not affect the rights and obligations of parties under natural gas supply contracts entered into prior to such amendment.
- (2) Wholesale customers shall be entitled to secure marketable natural gas or raw gas from any wholesale gas supplier or lessee, subject to section 173 (3) of this Act.
159. (1) The Authority shall develop arrangements for the safe and efficient trading of wholesale gas, where it determines that there is need for formal arrangements for the trading of wholesale gas. Trading and settlement of wholesale gas.
- (2) The Authority shall, where required, make regulations under subsection (1) for the trading and settlement of wholesale gas in consultation with industry participants and interested stakeholders.
160. (1) The operation of a gas transportation network shall be in accordance with the existing network code issued by the Government. Gas network code.
- (2) The Authority may in consultation with stakeholders in midstream and downstream gas operations modify the network code or create other network codes for common areas of operation.

(3) The Authority shall make copies of the gas network code available to interested parties upon payment of prescribed fees.

161. (1) A person shall be permitted access to an open access gas transportation pipeline or a gas transportation network for the purpose of having marketable natural gas transported to points of consumption subject to compliance with the prescribed terms and conditions for access stated in the gas network code.

Access related to midstream and downstream gas operations.

(2) The gas network code shall set out standard terms and conditions for connection to, interconnection with access and use of the gas transportation network.

(3) Where a gas transportation pipeline is isolated from the main gas transportation network, the Authority shall develop separate terms of access for the isolated gas transportation pipeline.

(4) The Authority may develop special terms for third party access to a gas distribution network.

162. (1) Where open access applies, open access to the gas transportation pipeline or gas transportation network shall be —

Conditions for the provision of open access in relation to gas operations.

(a) provided on a non-discriminatory basis between system users with similar characteristics under section 116 of this Act;

(b) provided in respect of any available capacity, where the capacity is not subject to a previous contractual commitment;

(c) provided in accordance with and governed by the terms and conditions of the network code approved by the Authority, where applicable;

(d) provided on the condition that the applicant for access is or becomes a party to and undertakes to comply with the applicable network code; and

(e) subject to the pricing principles set out in section 170 of this Act.

(2) Connection agreements may be entered into between —

(a) gas transportation pipeline owners and gas transportation network operator;

(b) a gas distributor and the gas transportation network operator, where a gas distribution network connects to the main transportation network; or

(c) a gas distributor and a gas transportation pipeline owner or gas transportation network operator.

163. The Authority may mediate in disputes in respect of third party access

Disputes in relation to access.

164. (1) The Authority may, to protect the interests of customers, issue regulations requiring suppliers, gas distributors and petroleum product distributors to —

Customer protection.

- (a) publish their terms of supply or distribution including tariffs, other than for negotiated tariffs under section 122 (4) of this Act;
- (b) establish or to facilitate the establishment of a forum at which customers are able to express their views and raise concerns;
- (c) formulate and adhere to standards of performance as are, in its opinion, necessary to ensure the safety, reliability and quality of supply and distribution services to customers and set penalties, pursuant to regulations, for failure to comply;
- (d) prepare and submit reports to the Authority, at least on an annual basis, indicating their performance levels and status of their operations in respect of licenced activities at such times as the Authority may by regulation or in their respective licences prescribe; and
- (e) develop and adhere to customer service codes, setting out the practices and procedures to be followed in the conduct of specified licenced activities, which may include —
 - (i) the installation, testing, maintenance and reading of meters,
 - (ii) fault repairs and response to customer emergencies,
 - (iii) the connection and disconnection of customers,
 - (iv) responding to customer complaints and complaint resolution,
 - (v) Billing and invoicing,
 - (vi) the extension of payment and credit facilities,
 - (vii) the provision of information to customers and the use and protection of customer information, and
 - (viii) the establishment of special services for economically or socially disadvantaged customers

2. The Authority may, in respect of all the applications for a licence, issue regulations requiring the licence holder to consider necessary in the Authority's

- (3) The customer service codes shall be made available to all customers upon request and published on the website of the Authority.
- (4) The Authority shall notify or by regulation require licensees to notify customers of the customer service codes that shall be adhered to by licensees.
- (5) The Authority shall, in developing customer protection regulations, —
 - (a) consult with suppliers, gas distributors, petroleum product distributors and interested stakeholders; and
 - (b) take into account existing procedures, practices and standards issued by the Federal Competition and Consumer Protection Commission.

165. The Authority shall, at its discretion and at such time or times as it deems appropriate, designate distributors of last resort and suppliers of last resort to provide services to customers —

Provision of service to customers.

- (a) where an existing gas distributor for a local distribution zone, a petroleum product distributor or a supplier becomes insolvent, is unable to provide licenced services or has had its licence suspended or revoked,
- (b) where the gas distributor for a local distribution zone or supplier refuses or fails to fulfil the terms of its licence to distribute or supply natural gas or petroleum product to customers, and
- (c) in such other circumstances as the Authority may deem appropriate:

Provided that, in each case, any reasonable additional costs associated with the obligation to act as distributor or supplier of last resort shall be recoverable through appropriate charging arrangements agreed with the Authority.

166. Where the designation of a supplier or distributor of last resort requires the transfer of customers from one licensee to another, the Authority shall prepare, or require the applicable supplier or distributor of last resort to prepare —

Transfer of customers.

- (a) procedures to secure the effective transfer of customers; and
- (b) a statement of any costs reasonably incurred in undertaking the transfer, which if approved by the Authority, shall be recoverable through regulated charges.

167. (1) The Authority shall, in accordance with this section and for each year, determine the domestic base price under the fifth Schedule to this Act for the purpose of determining the charges for the provision of gas, petroleum products and other services to customers.

Natural gas prices for the strategic petroleum products.

168. (1) The Authority shall, in accordance with this section and for each year, determine the domestic base price under the fifth Schedule to this Act for the purpose of determining the charges for the provision of gas, petroleum products and other services to customers.

- (2) The Authority shall continue to determine the prices referred to under subsection (1), if in its opinion, the control of prices for natural gas for the strategic sector is required.
- (3) The price control and the corresponding role of the domestic gas aggregator shall not be required, where the —
 - (a) entire domestic gas demand requirement under section 173 (2) is covered by contracts under sections 110 (2) and 173 (3) of this Act; or
 - (b) domestic market for natural gas is largely characterised by free market based contracting for natural gas between willing buyers and willing sellers, based on criteria established by the Authority in consultation with the stakeholders and at such time the provisions of subsections (4), (5), (6) and (7) and section 168 shall no longer be applicable and the criteria under this subsection may include that certain classes of wholesale customers, but not all, of the strategic sectors will no longer be subject to price controls as part of an ongoing process towards full free market conditions.
- (4) The aggregate gas price for a month shall be the price calculated based on the procedures established by the domestic gas aggregator on the basis of the prices determined by the Authority under subsection (1).
- (5) The price of marketable natural gas applicable to the power sector shall be the domestic base price at the marketable natural gas delivery point.
- (6) The price of marketable natural gas applicable to the commercial sector shall be the domestic base price at the marketable natural gas delivery point plus US \$0.50 per MMBtu.
- (7) Gas distributors shall not be part of the strategic sectors and shall negotiate the supply and pricing of their natural gas directly, provided that the applicable price for gas distributors for the marketable natural gas at the marketable gas delivery point shall not exceed that of the commercial sector under subsection (6).
- (8) Where applicable, wholesale gas suppliers, the wholesale customers of the strategic sectors and gas distributors shall pay for the transportation cost of the marketable natural gas from the marketable natural gas delivery point to the facilities of the wholesale customers.
- (9) The wholesale gas suppliers, wholesale customers of the strategic sectors and gas distributors shall, for the purpose of transportation, have the option to —
 - (a) use the gas transportation network applicable to their geographical location;

(b) obtain a gas transportation licence in order to transport their natural gas connecting to the gas transportation network, another existing gas transportation pipeline or directly to a marketable natural gas delivery point.

(10) Each producer client shall, for any month, receive from the escrow account of the domestic gas aggregator an amount that is equal to the aggregate gas price multiplied by the customer client volume that was paid for such producer client in such month by the customer client.

168. (1) Subject to the provisions of section 167 (3) of this Act, the gas price for the gas based industries shall be determined by the pricing principles specified in the Fourth Schedule to this Act.

Gas based industries gas price.

Fourth Schedule.

(2) The floor price for the gas based industries shall be US \$0.90 per MMBtu.

(3) The ceiling price shall be the domestic base price applicable for any particular year.

(4) The prices determined in the Fourth Schedule to this Act shall be prices at the marketable gas delivery point from where transport costs need to be added for delivery to the respective gas based industries.

Fourth Schedule.

(5) The Authority may by regulation adjust the price mechanism to add other gas based industries in line with market realities.

169. (1) Where the Authority determines that —

Power to regulate and review prices.

(a) a particular licenced activity is a monopoly service,

(b) competition has not yet developed in the market to such an extent as to protect the interests of customers, or

(c) a particular licensee is a dominant provider,

the Authority shall regulate the prices charged by licensees in respect of the activities, in a manner consistent with its functions under this Act and with the pricing principles set out in section 170 of this Act.

(2) The Authority shall undertake periodic pricing methodology reviews, provided that the pricing methodology review shall not affect arrangements entered into or approvals given for the development of a gas infrastructure or utilisation project prior to the effective date.

(3) The Authority shall consult with licensees, industry participants and stakeholders before undertaking a pricing review or establishing a methodology for regulating prices and revenues earned by licensees providing monopoly or dominant services.

170. Subject to the provisions of this Chapter, the Authority shall, in the exercise of its powers to regulate prices, be guided by the following principles:

Principles to be followed in regulating prices.

- (a) marketable natural gas prices shall be disaggregated into the component elements of the supply chain including the costs of wholesale gas, tariffs for gas processing, tariffs for transportation pipelines for natural gas, distribution and supply;
- (b) the prices charged for each licenced activity shall reflect the costs incurred in the efficient provision of that activity;
- (c) prices charged shall permit a reasonable return for licensees on their investments; and
- (d) prices shall not discriminate between customers with similar characteristics, such as similar size or a similar consumption profile.

171. The Authority may issue regulations imposing public service obligations on licensees in relation to matters including —

Public service obligations related to policy issues.

- (a) security of supply;
- (b) economic development and the achievement of wider economic policy objectives;
- (c) environmental protection; and
- (d) health and safety.

172. (1) The Authority shall, by regulation, provide for the recovery of any additional costs incurred in complying with the public service obligations through a public service levy, which may be imposed on customers, provided that it would, in the opinion of the authority, be in the wider public interest.

Public service levy.

(2) The amount of, and mechanism for the collection and remittance of, the public service levy imposed on each customer shall be set out in the regulations contemplated by subsection (1).

173. (1) The Authority shall, prior to the 1st of March of each calendar year, determine the domestic gas demand requirement and inform the Commission of this requirement.

Domestic gas demand requirement.

(2) Subject to subsection (3), the domestic gas demand requirement shall be the total amount of marketable natural gas required for all wholesale customers of the strategic sectors.

(3) Each wholesale customer of the strategic sectors shall have the right to negotiate its own supply contracts directly with lessees or suppliers and where the wholesale customer is of the view that the contracts are satisfactory for its requirements, it shall inform the

- (a) Authority that there is no need to be a customer client of the domestic gas aggregator; and
- (b) Commission of the lessees from which the required marketable natural gas has been obtained.

PART V — ADMINISTRATION OF MIDSTREAM AND DOWNSTREAM
PETROLEUM LIQUIDS OPERATIONS

174. (1) Except in accordance with an appropriate licence issued by the Authority, a person shall not undertake the following activities with respect to midstream petroleum liquids operations —

Activities requiring a licence for midstream and downstream petroleum liquids operations.

- (a) establish, construct or operate a terminal or other facility for the export or importation of crude oil or petroleum products;
- (b) establish, construct or operate a crude oil refinery;
- (c) establish, construct or operate a pipeline for the bulk transportation of petroleum liquids;
- (d) engage in bulk transportation of petroleum liquids by rail, barge or other means within Nigeria;
- (e) establish, construct or operate a facility for the bulk storage of petroleum liquids;
- (f) establish, construct or operate a petroleum liquids transportation network;
- (g) engage in the bulk sale of petroleum liquids; or
- (h) undertake construction or operation of any facility for the production of lubricants or petrochemicals based on petroleum products.

(2) Except in accordance with an appropriate licence or permit issued by the Authority, a person shall not undertake the following activities with respect to downstream petroleum products operations —

- (a) construct or operate any facility for the distribution or sale of petroleum products to retail customers;
- (b) establish, construct or operate a depot for the storage of petroleum products; or
- (c) undertake distribution, marketing or retail trading of petroleum products

- (3) The Authority may, by regulation, prescribe additional activities to be undertaken only on the basis of a licence or permit and shall have power to issue licences or permits for the activities in accordance with this Act.
- (4) Where a person engages in any of the activities set out in subsection (1), (2) or (3) without a licence or permit, the Authority shall —
- (a) seal the premises where the activity is undertaken;
 - (b) dismantle and seize the facilities by which the activities were undertaken;
 - (c) confiscate equipment or materials employed by the person in such activity; or
 - (d) impose penalties as prescribed by regulations under this Act.
- (5) Notwithstanding any provision of this Act, a person who engages in any of the activities set out in subsection (1), (2) or (3) without a licence or permit, commits an offence and is liable on conviction to imprisonment for a term of —
- (a) one year or to a fine prescribed by regulation, in the case of an activity requiring a licence; or
 - (b) six months or to a fine prescribed by regulation, in the case of an activity requiring a permit.
- (6) A holder of a subsisting lease, licence or permit who is engaged in activities in midstream or downstream petroleum liquids operations prior to the effective date shall, within 18 months from the effective date, apply to the Authority for, and the Authority may issue the appropriate licence or permit, where applicable.
- (7) The provisions of subsections (4) and (5) shall not apply to any person under subsection (6) until the Authority has considered the application and given a decision.
- (8) Where any person, in applying for a licence or permit, knowingly makes a false or misleading statement, the Authority may —
- (a) suspend or revoke the licence or permit; or
 - (b) impose a fine on the licensee or permit holder on the basis of the false or misleading information.
- (9) Crude handling agreements and any other agreements among parties entered into prior to the effective date related to midstream or downstream operations shall be submitted for review to the Authority and the Commission and where so ordered by the Authority or Commission, as the case may be, amendments shall be made to such agreements in compliance with the Act.

175. In addition to any matter provided under section 113 of this Act, the Authority may issue regulations with respect to midstream and downstream petroleum liquids operations, which shall include —

Special regulations for midstream and downstream petroleum liquids operations.

(a) the establishment and operation of a wholesale market, to ensure the continuity of supply of petroleum products to customers, that will apply to the owners and operators of crude oil refineries, transportation pipelines and other facilities or vessels for the bulk transportation of petroleum liquids, bulk storage facilities for petroleum liquids and terminals and outlets for retail trading of petroleum products; and

(b) matters ancillary to or consequential on the activities set out in paragraph (a).

176. Subject to applicable law and the terms and conditions prescribed by the authority, a licensee or permit holder is entitled to rights of way for the laying, operation and maintenance of petroleum liquids transportation pipelines, communication lines, power lines and other similar lines through or across the areas the licensee or permit holder may require for carrying on midstream or downstream petroleum liquids operations under the licence or permit.

Rights of way relating to midstream and downstream petroleum liquids operations.

177. The Authority may for the purpose of efficiency, preserve rights of way, easements or other rights over any surface or seabed areas subject to an existing licence or permit, which may be necessary for the laying, operation and maintenance of petroleum liquids transportation pipelines, communication lines, power lines and other similar lines and any right of way or other rights reserved shall continue for the benefit of any entity to whom the Authority may subsequently grant the same for a licence or permit.

Surface rights reserves for the Authority for midstream and downstream petroleum liquids operations.

178. (1) The Authority may in consultation with licensees and other stakeholders with respect to midstream petroleum liquids operations, develop a network code governing the terms of access into facilities and infrastructure used in midstream petroleum liquids operations.

Petroleum liquids midstream network code.

(2) The network code may include the following matters —

(a) a connection and interconnection policy, standard terms for connection to an open access petroleum liquids transportation pipeline or petroleum liquids transportation network and a statement of the connection charging methodology;

(b) a mechanism by which users reserve capacity in facilities and infrastructure and at any time there is a greater demand for access than available capacity, a mechanism for allocating capacity between users;

(c) the nomination

(d) the nomination of the pipeline and infrastructure used in the petroleum liquids transportation network and the terms of access to the pipeline and infrastructure.

timing and flow-rate of injections into and withdrawals from the petroleum liquids transportation network;

(e) the structure of charges and the applicable tariffs charged for using the petroleum liquids transportation network;

(f) the balancing of crude oil, condensates or petroleum products being conveyed;

(g) registration arrangements;

(h) metering, allocation and settlement arrangements;

(i) governance arrangements; and

(j) the maintenance of a register of customers and suppliers.

(3) The petroleum liquids midstream network code shall be published on the website of the Authority and physical copies shall be made available to interested persons on payment of a prescribed fee.

179. (1) Subject to section 162 of this Act, any person licenced under the provisions of this Act to supply petroleum liquids shall be permitted third party access to facilities and infrastructure used for midstream petroleum operation by owners, operating on their own account, of such facilities and infrastructure —

Third party access relating to midstream and downstream petroleum liquids operations.

(a) in the manner prescribed by this Act, the regulations, codes and other guidelines issued by the Authority under this Act; and

(b) on commercially viable terms based on a cost reflective pricing methodology

(2) The Authority may mediate in disputes related to third party access.

180. (1) Where open access applies, open access to the facilities and infrastructure used with respect to midstream petroleum liquids operations shall be —

Conditions for the provision of open access in relation to petroleum liquids operations.

(a) undertaken on a non-discriminatory basis between system users with similar characteristics under section 116 of this Act,

(b) provided in respect of any available capacity, where the capacity is not subject to a previous contractual commitment,

(c) provided in accordance with and governed by the terms and conditions of the network code approved by the Authority, where applicable.

at provided on the condition that the applicant for access is a member of the network and undertakes to comply with the applicable network code.

(c) subject to the pricing principles set out in section 207 of this Act:

Provided that facilities and infrastructure which are specifically defined by the Authority for the storage of national strategic stocks shall be exempt from the provisions of this Act relating to open access.

(2) The Authority may mediate in disputes in respect of open access.

181. The Authority shall

National strategic stocks.

- (a) establish, administer and ensure the storage and distribution of the national strategic stocks of petroleum products in accordance with regulations issued by the Authority;
- (b) determine and publish the amount to be charged as a levy for the financing of the national strategic stocks, which shall form part of the retail price of each petroleum product, such levy to be determined as a percentage of the retail price and be deducted on wholesale basis; and
- (c) designate, in consultation with the appropriate authorities and national security agencies, the strategic locations across the country where the national strategic stocks shall be distributed and maintained.

182. The Authority shall ensure that all companies with a licence for the bulk storage of petroleum products granted under section 187 of this Act maintain operating stocks in accordance with guidelines published by the Authority.

Operating stock.

183. (1) Subject to sections 111 and 174 of this Act and upon the approval of the Authority of an application and payment of a prescribed fee by a qualified person, the Minister may, on the recommendation of the Authority, grant and issue to that person a crude oil refining licence which shall permit the licensee to —

Grant of a crude oil refining licence.

- (a) procure, construct, install and operate facilities to process crude oil on its own account into derivative chemicals and petroleum products; and
- (b) sell such chemicals and petroleum products at the exit of the refinery.

(2) In considering an application for a crude oil refining licence, the Authority shall take into account the economic case for a refinery, including the potential demand for its use.

184. The crude oil refiner shall undertake the activities contemplated by the licence in a manner which best complies with the following general obligations:

Oil refiner's general obligations.

- (a) procure, construct, install, operate and maintain its refinery and associated facilities in an economical, safe, reliable and environmentally friendly manner;
- (b) shut down its facilities in emergencies and in order to carry out maintenance or in accordance with curtailment directives issued by the Authority;
- (c) manage its facilities as a reasonable and prudent operator;
- (d) avoid any act or omission that may affect the compatibility of the refinery with any facility or network that is likely to prejudice the public interest or the integrity of network operations;
- (e) produce petroleum products to a quality suitable for the transportation system as specified in the licence;
- (f) produce petroleum products to a quality suitable for use in accordance to the specifications approved by the Authority;
- (g) treat all customers in a non-discriminatory manner under section 116 of this Act; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

185. A crude oil refiner shall have the right of access to facilities, including harbours, jetties, petroleum bulk storage, transportation facilities and pumping installations in accordance with the open access or third party access requirements and the tariff methodology approved by the Authority Access rights.

186. In addition to conditions as may be imposed by the Authority under section 114 of this Act, a crude oil refining licence shall be deemed to be granted subject to the conditions that the holder shall — Conditions applicable to a crude oil refining licence.

- (a) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety related regulations, standards and operating procedures issued under this Act;
- (b) have regard to the effect of its licenced activities on the environment and complying with the requirements for environmental protection, management and restoration under this Act;
- (c) mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and its related licence.

(d) comply with any conditions precedent or other conditions as the Authority may prescribe by regulation.

187. (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person bulk petroleum liquids storage licence authorising the holder to undertake the bulk storage of petroleum liquids whether for its own account or on behalf of customers as provided for in the licence.

Grant of a bulk petroleum liquids storage licence.

(2) In considering an application for a bulk petroleum liquids storage licence, the Authority shall take into account the economic case for bulk storage facility, including the potential demand for its use.

188. The holder of a bulk petroleum liquids storage licence shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations, to

General duties of a bulk storage licensee.

(a) establish and make available to the public at its offices, the —

(i) procedure for obtaining third party access or open access, as provided for in the licence, throughput and terminating its services, and

(ii) method of response to the request for its service;

(b) procure, construct, install, operate and maintain its facilities in a safe, economical, reliable and environmentally friendly manner taking into account any strategic plans formulated by the Authority;

(c) shut down its facilities in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;

(d) grant third party access to use or have access to spare capacity within its facilities for the purpose of ensuring competitive supply of crude oil and petroleum products, where the licensee operates on its own account;

(e) consult with the Authority and obtain written permission prior to any modification of technical and operational rules of practice concerning the operation of its facilities;

(f) conduct its licenced activities in a non-discriminatory manner between all classes of customers under section 116 of this Act, where the licence is for bulk storage for customers and is operated on an open access basis.

eg. the holder of its facilities is a classifiable and publicly operated unit

(h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

189. In addition to conditions as may be imposed by the Authority under section 114 of this Act, a bulk petroleum liquids storage licence shall be deemed to be granted subject to the conditions that the holder shall —

Conditions applicable to a bulk petroleum liquids storage licence.

(a) where the licence is operated for the own account of the licensee, the licensee may own the petroleum liquids contained in the storage and where the licence is operated on an open access basis the licensee shall not own the petroleum liquids;

(b) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety related regulations issued under this Act;

(c) have regard to the effect of its licenced activities on the environment and complying with the requirements for environmental protection, management and restoration under this Act; and

(d) mark, maintain and secure the boundaries of its facilities and associated infrastructure constructed under the terms of its licence and any law in force.

190. (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum liquids transportation pipeline licence with the exclusive right to own, construct, operate and maintain a transportation pipeline for the bulk transportation of petroleum liquids within a route as defined in the licence for its own account with third party access provisions or as common carrier as stipulated in the licence.

Grant of petroleum liquids transportation pipeline licence.

(2) In considering an application for a petroleum liquids transportation pipeline licence, the Authority shall take into account the economic case for a petroleum liquids transportation pipeline including the potential demand for its use.

191. The holder of a petroleum liquids transportation pipeline licence shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations —

General duties of a petroleum liquids transportation pipeline owner.

(a) establish and make available to the public at its offices, the —

(i) procedure for obtaining and terminating transmission and interconnection services, and

(ii) method of response to the request for its service;

(b) construct, operate and maintain its petroleum liquids transportation pipeline in a safe, sound, efficient and reliable manner

taking into account any strategic plans formulated by the Authority;

- (c) manage supply shortfalls and meet on a reasonable endeavours basis requests for transportation above contractual volumes;
- (d) shut down its petroleum liquids transportation pipeline in emergencies and in order to carry out maintenance or in response to curtailment directives issued by the Authority;
- (e) provide access on a non-discriminatory basis under section 116 of this Act, where the licence is granted on a common carrier basis and provide for third party access pursuant to the licence conditions where the transportation pipeline is operated for the own account of the licensee;
- (f) consult with the Authority and obtain written permission prior to any modification of technical and operational rules of practice concerning the operation of its pipeline;
- (g) manage its transportation pipeline as a reasonable and prudent operator; and
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

192. In addition to conditions as may be imposed by the Authority under section 114 of this Act, a transportation pipeline licence shall be deemed to be granted subject to the conditions that the holder shall ---

Conditions applicable to a petroleum liquids transportation pipeline licence.

- (a) not own petroleum liquids in the pipeline, where the licence is issued on a common carrier basis;
- (b) where the holder is a licensee operating on its own account, who is a company which is an affiliate of a company that is a lessee, the licensee may own, or the affiliate may own, the petroleum liquids in a petroleum liquids transportation pipeline for the purpose of removing petroleum liquids from the lease;
- (c) where the holder is a company that also holds a licence to be a wholesale petroleum liquids supplier, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline, for the purpose of connecting to a lessee or wholesale customer to or from a petroleum liquids transportation network or petroleum liquids transportation pipeline, subject to third party access provisions as may be included in the licence.

(d) where the holder is a company that also holds a licence to be a petroleum liquids supplier, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline, for the purpose of connecting to a lessee or wholesale customer to or from a petroleum liquids transportation network or petroleum liquids transportation pipeline, subject to third party access provisions as may be included in the licence.

may own the petroleum liquids in a petroleum liquids transportation pipeline, where the principal user of the transportation pipeline is the petroleum product distributor, subject to third party access provisions as may be included in the licence;

- (e) where the holder is a company that also holds a licence to be a wholesale petroleum liquids supplier, operating on its own account, may own the petroleum liquids in a petroleum liquids transportation pipeline, for the purpose of connecting to a lessee or wholesale customer to or from a petroleum liquids transportation network or petroleum liquids transportation pipeline, subject to third party access provisions as may be included in the licence;
- (f) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed health and safety related regulations issued under this Act;
- (g) have regard to the effect of its licenced activities on the environment and comply with the requirements for environmental protection, management, and restoration under this Act; and
- (h) mark, maintain and secure the boundaries of the pipelines and associated infrastructure constructed under the terms of its licence.

193. (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum liquids transportation network operator licence authorising the conduct of activities specified in the licence, which shall include —

Grant of a petroleum liquids transportation network operator licence.

- (a) conveyance of petroleum liquids through the transportation network;
- (b) balancing the inputs and off takes from the transportation network;
- (c) providing open access to the transportation network; and
- (d) charging for the use of the transportation network.

(2) The Authority shall grant only one petroleum liquids transportation network operator licence for specified petroleum liquids within a geographically defined area to a single network operator, provided that the authority may, at its discretion, issue licences to other parties for the operation of isolated or dedicated pipelines.

194. The petroleum liquids transportation network operator shall exercise the rights and obligations imposed on it in a manner that best complies with the following general obligations —

General duties of a petroleum liquids transportation network operator.

- (a) establish and make available to the public at its offices, the —
 - (i) procedure, terms and conditions for obtaining and terminating access and interconnection services to the transportation network, and
 - (ii) method of response to the request for its service;
- (b) operate an efficient and economical transportation network for the safe and reliable conveyance of specified petroleum liquids in a manner that is designed to meet all reasonable demands for the specified petroleum liquids;
- (c) operate a nomination and balancing mechanism and an equitable curtailment of transportation whenever technical or operational expediencies requires;
- (d) consult with the Authority and obtain written permission prior to any modification of technical and operational rules of practice concerning the operation of its transportation network;
- (e) ensure the development and operation of a network code and terms for access into the transportation network in collaboration with the Authority, shippers, licensees and permit holders operating essential infrastructure;
- (f) ensure equitable and transparent open access, subject to the provisions of section 116, to the transportation network in accordance with the network code;
- (g) manage the transportation network as a reasonable and prudent operator;
- (h) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition; and
- (i) enter into agreements with transportation pipeline owners, distributors and wholesale customers for connection to, and operation of, the transportation network.

195. Subject to this Act, the Authority may grant the following special powers or authority to a petroleum liquids transportation network operator to facilitate the conduct of its licensed activities: —

Powers of a petroleum liquids transportation network operator.

- (a) the power to request and obtain from shippers information required to operate the nominations and balancing mechanism to operate the network or to facilitate competition;
- (b) the right to recover, on the basis of an invoice, expenses reasonably incurred in undertaking its licenced activities, subject to any conditions imposed by the Authority with respect to the level and structure of its charges; and
- (c) to purchase petroleum liquids for its own operations for purposes such as testing and commissioning of facilities, compression purposes and line fill.

196. (1) In addition to such conditions as may be imposed by the Authority under section 114 of this Act, a petroleum liquids transportation network operator licence may include an obligation to develop market rules in accordance with the provisions of this Act. Conditions applicable to a petroleum liquids transportation network operator licence.

(2) A petroleum liquids transportation network operator may be owner of any or all of the petroleum liquids transportation pipelines in the petroleum liquids transportation network.

(3) Where third parties are owners of certain petroleum liquids transportation pipelines in the petroleum liquids transportation network, the owners shall be paid by petroleum liquids transportation network operator the tariffs determined for non-operating owners of the pipelines.

(4) A petroleum liquids transportation network operator shall not misuse its monopoly position in the geographical area to charge franchise or other access charges for providing access to the petroleum liquids transport network other than the charges specifically permitted under this Act and its regulations.

197. (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a wholesale petroleum liquids supply licence. Grant of a wholesale petroleum liquids supply licence.

(2) A company that is a lessee producing crude oil or condensates or both or is a holder of a crude oil refining licence is a qualified person for the purpose of subsection (1) and shall be entitled to apply for and be issued a wholesale petroleum liquids supply licence by the Authority.

(3) A wholesale petroleum liquids supply licence authorises the supplier to sell and deliver petroleum liquids to bulk customers in Nigeria or for export.

198. A wholesale petroleum liquids supplier shall undertake the activities contemplated by the licence in a manner that best complies with the following general obligations. to General duties of a wholesale petroleum liquids supplier

(a) to sell petroleum liquids to bulk customers in Nigeria or for export in accordance with the licence and the regulations;

(b) abstain from activities, which in the opinion of the Authority may prevent, restrict or distort competition.

199. Subject to this Act, the Authority may grant the following specific powers or authority to the holder of a wholesale petroleum liquids supply licence to facilitate the conduct of its licenced activities, the right to —

Rights of a wholesale petroleum liquids supplier.

- (a) terminate wholesale supply to a customer in the event of non-payment, following a notice period as prescribed by regulation;
- (b) recover from a customer, on the basis of an invoice and subject to any conditions imposed by the Authority on the level and structure of a licensee's charges and costs reasonably incurred in the supply of petroleum liquids, provided that the sale of petroleum liquids to customers by the wholesale petroleum liquids supplier shall be subject to the provisions of this Chapter; and
- (c) enter a premises, in accordance with a metering code issued by the Authority, for the purpose of reading the meters, testing, maintaining metering equipment, disconnecting customers and to remove meters.

200. (1) In addition to conditions as may be imposed by the Authority under section 114 of this Act, a wholesale petroleum liquids supply licence shall be deemed to be granted subject to the supplier —

Conditions applicable to a wholesale petroleum liquids supply licence.

- (a) ensuring a reliable and efficient supply of petroleum liquids to customers on request, provided that it is economically feasible;
- (b) supplying petroleum liquids on request to a customer who is willing and able to pay for connection to the transportation network or transportation pipeline, subject to safety and network capacity constraints; and
- (c) conducting licenced activities safely, reliably and in an environmentally friendly manner in compliance with any law in force and any health and safety related regulations issued by the authority under this or any other Act.

(2) A wholesale petroleum liquids supplier shall undertake its licenced activities in a manner that best complies with the covenants and conditions of the licence and with customer protection measures approved by the Authority.

201. Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum product distribution licence.

Grant of licence for distribution of petroleum products.

202. In addition to conditions the Authority may impose under section 114 of this Act or that may be prescribed by regulation, a petroleum product distribution licence shall be deemed to be granted subject to the duty of the holder to —

General duties of petroleum product distributor.

- (a) develop and maintain a safe, efficient, reliable and economical service for the distribution of petroleum products to individual customers and petroleum product retailers;
- (b) carry on its business in a manner that will promote competition and avoid monopoly in the retail supply of petroleum products in Nigeria;
- (c) conduct its licenced activities safely and reliably in compliance with any law in force and prescribed environmental, health and safety regulations issued under this or any other Act;
- (d) publish the prices to be charged and to be paid by a person to whom the distributor sells petroleum products in a manner to ensure adequate publicity unless the Authority prescribes otherwise;
- (e) avoid undue preference or discriminate as between persons or any class of persons in establishing prices; and
- (f) comply with customer protection measures approved by the Authority.

203. (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petroleum product retail licence authorising the holder to establish, construct and operate a facility to be employed for retail sale of petroleum products.

Grant of a licence to construct and operate a facility for retail supply and distribution of petroleum products.

(2) The Authority shall issue guidelines in respect of the process for the establishment, construction and operation of facilities to be employed by petroleum product retailers for retail sale of petroleum products.

204. (1) Subject to sections 111 and 174 of this Act, the Authority may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a petrochemicals production licence authorising the holder to establish, construct and operate a facility for the production of petrochemicals and sell the petrochemicals produced.

Grant of a licence to construct and operate a facility for the production of petrochemicals.

(2) The Authority shall issue guidelines in respect of petrochemicals production licences.

205. (1) Subject to the provisions of this section, wholesale and retail prices of petroleum products shall be based on unrestrictive market pricing conditions.

Wholesale and retail prices of petroleum products.

(2) Where the Authority determines that a particular licenced activity is a monopoly service or a service by an excessively dominant supplier, the Authority shall have the power to regulate the tariffs and prices charged by the respective licensee in respect of the activities in a manner consistent with the Authority's duties under this Act and with the pricing principles set out in section 207 of this Act.

206. (1) The holder of a wholesale petroleum liquids supply licence and a wholesale customer shall, subject to the provisions of this Chapter, negotiate the wholesale prices directly between the parties on an arm's length basis, provided that the transfer price shall be transparent and reflect the transfer price between the parties.

Wholesale prices for petroleum products.

(2) The Authority shall have power to monitor bulk sale of petroleum products and may publish market-based prices in order to ensure that the transactions are undertaken in a manner that transfer pricing between the supplier and the wholesale customer are undertaken at a transparent arm's length basis.

(3) The supplier shall, within 14 days of the consummation of a transaction relating to the bulk sale of petroleum products, provide the Authority with information relating to the transaction including, where applicable, the cost incurred by the supplier in the production or supply of the product and other information relevant to the price at which the product is sold.

(4) A supplier who knowingly provides information, which is false or misleading with respect to the information required in subsection (3) is liable to a fine stipulated by the Authority in regulations.

207. Where under section 205 (2) of this Act, the Authority regulates the tariffs and prices of a licensee, the Authority shall allow the seller to recover reasonably and prudently incurred costs, including a reasonable return on the capital invested in the business.

Pricing principles in relation to petroleum products.

208. Licensees shall publish prices as required by the Authority in a manner that ensures that the customers are able to identify and calculate the extent of charges for which they will become liable.

Publication of prices.

PART VI — OTHER MATTERS RELATED TO MIDSTREAM AND DOWNSTREAM OPERATIONS

209. The Authority may issue regulations imposing public service obligations on licensees or a class of licensees in relation to the maintenance of strategic stock for which the Authority shall approve a tariff to be paid by the consumers.

Public service obligations.

210. The Authority shall, subject to the provisions of the Federal Competition and Consumer Protection Act, have the responsibility to —

Competition and market regulation.

(a) monitor the state of the markets regulated by the Authority;

Act No 1. 2018.

(b) administer, monitor and ensure compliance with the provisions of this Act and any law or regulation issued in respect of the administration and enforcement of this Act.

- (c) monitor market behaviour including the development and maintenance of competitive markets;
- (d) arrest situations of abuse of dominant power and restrictive business practices;
- (e) assess whether the petroleum industry is operating efficiently or the existing market arrangements may constitute barriers to entry into the market for new market participants;
- (f) determine whether there is any anti-competitive activity being carried on and exercise its powers under this section to prevent the continuance of the activity; and
- (g) determine any pre-conditions and any transitional arrangements required for any services to be offered competitively.

211. (1) Subject to the provisions of the Federal Competition and Consumer Protection Act, the Authority shall have the responsibility to prevent anti-competitive behaviour with respect to midstream and downstream petroleum operations and may take any or a combination of the following actions -

Power to prevent anti-competitive behaviour.
Act No 1, 2018.

- (a) monitor and determine whether any conduct by a licensee or any other person operating or intending to operate in midstream and downstream petroleum operations —
 - (i) has the purpose or effect of substantially lessening competition in any segment of the midstream and downstream petroleum operations,
 - (ii) may likely result in anti-competitive or discriminatory conduct, including an unlawful exercise of market power that may prevent customers from obtaining the benefits of a properly functioning and competitive market,
 - (iii) may amount to practices which reflect an apparent or probable effect of crippling, excluding or deterring the entry of another person into midstream and downstream petroleum operations, or
 - (iv) may likely be indicative of an abuse of dominant position in respect of the provision of any service;

(b) consider how best to prevent or mitigate abuse of market power in its decisions and determinations regarding matters including licensee applications, grant of licence, licence terms and conditions, and the regulation of prices for services to be supplied to market users.

(c) where, in the opinion of the Authority there is or may be, anti-competitive behaviour and in particular an abuse of market power, the Authority shall -

- (i) issue "cease and desist" orders as may be required,
- (ii) require and compel the disclosure of information from licensees,
- (iii) undertake inquiries and investigations, and
- (iv) levy fines prescribed by regulations issued by the Authority, which shall not exceed 5% of the annual turnover of the company for the preceding year.

(2) Notwithstanding the provisions of this section, where the Authority deems it to be in national interest or necessary to preserve or promote the benefits of a functional and effective competitive market, the Authority may, on the application by a licensee or other person with the ability to influence the price of petroleum products,

- (a) give written approval to the application upon such terms and conditions and impose other requirements as it may deem appropriate; and
- (b) issue directions to prevent or mitigate any conduct that shall or is likely to lead to the unlawful exercise of market power that will prevent customers from obtaining the benefits of a properly functioning and competitive market.

(3) The Authority may at any time withdraw an approval granted under subsection (2) upon such terms and conditions as it may deem appropriate.

212. (1) The Authority may require the holder of a licence to maintain separation in management, accounting or legal entities of its licenced or permitted activities, which may prohibit the holder of the licence from directly holding licences of another type.

Separation of certain licenced activities.

(2) Licenced activities between a holder of a licence and an affiliate shall be undertaken in a manner that the transfer pricing between both entities is undertaken on a transparent arm's length basis and in a manner that reflects the pricing principles contained in sections 170 and 207 of this Act.

(3) A holder of a licence shall not, without the prior written consent of the Authority, directly or indirectly acquire an interest in, purchase or merge with another holder of a licence or an affiliate of a holder of a licence

213. A holder of a licence or permit shall not discriminate between customers or classes of customers or their related undertakings or network users in respect of access, tariffs, prices, conditions or standards of service under section 116 of this Act. Non-discrimination among customers.
214. In the exercise of its powers under this Chapter, the Authority may consider — Considerations for exercise of the Authority's powers.
- (a) the relevant economic market;
 - (b) global trends in the relevant economic market;
 - (c) the effect on the number of competitors in the market and their respective market shares;
 - (d) the effect of barriers to entry into the market;
 - (e) the effect of any activity on the range of services in the market;
 - (f) the effect of the conduct on the cost and profit structures in the market;
 - (g) the ability of any independent licensee or operator to make price or tariff regulating decisions; and
 - (h) any other matter which the Authority may deem relevant.
215. (1) Where, in the opinion of the Authority, any act or activity prohibited under this Chapter has been or is likely to be undertaken by any person, the Authority may — Power to serve notice, issue "cease and desist" order.
- (a) serve a notice on the person, specifying the act or activity and its intention to issue a "cease and desist" order;
 - (b) direct the person to whom the notice is issued to do or not to do, the specified act or activity; and
 - (c) specify the time frame for compliance with the notice.
- (2) Where the person to whom the notice or directive issued under subsection (1) fails to comply, the Authority may issue a "cease and desist" order.
- (3) The Authority may levy a fine not exceeding 5% of the annual turnover of the company for the preceding year or revoke the licence of any person who fails to comply with a "cease and desist" order or a directive issued under subsection (1).

PART VII — COMMON PROVISIONS FOR UPSTREAM, MIDSTREAM AND DOWNSTREAM PETROLEUM OPERATIONS

216. (1) The Commission and Authority shall consult with stakeholders prior to finalising any regulatory or other instruments for regulation. Consultation with stakeholders.

(2) The stakeholders to be consulted for any particular regulation shall be lessees, licensees and permit holders that may be impacted by the regulations and such other persons that may be interested in the subject matter of the proposed regulation.

(3) The Authority or Commission, as the case may be, may, in finalising any regulation under this section, take into consideration any submission made during the stakeholders' consultation under subsection (1).

(4) Prior to holding the stakeholders' consultation under subsection (1), the Commission or Authority, as the case may be, shall publish in at least two national newspapers with wide coverage and on its website, notice of—

(a) the stakeholders' consultation;

(b) its invitation to lessees, licensees, permit holders and other stakeholders to participate in the stakeholders' consultation;

(c) the venue and period during which the stakeholders' consultation is to be held;

(d) the nature of the matter to which the stakeholders' consultation relates;

(e) the matters upon which the Commission or Authority, as the case may be, would require submissions;

(f) the form in which stakeholders are to make submissions on the subject matter of the stakeholders' consultation;

(g) the period of notice for the commencement of the stakeholders' consultation, which shall not be less than 21 days; and

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

(5) Notwithstanding the provisions of subsection (1), the Commission or Authority may, in national interest and exigency of the situation, issue a regulation without conducting a stakeholders' consultation.

(6) A regulation made under subsection (5) shall be valid for not more than one year with effect from its commencement date, except it is confirmed following a stakeholders' consultation conducted in accordance with subsection (3).

(7) The Commission or Authority, as the case may be, shall fix a date upon which the confirmed regulation under subsection (6) shall come into effect and cause the notice of that commencement date to be published in at least two national newspapers with wide coverage and on its website.

117 (1) Where it appears to the Commission or Authority that the holder of a lease licence or permit is contravening his obligations, it is hereby provided that any of the conditions of the lease licence or permit may be suspended or varied.

118 (1) Where it appears to the Commission or Authority that the holder of a lease licence or permit is contravening his obligations, it is hereby provided that any of the conditions of the lease licence or permit may be suspended or varied.

may be, may publish a notice in a manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the lease, licence or permit —

licences or permits where it appears.

- (a) specifying the actual or potential contravention;
- (b) directing the holder to do or not to do, the things specified;
- (c) specifying the remedy and the timeframe for compliance; and
- (d) notifying the holder of the lease, licence or permit of its intention to issue an enforcement order.

(2) The holder of the lease, licence or permit and any other interested party shall be entitled to make representations against or in support of a notice published under subsection (1) on a date specified in the notice.

(3) Where a holder of the lease, licence or permit fails to comply with a notice published under subsection (1), the Commission or Authority, as the case may be, may issue an enforcement order.

(4) The Commission or Authority may not issue an enforcement order if the holder of the lease, licence or permit —

- (a) is able to demonstrate to its satisfaction that it is not contravening or about to contravene a condition of a lease, licence or permit, or
- (b) has ceased to contravene a condition of the lease, licence or permit:

Provided that where the earlier contravention was deliberate, the Commission or Authority, as the case may be, may, at its discretion, impose a penalty as prescribed by regulation.

(5) A holder of a lease, licence or permit who fails to comply with the enforcement order under this section, contravenes the provisions of this Act and is liable as follows, the —

- (a) Commission shall revoke the permit or recommend to the Minister to suspend or revoke the licence or lease;
- (b) Authority shall revoke the permit or recommend to the Minister to suspend or revoke the lease, licence: or
- (c) Commission or Authority, as the case may be, shall impose any other penalty prescribed by regulations

10. The Commission or Authority may, in exercising its powers under this section, impose a penalty as prescribed by regulation.

(7) The Commission or Authority, as the case may be, may order the sealing up of any premises, including any facility or plant engaged in petroleum operations, where there has been a contravention of this Act or any regulation.

(8) Subject to any other provisions in this Act, any dispute between a lessee, licensee or permit holder and the Commission or the Authority shall be settled by the Federal High Court.

218. A person engaged in petroleum operations, which require a lease, licence or permit by the Commission or Authority under this Act, shall register its undertaking with the Commission or Authority, as the case may be and provide information concerning the activities of the undertakings as may be prescribed in regulations. Mandatory registration.

219. (1) The Commission and Authority shall establish, maintain and make publicly available, a register of leases, licences, permits and authorisations, issued, revoked, suspended, surrendered or withdrawn and any modification or exemption granted in respect of any lease, licence, permit or authorisation under this Act. Register of licences, permits and authorisations.

(2) The officer registering the issuance of any instrument as provided under subsection (1) shall require an acknowledgement of the receipt of a copy of such instrument from the person receiving it in such form as may be prescribed by regulation.

(3) A license or permit issued under this Act shall be conspicuously exhibited by a licensee or permit holder in a prominent place on the business premises of the licensee or permit holder.

220. (1) A lease, licence, permit or authorisation and any exemption granted under this Act shall be prepared in duplicate, one copy shall be delivered to the holder of the lease, licence, permit or authorisation and the other copy to be retained by the Commission or Authority which shall be bound up in a book of the appropriate series within its register and serially numbered. Preparation of leases, licences, permits and authorisations.

(2) The register referred to in section 219 of this Act shall also be kept in an electronic format and soft copies of individual leases, licences, permits, authorisations or exemptions shall be forwarded to the holder of a lease, licence, permit or authorisation.

(3) The Commission or Authority, as the case may be, shall cause a lease, licence, permit or authorisation to be prepared upon payment of the requisite fees and in the case of leases or licences for upstream petroleum operations the provisions of section 85 shall apply.

(4) The officer registering a lease, licence, permit or authorisation or exemption under subsection (1) shall require an acknowledgement of the receipt of the copy of the lease, licence, permit or authorisation or exemption from the person accepting such lease, licence, permit or authorisation or exemption in such form as may be prescribed by regulation.

221. (1) The lease, licence, permit or authorisation or any exemption shall be authenticated under the seal of the Commission or Authority, as the case may be and the validity of the lease, licence, permit or authorisation or any exemption shall commence from the date of its issuance. Effective date and authentication of licences, permits and authorisations.
- (2) The date of issuance of any lease, licence, permit or authorisation or any exemption shall be inscribed on the lease, licence, permit or authorisation or any exemption.
222. (1) The Commission or Authority, as the case may be, shall enter in the appropriate register a memorial of any extension, transfer, surrender, revocation, exemption, relinquishment, change of address, change of name or any other matter affecting the status of or any interest in any lease, licence, permit or authorisation registered under this Chapter together with the date of such entry. Register of memorials and interests.
- (2) The Commission or Authority, as the case may be, shall establish and maintain a register in which particulars of any interest or shares transferred or assigned are recorded by the Commission or Authority and the register shall be updated in relation to any change in the status of such interest or shares transferred or assigned.
223. A lease, licence, permit or authorisation registered under this Chapter shall, subject to the provisions of this Act, be conclusive evidence — Effect of registration.
- (a) that the rights described in the lease, licence, permit or authorisation are vested in the person named as the holder of the lease, licence, permit or authorisation; and
- (b) of the conditions and other provisions to which the holder of the lease, licence, permit or authorisation is subject under this Act.
224. (1) The registry and the registers required under sections 219, 222 and 223 of this Act shall be readily accessible to the public during the hours and upon the days designated by the Commission or Authority, as the case may be. Public access to the registry.
- (2) The Commission and Authority shall maintain an up-to-date electronic form of the registers required under sections 219, 222 and 223 of this Act on its website, which may be accessed for free by any member of the public.
- (3) A member of the public shall, upon the payment of prescribed fees, be entitled to obtain a certified true copy of any document or record contained in the registers referred to in sections 219, 222 and 223 of this Act.
225. The storage, application, transportation, and other petroleum operations of radioactive materials and other equipment generating ionizing radiation in all aspects of oil and gas operations shall be in compliance with the Nuclear Safety and Radiation Protection Act and such other legislative provisions as may be applicable. Radioactive materials.
Cap. N142:LFN: 2004.
226. (1) An application which requires the Commission or Authority's approval under this Act or under any regulations shall be approved or rejected within the time limit specified in the Act or regulations, or any period assigned by the Commission or Authority, if it is

- (2) Where no time limit has been specified under this Act or in any applicable regulation, the time limit referred to in subsection (1) shall be 90 days.
- (3) Where the Commission or Authority rejects an application, they shall, within the stipulated time limit, revert with reasons and any rejected application shall be tracked and accurate record of it kept.
- (4) Where the Commission or Authority at the expiration of the stipulated time frame refuses to communicate in writing its approval or rejection to the applicant, the application is deemed to have been approved and the default approval shall be recorded in the appropriate register by the Commission or Authority.

227. (1) Where a director or employee of the Commission or Authority, in the course of his duties, acquires information relating to the financial affairs of any person or to any commercial secret or where any other person indirectly acquires such or other information required to be kept confidential under the provisions of this Act from any director or employee of the Commission or Authority, he shall not make use of such information for any unauthorised or unofficial purpose nor disclose it to any other person except —

Disclosure of confidential or other information.

(a) for the purpose of legal proceedings under this Act or any other law; and

(b) to the extent that it may be necessary to do so for the purpose of this Act or any other law.

(2) A director or employee of the Commission or Authority shall not, for personal gain, make use of any information acquired by him in the course of his duties within a period of five years after the date on which he ceased to be a director or employee.

(3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to the forfeiture of any proceeds accruing to him on account of the contravention and to a fine or other sanctions prescribed in regulation.

228. (1) A person shall not —

Offences.

(a) obstruct or assault any officer of the Commission or Authority or any person authorised by the Commission or Authority in the exercise of the powers conferred on the Commission or Authority under this Act;

(b) refuse any officer of the Commission or Authority or any person authorised by the Commission or Authority, as the case may be, access to any premises, facilities or retail outlets or refuse to submit to a search of any premises, facilities or retail outlets by any authorised officer or agent of the Commission or Authority;

(c) fail to comply with any lawful demand, notice or order of an officer or authorised person of the Commission or Authority in the execution of the officer's duties under this Act.

(2) A person shall not —

(a) engage in any petroleum operations without a valid lease, licence or permit where such lease, licence or permit is required under this Act;

(b) unlawfully remove, destroy or damage any facility used for petroleum operations;

(c) furnish a statement or incomplete information calculated to mislead or wilfully delay or obstruct the Commission or Authority and its officers in the exercise of their duties;

(d) obstruct or fail to cooperate with the Commission or Authority in its investigation of any suspected crime or corrupt practice;

(e) act in breach of any relevant network code, where applicable to such person or in violation of this Act in relation to the allocation of available capacity, access and payment of tariffs in respect of the use of any facility or infrastructure; or

(f) use or permit its facility, infrastructure or equipment to be used for or in relation to the Commission or Authority of any offence.

229. (1) A person who violates the provisions of section 228 of this Act commits an offence and is liable on conviction to a fine prescribed in regulations. Penalties.

(2) Where an offence has been committed under section 228 (2) (b) of this Act, the person who committed the offence shall discontinue the operations of the affected infrastructure, facility or equipment until any damage, alteration, malfunction or loss has been rectified and all safety issues have been resolved.

(3) The Commission or Authority, as the case may be, may by regulation, where necessary, review the amount of the penalty stipulated in subsection (1) to reflect the effect of inflation or for other justified reasons.

230. A person who —

(a) fails or refuses to furnish, return or supply information to the Commission or Authority or any other lawful authority at the time and in the manner prescribed,

(b) furnishes a false or incomplete return

(c) supplies false or incomplete information

Refusal to furnish, return or supply information.

- (d) wilfully delays or obstructs the Commission or Authority, its officers and agents, police officers and other law enforcement officers in the exercise of the powers or duties conferred or imposed on the Commission or Authority under this Act, or
- (e) conceals, fails or refuses, without reasonable cause, to supply information required by the Commission or Authority or any duly empowered lawful authority at the time and in the manner prescribed or when required to do so,

commits an offence and on conviction by a court of competent jurisdiction is liable to a term of imprisonment and applicable fine as may be prescribed in regulation and with respect to paragraphs (a), (b) and (c), where such offence is repetitive or continues after having been so informed in writing by the Commission or Authority as the case may be.

231. (1) The Commission or Authority, as the case may be, may assess a penalty in the prescribed amount against any person for prescribed contraventions of this Act, regulations or an order made under this Act.

Power to issue administrative penalties.

(2) Prior to assessing a penalty, the Commission or Authority, as the case may be, shall provide notice to the person —

- (a) setting out the facts and circumstances that makes the person liable to a penalty;
- (b) specifying the amount of the penalty that is considered appropriate in the circumstances; and
- (c) informing the person of the person's right to make representations to the Authority or Commission, as the case may be.

(3) A person to whom notice is sent under subsection (2) may make representations to the Commission or Authority, as the case may be, in respect of whether or not a penalty should be assessed and the amount of the penalty.

(4) Representations under subsection (3) shall be made within 30 days after the person received the notice under subsection (2).

(5) After considering any representations made under subsection (3), the Authority or Commission, as the case may be, may -

- (a) assess a penalty and set a date by which the penalty is to be paid in full; or
- (b) determine that no penalty should be assessed

231. (1) The Commission or Authority, as the case may be, may assess a penalty in the prescribed amount against any person for prescribed contraventions of this Act, regulations or an order made under this Act.

232. (1) The decommissioning and abandonment of petroleum wells, installations, structures, utilities, plants and pipelines for petroleum operations on land and offshore shall be conducted in accordance with —

- (a) good international petroleum industry practice; and
- (b) guidelines issued by the Commission or Authority, as the case may be, provided that the guidelines shall meet the standards prescribed by the international maritime organisation on offshore petroleum installations and structures.

(2) A decommissioning and abandonment shall not take place without the written approval of the Commission or Authority, as the case may be.

(3) The Commission or Authority, as the case may be, shall by written notice, require a lessee, licensee or permit holder to commence the decommissioning and abandonment of a well, installation, structure, utility and pipeline, where such decommissioning and abandonment is required under good international petroleum industry practices or the guidelines.

(4) In production sharing contracts or any other contractual arrangement under section 85 of this Act responsibilities and liabilities relating to decommissioning and abandonment as specified in this section and section 233 of this Act shall apply to the licensee or lessee as contractor.

(5) A licensee or lessee may by written notice inform the Commission or Authority, as the case may be, of its intention to decommission or abandon.

(6) Upon a notice in subsection (5), the lessee or licensee, shall prior to any decommissioning and abandonment, submit to the Commission or Authority, as the case may be, a programme setting out —

- (a) estimate of the cost of the proposed measures;
- (b) details of measures proposed to be taken in connection with the shutdown of operations and decommissioning and abandonment of disused installations, structures or other assets used in petroleum operations as the case may be;
- (c) clear descriptions of the methods to be employed to undertake the work programme, which shall be in line with good international petroleum industry practices and environmental development;

(d) steps to be taken to ensure maintenance and safeguarding where any installations, structures or pipelines remain disused and in a condition to be maintained with respect to their use.

ultra-deep water environment and where the installation, structure or pipeline is partly removed, the licensee or lessee shall remain liable for any residual liability arising from the installation, structure or pipeline not removed; and

- (e) assessment of the environmental and social impact of the decommissioning and abandonment measures.
- (7) Installations and structures on land shall be completely removed and the environment restored to its original condition, except for buried transportation pipelines and gathering lines.
- (8) Except for the abandonment of wells, upon the submission of a decommissioning and abandonment programme by the licensee or lessee to the Commission or Authority, as the case may be, consultations shall be made with interested parties and other relevant public authorities and bodies.
- (9) The programme referred to in subsection (6) shall not be approved unless relevant environmental, technical and commercial regulations or standards are complied with.
- (10) Prior to the approval of an application or programme for decommissioning and abandonment, the Commission or Authority, as the case may be, shall ensure that —
- (a) considerations and recommendations are taken in the light of individual circumstances;
 - (b) the potential for reuse of a transportation pipeline together with other existing facility in connection with further hydrocarbon developments is considered before decommissioning;
 - (c) all feasible decommissioning options have been considered and a comparative assessment made;
 - (d) any removal or partial removal of an installation, structure or transportation pipeline is to be performed in a manner that guarantees sustainable environmental development; and
 - (e) any recommendation to leave an installation, structure or gathering line in place is made with regard to its likely deterioration and to the present, possible and future effects on the environment and in the case of offshore installations and structures, consistent with the applicable good international petroleum industry practices.
- (11) The Commission or Authority, as the case may be, shall enforce compliance by any holder of a current licence or lease or a holder of an expired licence or lease who was responsible for the applicable decommissioning and abandonment plan with respect to a licence or lease that has expired, to carry out its remaining or unfulfilled decommissioning and abandonment obligations under this Act.

(12) In archiving and maintaining the database of installations, structures and assets set out in subsection (14) the Commission or Authority, as the case may be, shall prescribe the manner and method in which the data shall be submitted by operators.

(13) The Commission or Authority, as the case may be, may recall a licensee or lessee responsible for a decommissioning and abandonment programme with respect to a licence or lease that has expired or is surrendered or a licensee or lessee that has transferred or divested its interest or equity, to carry out an obligation under this Act, provided however that, where a new company has assumed all respective obligations, with the approval of the Commission or Authority, upon the transfer or divestiture, the licensee or lessee shall have no further responsibilities.

(14) The Commission or Authority, as the case may be, shall ensure that a list of the installations, structures and pipelines on land and offshore in Nigeria used for petroleum operations and their current status is compiled and made available or accessible to the public annually.

233. (1) Each lessee and licensee shall set up, maintain and manage a decommissioning and abandonment fund held by a financial institution that is not an affiliate of the lessee or licensee, in the form of an escrow account accessible by the Commission or the Authority, as the case may be, under the provisions of the escrow agreement and where funds have been accrued prior to the effective date, such funds shall form part of the decommissioning and abandonment fund established under this Act.

Decommissioning and
abandonment fund.

(2) The decommissioning and abandonment fund shall exclusively be used to pay for decommissioning and abandonment costs.

(3) Where a lessee or a licensee fails to comply with the decommissioning and abandonment plan, the decommissioning and abandonment fund shall be accessed by the Commission or Authority, as the case may be, to pay for the performance by a third party of such lessee's or licensee's obligations under section 232 of this Act, after the licensee or lessee has been informed of the non-compliance and given a reasonable period to rectify the non-compliance.

(4) The amounts to be contributed to the decommissioning and abandonment fund shall be based on the following —

(a) with respect to upstream petroleum operations, on the decommissioning and abandonment plan approved by the Commission in the field development plan required by section 79 (2) of this Act and where —

(i) no decommissioning and abandonment plan exists, and

(ii) a field is in development or producing.

the lessee shall submit a decommissioning and abandonment plan based on the criteria established in section 232 (6) of this Act, within the period or the effective date is made after a permit

by the Commission, shall form the basis of the computation of the amount to be contributed by the lessee; and

(b) with respect to midstream petroleum operations, on the decommissioning and abandonment plan submitted under section 111 (3) of this Act and where no such plan exists, the licensee shall submit a decommissioning and abandonment plan to the Authority based on the criteria established in section 232 (6) of this Act within one year of the effective date, which once approved by the Authority shall form the basis of the computation of the amount to be contributed by the licensee.

(5) The decommissioning and abandonment plan shall establish the yearly amount to be contributed to the respective decommissioning and abandonment fund and the yearly amount shall be based on a reasonable estimate by the licensee or lessee of the applicable decommissioning and abandonment costs, projected forward on a nominal basis and divided by the estimated life of the facilities and the reasonable cost estimate shall be approved by the Commission or Authority, as the case may be.

(6) The estimated life of the facilities referred to in subsection (5) shall be based on the

—
(a) estimated life of the field, in case of facilities used for upstream petroleum operations; and

(b) period of time for which the safe operations of the facilities were designed, in case of facilities used for midstream petroleum operations.

(7) The estimated yearly contribution under subsection (5) shall be reviewed every 10 years following the first submission.

(8) A decommissioning and abandonment fund shall be funded by the applicable licensee or lessee based on the yearly amount established in subsection (5) and as provided in a regulation.

(9) A licensee or lessee shall —

(a) inform the Commission or Authority, as the case may be, of the establishment of its decommissioning and abandonment fund not more than three months from the date of commencement of production for upstream petroleum operations or the commissioning of the facilities for midstream petroleum operations; and

(b) furnish the Commission or Authority, as the case may be, on an annual basis with statements of accounts with respect to its decommissioning and abandonment fund with a copy to be provided to the Service;

- (10) Where the licensee or lessee is a party to a farm out agreement with one or more third parties, a decommissioning and abandonment plan funded in whole or in part by the applicable third parties shall be provided for in the applicable farm out agreement.
- (11) From the effective date, contributions to the decommissioning and abandonment fund shall be eligible for cost recovery and shall be tax deductible, provided that decommissioning and abandonment costs disbursed from the decommissioning and abandonment fund shall not be eligible for cost recovery or deductible for tax purposes.
- (12) Where there is excess in the decommissioning and abandonment fund after the decommissioning and abandonment has been carried out and approved by the Commission or Authority, as the case may be, the excess shall be considered income for production sharing or tax purposes and the amount after the withholding of profit oil and any tax shall be returned to the licensee or lessee.

CHAPTER 3 — HOST COMMUNITIES DEVELOPMENT

234. (1) The objectives of this Chapter are to —

Objectives and regulations.

- (a) foster sustainable prosperity within host communities;
 - (b) provide direct social and economic benefits from petroleum operations to host communities;
 - (c) enhance peaceful and harmonious co-existence between licensees or lessees and host communities; and
 - (d) create a framework to support the development of host communities.
- (2) The Commission and Authority may make regulations with respect to this Chapter on areas within their competence and jurisdiction as specified in this Act.
- (3) The regulations under subsection (2) shall include a grievance mechanism to resolve disputes between settlers and host communities.
- (4) The regulations under subsection (2) shall include the ability of the settlor to make the following adjustments to reduce expenditures where the available funds for administration under section 244 (c) of this Act are insufficient to fund the ongoing operations —
- (a) reduce the number of members of the Board of Trustees and frequency of meetings;
 - (b) not contribute to the reserve fund under section 244 (b) and maintain the reserve fund under section 244 (c).

(c) reduce the number of members of the management committee under section 247 and the frequency of meetings; and

(d) reduce the frequency of meetings of the host communities advisory committee under section 249.

235. (1) The settlor shall incorporate host communities development trust (in this Act referred to as "the trust") for the benefit of the host communities which the settlor is responsible.

Incorporation of host communities development trusts.

(2) Where there is a collectivity of settlors operating under a joint operating agreement with respect to upstream petroleum operations, the operator appointed under the agreement shall be responsible for compliance with this Chapter on behalf of the settlors.

(3) For settlors operating in shallow water and deep offshore, the littoral communities and any other community determined by the settlors shall be host communities for the purposes of this Act.

(4) The settlor shall for the purpose of setting up the trust, in consultation with the host communities, appoint and authorise a board of trustees ("the Board of Trustees"), which shall apply to be registered by the Corporate Affairs Commission as a corporate body under the Companies and Allied Matters Act in the manner provided under this Chapter.

Act No 3, 2020.

(5) The name of the corporate body to be registered by the Board of Trustees shall contain the phrase "host communities' development trust".

(6) The Commission or Authority, as the case may be, shall —

(a) make regulations on the administration, guide and safeguard the utilisation of the trust fund; and

(b) have the oversight responsibility for ensuring that the projects proposed by the Board of Trustees are implemented.

(7) The settlor shall undertake needs assessment that will metamorphose into the community development plan for the purpose of determining the projects to be undertaken by the host communities development trust.

236. The host communities development trust shall be incorporated —

Timeframe for incorporation of host communities development trust.

(a) within 12 months from the effective date for existing oil mining leases;

(b) within 12 months from the effective date for existing designated facilities.

(c) within 12 months from the effective date for host communities development trust for existing designated facilities.

(d) prior to the application for field development plan for existing oil prospecting licences;

(e) prior to the application for any field development plan under a petroleum prospecting licence or petroleum mining lease granted under this Act; and

(f) prior to commencement of commercial operations for licensees of designated facilities granted under this Act.

237. (1) Subject to the provisions of this Act, where the whole or part of an interest in a licence or lease governed by this Act is assigned, novated or otherwise transferred to another party, the legal and equitable interest, rights and obligations of the transferor in relation to any associated host communities development plan and host communities development trust, shall be deemed to attach to the property to be transferred to the transferee, the legal and equitable interests, rights and obligations of the transferor shall be deemed to become the interests, rights and obligations of the transferee.

Transfer of settlor's interest and obligations subject to host communities development trust obligation.

(2) Where the whole or part of a licence or lease governed by this Act is surrendered under this Act, the holder or holder nominee will continue to discharge its surviving obligations, notwithstanding that the area that is surrendered may be granted to a new lessee or licensee and where the surviving obligations have been complied with the holder shall have no further obligations relating to the part that was surrendered or the whole of the licence or lease where the entire licence or lease was surrendered.

(3) Where any licence or lease governed by this Act is revoked, terminated or expired, the holder will continue to discharge its surviving obligations, notwithstanding that the area revoked, terminated or expired may be granted to a new lessee or licensee and where the surviving obligations have been complied with, the holder shall have no further obligations.

238. Unless as otherwise provided for in this Act, failure by any holder of a licence or lease governed by this Act to comply with its obligations under this Chapter, after having been informed of such failure in writing by the Commission or Authority as the case may be, may be grounds for revocation of the applicable licence or lease.

Failure to incorporate host communities development trust.

239. (1) The constitution of the host communities development trust shall allow the host communities development trust to manage and supervise the administration of the annual contribution of the settlor contemplated under this Chapter and any other sources of funding.

Objectives of host communities development trust.

(2) The objectives of the host communities development trust shall be specified in the constitution as set out in subsection (3) (a) to (e).

(3) The objectives of the host communities development trust shall include, to ...

(a) finance and execute projects for the benefit and sustainable development of the host communities;

- (b) undertake infrastructural development of the host communities within the scope of funds available to the Board of Trustees for such purposes;
- (c) facilitate economic empowerment opportunities in the host communities;
- (d) advance and propagate educational development for the benefit of members of the host communities;
- (e) support healthcare development for the host communities;
- (f) support local initiatives within the host communities, which seek to enhance protection of the environment;
- (g) support local initiatives within the host communities which seek to enhance security;
- (h) invest part of available fund for and on behalf of the host communities; and
- (i) assist in any other developmental purpose deemed beneficial to the host communities as may be determined by the Board of Trustees.

(4) Notwithstanding the provisions of this Act relating to funding of the trust fund, nothing shall preclude the host communities from their entitlements under any other law.

240. (1) The constitution of each host communities development trust shall establish a fund comprising of one or more accounts ("host communities development trust fund") to be funded under this section.

Sources of funding for petroleum host communities development trust.

(2) Each settlor, where applicable through the operator, shall make an annual contribution to the applicable host communities development trust fund of an amount equal to 3% of its actual annual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the applicable host communities development trust fund was established.

(3) Each host communities development trust may receive donations, gifts, grants or honoraria that are provided to such host communities development trust for the attainment of its objectives.

(4) Profits and interest accruing to the reserve fund of host communities development trust shall also be contributed to the applicable host communities development trust fund.

241. The constitution of each host communities development trust shall provide that the applicable host communities development trust fund be used exclusively for the implementation of the applicable host communities development trust objectives.

Minimum amount of contribution to the trust fund.

242. (1) The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to be set up by the settlor, who shall determine its membership and the criteria for their appointment, provided that the membership of the Board of Trustees of the host communities development trust shall be subject to the approval of the Commission or Authority, as the case may be.
- (2) The settlor shall, in consultation with the host communities determine the membership of the Board of Trustees to include persons of high integrity and professional standing, who shall come from the host communities and the Members of the Board of Trustees shall elect a Chairman from amongst themselves.
- (3) The settlor shall determine —
- (a) the selection process, procedure for meeting, financial regulations and administrative procedures of the Board of Trustees;
 - (b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the Board of Trustees; and
 - (c) other matters other than the above relating to the operation and activities of the Board of Trustees.
- (4) Each member of the Board of Trustees shall serve a term of four years in the first instance and may be reappointed for another term of four years and no more.
- (5) Board of Trustees shall have a secretary, who shall be appointed by the settlor to keep the books of the Board.

The Board of Trustees, composition and management.

243. The Board of Trustees shall be responsible for the general management of the host communities development trust and shall be responsible for —

Duties and functions of the Board of Trustees.

- (a) determining the criteria, process and proportion of the host communities development trust fund to be allotted to specific development programs;
- (b) approving the projects for which the host communities development trust fund shall be utilised;
- (c) providing general oversight of the projects for which the host communities development trust fund shall be utilised;
- (d) approving the appointment of fund managers for purposes of managing the trust fund.

- (e) set up the management committee of the host communities development trust and appoint its members; and
- (f) determining the allocation of funds to host communities based on the matrix provided by the settlor.

244. The Board of Trustees shall in each year and under section 240 of this Act allocate from the host communities development trust fund, a sum equivalent to — Allocation of funds.

- (a) 75% to the capital fund out of which the Board of Trustees shall make disbursements for projects in each of the host communities as may be determined by the management committee in furtherance of the objectives set out in section 234 of this Act, provided that any sums not utilised in a given financial year shall be rolled over and utilised in subsequent year;
- (b) 20% to the reserve fund, which sums shall be invested for the utilisation of the host communities development trust whenever there is a cessation in the contribution payable by the settlor; and
- (c) an amount not exceeding 5% to be utilised solely for administrative cost of running the trust and special projects, which shall be entrusted by the Board of Trustee to the settlor, provided that at the end of each financial year, the settlor shall render a full account of the utilisation of the fund to the Board of Trustees and where any portion of the fund is not utilised in a given year, it shall be returned to the capital fund.

245. (1) The settlor shall provide to the Board of Trustees a matrix for distribution of the trust fund to the host communities. Matrix for distribution of trust fund.

(2) The Board of Trustees shall utilise the matrix provided under subsection (1) for distribution of the funds in the host communities development trust fund to each of its host communities.

246. (1) The Board of Trustees shall engage a fund manager to invest the reserve fund as the fund accrues. Engagement of fund managers.

(2) The Board of Trustees shall manage the interest and profits accruable from the investment of the reserve fund and allocate the gain in accordance with section 244 of this Act.

247. (1) The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to set up a management committee for the host communities development trust Management committee, composition and powers.

(2) The membership of the management committee shall comprise

(a) one representative of each host community, who shall be nominated by the host community as a non-executive member; and

(b) executive members, selected by the Board of Trustees shall be Nigerians of high integrity and professional standing, and may not necessarily be members of the host communities.

(3) A person appointed under subsection (2) (a) and (b) shall serve a term of four years in the first instance and may be reappointed for another term of four years and no more.

(4) The Board of Trustees shall in accordance with the host communities development trust determine —

(a) the selection process, procedure for meetings, financial regulations and administrative procedures of the management committee;

(b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the management committee; and

(c) any other matter relating to the operations and activities of the management committee.

(5) The management committee shall have a secretary, who shall be appointed by the Board of Trustees to keep the books of the committee.

248. The management committee shall be responsible for the general administration of the host communities development trust on an ad hoc basis and be responsible for the —

Duties and functions of the management committee.

(a) preparation of the budget of the host communities development trust and submit it to the Board of Trustees for approval;

(b) development and management of the contracting process for project award on behalf of the host communities development trust subject to approval of the Board of Trustees;

(c) determination of project award winners and contractors to execute projects on behalf of the host communities development trust through a transparent process subject to approval of the Board of Trustees;

(d) supervision of projects execution:

(e) nomination of fund managers for appointment by the Board of Trustees for approval to manage the reserve fund

- (f) reporting on the activities of the management committee, contractors and other service providers to the Board of Trustees; and
- (g) undertaking of any other function and duty that may be assigned to it by the Board of Trustees to enhance the performance of the host communities development trust.

249. (1) The constitution of the host communities development trust shall contain provisions mandating the management committee to set up an advisory committee ("host communities advisory committee"), which shall contain at least one member of each host community.

Host communities advisory committee and composition.

(2) The management committee shall in accordance with the constitution of the host communities development trust, determine —

- (a) the selection process, procedure for meetings, financial regulations and administrative procedures of the host communities advisory committee;
- (b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the host communities advisory committee; and
- (c) any other matter relating to the operations and activities of host communities advisory committee.

(3) Decisions of the management committee with respect to subsection (2) shall be subject to the approval of the Board of Trustees.

250. The host communities advisory committee shall perform the following functions —

Duties and functions of the host communities advisory committee.

- (a) nominate member to represent the host communities on the management committee;
- (b) articulate community development projects to be transmitted to the management committee;
- (c) monitor and report progress of projects being executed in the community to the management committee; and
- (d) advise the management committee on activities that may lead to improvement of security of infrastructure and enhancement of peace-building within the communities and the entire area of operation.

251. (1) The settlor shall after the grant of any licence or lease issued under this Act, conduct a needs assessment ("host communities needs assessment") in accordance with this Act and regulations made under this Act.

Host communities needs assessment.

(2) Each host communities needs assessment shall, from a social, environmental, and economic perspective —

- (a) determine the specific needs of each affected host communities;
- (b) ascertain the effect that the proposed petroleum operations might have on the host communities; and
- (c) provide a strategy for addressing the needs and effects identified.

(3) Each host communities needs assessment shall show that the settlor has —

- (a) engaged with each affected host communities to understand the issues and needs of such host communities;
- (b) consulted with and considered the reasonable concerns of women, youth and community leaders; and
- (c) engaged with each affected host communities in developing a strategy to address the needs and effects identified in the applicable host communities needs assessment.

(4) The settlor shall develop a host communities development plan and shall submit to the Commission or Authority, as the case may be, based on the findings of the host communities needs assessment, in order to undertake its oversight function preparatory to the establishment of the trust.

252. The host communities development plan shall be based on the matrix provided for in section 245 and such single plan shall —

Host communities development plan.

- (a) specify the community development initiatives required to respond to the findings and strategy identified in the host communities needs assessment;
- (b) determine and specify the projects to implement the specified initiatives;
- (c) provide a detailed timeline for projects;
- (d) determine and prepare the budget of the host communities development plan;
- (e) set out the reasons and objectives of each project as supported by the host communities needs assessment;
- (f) conform with the Nigerian content requirements provided in the Nigerian Oil and Gas Industry Content Development Act, 2010.

(g) provide for ongoing review and reporting to the Commission.

253. The financial year of the host communities development trust shall commence on 1st January and end on 31st December of each year or any other date set for this purpose by the Board of Trustees. Financial year of the host communities development trust.
254. The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to — Accounts and audit.
- (a) keep account of the financial activities of the host communities development trust; and
 - (b) appoint auditors to audit the accounts of the host communities development trust annually.
255. The constitution of the host communities development trust shall contain provisions requiring the — Mid-year and annual reports.
- (a) management committee to submit a mid-year report of its activities to the Board of Trustees not later than 31st August of the particular year;
 - (b) management committee to submit an annual report accompanied by its audited account to the Board of Trustees not later than 28th February of the succeeding year;
 - (c) Board of Trustees to submit an annual report of the activities of the host communities development trust accompanied by its audited account to the settlor not later than 31st March of the particular year; and
 - (d) settlor to submit an annual report of the activities of the host communities development trust accompanied by its audited account to the Commission or Authority, as the case may be, not later than 31st May of the particular year.
256. The funds of the host communities development trust created under this Act shall be exempted from taxation. Exemption from income tax.
257. (1) Any payment made by the settlor under section 240 (2) of this Act, shall be deductible for the purposes of hydrocarbon tax and companies income tax as applicable. Deduction of payment for petroleum host communities development.
- (2) Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host communities, the community shall forfeit its entitlement to the extent of the costs of repairs of the damage that resulted from the activity with respect to the provisions of this Act, whether that figure is less than

Provided the interruption is not caused by technical or natural cause.

- (3) The basis for computation of the trust fund in any year shall always exclude the cost of repairs of damaged facilities attributable to any act of vandalism, sabotage or other civil unrest.

CHAPTER 4 — PETROLEUM INDUSTRY FISCAL FRAMEWORK

PART I — OBJECTIVES AND ADMINISTRATION

258. (1) The objectives of this Chapter are to —

Objectives.

- (a) establish a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria;
- (b) provide a forward-looking fiscal framework that is based on core principles of clarity, dynamism and fiscal rules of general application;
- (c) establish a fiscal framework that expands the revenue base of the Federal Government, while ensuring a fair return for investors;
- (d) simplify the administration of petroleum tax; and
- (e) promote equity and transparency in the petroleum industry fiscal regime.

(2) All money collected from the petroleum industry that are due to the Government shall be transferred to the Federation Account in a timely manner, subject to this Act and these payments shall include taxes, royalties, production shares, profit shares, signature bonuses, production bonuses, renewal bonuses, rents, fees, fines, and other levies due in relation to the grant, assignment, termination, and breach of licences, leases and permits.

259. From the commencement of this Act, the administration and collection of Government revenue in the petroleum industry shall be the function of the Federal Inland Revenue Service (the Service) and the Commission, and —

Administration.

- (a) the Service shall be responsible for the assessment and collection of —
 - (i) hydrocarbon tax and enforcement of the provisions of this Act as it relates to hydrocarbon tax assessment and revenue collection. and

- (ii) companies income tax and tertiary education tax in accordance with this Act as it relates to taxable petroleum operations;
- (b) the Commission shall be responsible for the determination and collection of —
- (i) royalties, signature bonus, rents, and related payments and its enforcement under this Act, and
 - (ii) related payments or production shares, where the model contract includes provisions related to production sharing, profit sharing or risk service provisions; and
- (c) the Authority shall be responsible for the determination and collection of the gas flare penalty arising from midstream operations and its enforcement under this Act.

PART II — HYDROCARBON TAX

260. (1) This part applies to companies engaged in upstream petroleum operations in the onshore, shallow water and deep offshore, provided that — Application of this Part.

(a) hydrocarbon tax shall apply to crude oil as well as field condensates and liquid natural gas liquids derived from associated gas and produced in the field upstream of the measurement points; and

(b) hydrocarbon tax under this Part shall not apply to —

- (i) associated natural gas, including gaseous natural gas liquids produced in the field and contained in the rich gas, and non-associated natural gas,
- (ii) condensates and natural gas liquids produced from non-associated gas in fields or gas processing plants, provided the related volumes are determined at the measurement points or at the exit of the gas processing plant, regardless of whether the condensates or natural gas liquids are subsequently commingled with crude oil, and
- (iii) any condensates and natural gas liquids produced from associated gas at gas processing or other facilities downstream of the measurement points.

(2) The costs of production of associated gas upstream of the measurement point shall be allowed to be made full to the purposes of calculating hydrocarbon tax, provided that the production and marketing costs for such a fully producing associated gas upstream shall not exceed the cost of production of such a gas.

not be allocated to crude oil, but shall be claimed under the Companies Income Tax Act.

(3) This Part shall not apply to a frontier acreage until it is reclassified under section 68 (3) of this Act and to deep offshore.

(4) For the purpose of determining royalties, condensates shall be treated as crude oil and natural gas liquids as natural gas.

(5) Upstream petroleum operations shall also be subject to Companies Income Tax Act.

Cap. C21. LFN, 2004.

261. There shall be levied upon the profits of any company engaged in upstream petroleum operations in relation to crude oil a tax to be known as hydrocarbon tax, which shall be charged and assessed upon its profits related to the operations and payable during each accounting period in accordance with this Act.

Charge of hydrocarbon tax.

262. (1) Subject to this Act, in relation to any accounting period, the crude oil revenue of a company for that period shall be the value of any chargeable oil adjusted to the measurement points, based on the —

Ascertainment of crude oil revenue, adjusted profit, assessable profits and chargeable profits.

(a) proceeds of all chargeable oil sold by the company; and

(b) value of all chargeable oil disposed by the company.

(2) For the purpose of subsection (1), the value of any chargeable oil disposed of, shall be regarded as the aggregate of the value of that crude oil determined for royalties for all fields in accordance with this Act or any applicable law.

(3) Subject to section 266 (2) of this Act, the adjusted profits of an accounting period shall be the profits of that period after the deductions allowed by section 263 (1) of this Act.

(4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 265 of this Act.

(5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by section 266 of this Act

263. (1) In computing the adjusted profit of a company in upstream petroleum operations related to crude oil for any accounting period, there shall be deducted expenses wholly, reasonably, exclusively and necessarily incurred during that period for the following, including but without otherwise expanding or limiting the generality of —

Allowable deductions.

(a) rents incurred by the company for the period pursuant to a petroleum mining lease or petroleum prospecting licence;

(b) all royalties the liability for which was incurred and were paid by the company during that period in respect of crude oil and associated gas and where a petroleum mining lease

includes payments to the Federation Account related to production sharing, profit sharing, risk service contracts or other contractual features under a model contract and the company has incurred liability for such payments in kind or in cash:

- (c) expenses directly incurred for repair of plant, machinery or fixtures employed for the purpose of carrying on production activities or for the renewal, repair or alteration of production implement, utensils or articles so employed,
 - (d) an expenditure, tangible or intangible directly incurred in connection with the drilling of the first exploration well and the first two appraisal wells in the same field, whether the wells are productive or not, provided that subsequent exploration wells, appraisal wells and other wells shall be treated as qualifying drilling expenditure under the Fifth Schedule to this Act and where a deduction may be given under this section in respect of any such expenditure, that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the Fifth Schedule to this Act:
Fifth Schedule.
Fifth Schedule.
 - (e) any amount contributed to a fund, scheme or arrangement approved by the Commission for the purpose of decommissioning and abandonment, provided that the surplus or residue of the fund shall be subject to tax under this Act at the end of life of the field, where such surplus is returned to the lessee;
 - (f) all sums the liability of which was incurred by the company to the Federal Government or any State or Local Government Council by way of levies, stamp duties and fees;
 - (g) costs of gas reinjection wells, which are re-injecting natural gas that otherwise would be flared, subject to ratification by the Commission; and
 - (h) any amount contributed to any fund, scheme or arrangement approved by the Commission pursuant to the establishment of host communities development trusts under Chapter 3 of this Act, Environmental Remediation Fund, Niger Delta Development Commission and other similar contributions.
- (2) Where a deduction has been allowed to a company under this section in respect of a liability of the company and the liability or part of the liability is waived, released or recovered, the amount of the deduction corresponding to the liability or part thereof shall, for the purpose of section 262 (1) of this Act, be treated as income of the company of its accounting period, in which such waiver or release was made or given.

264. Subject to this Act, for the purpose of ascertaining the adjusted profit of a company in the accounting period from its upstream petroleum operations applicable to crude oil, no deduction shall be allowed in respect of — Deductions not allowed.

- (a) disbursements or expenses not being money wholly, reasonably, exclusively and necessarily incurred for the purpose of those operations;
- (b) expenditure for the purchase of information relating to the existence and extent of petroleum deposits, other than for the acquisition of geophysical, geological and geochemical data and information;
- (c) expenditure incurred as a penalty, natural gas flare fees or imposition relating to natural gas flare;
- (d) financial or bank charges, arbitration and litigation costs, bad debts and interest on borrowing;
- (e) head office or affiliate costs, shared costs, research and development costs or any other like shared indirect production costs;
- (f) production bonuses, signature bonuses paid for the acquisition of, or of rights in or over, petroleum deposits, bonuses or fees paid for renewing petroleum mining lease or petroleum prospecting licence or marginal field or fees paid for assigning rights to another party;
- (g) tax inputted into a contract or an agreement on a net tax basis and paid by a company on behalf of the vendor or contractor;
- (h) capital withdrawn or sum employed or intended to be employed as capital;
- (i) capital employed in improvements as distinct from repairs;
- (j) sum recoverable under an insurance or contract of indemnity, except an amount that is not recovered under the scheme;
- (k) rent of or cost of repairs to any premises or part of premises not incurred for the purpose of those operations;
- (l) amounts incurred in respect of tertiary education tax, companies income tax, any income tax, profits tax or other similar taxes, whether charged within Nigeria or elsewhere;
- (m) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;

(n) payment to provident, savings, widows and orphans or other society, scheme or fund:

(o) any contribution to a pension, provident or other society, scheme or fund for production staff which may be approved, with or without retrospective effect, by the National Pension Commission subject to such general conditions or particular conditions in the case of the society, scheme or fund as the Service may prescribe, provided that any sum received by or the value of any benefit obtained by the company, from any approved pension, provident or other society, scheme or fund, in the accounting period of that company shall, for the purpose of section 262 (1) of this Act, be treated as income of the company for that accounting period:

(p) all customs duties; and

(q) costs under paragraph 2 (2) (c) of the Sixth Schedule to this Act.

Sixth Schedule.

265. (1) The assessable profits for each company or petroleum mining lease for any accounting period shall be the amount of the adjusted profit of that period after the deduction of the amount of any loss incurred by that company during any previous accounting period.

Assessable profits and losses.

(2) The assessable profit shall be determined separately for each of the two classes of chargeable tax identified in section 267 (a) and (b).

(3) A deduction under subsection (1) shall be made so far as possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss was incurred, and, so far as it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on until such loss is fully deducted.

(4) Within five months after the end of any accounting period of a company, or within such further time as the Service may permit in writing, the company may elect in writing that a deduction or any part to be made under this section shall be deferred to and be made in the succeeding accounting period, and may so elect in any succeeding accounting period.

266. (1) The chargeable profits of any company for any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section, namely —

Chargeable profits and allowances.

(a) the aggregate amount of capital allowances due to the company under the provisions of the Fifth Schedule to this Act for the accounting period:

Fifth Schedule.

(b) the aggregate amount of all production allowances due to the company under the provisions of the Sixth Schedule to this Act for the accounting period; and

Sixth Schedule.

(c) in the case of acquisition costs of petroleum rights, the value of the rights and the value of the assets acquired shall be reported separately to the Service, provided that the value of the rights shall be eligible for annual allowance of 20% per annum and the value of the assets shall be depreciated based on the applicable depreciation rates for the respective assets, and there shall be a retention of 1% in the last year until the asset is disposed of.

(2) In determining the chargeable profit, the total cost shall not exceed the cost-price ratio as determined in the Sixth Schedule to this Act.

Sixth Schedule.

(3) The chargeable profits and allowances shall be determined separately for the two classes of assessable profits under section 267 (a) and (b) of this Act.

PART III — ASCERTAINMENT OF CHARGEABLE TAX

267. The chargeable tax for any accounting period of a company shall be a percentage of the chargeable profit for that period aggregated and it shall be —

Chargeable tax.

(a) 30% of the profit from crude oil for petroleum mining leases selected under section 93 (6) (b) and (7) (b) of this Act with respect to onshore and shallow water areas; and

(b) 15% of profit from crude oil for onshore and shallow water and for petroleum prospecting licences selected under section 93 (6) (a) and (7) (a) of this Act.

268. (1) Where, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Act other than this section, is less than the amount mentioned in subsection (2), the company is liable to pay an additional amount of chargeable tax for that period equal to the difference between those two amounts.

Additional chargeable tax payable in certain circumstances.

(2) The amount referred to in subsection (1) is, for any accounting period of a company, the amount which the chargeable tax for crude oil for that period, calculated in accordance with this Act, would come to, in the case of crude oil exported from Nigeria by the company, the reference in section 262 (1) (a) of this Act to the proceeds of sale were a reference to the amount obtained by multiplying the number of barrels of that crude oil determined at the measurement point by the fiscal oil price per barrel.

(3) For the purpose of subsection (2), the Commission shall establish the fiscal oil price at each measurement point on an export parity basis under paragraph 8 (1) and (2) of the Seventh Schedule and the total value of the chargeable oil for a company shall be the sum of the multiplications of volume and fiscal oil price at all measurement points as established by the Commission.

Seventh Schedule.

- (4) The whole of any additional chargeable tax for crude oil and associated gas payable by a company by virtue of this section for any accounting period shall be payable concurrently with the final instalment of the chargeable tax payable for that period.
- (5) Where there is no fiscal oil price established for a crude oil stream, the Commission shall establish fiscal oil price for such stream and every fiscal oil price per barrel established shall bear a fair and reasonable relationship —
- (a) to the established fiscal oil price of Nigerian crude oil streams of comparable quality and specific gravity; or
 - (b) where there are no such Nigerian crude oil streams of comparable quality and specific gravity it shall bear a fair and reasonable relationship to the official selling prices at main international trading centers for crude oil of comparable quality and gravity, due regard being had in either case to freight differentials and other relevant factors.
- (6) Where any crude oil, which in relation to a particular company is its chargeable oil, is exported from Nigeria by another company, that crude oil shall for the purpose of this section be deemed to be exported from Nigeria by that particular company.

PART IV — ASCERTAINMENT OF CHARGEABLE PROFITS AND CONSOLIDATION FOR TAX PURPOSES

269. (1) Where the Service is of the opinion that any disposition is not given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Service may disregard any such disposition or direct that such adjustments shall be made with respect to the companies' liability to tax as the Service considers appropriate to counteract the reduction of liability to tax effected or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessed accordingly. Artificial transactions.
- (2) In subsection (1), the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.
- (3) For the purpose of this section, the following transactions shall be deemed to be artificial or fictitious, namely, transactions between persons one of whom has control over the other or between persons both of whom are controlled by some other person which, in the opinion of the Service, were not made on terms which might be expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm's length.
- (4) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purpose of Part III of this Chapter such direction was an assessment.
- (5) Subject to this Act, the provisions of the Income Tax (Transfer Pricing) Regulations 2018 shall apply.

270. Where a company has not yet commenced the production and sale or disposal of chargeable oil, all costs incurred wholly, reasonably, exclusively and necessarily for the purpose of coming into upstream petroleum operations, subject to sections 263 and 264 of this Act, shall upon commencement of production and sale or disposal of chargeable oil be deemed to have incurred a qualifying pre-production capital expenditure which shall be amortised in line with paragraphs 5 and 17 of the Fifth Schedule to this Act.
- Pre-production cost.
Fifth Schedule.
271. (1) Without prejudice to section 275 of this Act, where a trade or business of upstream petroleum operations carried on in Nigeria by a company is sold or transferred to another company for the purposes of better organisation of that trade or business or the transfer of its management and any asset employed in that trade or business is sold or transferred, then, if the Service is satisfied that one of those companies has control over the other or that both companies are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least three years prior to the date of reorganisation, the provisions set out in subsection (2) shall have effect.
- Trade or business sold or transferred.
- (2) Where subsection (1) applies, the Service may in its discretion if, on or before the date on which the trade or business is so sold or transferred, the first sale of or bulk disposal of chargeable oil by or on behalf of the company selling or transferring the trade or business has occurred, but the first sale of or bulk disposal of chargeable oil by or behalf of the company acquiring that trade or business has not occurred, direct that —
- (a) the first accounting period of the company acquiring that trade or business shall commence on the date on which the sale or transfer of the trade or business takes place and end on 31st December of that same year, and the definition of accounting period in section 318 of this Act shall be construed accordingly;
- (b) for the purpose of the Fifth Schedule to this Act, the asset sold or transferred to the company acquiring that trade or business by the company selling or transferring the trade or business shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure on the asset on the day following the day on which the sale or transfer occurred; and
- Fifth Schedule.
- (c) the company acquiring the asset so sold or transferred shall be deemed to have received all allowances given to the company selling or transferring the trade or business in respect of the asset under the Fifth Schedule to this Act and any allowances deemed to have been received by that company under the provisions of the Fifth Schedule, provided that the Service in its discretion may —
- Fifth Schedule.
- (i) require the company selling or transferring the trade or business or the company acquiring that trade or

business, to guarantee or give security to the satisfaction of the Service for payment in full of tax due or to become due from the company selling or transferring the trade or business, and

(ii) impose such conditions as it deems fit on either of the companies or on both of them.

(3) In the event of failure by the company or companies selling to fulfil the guarantee or conditions, the Service may revoke the direction and may make the additional assessments or repayment of tax as may be necessary to give effect to the revocation.

(4) Where the acquiring company makes a subsequent disposal of the assets thereby acquired within the succeeding three years after the date of acquisition, any concession enjoyed under this subsection shall be rescinded and the company shall be treated as if it did not qualify for the concession as at the date of the initial reorganisation.

(5) Where a trade or business of petroleum operations carried on in Nigeria by a company incorporated under any law in force in Nigeria is sold or transferred to another company and any asset employed in that trade or business is so sold or transferred, and the Service is satisfied that the companies are not connected and that none has control over the other or both are not controlled by another company, the —

(a) transaction shall be dealt with under section 266 (1) (c); and

(b) accounting period of the new trade or business shall be as provided for in subsection (2).

(6) For the purpose of subsection (2) (a), the accounting period of the company acquiring that trade or business shall commence on the date on which the sale or transfer of the trade or business to the company takes place or on such date within the calendar month in which the sale or transfer takes place as may be elected by the company with the approval of the Service and end on 31st December of that same year and the definition of "Accounting Period" under this Act shall be construed accordingly.

(7) A merger, take-over, transfer or restructuring of the trade or business carried on by a company shall not take place without the approval and having obtained direction of the Service on any tax that may be due and payable.

(8) Reference to a 'trade or business' in this section shall include references to any part of the trade or business.

272. (1) A company engaged in upstream petroleum operations across terrains shall be allowed to consolidate costs for the purpose of companies income tax.

Consolidation of costs and taxes.

(2) A company engaged in upstream petroleum operations related to crude oil across terrains shall be allowed to consolidate costs and taxes for the purposes of hydrocarbon tax only across assets in which it holds licences and leases in

accordance with the two categories of chargeable tax stipulated in section 267 of this Act.

- (3) In respect of a company in existence prior to the commencement of this Act, the amount of any loss incurred during any accounting period by a company selling or transferring its trade or business whether to a connected or unrelated party, being a loss which has not been allowed against any assessable profit of any accounting period of that company shall not be allowed against any assessable profit of the company acquiring that trade or business.
- (4) A company that is a contractor in a contract under section 85 of this Act shall be allowed to consolidate its losses and revenues across petroleum prospecting licences and petroleum mining leases granted after the commencement of this Act, for the purposes of subsections (1) and (2) with respect to the two tax classes under section 267 of this Act.

PART V — PERSONS CHARGEABLE

273. (1) Any person, other than a company, who engages in upstream petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from the operations, commits an offence. Partnerships.

(2) Where the person referred to in subsections (1) has benefitted from any profits on upstream petroleum operations, the person shall be subject to hydrocarbon tax and companies income tax under this Act on the profits and shall pay a penalty provided under section 297 of this Act.

(3) Where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, tax shall be charged and assessed on them in accordance with subsection (4).

(4) The apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company shall be in line with the equity interest of the parties under a jointly executed agreement that will be made available to the Service and where no jointly executed agreement is made available, the Commission shall advise the Service the approved equity interest of the parties and it shall be binding on the parties.

(5) Subject to this Act, where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, the Service may make regulation, in compliance with section 61 of the Federal Inland Revenue Service (Establishment) Act, for the ascertainment of tax to be charged or assessed upon each company so engaged. Act No. 13, 2007.

(6) Regulations made under subsection (5) may make provisions —

- (a) with respect to apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and tax chargeable upon each company;

(b) for the computation of any tax as if the partnership, joint venture, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned;

(c) to accept other basis of ascertaining the tax chargeable upon each of the companies; and

(d) which have regard to any circumstances whereby the operations are partly carried on for any company by an operating company whose expenses are reimbursed by those companies.

(7) Regulations made under this section may be of general application for the purpose of this section and this Part or for a class of arrangement or for a particular application to a specific partnership, joint venture, scheme or arrangement.

(8) The effect of any regulation made under this section shall not impose a greater burden of tax upon any company so engaged in any partnership, joint venture, scheme or arrangement than would have been imposed upon that company under this Part, if all things enjoyed, done or suffered by such partnership, joint venture, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint venture, scheme or arrangement.

274. (1) Where a company is being wound up or where in respect of a company a receiver has been appointed by any court, by the holders of any debentures issued by the company or otherwise, the company may be assessed and charged to tax in the name of the liquidator of the company, the receiver or any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver with respect to companies income tax and hydrocarbon tax.

Company wound up.

(2) Any liquidator, receiver or agent under subsection (1) shall be answerable for doing the acts required to be done by virtue of this Act for the assessment and charge to tax of the company and for payment of such tax.

(3) A liquidator or receiver under subsection (1) shall not distribute any asset of the Company to the shareholders or debenture holders unless he has made provision for the payment in full of any tax which may be found payable by the company or by the liquidator, receiver or agent on behalf of the company.

275. Where a company which is or was engaged in petroleum operations transfers a substantial part of its assets to any person without having paid any companies income tax or hydrocarbon tax, assessed or chargeable upon the company, for any accounting period ending prior to such transfer and in the opinion of the Service one reason for such transfer by the company was to avoid payment of such tax then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 294 of this Act.

Avoidance by transfer.

276. Every person answerable under this Act for the payment of companies income tax or hydrocarbon tax on behalf of a company may retain out of any money in or coming to his hands or within his control on behalf of such company so much as shall be sufficient to pay the tax and shall be indemnified against any person for payments made by him in accordance with this Act.

Indemnification of representative.

PART VI — APPLICABILITY, ACCOUNTS AND PARTICULARS

277. (1) Every company engaged in upstream petroleum operations related to crude oil shall for each accounting period of the company make up accounts of its profits or losses and prepare the following particulars for the purpose of determining hydrocarbon tax —

Preparation and delivery of accounts and particulars.

(a) a statement of accounts of its profits or losses;

(b) computations of its actual adjusted profit or loss and actual assessable profits of that period;

(c) in connection with the Fifth Schedule to this Act, a schedule showing —

Fifth Schedule.

(i) the residues at the end of that period in respect of its assets,

(ii) all qualifying petroleum expenditure incurred by it in that period.

(iii) the values of any of its assets disposed of in that period, and

(iv) the allowances due to it under that schedule for that period;

(d) in connection with the Sixth Schedule to this Act, a schedule showing total production allowance from each and every field of its upstream petroleum operations related to crude oil;

Sixth Schedule.

(e) a computation of its actual chargeable profits for that period for the two classes of chargeable profits identified in section 267 (a) and (b) of this Act;

(f) a statement of amounts repaid, refunded, waived or released to it, referred to in section 263 (2) of this Act, during that period;

(g) a computation of its chargeable tax for that period and where associated gas is being sold or otherwise delivered through the measurement point the methodology used to determine the chargeable tax;

(h) duly completed self-assessment form attested to by the principal officer of the company; and

(i) evidence of payment of the final instalment.

(2) Every company engaged in upstream petroleum operations related to crude oil shall, with respect to any accounting period of the company and within five months after the expiration of that period or within five months after the effective date of this Act, whichever is later, deliver to the Service a copy of its accounts, bearing an auditor's certificate, of that period, in accordance with subsection (1) and copies of the particulars referred to in subsection (1) relating to that period with the copy of the delivered company accounts and each copy of those particulars, shall, where the copies are —

(a) not estimates, contain a declaration signed by authorised officer of the company or by its liquidator, receiver or the agent of the liquidator or receiver, that the same is true and complete; and

(b) estimates, contain a declaration, similarly signed, that the estimate was made to the best of the ability of the person signing same.

(3) Notwithstanding the provisions of this section, every company which is yet to commence bulk sales or disposal of chargeable oil, shall file with the Service its audited accounts and returns —

(a) within 18 months from the date of its incorporation, in the case of a newly incorporated company; and

(b) within five months after any period ending on 31st December, in the case of any other company, provided that where there is an interval between 31st December of the preceding year and the date on which the company commences the bulk sale or disposal of chargeable oil, natural gas or condensate, the interval shall be deemed to form part of the preceding period.

(4) A company which fails to comply with subsection (2) or (3) is liable to pay as penalty for late filing —

(a) ₦10,000,000 on the first day the failure occurs and ₦2,000,000 for each and every subsequent day in which the failure continues; or

(b) other sum as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette.

278. The Service may give notice in writing to any company engaged in upstream petroleum operations related to crude oil as the Service may deem necessary requiring the company to furnish further information, within reasonable time as may be specified, in relation to any matter referred to in section 277 of this Act or any other matter which the Service may consider necessary for the purpose of this Act. Power of the Service to request further information.
279. (1) For the purpose of obtaining information in respect of any company's upstream petroleum operations related to crude oil, the Service may give notice to a company requiring it within a period not less than 21 days from the date of service of the notice, to complete and deliver to the Service any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such liquidator or receiver, to attend before the Service or its authorised representative on the date or dates as may be specified in the notice and to produce for examination any books, documents, accounts and particulars which the Service may deem necessary. Power to call for returns and books.
- (2) Where a company assessable to hydrocarbon tax under the provisions of this Act fails or refuses to keep books or accounts which, in the opinion of the Service are adequate for the purpose of ascertaining the tax, the Service may by notice in writing require it to keep such records, books and accounts as the Service considers to be adequate in a form and in a language as the Service may direct and the company shall keep the records, books and accounts as directed.
- (3) An appeal shall lie from any direction of the Service made under this section to the Tax Appeal Tribunal.
280. (1) Not later than two months after the commencement of each accounting period of any company engaged in upstream petroleum operations related to crude oil, the company shall submit to the Service an estimated return of its profits or losses for that accounting period for the purpose of hydrocarbon tax, which shall include — Returns of estimated tax.
- (a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;
- (b) in connection with the Fifth Schedule to this Act, a schedule showing — Fifth Schedule.
- (i) the estimated residues at the end of that period in respect of its assets,
- (ii) all estimated qualifying petroleum expenditure incurred by it in that period,
- (iii) the values of any of its assets, estimated by references to the provisions of that schedule, to be disposed of in that period, and
- (iv) the allowances due to it under that schedule for that period;

(c) in connection with the Sixth Schedule to this Act, a schedule showing estimated total production allowance from all its upstream petroleum operations related to crude oil on field by field basis:

(d) a computation of its estimated chargeable profits of that period; and

(e) a computation of its estimated tax for that period.

(2) Where, at any time during the accounting period, there is a change in price, cost or volume, the company shall submit further returns on a monthly basis containing its revised estimated tax for such period.

(3) Where the further returns provided for under subsection (2) is not made, the Service shall impose interest at the prevailing LIBOR or any other successor rate plus 10% points for the differential of the revised tax over the estimated tax paid by the company.

(4) Every return made by a company engaged in upstream petroleum operations related to crude oil in fulfilment of the provisions of this section shall be subject to review and validation by the Service.

(5) Where a company does not provide the estimates under subsection (1) and (2), the Service shall have the right to determine such estimates on the best of judgment basis and impose same on the company.

(6) A company which fails to comply with subsection (1) is liable to pay as penalty for late filing —

(a) ₹10,000,000 on the first day the failure occurs and ₹2,000,000 for each and every subsequent day in which the failure continues; or

(b) other sum as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette.

281. Where it is shown by any company to the satisfaction of the Service that for some good reason, the company is not able to comply with section 277 of this Act within the time limited by that section or any notice given to it under section 278 or 279 of this Act, within the time limited by any such notice, the Service may grant in writing such extension of that time as the Service may consider necessary.

Extension of periods for making returns.

282. (1) The Service shall proceed to assess a company with the hydrocarbon tax for any accounting period of the company immediately after the expiration of the time allowed to such company for the delivery of self-assessment provided for in section 277 of this Act.

Assessment of tax payable.

(2) Where a company has delivered a self-assessment for any accounting period of the company, the Service may —

(a) accept the self-assessment; or

(b) refuse to accept the self-assessment and proceed as provided in subsection (3) upon any failure as mentioned and the like consequences shall ensue.

(3) Where, for any accounting period, a company files a self-assessment which was rejected by the Service or has failed to file self-assessment as provided in section 277 of this Act within the time limited by that section or has failed to comply with any notice given to it under section 278 or 279 of this Act within the time specified in such notice or within any extended time provided in section 281 of this Act, and the Service is of the opinion that the company is liable to pay hydrocarbon tax, the Service may estimate the amount of the tax to be paid by the company for that accounting period and make an assessment accordingly, provided that —

(a) the assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver the accounts and particulars or to comply with the notices, and

(b) nothing in this subsection shall affect the right of the Service to make any additional assessment under the provisions of section 283 of this Act.

283. (1) Where the Service discovers or is of the opinion at any time that, with respect to any company liable to hydrocarbon tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at an amount less than that which ought to have been assessed and charged for any accounting period of the company, the Service may within six years after the expiration of that accounting period —

Additional assessments.

(a) assess the company, as often as may be necessary, with tax for that accounting period at such amount or additional amount as in the opinion of the Service ought to have been charged and assessed; and

(b) may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company.

(2) Where a revision under subsection (1) results in a greater amount of tax to be charged than has been charged or would otherwise be charged, an additional assessment or an assessment for any such subsequent accounting period shall be made and the provisions of this Act as to notice of assessment, objection, appeal and other proceedings under this Act shall apply to any such assessment or additional assessment and to the tax charged.

(3) For the purpose of computing under subsection (1) the amount or the additional amount of tax for any accounting period of a company which ought to have been

charged, all relevant facts consistent with section 289 (4) of this Act shall be taken into account even though it is not known when any previous assessment or additional assessment on the company for that accounting period was made or could have been made.

- (4) Notwithstanding the provisions of this section, where any form of fraud, willful default or neglect has been committed by or on behalf of any company in connection with hydrocarbon tax imposed under this Act, the Service may, at any time and as often as may be necessary, assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to fraud, willful default or neglect.

284. (1) Assessments of hydrocarbon tax shall be made in such form and in such manner as the Service shall authorise and shall contain the — Making of assessments.

(a) names and addresses of the companies assessed to tax or of the persons in whose names any companies have been assessed to tax, provided that the names of the represented companies are indicated: and

(b) particular accounting period and the amount of the chargeable profits and chargeable tax for that period, in the case of each company for each of its accounting periods.

(2) When any assessment is to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) showing the amended or revised amount of the chargeable profits and chargeable tax.

(3) A copy of each assessment and of each amended or revised assessment shall be filed in a list which shall constitute the assessment list for the purpose of this Act.

285. (1) The Service shall cause to be served personally on or sent by courier to a company which is liable to hydrocarbon tax under this Act, by way of an additional assessment or an assessment by the Service, a notice of assessment stating the — Notices of assessment.

(a) accounting period and the amount of its chargeable profits and chargeable tax assessed and charged upon the company;

(b) place at which payment of the tax should be made; and

(c) rights of the company under subsection (2).

(2) Where any person in whose name an assessment was made in accordance with this Act, disputes the assessment, the person may apply to the Service by notice of objection in writing, to review and revise the assessment made on him and the application shall be made within 30 days from the date of service of the notice of the assessment, stating the amount of chargeable —

(a) profits of the company of the accounting period in respect of which the assessment is made; and

(b) tax and the tax which such person claims should be stated on the notice of assessment.

(3) The Service, upon being satisfied that due to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of 30 days, shall extend the period as may be reasonable in the circumstances.

(4) After receipt of a notice of objection referred to in subsection (2), the Service may within such time and place as it shall specify, require —

(a) the person giving the notice of objection to furnish such particulars as the Service may deem necessary; and

(b) any other person, by notice, to give evidence orally or in writing in respect of any matter necessary for the ascertainment of the hydrocarbon tax payable and the Service may further require that where such evidence is given —

(i) orally, it shall be given on oath, and

(ii) in writing, it shall be given by affidavit.

(5) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Service as to the amount of tax liable to be assessed, the assessment shall be amended accordingly and notice of the tax payable shall be served upon the person.

(6) Where an applicant for revision under subsection (2) fails to agree with the Service on the amount of the hydrocarbon tax, the Service shall give such applicant notice of refusal to amend the assessment as desired by the applicant or may revise the assessment to such amount as the Service may determine and give the applicant notice of the revised assessment and tax payable, together with notice of refusal to any subsequent request to amend the revision and, where necessary, any reference in this Act to an assessment or additional assessment shall be treated as a reference to an assessment or additional assessment as revised under the provisions of this subsection.

286. (1) An assessment, warrant or other proceeding purporting to be made in accordance with this Act shall not be quashed or deemed to be void or voidable for want of form or be affected by reason of a mistake, defect or omission, if the —

Errors and defects in assessment and notice.

(a) substance and effect of the assessment is in conformity with the provisions of this Act; and

(b) company assessed or intended to be assessed or affected is designated according to common intent and understanding.

(2) An assessment shall not be invalidated or affected by reason of —

(a) a mistake as to the —

(i) name of a company liable or of a person in whose name a company is assessed, or

(ii) amount of the tax: or

(b) any variance between the assessment and the notice, if in cases of assessment, the notice be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the particulars on which the assessment is made.

287. Notwithstanding anything to the contrary in any law —

Tax computation.

(a) all hydrocarbon tax computation made under this Act shall be in US Dollars; and

(b) any assessment made under section 284 of this Act shall be in US Dollars.

PART VII — APPEALS

288. Any Company or tax payer, who does not agree with an assessment made under section 285 (6) of this Act, may appeal against the assessment to the Tax Appeal Tribunal established under the provisions of section 59 of the Federal Inland Revenue Service (Establishment) Act.

Appeals to Tax Appeal Tribunal.

Act No. 13, 2007.

289. (1) Where —

Assessment to be final and conclusive.

(a) no valid objection or appeal has been lodged within the time limited by section 285 of this Act or the rules of the relevant tribunal or court, as the case may be, against an assessment as regards the amount of the hydrocarbon tax assessed,

(b) the amount of the tax has been agreed to under section 285 (5) of this Act, or

(c) the amount of the tax has been determined on objection or revision under section 285 (6) of this Act or on appeal.

the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such tax.

- (2) Where the full amount of the tax in respect of the final and conclusive assessment under subsection (1) is not paid within the appropriate period or periods prescribed in this Act, the provisions relating to the recovery of tax and to any penalty under section 292 of this Act, shall apply to the collection and recovery, subject only to the set-off of the amount of any tax repayable under any claim, made under any provision of this Act, which has been agreed to by the Service or determined on an appeal against a refusal to admit any such claim.
- (3) Where an assessment has become final and conclusive, any tax overpaid shall be repaid or treated as credit in favour of the assessed party.
- (4) Nothing in section 285 of this Act or in this Chapter shall prevent the Service from making any assessment or additional assessment to hydrocarbon tax for any accounting period which does not involve re-opening any issue on the same facts which has been determined for that accounting period, under section 285 (5) and (6) of this Act by agreement or otherwise or on appeal.

PART VIII — COLLECTION, RECOVERY AND REPAYMENT OF TAX

- 290. Collection of hydrocarbon tax shall, in cases where notice of an objection or an appeal has been given, remain in abeyance and any pending proceedings for any payment in instalment shall be stayed until the objection or appeal is determined but the Service may in any such case, enforce payment of that portion of the tax which is not in dispute by an application to the tribunal or court, as the case may be. Procedure in cases where objection or appeal is pending.
- 291. (1) Subject to section 280 of this Act, hydrocarbon tax for any accounting period shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4). Time within which payment is to be made.
- (2) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or where the accounting period is less than a year, in an amount equal to equal monthly proportion, of the amount of tax estimated to be chargeable for such accounting period in accordance with section 280 (1) of this Act.
- (3) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) shall be due and payable not later than the last day of the month in issue and shall be in an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with section 280 (2) of this Act less so much as has already been paid for such accounting period divided by the number of such of the monthly payments remaining to be made in respect of such accounting period.
- (4) A final instalment of tax shall be due and payable on or before the due date of filing of the self-assessment of tax for such accounting period and shall be the amount of the tax assessed for that accounting period less so much as has already been paid under subsections (2) and (3).

(5) Any instalments on account of tax estimated to be chargeable shall be treated as hydrocarbon tax charged and assessed for the purposes of sections 292 and 294 of this Act.

292. (1) Where any hydrocarbon tax or any instalment of tax due and payable is not paid within the appropriate time limit prescribed in section 291 of this Act —

Penalty for non-payment of tax and enforcement of payment.

(a) a sum equal to 10% of the amount of the tax payable shall be added and the provisions of the Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum:

(b) the tax due shall incur interest at the prevailing LIBOR or any successor rate, plus 10% from the date when the tax becomes payable until it is paid and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;

(c) the Service shall serve a demand notice upon the company or person in whose name a tax is chargeable and if payment is not made within one month from the date of the service of the demand notice, the Service may proceed to enforce payment under this Act; and

(d) an addition imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.

(2) Any person who without lawful justification or excuse fails to pay hydrocarbon tax within the period of one month prescribed in subsection (1) (c), commits an offence under this Act and the provisions of subsection (1) (a) to (c) shall apply.

(3) The Service may, for any good cause shown, remit the whole or any part of the additional 10% penalty and interest on the tax due under subsection (1).

293. (1) Where payment of hydrocarbon tax in whole or in part has been held in abeyance pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable within one month from the date of service on the company assessed or on the person in whose name the company is assessed, of the notification of the tax payable by the Service or Tribunal.

Collection of tax after determination of objection or appeal.

(2) Where such balance is not paid within one month, section 292 of this Act shall apply.

294. (1) Hydrocarbon tax may be sued for and recovered in a court of competent jurisdiction at the place at which payment shall be made by the Service.

Suit for tax by the Service.

(2) In any suit under subsection (1) the production of a certificate signed by any person duly authorised by the Service giving the name and address of the defendant and

the amount of tax due by the defendant shall be sufficient evidence of the amount due.

295. (1) Where a person who has paid hydrocarbon tax for an accounting period alleges that any assessment made upon him or in his name for that period, was excessive by reason of some error or mistake in the accounts, particulars or other written information supplied by him to the Service for the purpose of the assessment, that person may, not later than six years after the end of the accounting period in respect of which the assessment was made, make an application in writing to the Service

Relief in respect of error or mistake.

(a) for a relief; or

(b) to set-off the credit against the liability of a similar tax payable to the Service.

(2) On receiving an application under subsection (1), the Service shall inquire into it and subject to the provisions of this section shall by way of repayment of tax give such relief or approve the set-off in respect of the error or mistake as appears to the Service to be reasonable and just.

(3) A relief shall not be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the accounts, particulars or information was in fact made or given on the basis or in accordance with the practice of the Service generally prevailing at the time when the accounts, particulars or information was made or given.

(4) In determining any application under this section, the Service shall have regard to all the relevant circumstances of the case and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the chargeable profits of the applicant and for this purpose, the Service may take into consideration the liability of the applicant and assessments made upon him in respect of other years.

296. (1) Except as otherwise expressly provided in this Act, a claim for the repayment of any hydrocarbon tax overpaid shall not be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates.

Repayment of tax.

(2) The Service shall cause to be refunded or set-off at the option of the applicant upon presentation of relevant documents evidencing the tax to be refunded.

(3) Any tax claimed based on this section, which is proven not to be due, shall attract a penalty at the prevailing LIBOR or any other successor rate plus 10% from the date the payment or set-off was made up to the date the refund is made by the applicant.

PART IX — OFFENCES AND PENALTIES

297. (1) A person who fails to comply with the provisions of this Chapter or any regulation made under this Act for which no other penalty is specifically provided, shall be

Penalty for defaults.

liable to an administrative penalty of ₦10,000,000, and where the default continues beyond a period stipulated by this Act or regulation, the person shall be liable to a further administrative penalty of ₦2,000,000 or such other sum as may by order be prescribed by the Minister of Finance, for each day the default continues.

(2) Notwithstanding the provisions of subsection (1), a person who is found guilty of an offence under this Chapter or in a regulation made under this Act for which no other penalty is specifically provided, shall, on conviction, be liable to a fine of ₦20,000,000 or other sum as may be prescribed by the Minister of Finance by an order and where the offence continues beyond a period stipulated by this Act or regulation, the person shall be liable to an additional fine of ₦2,000,000 or such other sum as may, by order, be prescribed by the Minister of Finance for each day the default continues, or imprisonment for a term of six months.

(3) A person who —

(a) fails to comply with the requirements of a notice served on him under this Chapter;

(b) fails to comply with section 277 of this Act.

(c) without sufficient cause fails to attend in answer to a notice or summons served on him under this Chapter or having attended fails to answer any question lawfully put to him, or

(d) fails to submit any return required to be submitted under section 277 or 281 of this Act.

commits an offence.

(4) Any violation in respect of which a penalty is provided for in subsection (1) shall be deemed to occur in Nigeria.

298. (1) A person who without reasonable excuse —

(a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses of which he is required under this Act to make up accounts,

(b) prepares or causes to be prepared any incorrect schedule or statement required to be prepared under section 277 of this Act by overstating any expenditure or overstating any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released, or

(c) gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to hydrocarbon tax.

Penalty for making incorrect accounts.

is liable to an administrative penalty of the sum of ₦15,000,000 or 1% of the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or information or would have been so undercharged if the account, schedule, statement or information had been accepted as correct, and is also liable for the appropriate tax which would have been charged.

(2) Notwithstanding the provisions of subsection (1) (c), a person who gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to hydrocarbon tax commits an offence and on conviction is liable to a fine of ₦15,000,000 or 1% of the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or information, or would have been so undercharged if the account, schedule, statement or information had been accepted as correct and is also liable for the appropriate tax which would have been charged.

(3) The Service may compound any offence under this Act by accepting a sum of money not exceeding the maximum fine specified for the offence and shall issue an official receipt for any money so received.

299. (1) A person who —

False statements and returns.

(a) for the purpose of obtaining any deduction, refund, rebate, reduction or repayment in respect of hydrocarbon tax for himself or for any other person or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation or forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any receipt or token as evidence for payment of the tax under this Act; or

(b) aids, abets, assists, counsels, incites or induces any other person

—
(i) to make or deliver any false return or statement under this Act,

(ii) to keep or prepare any false accounts or particulars affecting tax, or

(iii) unlawfully refuses or neglects to pay tax,

commits an offence and is liable on conviction to a fine of ₦15,000,000 or 1% of the amount of tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months or to both the fine and imprisonment and is also liable for the appropriate hydrocarbon tax which would have been assessed and charged.

(2) Notwithstanding the provisions of subsection (1), any person who does any of the acts or makes the omissions contained in subsection (1), may be liable to an administrative penalty of ₦15,000,000 or 1% of the amount of hydrocarbon tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the act or omission occurred and shall still be liable for appropriate tax which would have been assessed and charged.

300. A person who, —

(a) being a member of the Service charged with the administration of this Act or any assistant employed in connection with the assessment and collection of the hydrocarbon tax who —

(i) demands from any person an amount in excess of the authorised assessment of the tax payable,

(ii) withholds for his own use or otherwise any portion of the amount of tax collected.

(iii) renders a false return, whether verbal or in writing of the amounts of tax collected or received by him, or

(iv) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the Service or any other individual; or

(b) not being authorised under this Act, collects or attempts to collect the tax under this Act,

commits an offence and is liable on conviction to a fine equivalent to 200% of the sum in question or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Penalties for offences by authorised or unauthorised persons.

301. The institution of proceedings for or the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve any person of liability to payment of any hydrocarbon tax for which he is or may become liable.

Tax to be payable notwithstanding any proceedings for penalties.

PART X — APPLICATION OF COMPANIES INCOME TAX TO PETROLEUM OPERATIONS

302. (1) Without prejudice to Companies Income Tax Act and any other applicable law, the provisions of this Act shall apply and any company, concessionaire, licensee, lessee, contractor or subcontractor involved in the upstream, midstream or downstream petroleum operations under this Act, shall also be subject to the Companies Income Tax Act.

General requirement of companies engaged in petroleum operations to pay companies income tax.

Cap. C21, LFN. 2004.

(2) For the purpose of determining the value of chargeable crude oil, or chargeable gas, in relation to any accounting period, the crude oil and gas revenue of a company for that period shall be the value of any chargeable oil or chargeable gas adjusted to the measurement points, based on the —

- (a) proceeds of all chargeable oil or gas sold by the company; and
 - (b) value of all chargeable oil or gas disposed by the company.
- (3) Subject to sections 142 (2) and 197 (2) of this Act, a person intending to be involved in more than one stream, that is upstream, midstream or downstream petroleum operations shall register and use a separate company for each stream of petroleum operations under this Act provided that, for companies with petroleum mining leases selected under section 93 (6) (b) and (7) (b) of this Act, no stamp duties and capital gains tax shall be levied by Government on such segregation.
- (4) For strategic projects in the upstream petroleum operations that seek to produce oil and natural gas to be processed or refined to finished petroleum products, and supplied in wholesale solely to the domestic market, such projects shall have the option to be established as an integrated strategic project (ISP), whereby the capital investment in the associated midstream petroleum operations as defined under this Act, can be consolidated with the upstream petroleum operations for purposes of tax, and where an ISP option is elected, the following provisions shall apply —
- (a) arms-length transfer prices shall be established to fiscalise the hydrocarbons transferred from the upstream petroleum operations to the midstream petroleum operations; and
 - (b) capital investment in the midstream petroleum operations consolidated with upstream petroleum operations cannot be represented for capital allowances when fiscalising the income from midstream petroleum operations.
- (5) In determining the companies income tax, the hydrocarbon tax under this Act shall not be deductible.
- (6) All companies engaged in domestic midstream petroleum operations, downstream gas operations and large-scale gas utilisation industries as defined in this Act, shall be entitled to benefit from the incentives provided under section 39 of the Companies Income Tax Act, and investors in gas pipeline will be granted an additional tax-free period of five years at the expiration of the tax-free period granted in section 39 of the Companies Income Tax Act. Cap. C21. LFN. 2004.
- (7) Natural gas transferred or disposed from the upstream to the midstream or downstream shall be subject to tax under the Companies Income Tax Act. Cap. C21. LFN. 2004.
- (8) Natural gas liquids and liquid petroleum gases derived from natural gas shall be subject to companies income tax.
- (9) Acquisition costs of petroleum rights shall be eligible for annual allowance at the rate of 20% with a retention value of 1% in the last year until the asset is disposed.
- (10) Capital allowances for other assets shall be granted as follows —

(a) upstream petroleum operations assets shall be in accordance with the Fifth Schedule to this Act: and

Fifth Schedule.

(b) midstream and downstream operations shall be in accordance with the Second Schedule to the Companies Income Tax Act.

Cap. C21, LFN, 2004.

(11) Section 24 of the Companies Income Tax Act shall be read in conjunction with the following provisions of this Act —

(a) all rents and royalties the liability for which was incurred by the company during that period in respect of crude oil sold, condensate sold and natural gas sold or delivered or disposed of in any other commercial manner and where a petroleum mining lease includes payments to the Federation Account related to production sharing, profit sharing, risk service contracts or other contractual features and the company has incurred liability for such payments and such payments were made;

(b) any amount contributed to any fund, scheme or arrangement approved by the Commission or Authority for the purpose of providing for —

(i) abandonment and decommissioning,

(ii) petroleum host communities development trust, or

(iii) environmental remediation; and

(c) other deductions as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette.

(12) Section 27 of the Companies Income Tax Act shall be read in conjunction with the following provisions of this Act —

Cap. C21, LFN, 2004.

(a) any expenditure for the purchase of information relating to the existence and extent of petroleum deposits, other than for the acquisition of geological, geophysical and geochemical data or information;

(b) any expenditure incurred as a penalty including natural gas flare fees or any such imposition relating to natural gas flare;

(c) production bonuses, signature bonuses paid for the acquisition of, or of rights in or over, petroleum deposits; signature bonuses or fees paid for renewing petroleum mining lease or petroleum prospecting licence or fees paid for assigning rights to another party including for marginal fields; and

(d) any tax inputted into a contract or an agreement on a net tax basis and paid by a company on behalf of the vendor or contractor.

(13) Any company involved in upstream petroleum operations shall apply the accounting periods established for hydrocarbon tax on an actual year basis for its company's income tax in accordance with sections 277, 280 and 291 of this Act.

(14) Any company involved in upstream petroleum operations that is in default of subsection (13) in relation to filing of companies income tax returns, shall be liable to pay a penalty for late filing as follows —

(a) ₦10,000,000 on the first day the failure occurs and ₦2,000,000 for each and every subsequent day in which the failure continues; or

(b) other sum as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette.

(15) Offences and penalties specified under Part IX of this Chapter shall be applicable to companies income tax of upstream petroleum companies.

(16) The tax due from a company involved in upstream petroleum operations shall in the case of —

(a) Naira remittances, carry interest at the prevailing NIBOR plus 10% from the date when the tax becomes payable until it is paid, and

(b) foreign currency remittances, incur interest at the prevailing LIBOR or any successor rate plus 10% from the date when the tax becomes payable until it is paid.

and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest.

(17) Furthermore upstream petroleum operations shall be subject to the following provisions —

(a) where, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with this section other than this subsection, is less than the amount mentioned in paragraph (b), the company shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between those two amounts;

(b) the amount referred to in paragraph (a) is, for any accounting period of a company, the amount which the chargeable tax for crude oil or gas for that period, calculated in accordance with this section, would come to if the reference in subsection (2) (a) and

- (b). to the proceeds of sale or disposal were a reference to the amount obtained by multiplying the number of barrels of that crude oil or gas determined at the measurement point by the fiscal oil per barrel or fiscal gas per MMBtu;
- (c) for the purpose of paragraph (b), the relevant sum per barrel of crude oil, condensate or gas per MMBtu by a company is the fiscal oil price or fiscal gas price applicable to that crude oil or gas as may be established by the Commission;
- (d) the whole of any additional chargeable tax for crude oil or chargeable gas payable by a company by virtue of this subsection for any accounting period shall be payable concurrently with the final instalment of the chargeable tax payable for that period;
- (e) where there is no fiscal oil price or fiscal gas price established for a crude oil stream or gas, the Commission shall establish fiscal oil price or fiscal gas price for such stream and every fiscal oil or gas price established shall bear a fair and reasonable relationship
-
- (i) to the established fiscal oil or gas price of Nigerian crude oil streams or gas of comparable quality and specific gravity, or
- (ii) where there are no such Nigerian crude oil streams or gas of comparable quality and specific gravity it shall bear a fair and reasonable relationship to the official selling prices at main international trading centers for crude oil or gas of comparable quality and gravity, due regard being had in either case to freight differentials and other relevant factors; and
- (f) where any crude oil or gas, which in relation to a particular company is its chargeable oil or chargeable gas, is exported from Nigeria by another company, that crude oil or gas shall for the purpose of this section be deemed to be exported from Nigeria by that particular company.

PART XI — GENERAL PROVISIONS

303. (1) The provisions of this Act shall not apply to holders of an oil prospecting licence or oil mining lease who do not enter into a conversion contract until the termination or expiration of the respective oil prospecting licence or oil mining lease save for the provisions of section 311 and paragraphs 10 and 11 of the Seventh Schedule to this Act which shall apply to licences and leases awarded to indigenous Nigerian companies on a sole risk basis under the Petroleum Act, on which the Government has successfully exercised its back-in rights prior to the effective date of this Act but any renewal of an oil mining lease shall be based on this Act.

General application of this Part and other matters.

Seventh Schedule.

Cap. P10, LFN, 2004.

(2) The fiscal provisions of this Act are the base terms that are applicable and the Commission may under section 74 (2) of this Act conduct a licensing round whereby the bid parameter is a higher royalty, profit oil share or other fiscal features in order to ensure that the Government receives the full market value for each block.

304. (1) Where matters relate to hydrocarbon tax and companies income tax, the Minister of Finance may make regulations for the carrying out of the provisions of this Act and the Service may make rules and specify the form of returns, claims, statements and notices under this Act.

Regulations, rules and forms.

(2) Where matters relate to fees, rents, royalties and payments to Government other than taxes and duties, the Commission may make regulations and rules generally for the carrying out of the provisions of this Act.

(3) Where matters relate to the environment, the Commission and Authority shall have responsibility over all environmental matters in respect of upstream petroleum operations and midstream and downstream respectively except in relation to environmental impact assessment which shall be in accordance with applicable laws.

305. Fiscal stabilisation clauses contained in any production sharing contract or other contract entered into after the commencement of this Act shall not be applicable to the fiscal provisions listed in this section, regardless of whether these changes affect the contractor favorably or unfavorably, if changes are being made in a manner that is not discriminatory to the petroleum industry or the contractor and the respective fiscal provisions are —

Fiscal stabilisation.

(a) generally applicable taxes, such as withholding taxes, companies income tax, tertiary education tax and VAT;

(b) levies, taxes or payments to comply with modern principles in respect of environment, labour laws, health and safety; and

(c) new taxes, levies or duties to implement Nigeria's commitments with respect to climate change under the United Nations Framework Convention on Climate Change and other related international agreements.

306. All production of petroleum, including production tests shall be subject to royalties as provided in the Seventh Schedule to this Act.

Royalty.
Seventh Schedule.

CHAPTER 5 — MISCELLANEOUS PROVISIONS

307. (1) The provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against the Commission or the Authority, the Commission Chief Executive or the Authority Chief Executive, any commissioner or director, officer or employee of the Commission or Authority.

Legal proceedings.
Cap. P41, LFN, 2004.