

Nigeria

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1. Introduction

The oil industry in Nigeria dates back to the 1950s when oil was discovered in Oloibiri¹ after 50 years of oil exploration.² At the time, Shell-BP was the country's sole concessionaire, successfully producing from Nigeria's first oilfield in 1958.³ Exploration rights were extended to other foreign companies after Nigeria's independence in 1960.

In 1971, Nigeria joined the Organisation of Petroleum Exporting Countries (OPEC). A new national oil company, the Nigerian National Petroleum Corporation (NNPC), state owned and controlled, was established by law in 1977 to replace the previous state-owned company, Nigerian National Oil Company (NNOC).

The Federal Government of Nigeria over the course of the 1970s acquired major equity interests in the existing concessions through participation agreements that eventually became joint venture arrangements. The production sharing contracts came into being at a substantially later date in the 1990s, although Ashland Oil (Nigeria) Unlimited had entered into such a contract with the then NNOC in 1973.

2. Upstream activities

From the inception of oil exploration in Nigeria in 1937, till the early 1990s, nearly all upstream activities were restricted to land and swamps. Where prospecting ventured offshore, it was in areas not greater than 200m water depth.⁴

However, the Federal Government opened up a new frontier in exploration activities in 1993, foreshadowing a promising future, by allocating some offshore blocks in water depths reaching 2,500m.⁵ They are being operated under a production sharing contract arrangement and are governed by the Deep Offshore and Inland Basin Production Sharing Contract Act.⁶ Two of Nigeria's largest deep-water discoveries are the Bonga⁷ and Agbami⁸ fields.

1 A community in the Ogbia Local Government Area in present-day Bayelsa State (Niger Delta area) of Nigeria.
2 See www.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasInNigeria/IndustryHistory.aspx (last accessed 31 August 2017).
3 5,100 barrels per day.
4 www.nnpcgroup.com/NNPCBusiness/UpstreamVentures/Exploration.aspx (last accessed 31 August 2017).
5 *Ibid.*
6 Cap D3, Laws of the Federation of Nigeria, 2004.
7 Operated by Shell Nigeria Exploration and Production Company Limited (SNEPCo). See <http://corporate.exxonmobil.com/en/company/worldwide-operations/crude-oils/bonga> (last accessed 31 August 2017).
8 Operated by a subsidiary of Chevron. See www.chevron.com/countries/nigeria/ (last accessed 31 August 2017).

There has also been an increase in gas upstream activities as a result of the Federal Government's focus on gas monetisation from 2008, as well as a rising demand for natural gas in the West African sub-region, domestic gas-to-fertiliser and regional gas-to-power prospects.⁹ This has led to a drop in flared gas from over 50% in 2001 to about 11% as at 2015.¹⁰

3. Petroleum legal regime

3.1 Petroleum law and relevant provisions

The Constitution is the basis of state ownership of natural resources in Nigeria as it vests the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria in the government of the Federation, managed in a manner prescribed by the National Assembly.¹¹

The Petroleum Act¹² is the principal legislation governing the oil and gas industry. It provides for the exploration of petroleum from Nigeria's territorial waters, continental shelf and exclusive economic zones. It also vests the ownership of all onshore and offshore revenue from petroleum resources in the Federal Government of Nigeria.¹³ It provides for the running of refineries, control of petroleum products, regulations of the safe working of petroleum operations, conservation of petroleum resources and pollution prevention.¹⁴ Most of the powers under the Act are exercisable by the Minister of Petroleum Resources, with a few powers exclusive to the President of Nigeria. Under the Act, the Minister may grant the licences for upstream petroleum operations.¹⁵

The Deep Offshore & Inland Basin Production Sharing Contracts Act¹⁶ gives effect to certain fiscal incentives given to the oil and gas companies operating in the Deep Offshore and Inland Basin areas.

Environmental Laws – Flowing from the constitutional power of the National Assembly to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria,¹⁷ key laws on the protection of the environment were passed and include the following:

- National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act:¹⁸ This Act set up NOSDRA to coordinate and implement the National Oil Spill Contingency Plan, in addition to having primary responsibility for preparedness, detection and response to all oil spills in Nigeria.¹⁹

9 See the Oil and Gas Industry Annual Report available at <https://dpr.gov.ng/index/oil-gas-industry-annual-reports-ogiar/> (last accessed 31 August 2017).

10 *Ibid.*

11 1999 Constitution Cap C23, Laws of the Federation of Nigeria 2004, s 44(3).

12 Cap P10, Laws of the Federation of Nigeria 2004.

13 *Ibid.*, Preamble.

14 *Ibid.*, s 9.

15 *Ibid.*, s 2.

16 Cap D3, Laws of the Federation of Nigeria 2004.

17 1999 Constitution Cap C23, Laws of the Federation of Nigeria 2004, s 20.

18 Cap N157, Laws of the Federation of Nigeria.

19 See NOSDRA Act 2006, ss 1 and 5.

- Environmental Impact Assessment Act:²⁰ This Act seeks to ensure that the environmental effects of the activities of any individual, government or corporate body are first taken into consideration before the activities are carried out. It requires an assessment of both private and public projects that may have a substantial impact on the environment.²¹
- Hydrocarbon Oil Refineries Act:²² This Act makes provision for the licensing and control of the refining of hydrocarbon oils.²³ It prohibits the refining of hydrocarbon oils in any place other than a licensed refinery.²⁴
- Associated Gas Re-Injection Act:²⁵ This Act seeks to prevent the unlawful flaring of gas²⁶ and provides for the establishment of schemes to enable the viable use of associated gas or its re-injection.²⁷
- Harmful Waste (Special Criminal Provisions, etc) Act:²⁸ This Act prohibits the carrying, depositing and dumping of harmful waste on any land or territorial waters.²⁹
- Oil Pipelines Act:³⁰ This Act makes “provision for licences to be granted for the establishment and maintenance of pipelines incidental and supplementary to oil fields and oil mining, and for purposes ancillary to such pipelines.”³¹ It provides for the payment of compensation to persons who suffer as a result of pipeline breakage or leakage³² and gives credence to other regulations concerning public safety and prevention of pollution.³³
- Oil in Navigable Waters Act:³⁴ This Act implements the terms of the International Convention for the Prevention of Pollution of the Sea by Oil 1954–1962 and makes provisions for such prevention in Nigeria’s navigable waters.³⁵
- Niger-Delta Development Commission (NDDC) Act:³⁶ This Act set up NDDC with a mandate to tackle ecological problems arising from the exploration of oil minerals in the Niger Delta area.³⁷ It also empowers NDDC to formulate policies and guidelines for the development of the Niger Delta area³⁸ and implement programmes to achieve it.

20 Cap E12, Laws of the Federation of Nigeria 2004.

21 See Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria 2004, s 2.

22 Cap H5, Laws of the Federation of Nigeria 2004.

23 Preamble to the Hydrocarbon Oil Refineries Act, Cap H5, Laws of the Federation of Nigeria 2004.

24 Hydrocarbon Oil Refineries Act, s 1.

25 Cap A25, Laws of the Federation of Nigeria 2004.

26 Section 3 requires that no associated gas shall be flared without the written permission of the minister of petroleum resources.

27 Associated Gas Re-Injection Act, Cap A25, Laws of the Federation of Nigeria 2004, s 1.

28 Cap H1, Laws of the Federation of Nigeria 2004.

29 Preamble to the Harmful Waste (Special Criminal Provisions etc.) Act, Cap H1, Laws of the Federation of Nigeria 2004.

30 Cap O7, Laws of the Federation of Nigeria 2004.

31 Preamble to the Oil Pipelines Act, Cap O7, Laws of the Federation of Nigeria 2004.

32 Oil Pipelines Act, s 11.

33 *Ibid*, s 17. See also s 14 which provides for restrictions in the construction of any works that may interfere with existing public facilities.

34 Cap O6, Laws of the Federation of Nigeria, 2004.

35 *Ibid*, Preamble.

36 Cap N86, Laws of the Federation of Nigeria 2004.

37 *Ibid*, Preamble.

38 *Ibid*, s 7.

- Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN): These guidelines and standards were issued by the Department of Petroleum Resources (DPR)³⁹ to ensure that oil and gas industry operators in the course of their operations do not degrade the environment. It establishes guidelines and standards for environmental quality control of the petroleum industry, providing a comprehensive integrated document on pollution abatement technology, as well as standardising the environmental pollution abatement and monitoring procedures, including the analytical methods for various parameters.⁴⁰

The Nigerian Oil and Gas Industry Content Development Act 2010 is fundamental to the government's efforts of developing indigenous capacity in the oil and gas industry. The Act is designed to increase the participation of Nigerians and Nigerian companies in Nigeria's oil and gas industry to an appreciable level, and establishes the Nigerian Content Development and Monitoring Board (NCDMB), whose primary obligation is to coordinate, monitor and ensure the implementation of the provisions of the Act.

(a) Regulatory bodies

- Ministry of Petroleum Resources
The Ministry of Petroleum Resources has a mandate to initiate policies governing the industry and supervise their implementation. Its technical department is known as the Department of Petroleum Resources (DPR) and is primarily responsible for the regulation of the oil and gas industry.
- The Department of Petroleum Resources (DPR)
This is the technical arm of the Ministry of Petroleum Resources and is responsible for regulating and supervising all operations for which licences and leases have been issued in the oil and gas industry. It also holds the National Data Repository, a data bank set up to store and preserve oil exploration and production data and information under a common platform while allowing for easy accessibility.⁴¹
- The Nigerian Content Development and Monitoring Board (NCDMB)
This Agency ensures the implementation of Nigerian content in all activities in the oil and gas industry.
- The Petroleum Products Pricing and Regulatory Agency (PPPRA)
This is the government agency that determines the pricing policy of petroleum products. It also regulates the supply and distribution of the products.
- National Oil Spill Detection and Response Agency (NOSDRA)
This agency was set up by the NOSDRA Act in 2006 and is responsible for ensuring compliance with all existing environmental legislation as well as detection of and response to oil spills in the Nigerian petroleum sector.

39 A department of the Ministry of Petroleum Resources.

40 Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, (EGASPIN) Part 1.

41 National Data Repository Regulations 2007.

(b) **Key players**

The Nigerian National Petroleum Corporation (NNPC) is the state-owned national oil company, undertaking commercial ventures in the oil and gas industry on behalf of the Federal Government through the joint venture and production sharing contracts. NNPC also participates in all other sectors of Nigeria's oil and gas industry.

Other major players in the industry are internationally known oil companies such as Shell, Total, Chevron, Agip and Mobil, which dominate the upstream sector. The midstream and downstream sectors are filled with both foreign and Nigerian participants.

(c) **Types of host granting instruments and standard forms**

Nigerian Law provides for three types of granting instruments:⁴²

- Oil Exploration Licence (OEL) to explore for petroleum;⁴³
- Oil Prospecting Licence (OPL) to prospect for petroleum; and
- Oil Mining Lease (OML) to search for, win, work, carry away and dispose of petroleum.

In practice, OELs are no longer issued, while OPLs are usually issued to holders of OPLs upon successful application for its conversion to an OML.

Standard forms of these documents are contained as part of a Schedule to the Petroleum (Drilling and Production) Regulations.

(d) **Who has authority to sign those host granting instruments on behalf of the government?**

The Minister of Petroleum Resources is empowered by the Petroleum Act to grant OELs, OPLs or OMLs and only to companies incorporated according to Nigerian Law.⁴⁴

(e) **What is the legal process to have a legally binding host granting instrument?**

Bid rounds and direct negotiation are discussed briefly below.

(f) **Acquisition of acreage through bid rounds and/or direct negotiation**

Bid round: Bid rounds are conducted at times determined by the Federal Government. Bid guidelines are usually issued outlining the procedures applicable under the Petroleum Act, the relevant terms and conditions as well as the documentation required for the bid. Invitations may also be sent to participants, and the Federal Government had at one time required the participation of local content vehicles as bid partners. The three phases involved in the bidding round are:

- registration of participating companies;
- technical evaluation; and
- commercial evaluation.

42 Petroleum Act, s 2.

43 Petroleum is defined in the Petroleum Act as including natural gas. See s 15.

44 Petroleum Act, s 2.

Direct negotiation: Although recognised under Nigerian law, discretionary licensing has been consistently frowned upon and less used in Nigeria, due to a perceived lack of transparency within the process. In this system of licensing, the applicant approaches the government by way of application,⁴⁵ with the grant of a licence completely at the discretion of the government. Government policy has favoured the issuance of licences via bidding rounds.

(g) **Joint venture standard forms, practices and conditions**

There are five main types of petroleum arrangements prevalent in Nigeria as stated below. All are as devolved under the Petroleum Act.

Joint operating agreement (JOA): This is the popular name for the agreement that caters for the joint venture arrangement between the NNPC and its joint venture partners. The JOA has its history in the participation agreements that laid out the terms and conditions of a majority percentage interest of the Federal Government of Nigeria in the OMLs previously held solely by international oil companies.

The joint venture arrangement is the oldest existing arrangement in the industry and no new contracts are being signed with this arrangement. It is an agreement indicating a joint leasehold and ownership of the assets, liabilities and development funds of the oil mining leases. As a result of joint ownership, each joint venture partner contributes funds for oil operations in proportion to their ownership. Risks, losses and profits are also split in a like manner.

Production sharing contract (PSC): The PSC came into being as an alternative petroleum arrangement where one party (known as the contractor)⁴⁶ solely contributes all the funds for the operation of the licence or lease⁴⁷ and bears all the attendant risk in exchange for a profit share where oil is found in commercial quantities. The NNPC, which is the concessionaire in this case, enters into the contract with the contractor. Under the PSC, prior permission is required from NNPC on all financial and technical issues.

Service contract: The service contract, although it exists in Nigeria, is not a common petroleum sector arrangement. It shares a lot of features with the PSC, the difference being that the contractor has its exploration and development costs paid but has no title to the crude oil produced.

Under a service contract arrangement, the contractor funds operations and in consideration of this, a payment in cash is offered, although payment is usually in crude oil *in lieu* of cash. The contractor may also have the first option to purchase crude oil produced from the contract area.

Under this arrangement, NNPC has the right to take over production operations, unlike the PSC arrangement.

45 Petroleum (Drilling and Production) Regulations, para 1.
46 In practice, this may comprise multiple party companies.
47 Usually, an oil prospecting licence or an oil mining lease.

Indigenous operatorship (sole risk contract): The holders of sole risk contracts are independent and indigenous oil companies to which oil blocks have been awarded without the direct participation of the government through the NNPC. All concessions are granted on a sole-risk basis, with royalties and taxes payable to the Federal Government from the oil operations.

Marginal field agreement: Marginal field agreements are entered into in respect of fields previously owned by joint ventures but, because they have remained non-producing for at least 10 years,⁴⁸ the Federal Government has decided to cause them to be farmed out as marginal fields to indigenous operators. They may also be farmed out directly on the initiative of the joint ventures⁴⁹ due to their marginal economics or high fiscal terms⁵⁰ for the joint ventures. Only indigenous oil and gas companies may apply for marginal fields.⁵¹

(h) Qualification requirements

General criteria to qualify for participation in most upstream activities include:

- evidence of registration as an exploration and production company in Nigeria;
- evidence of adequate financial resources;
- evidence of company's technical capability;
- applicant's environmental policies;
- quantum of local content; and
- evidence of required payments.

This is an extract from the chapter 'Nigeria' by Chisom Nneka Udechukwu and Latifat Folashade Yusuff in Upstream Law and Regulation: A Global Guide, Second Edition, Volume I, published by Globe Law and Business.

48 Petroleum Act, para 17(2) of the First Schedule (Oil Exploration Licences, Oil Prospecting Licences and Oil Mining Leases).
 49 *Ibid*, para 17(1).
 50 Marginal fields are subject to fiscal terms different from those attaching to joint venture and production sharing arrangements.
 51 Guidelines for farmout and operation of marginal fields issued by the DPR.
 52 First Schedule to the Petroleum Act, s 3.
 53 First Schedule to the Petroleum Act, s 6.
 54 First Schedule to the Petroleum Act, s 10.