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## AN ANALYSIS OF THE PETROLEUM INDUSTRY ACT ON UPSTREAM OIL EXPLORATION GOVERNANCE

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### Abstract

In response to contemporary challenges in Nigeria's oil and gas industry, such as overconcentration of powers in the hands of the Minister of Petroleum Resources, the overburdening of the Nigerian National Petroleum Corporation with the dual responsibility of regulator and operator in the petroleum industry, it became imperative to implement reforms ensuring maximum and sustainable value from its resources. Although the reform process began in 2001, it culminated in the Petroleum Industry Act (PIA) of 2021, which introduced key provisions for upstream petroleum governance. Using the doctrinal methodology, reliance was placed on primary sources of law such as the Petroleum Act 1969, Petroleum Profits Tax Act 2004, Petroleum Industry Act, 2021, and other legislations and regulations. The objective of this paper was to appraise the administration, regulation, and structure of the PIA's upstream exploration governance. Key areas covered include Acreage Administration, the National Grid System, and licensing structures such as the Petroleum Exploration licence, Petroleum Prospecting Licence, and Petroleum Mining Lease. It also explored model contracts, including production sharing, profit sharing, and risk service contracts, as well as concession agreements. Additionally, it reviewed conditions for relinquishment, surrender, and conversion of licenses and leases, along with procedures for assignments, mergers, transfers, acquisitions, and revocations. Other governance issues addressed include provisions on marginal fields, environmental management, and compensation for damages to protected objects. Domestic Crude Oil Supply and Domestic Gas Delivery Obligations are also considered. This paper found that Section 94(9) removes any provision for the declaration of new marginal fields. Flowing from the finding of the paper, it was recommended that Section 94(9) which removes provision provides for the declaration of new marginals should be deleted since the provisions of marginal fields is primarily aimed at encouraging indigenous participation, and scrapping it will defeat this purpose.

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**Keywords:** Petroleum Industry Act, Upstream Regulatory Governance

## 1.1 Introduction

After over fifty years of the dominance of the Petroleum Act, 1969<sup>1</sup> as the principal legislation regulating the governance of the Nigerian oil and gas industry, the Petroleum Industry Act (PIA), 2021 came into force on the 16<sup>th</sup> of August, 2021. In the fifty years plus, while the Petroleum Act (PA) remained as the primary regulatory instrument of the oil and gas industry, petroleum business global realities presented contemporary challenges which made the then prevailing legal and governance structure obsolete, inadequate and incapable of responding appropriately to the requirements of the contemporary realities.<sup>2</sup> Some of the challenges include over concentration of powers in the hands of the Minister of Petroleum Resources, weak provision for the regulation or total elimination of gas flaring, despite its attendant negative effects on both the environment and the economy of the nation. Other challenges are the burdening of the Nigerian National Petroleum Corporation (NNPC) with the dual responsibility of regulator and operator which negatively affected the effectiveness and efficiency administration of the sector. This realization led to the advocacy for far reaching reforms of the country's oil and gas industry, with the overall objective of repositioning the industry in a way that would ensure that the country obtains maximum and sustainable value from its resources.<sup>3</sup> Central to the thrust of this policy is the need to ensure separation and clarity of roles between the different public agencies operating in the industry.<sup>4</sup> Equally of significant concern is the

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<sup>1</sup>Petroleum Act, 1969, Cap P 10. LFN 2004, S.1

<sup>2</sup>Egbogah, E.O. (2013) Oil and Gas Sector Reforms in Nigeria: What You Should Know <http://www.dregbogah.com/documents/69.html> accessed online 19th April, 2017

<sup>3</sup>*Ibid*

<sup>4</sup>*Ibid*

need to infuse strict commercial orientation in all the relevant aspects of the industry.<sup>5</sup>

Though it took well over two decades, before the coming into force of PIA, its enactment nevertheless brought with it some novel provisions for the legal and governance structure of the oil and gas industry such as the establishment of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC)<sup>6</sup>, which is charged with the mandate of regulating the upstream oil and gas sector, and the Nigerian Midstream and Downstream Regulatory Authority with the mandate to regulate the midstream and downstream sector<sup>7</sup> including technical, operational and commercial activities.<sup>8</sup>

In a remarkable departure from the hitherto fused responsibilities of both regulator and operator in the erstwhile Nigerian National Petroleum Corporation (NNPC), PIA also provided that within six months from its commencement, the Minister, that is the Minister of Petroleum Resources shall cause to be incorporated under the Companies and Allied Matters Act, a limited liability company, which shall be called Nigerian National Petroleum Company Limited (NNPCL).<sup>9</sup>The assets, interests and liabilities of NNPC which are determined and identified by the Minister of Petroleum Resources and the Minister of Finance are by virtue of section 54 of PIA to be transferred to NNPC Limited or its subsidiaries.<sup>10</sup>By this provision, NNPC is effectively divested of its regulatory powers and transformed into an operator within the Nigerian oil and gas sector, albeit with government interest. Against the foregoing background, this paper focuses on PIA and

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<sup>5</sup>*Ibid*

<sup>6</sup> Petroleum Industry Act, 2021, No. 142, Vol. 108, s.4

<sup>7</sup>*Ibid*, s.29

<sup>8</sup>*Ibid*, s.31

<sup>9</sup>*Ibid*, s.53

<sup>10</sup>*Ibid*, s.54

upstream oil exploration governance by considering critically the administration of upstream petroleum operations and environment.

## **1.2 Acreage Administration and National Grid System**

Section 1 of PIA, vests the property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone in the Government of the Federation of Nigeria.<sup>11</sup> The emphasis on the Government of the Federation of Nigeria clears the ambiguity characterized with the vesting of ownership in the state as provided in the Petroleum Act<sup>12</sup> with its attendant interpretational challenges.

In furtherance of the vesting of property and ownership rights in the Government of the Federation, section 68 of PIA, leaves no one in doubt on the administration of acreage and vesting of data relating to upstream petroleum operations which is in the government of the federation and is to be managed by NUPRC.<sup>13</sup> In administering the acreages, the Minister of Petroleum Resources may upon the recommendation of NUPRC reclassify all or part of the basin from frontier acreages to a general onshore area, where a significant petroleum discovery has been made.<sup>14</sup> Reclassified basins with new licence and leases shall be subject to the fiscal terms applicable to onshore areas as provided for under PIA.<sup>15</sup> For the purposes of acreage management, NUPRC' is mandated to adopt a national grid system which is to be based on the UTM system<sup>16</sup> or any other projection system in use by the office of the Surveyor-General of the Federation.<sup>17</sup>

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<sup>11</sup>*Ibid*, s.1

<sup>12</sup>N 1, s.1

<sup>13</sup> N6, s.68

<sup>14</sup>*Ibid*, s.63

<sup>15</sup>*Ibid*, s.68(3)

<sup>16</sup> "UTM" as used in PIA means the Universal Transverse Mercator, a conformal projection which uses a two dimensional Cartesian coordinate system to give locations on the surface of the earth.

<sup>17</sup>N6, s.69(1) & (2)

The essence of the grid system is to enable NUPRC deploy a system for the numbering of parcels which shall allow for subdivision and aggregation of the parcel<sup>18</sup> and used for the administration of upstream petroleum operations such as definition of licence and lease areas; relinquishments, bid procedures; identification of well locations; petroleum conservation measures; and other regulatory and acreage management procedures.<sup>19</sup>

### **1.3 Licences and Leases in the Nigerian Upstream Petroleum Sector**

The Petroleum Industry Act provides for two major licences, the Petroleum Exploration Licence (PEL)<sup>20</sup> and the Petroleum Prospecting Licence (PPL)<sup>21</sup> as well as a lease arrangement known as Petroleum Mining Lease (PML),<sup>22</sup> all of which may be granted only to a company incorporated and validly existing in Nigeria under the Companies and Allied Matters Act.<sup>23</sup> Whereas PEL is granted to a qualified applicant to carry out petroleum exploration operations on a non-exclusive basis,<sup>24</sup> PPL which is granted to a qualified applicant to drill exploration and appraisal wells and do corresponding test production on an exclusive basis also enables the holder to carry out petroleum exploration on a non-exclusive basis.<sup>25</sup>

The Petroleum Mining Lease on the other hand may be granted to qualified applicants to win, work, carry away and dispose of crude oil, condensates and natural gas on exclusive basis; drill exploration and appraisal wells and carry out

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<sup>18</sup>*Ibid*, s.69(3)

<sup>19</sup>*Ibid*, s 69(6)

<sup>20</sup>*Ibid*, s.70(1)(a)

<sup>21</sup>*Ibid*, s. 70(1)(b)

<sup>22</sup>*Ibid*, s.70(1)(c)

<sup>23</sup>*Ibid*, s.70(2)

<sup>24</sup>*Ibid*, s.70(1)(a)

<sup>25</sup>*Ibid*, s.70(1)(b)

related test production on exclusive basis while also empowering such applicants to carry out petroleum exploration operations on a non-exclusive basis.<sup>26</sup>

### **1.3.1 Petroleum Exploration Licence**

This form of license grants the licensee, for an initial period of three years, the non-exclusive rights to carry out petroleum exploration operations such as creating geographical surveys, obtaining rights to land, howbeit within the area provided for in the license<sup>27</sup>. After the first three years of grant, it is renewable for a further three years, subject to the fulfillment of the prescribed conditions. A Petroleum Exploration License, however, does not grant the licensee the right to win, extract, work, store, carry away, transport or explore petroleum discovered in the license area<sup>28</sup>. Such license may cover an area that includes both a Petroleum Prospecting License and Petroleum Mining Lease. However, such licensees are not under an obligation to purchase the results of any survey carried out under the Petroleum Exploration License<sup>29</sup>.

### **1.3.2 Petroleum Prospecting Licence**

The Petroleum Prospecting License grants the licensee the exclusive right to drill exploration and appraisal wells.<sup>30</sup> The grant of this license is however subject to Section 71(5) which states that “a petroleum exploration license granted in respect of frontier acreages may include a provision permitting the licensee to select, based on the result of his exploration work and be granted one or more petroleum prospecting licenses prior to the termination of the license containing the fiscal provisions stipulated in Chapter 4 of this Act.” It is worthy to note that notwithstanding the bidding parameters stipulated in the Act, where there is a

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<sup>26</sup>*Ibid*, s.70(1)(c)

<sup>27</sup>*Ibid*, s.71(2)

<sup>28</sup>*Ibid*, s.71(3)

<sup>29</sup>*Ibid*, s71 (4)

<sup>30</sup>*Ibid*, s72(1)(a)(b)

bilateral or multi-lateral agreement between Nigeria and another country, the Government may, for strategic purpose and in return for substantive benefits to the nation, direct NUPRC to negotiate and award a petroleum prospecting license or petroleum mining lease to a qualified investor identified in the agreement or treaty.<sup>31</sup>

Upon successful drilling, a licensee has the right to carry away and dispose of the crude oil extracted. Furthermore, the license empowers the licensee to carry out petroleum exploration activities within the licensed area. The area within which such license can be used is restricted to 350 square kilometers for any onshore or shallow water acreages; 1,000 square kilometers for any deep offshore acreages; and 1,500 square kilometers for any frontier acreages. For onshore and shallow water acreages, the duration of the license is for a maximum of six years; an initial three years and an optional extension period of three years.<sup>32</sup> For deep offshore and frontier acreages, the duration of the license is for a maximum of ten years; an initial five years and an optional extension period of five years.<sup>33</sup> Upon grant of this license, the licensee is to commit to a work programme<sup>34</sup> and also commit to drilling at least one exploration well.<sup>35</sup> Where a licensee makes a discovery, either during the initial period of exploration or optional period, the licensee shall inform the NUPRC within 180 days of the discovery stating whether the discovery merits appraisal, or is of no interest to him.<sup>36</sup>

Regarding the issue of appraisal, a holder of PPL shall submit to NUPRC within one year for approval a commitment to an appraisal programme of not more than three years with a scope and nature permitting the licensee to declare a

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<sup>31</sup>*Ibid*, s74(3)

<sup>32</sup>*Ibid*, s77(1)

<sup>33</sup>*Ibid*, s77(2)

<sup>34</sup>*Ibid*, s78(1)

<sup>35</sup>*Ibid*, s78(2)

<sup>36</sup>*Ibid*, s78(3)

commercial discovery, where the result of the appraisal is positive.<sup>37</sup> For this purpose, the appraisal area will not be larger than the outer boundary of the discovery, as determined by the licensee and a zone of not more than two kilometers surrounding the outer boundary, provided that the appraisal area does not extend beyond the area provided for in the license<sup>38</sup>.

Furthermore, where a significant oil or gas discovery has been declared, the licensee is entitled to retain such area of discovery for a maximum period of 10 years, starting from the day the declaration was made.<sup>39</sup> Where the retention period of 10 years has expired and the licensee has not declared a commercial discovery, the area is to be relinquished by the licensee<sup>40</sup>. Upon relinquishment, the license shall expire.<sup>41</sup> Where after appraisal, the licensee declares a commercial discovery within a space of two years, the licensee is to submit to NUPRC, a field development plan together with a commitment to carry out the work described in the field development plan.<sup>42</sup> Such work commitment is to be supported by a bank guarantee, letter of credit or performance bond.<sup>43</sup>

In the event that the licensee fails to submit a field development plan or work commitment, the area containing the commercial delivery shall be relinquished,<sup>44</sup> but where the licensee has submitted a field development plan for the field, the license shall continue until the process for the grant of a lease has been completed or NUPRC has decided not to grant the lease.<sup>45</sup>

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<sup>37</sup>*Ibid*, s.78(4)(a)

<sup>38</sup> *Ibid*, s78(4)(b)

<sup>39</sup>*Ibid*, s78(9)

<sup>40</sup>*Ibid*, s78(13)

<sup>41</sup>*Ibid*, s78(14)

<sup>42</sup>*Ibid*, s79(1)

<sup>43</sup>*Ibid*, s79(11)

<sup>44</sup>*Ibid*, s79(5)

<sup>45</sup>*Ibid*, s79(6)



It is important to note that it is required of a licensee or lessee to promptly notify NUPRC of any petroleum reservoir which extends beyond the boundaries of its licence or lease area.<sup>46</sup> The reason for this, is to ensure optimum recovery of petroleum from a petroleum reservoir<sup>47</sup> and basically operationalize the concept of unitization.<sup>48</sup>

### **1.3.3 Petroleum Mining Lease**

A Petroleum Mining Lease (PML) is the third form of rights acquisition. It is granted for each commercial discovery of crude oil or natural gas or both, to the licensee of a petroleum prospecting licence who has satisfied the conditions imposed on the licence<sup>49</sup> and received approval for the applicable field development plan from NUPRC.<sup>50</sup> PML empowers its holder to win, work, carry away and dispose of crude oil, condensates and natural gas on an exclusive basis;<sup>51</sup> drill exploration and appraisal wells on an exclusive basis<sup>52</sup> and carry out exploration operations on a non-exclusive basis.<sup>53</sup> There is also provision for a petroleum prospecting licensee to propose that a separate petroleum mining lease be granted for each commercial discovery to which a PPL relates prior to the

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<sup>46</sup>*Ibid*, s.80(1)

<sup>47</sup>*Ibid*, s.80(2)

<sup>48</sup>Unitization is the joint and coordinated operation of all or part of an oil and gas reservoir by the holders of different oil blocks or leases overlying a common petroleum reservoir. Unitization is a combination of most if not all of the separate pools in the oil field into one field so that the reservoir may be operated without regard to surface property right. It is a process whereby owners of adjoining license pool reserves to form a single unit operated by one of the owners, while production is divided by the owner according to the unitization agreement. Unitization allows the entire field or substantial portion of it to be operated as a single entity so that there can be greater recovery at less cost. It allows for efficient development and operation of an oil reservoir and prevents waste. It is a process of avoiding the drilling of unnecessary well and protecting the correlative right of other holders of license involved in the fields. Unitization of an oil field is necessary where that field cuts across more than one licensed block.

<sup>49</sup>N6, s.81(1)(a)

<sup>50</sup>*Ibid*, s.81(1)(b)

<sup>51</sup>*Ibid*, s.70 (1)(c)(i)

<sup>52</sup>*Ibid*, s.70(1)(c)(ii)

<sup>53</sup>*Ibid*, s.70(1)(c)(iii)

expiration of the applicable PPL.<sup>54</sup> It is important to note that notwithstanding the grant of a separate PML as may be proposed by the licensee of a PPL, the applicable PPL shall continue for the remaining area to which the licence relates for the duration provided in that licence.<sup>55</sup> By virtue of section 81(6), the area to which a PML relates and derived from a PPL is expected to be proposed by the licensee based on an independent engineering report, which shall not be binding on NUPRC.<sup>56</sup> The non-binding proviso, raises questions as to why a licensee will in the first instance be subjected to making such a proposal with an independent engineering report when it may not be acceptable to NUPRC, when it would have been more reliable and cost saving if NUPRC undertakes the responsibility on request by the licensee.

In the light of the fact that separate PMLs can be granted for each commercial discovery to which a PPL relates, PIA stipulates that where two or more PMLs derived from the same PPL constitute a single field based on an interpretation by NUPRC of geological or petroleum engineering data showing that the field is a single field, the leases shall be considered as a single lease, notwithstanding that their boundaries do not join with another lease, provided the granting date of the single lease shall be the first lease that was granted.<sup>57</sup> It would appear that this provision would ensure the conservation and optimum production of the field which is subject to the grant of two or more PML. The indication regarding the granting date of the single lease presupposes a resort to the fairness test of first come, first serve basis which is at all fours with the overall objective of PIA to promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria.<sup>58</sup>

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<sup>54</sup>*Ibid*, s.81(4)

<sup>55</sup>*Ibid*, s.81(5)

<sup>56</sup>*Ibid*, s.81(6)

<sup>57</sup>*Ibid*, s.81(9)

<sup>58</sup>*Ibid*, s.2(c)

Presumably, as a response to stakeholders' observations that the Nigerian oil and Gas Industry is shrouded in secrecy, section 83(1) of PIA states as follows:

A licensee or lessee shall for each petroleum prospecting licence or petroleum mining lease provide a yearly summary of royalties, fees, taxes, profit oil shares and other payments to Government within six months after each calendar year to the Commission and the Minister of Finance through the Accountant-General of the Federation and in the case of joint ventures, where an operator makes payments to Government, the operator shall provide the required information and where individual holders of the licence or lease make such payment, the individual holders of the licence or lease shall be responsible for providing the information and where consolidation applies on a consolidated basis.<sup>59</sup>

Other subsections of section 83<sup>60</sup> amongst others empowers NUPRC to define the required details and also provided the *modus operandi* for bringing into effects the letter and intent of section 83(1). Again, this provision on the issue of confidentiality is in tandem with the reform objectives of PIA to promote transparency and also in conformity with the purpose for the establishment of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007 to the effect that NEITI is charged with the responsibility among other things, for the development of a framework for transparency and accountability in the reporting and disclosure by all extractive industries companies of revenue due to or paid to the Federal Government.<sup>61</sup> However, for a governance regime seeking to create efficient and effective governing institutions, with clear and separate roles for the petroleum industry and establish a framework for the creation of a commercially oriented and profit driven national petroleum company which is a limited liability company to be specifically identified for disclosure purposes as contained in section 83(3)(a) to (c), seems to project the Nigerian National Petroleum

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<sup>59</sup>*Ibid*, s.83(1)

<sup>60</sup>*Ibid*, s.83(2) to 83(8)

<sup>61</sup> See the Explanatory Memorandum of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007

Company Limited as a statutory body colouration beyond the usual corporate entity regulated by the Companies and Allied Matters Act.

Regarding duration, PML is granted for a maximum period of 20 years<sup>62</sup> and is granted for each commercial discovery of crude or natural gas, or both, to the licensee of a petroleum prospecting license who has satisfied the conditions imposed on the license or licensee under PIA and received approval for the applicable field development plan from the NUPRC.<sup>63</sup> PML can be renewed where the lessee writes to NUPRC not less than 12 months before the expiration of the lease requesting for a renewal of the lease for the leased area.<sup>64</sup> Such a renewal is not automatic, as there are conditions the lessee must satisfy before the lease can be renewed. The lessee must have fulfilled all the obligations relating to the development of the lease area. Furthermore, the lessee must have fully met all payment requirements, especially in respect of taxes, royalties, rents and fees and lastly, the lessee must not be in default of any obligation or condition, and must also have discharged all operational obligations in compliance with the applicable rules and regulations.<sup>65</sup>

### **1.3.4 Bidding and Award Processes for Petroleum Prospecting Licence and Petroleum Mining Lease**

Still in line with the reform objectives of PIA to promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria, the bidding and award processes for the grant of a Petroleum Prospecting License or Petroleum Mining Lease are to be based on a fair, transparent and competitive bidding process, in line with the licensing round guidelines and regulations made pursuant to PIA.<sup>66</sup> Such licensing round guidelines are to be

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<sup>62</sup>N6, s.86(1)

<sup>63</sup>*Ibid*, s.81(1)

<sup>64</sup>*Ibid*, s.87(1)

<sup>65</sup>*Ibid*, s.87(2)(a)-(d)

<sup>66</sup>*Ibid*, s.73(1)(a)(b)

accompanied with the model license for the Petroleum Prospecting License or model lease for the Petroleum Mining Lease. There are specific clauses that must be included in the Model Lease or License. These clauses include description of the acreage; the term of the license or lease; rules for dispute resolution; details of obligations regarding relinquishment, decommissioning and abandonment; applicable sanctions in the event of failure by the licensee or lease to comply with the terms and conditions of the license or lease, among other clauses<sup>67</sup>.

It is worthy of note to point out that the lease is granted upon the basis of a commitment from the lessee to develop and produce the commercial discovery of crude oil and natural gas in the area to which the lease relates, as well as a commitment to restart or continue petroleum production in the said area<sup>68</sup>.

In the same vein, the grant of a PPL or a PML on a previously, appraised area of a PPL or a surrendered, relinquished or revoked PML in, under or upon the territory of Nigeria, shall be by open, transparent, competitive and non-discriminatory process.<sup>69</sup>

The winning bidder shall be determined on the basis of single bid parameter,<sup>70</sup> which shall be based on signature bonus to be paid in full prior to the granting of the licence or lease by or on behalf of the winning bidder or a royalty interest or a profit split or profit oil split or a work programme commitment during the initial exploration period or any other parameter as may be defined specifically to a bid round<sup>71</sup> and also a combination of the above bid parameters based on a point system assessable by the bidder in such a manner that the bidder with the highest aggregate number of points shall be the winning bidder.<sup>72</sup>

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<sup>67</sup>*Ibid*, s.76

<sup>68</sup>*Ibid*, s.82(3)(a)(b)

<sup>69</sup>*Ibid*, s.74(1)

<sup>70</sup>*Ibid*, s.74(2)(a)

<sup>71</sup>*Ibid*, s.74(2)(a) (i to v)

<sup>72</sup>*Ibid*, s.74(2)(b)

Despite this statutory flavour which seeks to put an end to discretionary award of licences and leases in the Nigerian oil and gas industry, an opening for discretionary award seems to have been created by virtue of section 74(3) which provided that:

Notwithstanding the bidding parameters prescribed in subsection (2) [paraphrased above], where there is a bilateral or multilateral agreement between Nigeria and another country, the Government may, for strategic purpose and in return for substantive benefits to the nation, direct NUPRC to negotiate and award a petroleum prospecting licence or petroleum mining lease to a qualified investor identified in the agreement or treaty.<sup>73</sup>

It is respectfully, submitted that this provision is susceptible to abuse by any government or its officials or agents if appropriate safeguard mechanisms are not put in place to check any likelihood of abuse. It is nevertheless, reassuring that the implementation of treaties provision of section 12 of the Constitution of the Federal Republic of Nigeria, 1999 as amended<sup>74</sup> will serve as a check and balance on any likelihood of abuse.

#### **1.4 Contractual Arrangements under the Petroleum Industry Act**

By virtue of section 84(1), once an oil and gas right has been granted through a licence or lease by the Minister with responsibility for Petroleum Resources, the licensee or lessee as the case may be, subject only to prohibition under PIA, may enter into a contract with a third party for the exploration, prospecting, production

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<sup>73</sup> Ibid, s.74(3)

<sup>74</sup>Section 12 of the Constitution of the Federal Republic of Nigeria, 1999 as amended provides that (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty. (3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.

or development of crude oil or natural gas or both.<sup>75</sup> Although, the licensee or lessee may enter into contract, this does not confer on any such holder the right to assign an interest in any licence or lease except in accordance with the provisions of PIA.<sup>76</sup>

Perhaps, as a guidance, NUPRC is expected to develop a model licence and model lease which may contain an obligation to comply with fiscal obligations and other provisions related to fees, rents, royalties for such contract attached to or incorporated in the model licence or lease.<sup>77</sup> Additional provisions which may be included in the model license or lease include the following; a production sharing contract,<sup>78</sup> a profit sharing contract,<sup>79</sup> a risk service contract,<sup>80</sup> a concession agreement<sup>81</sup> and any contract which may be a variation of the aforementioned contracts or a contract which at the time is an internationally recognized form of contract for the exploration and production of petroleum.<sup>82</sup> It is significant to note that the Minister will not grant a Model license or Model lease unless the appropriate model contract is attached to the licence or lease as a guide on the relevant fiscal obligations.<sup>83</sup>

It is worthy of note that the aforementioned contractual arrangements are expected to include a carried interest provision, whereby the government through the

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<sup>75</sup>N6, s.84(1)

<sup>76</sup>*Ibid*, 84(2)

<sup>77</sup>*Ibid*, s.85

<sup>78</sup>*Ibid*, s.85(2)(a); A Production Sharing Contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs from a share of production as established in the contract from the applicable area.

<sup>79</sup>*Ibid*, s.85(2)(b); A Profit-Sharing Contract, which is a production sharing contract whereby the profit oil is provided in cask to the Government.

<sup>80</sup>*Ibid*, s. 85(2)(c); A Risk Service Contract for the exploration, development and production of petroleum on terms under which the financial risk bearing party shall recover costs by a payment in cash or in kind from petroleum produced from the applicable area.

<sup>81</sup>*Ibid*, s.85(2)(d); A Concession Agreement for exploration, development, and production of petroleum, which may include an incorporated or unincorporated joint venture.

<sup>82</sup>*Ibid*, s.85(2)(e)

<sup>83</sup>*Ibid*, s.85 (3)

NNPCL will have the right to participate up to 60% in the contract, or identified as a bid parameter.<sup>84</sup> The right to participate can be from any time upon the granting of the license or lease.<sup>85</sup> Some other expected provisions of the contract include the stipulation that Government shall refund fully its proportionate share of the unrecovered proven costs from the date of its participation and such refunded cost shall relate to development and production and shall not include bonuses and penalties, interest, premium or markups on cost.<sup>86</sup> For the purposes of the nature, validity and quantum of the unrecovered costs to be refunded, its determination or verification shall be by an agreed expert determination procedure.<sup>87</sup> The contract must provide that the refund obligation may be in the form of cash or kind from future share of production or entitlements from the effective participation date,<sup>88</sup> while also stating the terms, conditions and financial details of any right of participation by the government as contained in the model contract prepared by NUPRC in consultation with NNPCL.<sup>89</sup> Also to be provided in the contract is the fact that no upfront payment will be required of the Government.<sup>90</sup>

### **1.5 Relinquishment and Surrender of Licenses and Leases**

Depending on the number of years granted, either three or five years, prior to the expiration of the Petroleum Prospecting License, a licensee is to relinquish every area that is not an appraisal area, retention area or lease area.<sup>91</sup> PIA nevertheless provided for the retention of every appraisal area, and where one or more declarations of a commercial discovery have been made, the petroleum

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<sup>84</sup>*Ibid*, s.85(4)(a)

<sup>85</sup>*Ibid*, s.85(4)(b)

<sup>86</sup>*Ibid*, s.85(4)(c)

<sup>87</sup>*Ibid*, s.85(4)(e)

<sup>88</sup>*Ibid*, s.85(4)(f)

<sup>89</sup>*Ibid*, s.85(4)(g)

<sup>90</sup>*Ibid*, s.85(4)(d)

<sup>91</sup>*Ibid*, s.88(1)(2)



prospecting license will be extended until all related petroleum mining leases have been either granted or denied.<sup>92</sup>

It is to be borne in mind that after the expiration of 10 years, the holder of a Petroleum Mining Lease is to relinquish all parcels which do not fall within the boundary of a producing field, or any formation deeper than the deepest producing formation.<sup>93</sup> Thereafter, such relinquished area or zone shall be vested in the government and administered by NUPRC.<sup>94</sup> However, notwithstanding the right to relinquishment, a licensee or lessee has the right to surrender a part or whole of the licensed area.<sup>95</sup> This is however subject to complying with obligations imposed under the license or lease, as well as giving a three month notice to NUPRC prior to the surrender.<sup>96</sup> A licensee or lessee has the right of way for the laying, operation and maintenance of gathering lines, telephone lines, power lines and other similar lines as it relates to upstream petroleum operations.<sup>97</sup>

## **1.6 Conversion of Licenses and Leases**

Under the Petroleum Act, 1969, the applicable licenses and leases were the Oil Prospecting License and Oil Mining Lease. These existing OPLs and OMLs may enter into a voluntary conversion contract (VCC) under PIA.<sup>98</sup> Essentially, a licensee or lessee under a VCC shall benefit from the fiscal provisions under PIA where such a licensee or lessee is in compliance with PIA.<sup>99</sup> The VCC is expected to contain clauses terminating all outstanding arbitration and court cases, fiscal incentive provisions under the Petroleum Profit Tax Act, as well as stability

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<sup>92</sup>*Ibid*, s.88(3)

<sup>93</sup>*Ibid*, s.88(5)

<sup>94</sup>*Ibid*, s.88(7)

<sup>95</sup>*Ibid*, s.89(1)

<sup>96</sup>*Ibid*, s.89(1)(a)(b)

<sup>97</sup>*Ibid*, s.90

<sup>98</sup>*Ibid*, s.92(1)

<sup>99</sup>*Ibid*, s.92(2)

provisions or guarantees provided by the then NNPC.<sup>100</sup> It is important to note that where an Oil Prospecting License is converted, the term of years included in such a licence shall apply to the converted Petroleum Prospecting License.<sup>101</sup>

The position regarding relinquishment upon renewal or conversion of an oil mining lease is provided for in section 93 of PIA and it is to the effect that where the total acreage of an oil mining lease area is less than 40% of the area to which the applicable oil mining lease applies, the holder may select additional areas covered by the oil mining lease for a conversion to a petroleum mining lease in such a manner that the total of all areas selected shall not be more than 40% of the oil mining lease.<sup>102</sup> However, where the total acreage is more than 40%, the holder is entitled to keep such larger area made up of the selected areas.<sup>103</sup>

### **1.7 Marginal Field**

PIA defines a marginal field to mean a field or discovery which has been declared a marginal field prior to 1<sup>st</sup> January, 2021 in section 318 which is the interpretation section. Marginal field was nevertheless further described to mean a field or discovery which has been declared a marginal field prior to 1<sup>st</sup> January, 2021 or which has been lying fallow without activity for seven years after its discovery prior to the effective date. Hopefully, having two different descriptions of marginal field in the same statute will not lead to confusion. In event however, that there is a confusion, it submitted that the definition as provided in the interpretation section may have to prevail as the purpose of that section is to clarify ambiguity. It may perhaps be important to state that in September 1996, the Ministry of Petroleum resources upon the coming into effect of the Petroleum (amendment) decree of 1996 issued a set of guidelines for the farm out and

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<sup>100</sup>*Ibid*, s.92(a)(b)

<sup>101</sup>*Ibid*, s.92(7)

<sup>102</sup>*Ibid*, s.93(2)

<sup>103</sup>*Ibid*, s.93(2)

operations of marginal fields. The guidelines define marginal field as fields with the following characteristics:

- a) Low Stock Tank Oil Initially in Place (STOIIP) and therefore low reserves;
- b) Long distance from existing production facilities thereby making them uneconomically viable to put on stream;
- c) Fields not yet considered for development because of marginal economies under the current market and fiscal conditions;
- d) Fields with crude characteristics that are different from current streams (such as crude with very high viscosity and low API gravity) which cannot be produced through conventional methods;
- e) Fields with one or more wells which have not been developed by the operating company as a consequence of the company's ranking including unappraised discoveries and under developed fields, but excluding fields with high gas and low reserves;
- f) Producing fields which have become uneconomical fields to produce when close to or passed abandonment limits.

Generally, the rationale for marginal fields is to promote the participation of Nigerians in the oil and gas sector, increase the nation's reserves of oil and gas as well as provide employment opportunities for Nigerians.<sup>104</sup> Some of the ways

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<sup>104</sup>Lanre Afuye, Crystal Awodimila *'Nigeria: Marginal Fields And The Petroleum Industry Act 2021: The Good And The Improvable Provisions'* <https://www.mondaq.com/nigeria/oil-gas--electricity/1241218/marginal-fields-and-the-petroleum--industry-act-2021-the-good-and-the-improvable->

through which marginal fields are utilized to promote local participation include provision of incentives such as lower tax rates and tax holidays because of the unascertainable economic viability features of marginal fields. However, with the new Petroleum Fiscal Framework under PIA, there is a change in the legal and governance structure for marginal fields.

Under PIA, a producing marginal field shall be allowed to continue to operate under the original royalty rates and farm out agreements.<sup>105</sup> However, within 18 months from the passage of PIA, the marginal field shall be converted to a PML, whose chargeable Hydrocarbon tax and Companies Income Tax shall be 15% and 30% respectively.<sup>106</sup> Nevertheless, any discovery declared prior to January 21, 2021, which is not producing, shall be converted to a Petroleum Prospecting License and shall benefit from the terms of new acreage provided for under the new petroleum fiscal framework provided in Petroleum Industry Act.<sup>107</sup> Where however the discovery has been transferred to the Government, NUPRC shall be entitled to offer the petroleum prospecting license in a bid round in accordance with the procedure for award of such license as stipulated under Section 74.<sup>108</sup> In the event that within three years of the effective date, a marginal field has not been transferred to the government, then such a marginal field shall be subject to processes which makes it an obligation for the holder of an oil mining lease to present a field development plan, or the holder of the oil mining lease with the consent of NUPRC and based on terms and conditions approved by NUPRC, farm out the discovery or relinquish the field.<sup>109</sup> The NUPRC cannot approve the farm-

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[provisions#:~:text=The%20PIA%20reduces%20the%20headline,be%20enjoyed%20by%20the%20operators. , accessed on May 16, 2023.](#)

<sup>105</sup> 'Farm Out' means an agreement between the holder of a petroleum mining lease or petroleum prospecting license and a third party, which permits such party to explore, prospect, win, work and carry away any petroleum encountered in a license or lease area during the validity of such license or lease.

<sup>106</sup>N6, s.267

<sup>107</sup>*Ibid*, 94(2)

<sup>108</sup>Such bid round must be open, transparent, competitive and non-discriminatory.

<sup>109</sup>N6, S.94(4)(a)(b)(c)

out of a marginal field, without the farmee presenting a field development plan over a period of time agreed with NUPRC.<sup>110</sup> A failure to present a field development plan under this section shall lead to the relinquishment of the marginal field, which shall thereafter be vested in the government and administered by the NUPRC.<sup>111</sup> Curiously, section 94(9) states that no new marginal fields shall be declared under PIA.<sup>112</sup> This provision raises concern since the whole idea behind marginal fields is to promote indigenous participation and bring about inclusiveness in petroleum business in the country. It is of course doubtful if the goal of marginal fields has been achieved in the country to warrant putting an end to its existence.

### **1.8 Assignment, Mergers, Transfers and Acquisitions of Licenses and Leases**

PIA empowers the holder of licenses/leases to assign, novate, merge, and transfer such licence, lease or any right, power or interest with the written consent of the Minister<sup>113</sup> upon the recommendation of NUPRC.<sup>114</sup> These rights are however not prejudicial to a holder of a license or lease to by way of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interests under the applicable licence, lease or grant a security in respect of the interest provided that the consent of NUPRC is obtained. A licensee or lessee wishing to assign, novate, merge or transfer shall submit an application for approval to NUPRC in NUPRC's prescribed format and accompanied with any other information as may be required by regulations published by NUPRC.<sup>115</sup>

Where the application is refused, NUPRC is to inform the licensee/lessee of its reasons for doing so, and thereafter give reasonable time to the licensee/lessee or

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<sup>110</sup>*Ibid*, s.94(5)

<sup>111</sup>*Ibid*, s.94 (6)(7)

<sup>112</sup>*Ibid*, s.94 (9)

<sup>113</sup>*Ibid*, s.95(1)

<sup>114</sup>*Ibid*, s.95(2)

<sup>115</sup>*Ibid*, s. 95(4)

third parties to make further representations.<sup>116</sup> Should the Minister decide to approve such assignment, transfer, or novation, the NUPRC must ensure that prior to such approval, the proposed transferee is a company incorporated in Nigeria, having sufficient technical knowledge, experience and financial resources that will enable it to effectively carry out all the responsibilities of a licensee or lessee.<sup>117</sup> Additionally, the proposed transferee must be of good reputation and standing as well as be in compliance with the Federal Competition and Consumer Protection Act.<sup>118</sup>

### **1.9 Revocation of Licenses and Leases**

There are circumstances which can lead to the revocation of a licence or lease as the case may be. Revocation of a PPL or PML is done by the Minister upon the recommendation of NUPRC.<sup>119</sup>

Some of the grounds for revocation include: failure to conduct petroleum practices in accordance with international petroleum industry practices, the provisions of PIA and other relevant legislation;<sup>120</sup> interruption of production for a period of over 180 days consecutive days without justification or as provided for in the applicable licence, lease or approved field development plan, provided that an event of force majeure shall be an acceptable justification for interruption; failure to fulfill the terms of the license, lease, or approved field development plan;<sup>121</sup> and failure to pay rents, royalties, taxes or other payment or production shares to the government as at when they become due.<sup>122</sup>

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<sup>116</sup>*Ibid*, s.95(7)(a)

<sup>117</sup>*Ibid*, s.95(11) (a)(b)(c)

<sup>118</sup>*Ibid*, s.95(11)

<sup>119</sup>*Ibid*, s.96(1)

<sup>120</sup>*Ibid*, s.96(1)(a)

<sup>121</sup>*Ibid*, s.96(1)(c)

<sup>122</sup>*Ibid*, s.96(1)(d)

For a license or lease to be revoked, NUPRC will serve the licensee or lessee with a notice of default stating the purported grounds upon which the license or lease is to be revoked.<sup>123</sup> Thereafter, NUPRC will give the licensee or lessee a remediation period of not less than 60 days within which to remedy the defaults stated above which could lead to revocation.<sup>124</sup> Where NUPRC is satisfied with the remedy provided by the licensee or lessee, NUPRC will stop the termination process.<sup>125</sup> However, if after the 60 days' period, the default is not remedied, the license or lease may be revoked.<sup>126</sup> Such revocation decision will thereafter be published in the Federal Government Gazette, and NUPRC is expected to amend all relevant registers maintained by it to reflect the revocation.<sup>127</sup>

### **1.10 Fees Payable to the Government**

A licensee or lessee has an obligation to pay rents, fees, royalties, production and profit shares in the amount and time as prescribed in the licence or lease under PIA and regulations made by NUPRC.<sup>128</sup> In the event that the required payment remains unpaid for a period of 30 days, it shall be considered as a debt to NUPRC with interest accruing at the prevailing Central Bank of Nigeria rate.<sup>129</sup> Furthermore, where the debt still remains unpaid after 30 days, NUPRC is empowered to enter the land, premises or property of the licensee or lessee, and seize, distrain or sell any of its petroleum products, engines, implements, tools etc and the cost incurred in this process shall be added to the total debt.<sup>130</sup> Any money

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<sup>123</sup>*Ibid*, s.97(1)(a)

<sup>124</sup>*Ibid*, s.97(1)(b)

<sup>125</sup>*Ibid*, s.97(2)

<sup>126</sup>*Ibid*, s.97(3)

<sup>127</sup>*Ibid*, 97(4)(b)

<sup>128</sup>*Ibid*, s.100(1)

<sup>129</sup>*Ibid*, s.100(2)

<sup>130</sup>*Ibid*, s.100(3)(a)(b)

gotten from the sale shall be used to offset the debt, and if there is any surplus, the NUPRC shall pay same to the licensee or lessee.<sup>131</sup>

## 1.11 Protection of Venerated Objects and Environmental Management

### Compensation for Damage to Protect and Venerated Objects

Under PIA, a licensee or lessee is prohibited from exercising any of the rights or powers of entering, occupying etc. conferred by its licence or lease in relation to any area held to be sacred.<sup>132</sup> The determination of whether an area is sacred is to be decided by the customary court of the area,<sup>133</sup> understandably because issues of sacredness of a place is based on the custom of the people in that area. The prohibition extends to the injuring or destroying of a tree or object which has commercial value or is the object of veneration to the people living in the area of the license or lease.<sup>134</sup> Equally prohibited, is the damaging or destroying of any property or building,<sup>135</sup> or even disturbing or damaging of the surface of the land or any other rights to any person who owns or is in lawful occupation of the surface area covered by the licence or lease.<sup>136</sup> Where the licensee or lessee fails to abide by this, they shall be liable to pay fair and adequate compensation to the persons or communities directly affected by the injury.<sup>137</sup> NUPRC shall prescribe by regulation the amount of compensation payable and where a licensee or lessee fails to pay compensation has prescribed,<sup>138</sup> NUPRC also have the power to apply sanctions against a licensee or lessee that fails to pay compensation within 30 days in accordance with regulations made under PIA.<sup>139</sup>

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<sup>131</sup>*Ibid*, s.100(3)(c)

<sup>132</sup>*Ibid*, s101(1)

<sup>133</sup>*Ibid*, s.101(1)(a)

<sup>134</sup>*Ibid*, s.101(2)(a)

<sup>135</sup>*Ibid*, s.101(2)(b)

<sup>136</sup>*Ibid*, s.101(2)(c)

<sup>137</sup>*Ibid*, s.101(3)

<sup>138</sup>*Ibid*, s.101(4)

<sup>139</sup>*Ibid*, s.101(5)



## **Environmental Management**

In what will appear to be a consciousness of environmental management, PIA in section 102 provided that a licensee or lessee who engages in upstream and midstream operations shall within one year of the effective date or six months after the grant of a license or lease submit to NUPRC or NMDPRA, an environmental management plan (EMP) as regards projects that require environmental impact assessment.<sup>140</sup> The submitted EMP is expected to be in accordance with extant Acts.<sup>141</sup> NUPRC or NMDPRA as the case may be shall approve the environmental management plan where it complies with relevant extant environmental Acts and the applicant has the capacity or has provided for the capacity to rehabilitate and manage the negative impacts on the environment.<sup>142</sup> In approving EMP, NUPRC and NMDPRA shall take into account the policy thrust of the Government regarding environmental protection and management practices.<sup>143</sup> NUPRC or NMDPRA as the case may be after approval of an EMP and after engagement with the operator of a licence or lease, call for an amendment of the environmental management plan.<sup>144</sup> PIA prohibits outright the utilization of chemicals for upstream operations except where NUPRC grants an applicable permit and approval.<sup>145</sup>

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<sup>140</sup>*Ibid*, s.102(1)(a)(b)

<sup>141</sup>*Ibid*, s.102(2)

<sup>142</sup>*Ibid*, s. 102(3)(a)(b)

<sup>143</sup>*Ibid*, s.102(4)

<sup>144</sup>*Ibid*, s.102(6)

<sup>145</sup>*Ibid*, s.102(7)

## **1.12 Domestic Crude Oil Supply Obligations and Domestic Gas Delivery Obligations**

### **Domestic Crude Oil Supply Obligations**

The position of PIA regarding domestic crude oil supply obligations appears not to be static but to be determined by the market forces of demand and supply.<sup>146</sup> This however may be subject to the issuance of regulations or guidelines on the mechanism for the imposition of a domestic crude oil supply obligations on lessee of upstream petroleum operations including applicable penalties.<sup>147</sup> The regulation for domestic crude oil supply obligations was made in 2022. Some of the parameters that will determine domestic crude oil supply obligations are to be partly dependent on the crude oil requirements of refineries in operation in the country that would be supplied by NMDPRA to NUPRC.<sup>148</sup> Crude oil available by reason of the domestic crude oil supply obligations may only be sold to holders of crude oil refining licence whose refineries are in operation.<sup>149</sup> The supply of such crude oil will be commercially negotiated between the lessee and the crude oil refining licensee having regard to the prevailing international market prices for similar grades of crude.<sup>150</sup>

### **Domestic Gas Delivery Obligations**

Similarly, NUPRC is expected to make a regulation or issue guidelines which will prescribe and allocate domestic gas delivery obligation among all lessees before 1<sup>st</sup> of March of each year<sup>151</sup> based on the information by NMDPRA of the

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<sup>146</sup>*Ibid*, s.109(1)

<sup>147</sup>*Ibid*, s.109(2)

<sup>148</sup>*Ibid*, s.109(3)

<sup>149</sup>*Ibid*, s.109(4)(a)

<sup>150</sup>*Ibid*, s.109(4)(b)

<sup>151</sup>*Ibid*, s.110

domestic gas demand requirements<sup>152</sup> as determined by it, prior to 1<sup>st</sup> March of each year.<sup>153</sup> This arrangement does not however preclude a lessee on a voluntary basis to conclude contracts with wholesale customers of the strategic sectors or with wholesale gas suppliers supplying the strategic sectors for delivery of marketable natural gas on a free market basis to these customers or suppliers.<sup>154</sup> NUPRC must however be notified of such contracts.<sup>155</sup> A lessee will be deemed to have fulfilled its domestic gas delivery obligation where the volume of the contracts is equal to or higher than its domestic gas delivery obligation.<sup>156</sup>

It is important to note that a lessee who has complied with its obligations in relation to domestic gas delivery, yet wishes to supply to wholesale customers which are not a part of the strategic sectors may deliver further supplies of marketable natural gas to the domestic market on a basis of willing seller and willing buyer.<sup>157</sup> NUPRC is to require from a lessee that produces natural gas to carry out works and operations that may increase production, while dedicating specific volume of the natural gas produced towards the requirements of the domestic market.<sup>158</sup> The determination of the volume of natural gas to be dedicated by a lessee towards the domestic gas delivery obligation is based on an allocation system among lessees which is determined by NUPRC in consultation with NMDPRA based on readily available supporting infrastructure.<sup>159</sup> Having regards to the foregoing provision, a lessee has an obligation to deliver the volume of natural gas needed by a wholesaler customer as determined by the domestic gas

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<sup>152</sup>*Ibid*, s.318; Domestic gas demand requirement means an aggregate of the volume of natural gas required to meet the natural gas demand for strategic sectors within the domestic economy for a specified period

<sup>153</sup>*Ibid*, s.173

<sup>154</sup>*Ibid*, s.110(2)

<sup>155</sup>*Ibid*

<sup>156</sup>*Ibid*, s.110(2)(a)

<sup>157</sup>*Ibid*, s.110(4)

<sup>158</sup>*Ibid*, s.110(5)

<sup>159</sup>*Ibid*, s.110(6)

aggregator at a location indicated by the domestic gas aggregator<sup>160</sup> in accordance with the gas purchase order.<sup>161</sup> Under PIA, a penalty of US \$3.50 per MMBtu is imposed upon a lessee that fails to comply with the domestic gas delivery obligation.<sup>162</sup> However, where the lessee has signed a gas purchase and sale agreement with a wholesale supplier of the strategic sectors, the penalty for failure shall be what is stated in the agreement.<sup>163</sup> Notwithstanding, the specified penalty imposed as penalty, NUPRC may adjust the rate as long as it is in line with a regulation made under PIA.<sup>164</sup> A significant point to note is that in the event of a default occasioned by a force majeure which made a purchaser unable to accept allocated natural gas volumes or incapable of transporting the allocated natural gas for reasons beyond the control of the lessee, or where the purchaser fails to pay for the allocated natural gas volumes, and it has been proved by the lessee, such lessee will be exculpated of liability to pay the penalty.<sup>165</sup>

The regime of the imposition of domestic gas delivery obligation by NUPRC can be discontinued once NMDPRA determines that the natural gas market has attained full market status in line with natural gas prices for the strategic sectors and gas distributors.<sup>166</sup>

Upon the allocation of a volume of natural gas to be supplied by a lessee under the domestic gas supply obligation, such a lessee is required to submit a marketable natural production and supply plan consistent with these obligations to NMDPRA.<sup>167</sup>

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<sup>160</sup>*Ibid*, s.110(7)

<sup>161</sup>*Ibid*, s.156

<sup>162</sup>*Ibid*, s.110(8)

<sup>163</sup>*Ibid*

<sup>164</sup>*Ibid*, s.110(9)

<sup>165</sup>*Ibid*, s.110(10)

<sup>166</sup>*Ibid*, s.110(11)

<sup>167</sup>*Ibid*, s.110(12)

In the event of a loss suffered as a result of default to supply marketable natural gas in line with the gas purchase order issued by the domestic gas aggregator, a producer-customer of the domestic gas aggregators shall pay compensation to the customer-client.<sup>168</sup> It is worthy of note that in addition to the penalty of US \$3.50 per MMBtu imposed on a lessee who fails to comply with the domestic gas delivery obligation as directed by NUPRC, the lessee shall be prevented from supplying natural gas to any midstream gas export operations with the exception of gas sales agreements already entered into by the lessee.<sup>169</sup> Furthermore, where the lessee is supplying natural gas to midstream gas export operations, NUPRC may impose other sanctions as may be prescribed by a regulation made pursuant to PIA.<sup>170</sup> For a lessee to obtain approval for the supply of natural gas for exports, from the effective date of PIA, it would be subject to prior compliance with its domestic gas delivery obligation<sup>171</sup> In what appears as a recognition and compliance with the principle of *pactasuntservanda*,<sup>172</sup> presumably to boost investors' confidence in the Nigerian oil and gas industry, PIA in section 110(16) provides that domestic gas delivery contracts entered into by lessees or licensees prior to the effective date and continuing after the effective date of PIA shall be counted towards their domestic gas delivery obligation.<sup>173</sup>

### 1.13 Conclusion

In line with the objectives of promoting transparency, good governance and accountability in the administration of the petroleum resources of Nigeria, the administration of acreage and vesting of data as well as the types and characteristics of licenses and lease were provided for under PIA. Although, the provisions on licence and lease are not radically different from what obtained

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<sup>168</sup>*Ibid*, s.110(13)

<sup>169</sup>*Ibid*, s.110(14) (a)

<sup>170</sup>*Ibid*, s.110(14)

<sup>171</sup>*Ibid*, s.110(15)

<sup>172</sup>Agreements and stipulations of the parties to a contract must be observed.

<sup>173</sup>n 6, s.110(16)

under the Petroleum Act, the manner of conducting the bid and award processes for licences and leases are statutorily stipulated with mandatory requirement for the licensing round guidelines to be accompanied with a model licence or model lease as the case may be. As against the era of the Petroleum Act, PIA, provides for disclosure of information on royalties, fees, rates, profit oil shares and other payments to the government. Again unlike the provisions on the acquisition of oil and gas rights under the Petroleum Act which is silent on contractual arrangements, PIA makes provisions for model contracts and their operationalization. The model contracts are typically those synonymous with the oil and gas industry but now with some statutory obligations. As a contemporary legislation responding to contemporary challenges and realities, innovative provisions such as environmental management and elimination of gas flare were provided for in PIA. The new governance regime also addresses concerns for the unitization petroleum reservoir which extends beyond the boundaries of its licence or lease area in order to ensure optimum recovery;. In a bid to create a regime of willing supplier and willing buyer for crude oil as well as prescribing and allocating natural gas to strategic sectors of the economy, PIA provides a legal framework for both domestic crude oil supply and domestic gas delivery obligations.

In relation to marginal fields, it was found that Section 94(9) no longer makes any provision for the declaration of new marginal fields. Premised on the fact that the provision for marginal fields is aimed at encouraging indigenous participation, removing this provision of the law defeats this purpose. Hence, it is recommended that this section of the legislation be deleted, which will give room for the declaration of new marginal fields, which will ultimately more inclusiveness of Nigerians in the petroleum industry.