

Oil and gas regulation in Nigeria: overview

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A Q&A guide to oil and gas regulation in Nigeria.

The Q&A gives a high level overview of the domestic oil and gas sector, rights to oil and gas, health safety and the environment, sale and trade in oil and gas, tax and enforcement of regulation. It covers transfer of rights; transportation by pipeline; environmental impact assessments; decommissioning; waste regulations and proposals for reform.

To compare answers across multiple jurisdictions, visit the energy and natural resources *Oil and gas regulation Country Q&A tool*.

This Q&A is part of the multi-jurisdictional guide to energy and natural resources. For a full list of content visit www.practicallaw.com/energy-mjg.

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Contents

- Domestic sector
- Regulation
 - Regulatory bodies
 - The regulatory regime
- Rights to oil and gas
 - Ownership
 - Nature of oil and gas rights
 - Transfer of rights
- Tax
- Transportation by pipeline
- Health, safety and the environment
 - Health and safety
 - Environmental impact assessments (EIAs)
 - Environmental permits
 - Waste
 - Flares and vents
 - Decommissioning
- Sale and trade
- Enforcement of regulation
- Reform
- The regulatory authorities

- Minister of Petroleum Resources
 - Ministry of Petroleum Resources
 - Department Of Petroleum Resources (DPR)
 - Department of Gas Resources (DGR)
 - Nigerian National Petroleum Corporation (NNPC)
 - Online resources
 - Contributor profiles
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Domestic sector

1. Describe the domestic sector and policy for oil and gas, including liquefied natural gas (LNG).

Domestic industrial production

The oil and gas sector remains central to the Nigerian economy and accounts for about 95% of the country's exports. Nigeria has:

- 37.2 billion barrels of proven oil reserves (the largest oil and gas producer in Africa and the 11th largest in the world).
- More than 187 trillion cubic feet of proven natural gas reserves (the largest natural gas reserve holder in Africa and the seventh largest in the world).

Nigeria's crude oil production is primarily for the export market. Domestic consumption of crude oil is mostly limited to the supply of Nigeria's four refineries, Port Harcourt I and II, Warri and Kaduna for the production of petrochemicals and related products.

Similarly, the primary market for Nigeria's natural gas was historically the export market. However, there is increased local demand for natural gas.

Domestic consumption of natural gas is mainly for:

- Power generation.
- Fertiliser production.
- Methanol production.
- Aluminium smelting.
- Cement production.
- Steel manufacturing.
- Residential consumption of bottled liquid propane gas (LPG).

Domestic demand for gas was projected to reach five billion standard cubic feet a day by 2013 with the majority of the demand coming from the growing power sector. However, gas production is expected to rise to 80 billion cubic metres by the end of the 2020, with demand rising by 246% between 2010 and 2020, and export potentials at about 35 billion cubic metres, largely in the form of LNG, leaving about 45

billion cubic metres for local consumption. To ensure that these projected figures are met, the Federal Government of Nigeria (FGN) released the National Gas Master Plan (Gas Master Plan) in 2008. As part of the Gas Master Plan, the FGN has issued the following:

- The National Gas Supply and Pricing Policy (Gas Pricing Policy).
- The National Domestic Gas Supply and Pricing Regulations (Policy Regulations).
- The Gas Infrastructure Blueprint.

The first two instruments impose obligations on gas producers to set aside a predetermined portion of their gas production for supply to the domestic market (*see below, Government policy objectives*).

The third seeks to fast track the exploitation of Nigeria's gas reserves for supply to the export, regional and domestic markets

The import/export market

The ownership and control of all minerals, mineral oils and natural gas in Nigeria is vested in the Federal Government (*1999 Constitution of Nigeria*).

Although there is no private ownership of the oil and gas *in situ*, the Government permits private individuals to own rights to prospect, explore and mine for oil and gas.

This control of the oil and gas industry is exercised through Government institutions such as the:

- Ministry of Petroleum (Ministry).
- Department of Petroleum Resources (DPR).
- Nigerian National Petroleum Corporation (NNPC).

The DPR is principally responsible for processing all applications for licences and leases in the oil and gas industry. Third parties are allowed to acquire participating or working interests in mineral rights through joint operating agreements (JOAs). Farm outs are also allowed for the assignment of part of mineral rights or a participating interest for the performance of obligations.

Government policy objectives

Of the FGN's domestic policies on upstream oil and gas, two recent policies particularly stand out:

- The Nigerian Content Policy.
- The Gas Master Plan.
- The framework for the Nigerian Content Policy, which seeks to increase local capacity and participation in the oil and gas industry, is established by the Nigerian Oil and Gas Industry Content Development Act (NCDCA). The NCDCA prescribes that:
 - indigenous Nigerian operators be given first consideration for the award of licences and contracts;
 - preference should be given to goods manufactured in Nigeria;
 - qualified Nigerians be considered first for employment and training.

In 2008, the FGN approved the Gas Master Plan that aims to optimise the country's large natural gas reserves. The Gas Master Plan comprises three elements:

- The Gas Infrastructure Blueprint, which envisages the establishment of three central processing facilities to be granted to preferred bidders.

- The Gas Pricing Policy, which envisages a framework for a differentiated pricing regime across sectors.
- The Policy Regulations, which impose a mandatory reserves allocation for domestic use.

Other regulatory bodies

The Ministry and the Department of Gas Resources (DGR) are the other regulatory bodies in the oil and gas sector. Both are responsible for implementing government policy and ensuring compliance with applicable law (*see Question 3*).

Current market trends

Nigeria has recently witnessed much activity in the transactions on the acquisition of upstream oil and gas assets. This activity owes to the recent policy decision of IOCs operating in Nigeria to focus on their deep offshore operations and to consequently divest their onshore assets. As part of this process as many as 13 onshore acreages have been put up for sale since 2010.

The clamour witnessed on the introduction of the Petroleum Industry Bill in 2012 has reduced in fervour, although there continues to be calls for the Nigerian National Assembly to consider the Bill.

Much attention was drawn to the use of alternative funding structures by the NNPC and subsidiaries of the NNPC in 2013 and 2014. This is currently the subject of ongoing legislative enquiry by the Nigerian National Assembly. Its focus is the need to ring-fence commercial arrangements in the oil and gas sector in terms of validity, legality and enforceability.

2. What percentage of domestic energy needs is met by oil and gas?

Nigeria's energy consumption at present is as follows:

- Oil: 64%.
- Natural gas: 27%.
- Hydro-electricity: 8%.

It is estimated that about 80% of natural gas consumed in Nigeria is used for power generation. The remaining 20% is mostly used in the cement, fertiliser, methanol, aluminium and steel industries, while a negligible proportion is consumed as Liquefied Propane Gas (LPG).

LNG is not used in Nigeria as it is exclusively for export.

Regulation

Regulatory bodies

3. Who regulates the extraction of oil and gas?

The Ministry of Petroleum (Ministry) has primary supervisory oversight over the oil and gas industry. As such, the Ministry is responsible for the formulation, implementation and co-ordination of government policy for the industry.

The Ministry exercises its regulatory functions through the Department of Petroleum Resources (DPR). The DPR is responsible for the day-to-day monitoring of the petroleum industry and for supervising all petroleum industry operations carried out under licences and leases in the country with a view to ensuring compliance with the applicable laws and regulations in line with good oilfield practices.

Within the Ministry, the DGR is responsible for regulating the gas sector in accordance with the Gas Master Plan as well as activities such as gas exploration, development, treatment, processing and utilisation. The DGR also has the additional responsibility of issuing permits and licences relating to the gas sector.

The Minister of Petroleum Resources is in charge of the DPR with overarching regulatory powers, and responsibility for the granting of rights for the exploration, extraction and production of oil and gas in Nigeria either through:

- The issuance of oil exploration licences (OELs), oil prospecting licences (OPLs) and oil mining leases (OMLs).
- Other contractual arrangements, such as production sharing contracts (PSCs) and service agreements or service contracts (SCs).
- Consent to the assignment of licences and contractual interests in oil and gas assets.

Other agencies and entities with oversight over the extraction of oil and gas include:

- Nigerian Content Monitoring Board (NCMB). The NCMB is responsible for supervising, co-ordinating, monitoring and managing the development of Nigerian content in the Nigerian oil and gas sector in accordance with the requirements and prescriptions of the NCDA.
- Federal Ministry of Environment (FME). The FME is responsible for administering environmental impact assessments (EIAs) relating to public and private projects, including oil and gas projects.
- Petroleum Inspectorate. Operating as a department within the Nigerian National Petroleum Corporation (NNPC), the inspectorate is responsible for issuing permits and licences for activities connected with petroleum exploration and exploitation.
- National Oil Spill Detection and Response Agency (NOSDRA). NOSDRA is responsible for preparing, detecting and responding to oil spillages.
- Joint Authority. Established by the treaty between Nigeria and Sao Tome and Principe on the joint development of petroleum and other resources in the exclusive economic zones of both countries, the Joint Authority is responsible for managing activities relating to the exploration and exploitation of petroleum resources.

The DPR has primary responsibility for the enforcement of safety and environmental standards in the oil and gas industry. In addition to the DPR, there are other government agencies at the Federal and state levels with supervisory oversight over matters of health, safety and the environment in the oil and gas industry, including:

- The FME, which approves EIA reports in respect of oil and gas projects.
- NOSDRA, which is empowered to carry out surveillance on oil exploration and to ensure compliance with all existing environmental legislation, particularly in detection of oil spills.
- The National Environmental Standards and Regulations Enforcement Agency (NESREA), which has responsibility for enforcing compliance with the provisions of international agreements, protocols, conventions and treaties on the environment.
- The environmental protection agencies of each Nigerian state.

See box, *The regulatory authorities*.

The regulatory regime

4. Describe the regulatory regime that applies to oil and gas exploration and production, including the key legislation and features of the regime.

The key legislation underpinning of the oil and gas industry includes the:

- Petroleum Act 1969, and all amendments, subsidiary legislation, regulations and instruments enacted under it.

- Nigerian Oil and Gas Industry Content Development Act 2010.
- Oil Pipelines Act 1965.
- Oil in Navigable Waters Act 1968.
- Associated Gas Reinjection Act 1979.
- Petroleum Profits Tax Act 1958.
- The Environmental Impact Assessment Act 1992.

Each law plays a different but significant role in the administration and regulation of the industry. In addition, they create regulatory agencies that implement government policy and ensure compliance with the respective enabling laws.

Rights to oil and gas

Ownership

5. How are rights to oil and gas held, and who holds those rights?

The entire ownership and control of petroleum resources (including oil and gas) in, under and on any land in Nigeria, its territorial waters and its exclusive economic zone is vested in the Federal Government of Nigeria (FGN) by virtue of the Constitution, the Petroleum Act 1969 (PA) and the Exclusive Economic Zone Act (EEZA).

However, under the PA, the Minister may grant qualified persons rights to prospect, explore and produce oil and gas through the issuance of an:

- Oil exploration licence (OEL) which entitles the licensee to the non-exclusive right to explore for oil and gas within the area of the grant.
- Oil prospecting licence (OPL) which confers on the licensee the exclusive right to explore for oil and gas within the area of the grant, and to carry away and dispose of the petroleum won and saved during its prospective operations.
- Oil mining leases (OML) which entitles the licensee the exclusive right within the leased area to conduct exploration and prospective operations and to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the lease area.

In addition, participatory rights are granted by the FGN to contractors to conduct sole risk petroleum operations with respect to OMLs held by the NNPC (*Deep Offshore and Inland Basin Production Sharing Contracts Act*).

Abandoned or unproductive fields in lease areas covered by OMLs are farmed-out to independent leaseholders and indigenous companies periodically (*PA and Guidelines for Farm-out and Operation of Marginal Fields 2011*).

Ownership of land does not confer title to the petroleum resources in the subsoil. The entire ownership and control of petroleum resources remains vested in the FGN.

Nature of oil and gas rights

6. What are the key features of the leases, licences or concessions which are issued under the regulatory regime? Can these rights be leased by the right-holder?

See *Question 5* for key features of oil exploration licences (OELs), oil prospecting licences (OPLs) and oil mining leases (OMLs).

Lease/ licence/ concession term

OELs. An OEL will expire on 31 December next following the date it was granted, with an option to renew for a further year if:

- All obligations imposed by the Petroleum Act 1969 (PA) in relation to the OEL have been fulfilled.
- The Minister of Petroleum Resources is satisfied with all work done and the reports submitted by the licensee.
- An application for renewal is made at least three months before the date of expiry of the licence.

OPLs. The duration of an OPL is determined by the Minister and does not exceed five years. The duration of OPLs relating to production sharing contracts in the deep offshore and inland basin are determined by the Minister but with a minimum period of five years, which can be increased to ten years.

OMLs. The term of an OML does not exceed 20 years. However, an OML may be renewed where the lessee applies in writing to the Minister not less than 12 months before the expiry of the lease, for a renewal in relation to the whole of the leased area, or any part of the leased area. The renewal should be granted if the lessee has paid all rent and royalties and performed all obligations under the lease.

Fees

Application fees, rents and royalties are payable in relation to OELs, OPLs and OMLs. Under the PA the application fee for an OPL is US\$10,000 and the application fee for an OML is US\$500,000. Other fees payable include:

- Processing fees.
- Fees payable on the application for renewal of an OML.
- Fees payable on the assignment of an OPL or OML.

Liability

Holders of OELs, OPLs and OMLs can be liable to compensate owners and lawful occupiers of land covered by the licences or leases, where their rights have been affected.

Restrictions

The right-holder of an OPL or OML cannot create a lease over its rights in the relevant licence/lease. However, a right-holder may assign its rights with the consent of the Minister (*see Question 9*).

7. How are such leases, licences or concessions awarded?

Oil exploration licences (OELs), oil prospecting licences (OPLs) and oil mining leases (OMLs) are granted by the Minister of Petroleum Resources under powers conferred by the Petroleum Act 1969 (PA).

An applicant for a grant must complete the prescribed forms and pay the application fee.

OELs. Once a licence is granted, the licensee is expected to start work within three months from the date the licence was granted.

OPLs. Following the issue of a licence and the payment of a significant signature bonus within a prescribed time period, the licensee has the exclusive right to explore and prospect for petroleum within the area covered by the licence.

OMLs. These leases are awarded to holders of OPLs who have discovered oil in commercial quantities, and have satisfied all other conditions imposed on the OPL, and by the PA.

Transfer of rights

8. How are oil and gas rights transferred? Are there any restrictions on the disposal of interests?

Rights or interests in an oil mining lease (OML) or oil prospecting licence (OPL) may be transferred by assignment. However, an assignment can only be valid where the consent of the Minister of Petroleum Resources has first been obtained following the fulfilment of the relevant conditions. These conditions include that the proposed assignee:

- Is of good reputation, a member of a group of companies of good reputation, or is owned by a company or companies of good reputation.
- Has sufficient technical knowledge and experience, and sufficient financial resources to effectively operate under the licence or lease.

The holder of an OML is allowed to farm-out a marginal field lying within the leased area, with the consent of and on terms and conditions approved by the President.

Tax

9. What payments, such as taxes or royalties, are payable by oil and gas interest holders to the government?

The tax regime applicable to oil and gas exploratory works is principally under the Petroleum Profits Tax Act 1958 (PPTA). The PPTA is aimed at taxation of the profits of upstream oil companies. Other levies and charges applicable to and payable by upstream oil and gas companies include:

- Signature bonuses, which are payable on the grant of oil prospecting licences (OPLs), oil mining leases (OMLs) and the grant of marginal field interest.
- Rents payable annually on concessions and other grants issued under the Petroleum Act 1969 (PA).
- Royalties paid offshore on the quantity of oil extracted over time.
- Companies Income Tax, which risk service contract counterparties as well as service contractors under alternative funding arrangements in the Nigerian oil and gas sector are liable to (*Companies Income Tax Act*).
- Education Tax (*Education Tax Act*).

Joint ventures between operators may be incorporated or unincorporated. If the joint venture is incorporated as a separate legal entity, it will be liable in its own right for tax liabilities. However, in the Nigerian oil and gas industry, joint ventures are mostly unincorporated, with two or more companies holding undivided participating interests under a joint venture agreement or a joint operating agreement (JOA). In this situation, the joint venture does not exist as a legal entity but each participant owns a participatory interest.

Usually, the JOA details the proportions in which the parties are entitled to the profits of the venture. Generally, parties share equally the burden and benefit in accordance with the terms of the JOA.

Tax liability is deducted before calculating the participants' profit and other direct costs including, concession rentals, labour and other personnel costs, equipment and facilities, and so on. Only after deduction of tax liability is profit calculated by reference to the ratio agreed in the JOA.

10. Does the government derive any other economic benefits from oil and gas exploration and production?

Under the traditional joint venture arrangement in Nigeria, the Federal Government of Nigeria, through the NNPC or, now commonly, the Nigerian Petroleum Development Company, the exploration and production subsidiary of the NNPC, holds majority participatory interest.

To this end, the Government derives immense benefit from oil and gas exploration and production particularly through the imposition of taxes (principally under the Petroleum Profits Tax Act 1958 and the Companies Income Tax Act), signature bonuses and royalties.

11. What taxes and duties apply on import and export of oil and gas?

The import and export of oil cargo is liable to pre-shipment inspection both at the point of import and export. On the import of petroleum products, importers are required to pay a fee calculated at 1% of the freight on board (FOB) value of the crude oil import. On the export of crude oil and gas cargo, a Nigerian Export Supervision Scheme (NESS) fee of 0.1% of the assessed FOB value of the crude oil exports is payable.

The harmonised tariff system for the importation and exportation of petroleum products is 30% of the face value of the product under the Custom, Excise Tariff, etc. (Consolidated) Act 1995, less all applicable allowances.

Transportation by pipeline

12. What regulatory requirements apply to the construction and operation of pipelines?

The Minister of Petroleum Resources is vested with the power to grant permits to survey routes for oil pipelines and to grant licences for the construction, maintenance and operation of oil pipelines (*Oil Pipelines Act*).

A permit to survey allows the holder to enter any land on the route covered by the permit, with necessary equipment and vehicles to survey, dig and bore holes, and do all necessary acts to ascertain the suitability of the land for establishing an oil pipeline.

An oil pipeline licence allows the licensee to enter and take possession of, or use land to construct, maintain or operate an oil pipeline or ancillary installations.

13. Is there a system of third party access to pipelines and other infrastructure?

A person other than the owner of an oil pipeline constructed, maintained and operated under the Oil Pipelines Act can apply to the Minister of Petroleum Resources for access to mineral oils, natural gas, or any of their derivatives or components (*Oil Pipelines Act*).

Health, safety and the environment

Health and safety

14. Describe the health and safety regime that applies to oil and gas exploration and extraction, and transportation by pipeline.

Exploration and extraction

The Minister of Petroleum Resources is responsible for making regulations on matters relating to oil prospecting licences (OPLs) and oil mining leases (OMLs), including matters relating to safe working, enquiries into accidents and the prevention of pollution of water courses and the atmosphere. In this regard the following legislation has been enacted:

- Mineral Oils (Safety) Regulations 1963. This prescribes standard safety measures and imposes duties relating to safety of operations on holders of OPLs and OMLs.
- Oil in Navigable Waters Act 1968. This prohibits polluting the navigable waters of Nigeria with crude oil, fuel oil, lubricating oil, heavy diesel oil and any mixture of oil. It further requires ships and vessels to be fitted with equipment to prevent oil pollution.
- Oil Pipelines Act. This prohibits a pipeline licensee from constructing any works within fifty yards of any public roads, dam, reservoir or building or over any water course required for domestic or irrigational use.

- Environmental Guidelines and Standards for the Petroleum Industry (EGASPIN). Issued by the Department of Petroleum Resources (DPR), these guidelines and standards set out monitoring programmes and schedules to ensure environmental quality control for the oil and gas industry.
- Petroleum Refining Regulations 1974. These require measures be taken to prevent and control environmental pollution and to ensure that all on-site personnel have suitable protective clothing, equipment and appliances as approved by the DPR.
- National Oil Spill Detection and Response Agency (Establishment) Act 2006. This prescribes regulations for dealing with waste emanating from oil production and exploration and its potential effect on the environment.
- Environmental Impact Assessment Act. This makes it mandatory for an EIA study to precede every oil and gas project as a safety measure for determining the impact of the project on the environment.
- Associated Gas Re-Injection Act seeks to restrict and regulated the flaring of associate gas.
- Harmful Waste (Special Criminal Provisions, etc.) Act prohibits the carrying, depositing and dumping of harmful waste on any land or territorial waters.
- National Environmental Standards & Regulations Enforcement Agency Act generally empowers the NESREA to preserve and maintain public health and welfare, and prohibit the discharge of hazardous substances into the air, land and waters of Nigeria

In addition, the various states have enacted their own environmental protection laws.

Transportation

The Oil Pipelines Act prohibits a pipeline licensee from constructing any works within fifty yards of any public roads, dam, reservoir or building or over any watercourse required for domestic or irrigational use. The Oil and Gas Pipeline Regulations enacted under the Oil Pipelines Act requires oil and gas pipeline construction to be carried out with the least disturbance to the environment, and requires operators to establish emergency plans for prompt responses and remedial action to protect their immediate environment. Also relevant are the Crude Oil Transportation and Shipment Regulations, which prohibit acts such as topping and prescribe checks for ships and vessels engaged in transporting crude oil. Topping refers to the further loading of crude oil in any available space on a ship, tanker or vessel after the nominated quantity of crude oil has been loaded at a designated terminal.

Environmental impact assessments (EIAs)

15. Is an EIA required before extracting or processing oil and gas?

The Environmental Impact Assessments Act (EIAA) makes conducting an EIA study mandatory before an oil and gas project can be commenced. This is with a view to determining the nature of the project and to what extent the project will affect the environment. EIA studies apply not only to private projects, but also to projects being carried out by public institutions.

The EIAA does not stipulate whether an assessment is to be completed in house or through an external body.

The Environmental Guidelines and Standards for the Petroleum Industry (EGASPIN) also make EIA studies mandatory. However, there is a closed category of projects that do not require EIA studies:

- Projects that the President or the Federal Environmental Protection Council feels are likely to have minimal environmental effect.
- Projects carried out during national emergencies.
- Projects carried out in circumstances that, in the opinion of the National Environmental Standards & Regulations Enforcement Agency are in the interest of public health or safety.

The EGASPIN prescribes that the EIA study must be prepared by the project proponent or initiator (proponent), together with consultants certified by the Department of Petroleum Resources (DPR) (where necessary) and in conjunction with the DPR.

16. What are the different stages of the EIA?

Stages of the EIA

The Environmental Guidelines and Standards for the Petroleum Industry (EGASPIN) sets out the process for an EIA study in relation to oil and gas projects.

To start, an initial assessment or environmental screening of significant issues is conducted by the proponent and the Department of Petroleum Resources (DPR). After this, an environmental screening report (ESR) is produced and reviewed with the DPR. A preliminary assessment of the impacts is conducted by the proponent, DPR and other stakeholders to determine potential significant and adverse environmental effects and a preliminary EIA report (PAIR) is prepared for approval by the DPR. If no significant impact on the environment is identified the project is allowed to proceed.

However, if the PAIR identifies significant impacts on the environment, the proponent must conduct a detailed EIA study to be submitted to the DPR. The DPR and the proponent prepare the detailed EIA study and a draft EIA report is produced by the proponent and submitted to the DPR for review. Mitigation measures (including design mitigation) are also considered. The draft EIA report forms the basis of approval for the engineering design of the project.

The final EIA report is produced by the proponent and submitted to the Director of the DPR following the conclusion of the detailed engineering design, but before the start of construction.

Timeline for completion of EIA

There is no definitive timeline in either the Environmental Impact Assessments Act or EGASPIN in relation to the EIA process. The timeframe typically depends on several variables, such as the nature of the project, its location and the DPR's turnaround time.

Environmental permits

17. Is there a permit regime for environmental damage or emissions produced during the extraction or processing of oil and gas?

The Environmental Guidelines and Standards for the Petroleum Industry prescribes the permit regime for emissions and discharge of effluent produced in the course of extracting and processing oil and gas in Nigeria. Accordingly, effluent discharge sites must be registered with the Department of Petroleum Resources and no operator is permitted to discharge effluent without the requisite permit. Relevant permits required include:

- The Industrial Waste Discharge/Disposal Permit relating to all forms of waste discharged (that is, solid, liquid or gas).
- The Production Waste Injection Well Permit for drilling to dispose of waste.
- Gas Flaring Permits/Certificates granted by the Minister of Petroleum Resources, permitting an exploration company to flare gas in specified oil fields.
- Storage Treatment and Disposal Facilities Permit for facilities that store, treat and dispose of on-site hazardous waste.

Waste

18. What are the regulations on the disposal of waste products resulting from oil or gas extraction or processing?

The Petroleum (Drilling and Production) (Amendment) Regulations 2006 set out provisions for the disposal of waste products from petroleum refining. The regulations provide, among other things, for waste products and refinery effluent to be disposed of in accordance with good refining practices and to sites designated by the Department of Petroleum Resources. In addition, these regulations require the manager of a refinery to employ practicable precautions to prevent pollution to the environment from petroleum products.

The Harmful Wastes (Special Criminal Provisions) Act 1988 criminalises the carriage, deposit or dumping of any harmful waste on any land or in any territorial waters, and the possession of harmful wastes for this purpose.

In relation to disposal of waste resulting from gas extraction, the Associated Gas Reinjection Act (AGRA) and the AGRA Regulations 2005 set a cease-date of January 2005 for the flaring of gas and prescribed a penalty of forfeiture of the relevant field concessions.

Apart from the general penalties prescribed by law for non-compliance and contraventions, no taxes are payable on waste disposal.

However, under the AGRA, the Minister of Petroleum can prescribe a sum payable by an oil and gas operator for every 28.317 standard cubic metres of gas flared.

Flares and vents

19. Are flare and vent regulations in place?

Historically, gas was flared in Nigeria due to insufficient investment in gas utilisation infrastructure. As a result, oil exploration companies flared the associated gas to extract the primary product. Unconfirmed reports suggest that the volume of gas flared in Nigeria is second only to Russia. To address this, the first attempt by the Nigerian Government aimed at ending gas flaring was a 1969 order. Today, the Associated Gas Re-injection Act 1979 (AGRA) is the primary legislation on gas flaring in Nigeria. It required oil exploration companies to:

- Submit documentation on schemes for the viable utilisation of associated gas produced from groups of fields.
- Cease gas flaring by 1 January 1984.

However, the AGRA permits the Minister of Petroleum Resources to allow an exploration company to continue to flare gas on prescribed terms and conditions in relation to specified oil fields. The Associated Gas Re-Injection (Continued Flaring of Gas) Regulations under the Act outline the conditions for the issue of a certificate by the Minister for the continued flaring of gas. The AGRA imposes a nominal fine on exploration companies that continue to flare gas after 1 January 1984. This cease-date has been moved several times, most recently by the Associated Gas Reinjection Act (Continued Flaring of Gas) Regulations 2005 (AGRA Regulations 2005), which set a cease-date of January 2005.

The draft Petroleum Industry Bill (PIB) has set a January 2013 cease-date with more severe consequences for defaulting companies over and above the nominal fine.

Decommissioning

20. What are the decommissioning obligations and liabilities that arise?

The Petroleum (Drilling and Production) Regulations 1969 contain provisions requiring the approval of the director of petroleum resources to abandonment programmes of licensees and lessees. The regulations restrict the abandonment of existing oil wells without the written permission of the director.

Contractual obligations and liabilities in relation to the decommissioning and abandonment of oil and gas project facilities will depend on the provisions contained in any given joint operating agreement entered into by the relevant parties.

Under the Environmental Guidelines and Standards for the Petroleum Industry, licensees and lessees are required to decontaminate, dismantle and remove structures from oil and gas installations and facilities after such installations or facilities have been abandoned and "decommissioned". This decommissioning activity is to commence at least one year after the facilities have been completely shut down or abandoned.

Sale and trade

21. How is trade in oil and gas usually completed?

In Nigeria, the bulk of petroleum assets are exploited under joint venture (JV) arrangements between the major international oil companies and the Nigerian National Petroleum Corporation on behalf of the Federal Government of Nigeria (FGN). The JVs typically allow each JV partner to make arrangements for acquiring and disposing of its crude entitlement.

For the FGN's portion of the crude, the FGN grants crude disposal allocations to oil trading companies to sell its crude entitlement, on an annual basis.

Industry operators typically enter into sale and purchase arrangements with off-takers (bulk or anchor purchasers of the crude who buy the crude from the operators), on either a long- or short-term basis based on pre-agreed pricing formulae. This arrangement has the disadvantage that there may be spot sales of crude by operators that sell the crude to the highest bidder, taking advantage of upward movements in the oil market.

22. Are oil and gas prices regulated?

Currently, the prices of some petroleum products are partially regulated (these are, premium motor spirit (petrol) (PMS) and kerosene). Automated gas oil was fully deregulated several years ago. Early in 2012, the Federal Government of Nigeria (FGN) attempted the full deregulation of the pump prices of PMS and kerosene through the removal of existing fuel subsidies. However, this attempt led to nationwide demonstrations and protests, and consequently the compromise was partial deregulation under a phased exercise. As a result, the prices of petroleum products are still regulated in Nigeria.

Under the Petroleum Act 1969 (PA) the Minister of Petroleum Resources is responsible for fixing the prices of petroleum products. This power is exercised to determine the pricing policy of petroleum products sold and distributed in Nigeria. The Petroleum Products Pricing Regulatory Agency (PPPRA) discharges this duty through a monthly petroleum products pricing template.

In 2008, the FGN issued the Gas Pricing Policy, which provides a transitional pricing framework arrangement, pending the full development of the domestic gas market and the evolution of an alternative pricing approach. The Gas Pricing Policy does not fix prices, it merely sets out the indices for ascertaining the floor price for dry gas supplied to different sectors in the domestic market. However, the DGR is empowered to establish the aggregate price (the price for the supply of gas, reflective of the average cost of gas supply in Nigeria) as a basis for gas supply to the domestic sector.

Enforcement of regulation

23. What are the regulator's enforcement powers?

Orders

General supervisory powers over all operations carried out under petroleum interests are vested in the Minister of Petroleum Resources. The Minister's powers of enforcement include:

- Accessing at any time, oil exploration licence (OEL), oil prospecting licence (OPL) and oil mining lease (OML) areas, refineries and installations under the Petroleum Act 1969 (PA) to enforce the PA and all industry applicable regulations.
- Ordering the arrest of any person found committing or to have committed an offence under the PA or other laws or regulations.
- Summoning a licensee or lessee or any of its subcontractors to provide information on their respective operations and where necessary suspending the operations (such as in cases where the operations are not conducted in accordance with good oilfield practice).

Additional powers of the Minister include:

- Powers of revocation of OPLs and OMLs in certain instances of the change of control of the OPL or OML holder.
- Power to make regulations on any matter requiring regulations under the PA.

The DPR monitors compliance with industry regulations and enforces environmental regulations. It is also responsible for supervising all petroleum industry operations carried out under licences and leases in the country, and ensuring compliance with the applicable laws and regulations.

Fines and penalties

Each of the legal and regulatory provisions underpinning the petroleum industry prescribe fines and penalties for offences committed under them. For example, a person who:

- Constructs or operates a refinery without a licence is liable on conviction to a fine not exceeding NGN2000.
- Explores for oil without an OEL, prospects for petroleum without an OPL or OML is liable on conviction to a fine not exceeding NGN2000.

24. Is there a right of appeal against the regulator's decisions?

Generally, there is no right of appeal against the decisions of the Minister of Petroleum Resources as the bulk of the ministerial powers are exercised at the Minister's discretion, which is guided and bound by the limits of the law. However, a number of laws recognise the right of an oil prospecting licence (OPL) or oil mining lease (OML) holder to refer the dispute to be settled by arbitration in the event of a dispute arising in connection with an OPL or OML. The statutes recognising this right of recourse to arbitral proceedings include the Petroleum Act 1969 and the Oil Pipelines Act. The absence of a statutorily prescribed appeal procedure does not limit the right of an OPL or OML holder to approach the appropriate courts of law for judicial review or other form of legal redress against a regulator in the event of an improper exercise of a discretionary or other statutory power.

Reform

25. Are there plans for changes to the legal and regulatory framework?

The framework underpinning the petroleum industry in Nigeria has not evolved at the same pace as developments, and do not take into account the significant advancements and challenges that have occurred over the years. The need for an industry-wide overhaul is therefore apparent.

The Federal Government of Nigeria's response to this need is the proposed draft Petroleum Industry Bill (PIB), which, if enacted, has the potential to change the face of operations and the petroleum industry.

The PIB as proposed presents an attempt to amalgamate under a single instrument, the various legislative, regulatory and fiscal policies, instruments, structures and institutions that govern the industry. Additionally, it aims to introduce a new operational and fiscal regime for revenue management.

The key changes proposed by the PIB include:

- Creating a framework for the unbundling of the powers, functions and objectives of the Nigerian National Petroleum Corporation (NNPC), together with its assets and liabilities, into the:
 - Nigerian Petroleum Assets Management Company Limited (as a subsidiary of the Nigerian Petroleum Assets Management Corporation);
 - National Oil Company Plc (NOC);

- National Gas Company Plc (NGC).
- The carving-out of natural gas from the exploration and exploitation of crude oil. Consequently, a separate licence/authorisation will be required to conduct gas exploration and exploitation activities.
- The introduction of a hydrocarbon tax (a resource tax), imposed on companies engaged in upstream petroleum operations.
- The expansion of the scope of "assignment" and the applicability of the requirement for ministerial consent. Effectively, offshore changes of control in companies holding petroleum assets and exchange of shares are to be within the purview of an "assignment" under the PIB.

The PIB proposes a number of regulatory entities such as the:

- Upstream Petroleum Inspectorate, with responsibility for administering all acreage for exploration, development and production of petroleum.
- Petroleum Technical Bureau, to promote the exploration of hydrocarbons in the frontier basins of Nigeria and evaluate all unassigned frontier acreages in Nigeria.
- Downstream Petroleum Regulatory Agency (DPRA), empowered to set benchmark costs for downstream operations, provide market rules and issue licences.

In addition to the PIB, the Downstream Gas Act (DGA) is another statute that has been proposed. The DGA would establish the proposed Gas Regulatory Commission with functions including regulating the price of gas supplied and utilised in the downstream gas sector as well as monitoring and imposing pricing restrictions on licensees.

The regulatory authorities

Minister of Petroleum Resources

Address. The Federal Ministry of Petroleum Resources, Abuja, Nigeria.

Main responsibilities. The Minister exercises primary supervisory oversight over the petroleum industry and is responsible for the formulation, implementation and co-ordination of Government policy for the industry.

Ministry of Petroleum Resources

Address. Federal Ministry of Petroleum Resources, Abuja, Nigeria.

T +234 9 523 0763/+234 9 523 7332

F +234 9 523 6652

Main responsibilities. The Ministry is the government department with oversight over the petroleum industry. The powers conferred on the Ministry are exercised through the Minister.

Department Of Petroleum Resources (DPR)

Address. 7, Kofo Abayomi Street, Victoria Island, Lagos State (Headquarters), Nigeria.

(The DPR has zonal offices in several states across the country.)

T +234 805 829 8820

W www.dprnigeria.com

Main responsibilities. The DPR is a department within the Ministry of Petroleum Resources. The DPR is the technical arm of the Ministry and ensures compliance with industry regulations, processes applications for licences, leases and permits, and establishes and enforces environmental regulations. It is also responsible for supervising all petroleum industry operations carried out under licences and leases in Nigeria to ensure compliance with the applicable laws and regulations in line with good oil producing practices.

Department of Gas Resources (DGR)

Address. 7, Kofo Abayomi Street, Victoria Island, Lagos State (Headquarters), Nigeria.

W www.dprnigeria.com

Main responsibilities. The DGR was established under the National Gas Supply and Pricing Regulations and is expected to ensure the availability of gas supply to the domestic market.

Nigerian National Petroleum Corporation (NNPC)

Address. NNPC Towers, Central Business District, Herbert Macaulay Way, Abuja, Nigeria.

T +234 9 234 8200

E contactus@nnpcgroup.com

W www.nnpcgroup.com

Main responsibilities. The NNPC is the vehicle through which the FGN participates in the Petroleum Industry. The NNPC engages in all commercial activities relating to the petroleum industry and enforces all regulatory measures relating to the general control of the petroleum industry through its Petroleum Inspectorate department.

Online resources

W www.dprnigeria.com

Description. This is the website of the Department of Petroleum Resources (DPR).

W www.nnpcgroup.com

Description. This is the website of the Nigerian National Petroleum Corporation Group (NNPC).

Contributor profiles

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Professional qualifications. Nigeria, Attorney, 1992

Areas of practice. Natural resources law; mining and metals; infrastructure development and green technology.

Non-professional qualifications. MBA, Manchester Business School, University of Manchester

Recent transactions

- Recently advised on the US\$450 million borrowing base financing of the development of the Ebok Marginal Field by Afren Resources.
- Advised on the OML 125, US\$190 million acquisition of oil mining lease by Oando.
- Advised on the Mobil/Nigerian National Petroleum Corporation OSO NGL II, US\$1.2 billion financing by Credit Suisse, OPIC.
- Advised on the Mobil/Nigerian National Petroleum Corporation Satellite Field US\$600 million development.
- Advised on the sale, transportation, purchase and delivery of natural gas by NGAS across the West African sub-region. Project Supervisor in the Oando NGN60 billion medium term loan arranged by Stanbic IBTC, Guaranty Trust Bank and First Bank of Nigeria (Lagos, Nigeria; November 2009 to June 2010).

Languages. English, Yoruba

Professional associations/memberships. Member, Nigerian Bar Association; Recipient, Eisenhower Fellowship for International Leadership.

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Professional qualifications. Nigeria, Attorney, 2000

Areas of practice. Natural resources law; mining and metals; infrastructure development and green technology.

Non-professional qualifications. LLM, University College London.

Recent transactions

- Recently advised on the Oando acquisition of Oil Mining Lease assets.
- Recently advised on the construction of a dedicated 124km gas pipeline from Ukanafun local government area of Akwa Ibom state to the United Cement Company Limited cement factory in Calabar, Cross Rivers state.
- Currently advising on the sale, transportation, purchase and delivery of natural gas by NGAS across the West Africa Sub-Region.
- Currently advising a major international oil and gas company on the proposed acquisition of a company with significant OML assets in Nigeria.
- Currently advising a major international oil company on its obligations under the Associated Gas Reinjection Act.

Languages. English, Yoruba

Professional associations/memberships. Member, Nigerian Bar Association.

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Professional qualifications. Nigeria, Attorney, 2006

Areas of practice. Oil and gas; finance.

Non-professional qualifications. LLM, University College London.

Recent transactions

- Recently advised a bidder on its bid to acquire the onshore petroleum acreages of an IOC.
- Recently advised on the US\$3.3 billion financing for the development of an integrated petrochemical and refinery complex.
- Currently advising a leading oil and gas trading company on the purchase of LPG and propane from an E&P company.
- Currently advising a group of investors in a bid vehicle for the acquisition of a petroleum acreage of an IOC.
- Currently advising an oil and gas trading company on its proposed purchase of NGLs from a joint venture group.
- Currently advising a leading oil servicing company on the restructuring of the plugging and abandonment operations.
- Currently advising a major international oil and gas company on the proposed acquisition of a company with significant OML assets in Nigeria.

Languages. English, Yoruba

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