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Energy & Natural Resources

9th November 2017.



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When Stepping back is a Panacea to Moving Forward: The Legislative Story of the Nigerian Petroleum Industry Bill.

Background

The Nigerian Petroleum Industry Bill (PIB) possibly ranks as number one by a wide margin among the bills that have spent the most time with the legislature. It is also one of the most controversial and most discussed in the legislative history of bills within the chambers of the Nigerian National Assembly, because of the sensitive nature of the matters addressed.

Following the renewed quest for more revenue by the resource-owning states and for increased participation of the local stakeholders in the extraction of their resources, the bill was first introduced in the year 2000. As generally acknowledged, the Petroleum Industry in Nigeria, generates over 90% of the income of the Federal Government of Nigeria. The operators of majority of the oil and gas fields in Nigeria are the multinationals and other local investors. All the investors, whether multinational or local, want good returns on their investments and some certainty in the applicable legal regime; while the local indigenous peoples of the Niger Delta where these fields are majorly situated have had to endure environmental pollution and the lack of commensurate infrastructure and economic development within their enclaves for a fairly long period of time. It is thus understandable why there have been conflicting interests that need to be properly harmonized in the PIB in order to satisfy all the stakeholders within the industry. It is the synchronization of these interests that has proved rather difficult so far.

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Since the year 2000 when the idea of a PIB was first mooted, it has undergone a number of transformations, to the point where, today, it has been unbundled into several segments. What used to be the PIB has now been unbundled into at least four separate segments. The protracted incarnations, transformations and reintroductions as well as the vexed question of why the Bill has not been passed till date, even after 17 years of parliamentary debate and tinkering, agitates the mind of this writer as it does that of many other writers and commentators. This commentary attempts a short but direct appraisal of the legislative trajectory of the PIB till date and the objectives sought to be attained by stakeholders. With what appears to be on the horizon - i.e. the unbundling of the PIB and the current interests/efforts of the senate in particular and the National Assembly generally, the PIB or its transfigured sectional bills will become law eventually. It is also expected that the necessary investments will come and the Petroleum Industry in Nigeria will be on a sounder footing to meet the contemporary challenges confronting the sector.

Contents and Approach of PIB at Inception

In its format at inception, the PIB sought to combine a wide range of existing legislations and regulations governing various aspects of the petroleum industry into a single enactment. It also sought to add new provisions that are anticipated to make the industry more transparent and better governed, enable deployment of better environmentally friendly technologies, and generate more value for all stakeholders. Section 354(1) of the Petroleum Industry Bill¹ specifically sought to repeal the following existing laws:

1. Associated Gas Reinjection Act Cap A25 Laws of the Federation of Nigeria 2004;
2. Motor Spirits (Returns) Act Cap M20 Laws of the Federation of Nigeria 2004;
3. Petroleum Act Cap P10 Laws of the Federation of Nigeria 2004;
4. Petroleum Equalization Fund (Management Board, etc.) Act Cap P11 Laws of the Federation of Nigeria 2004
5. Petroleum (Special) Trust Fund Act Cap P14 Laws of the Federation of Nigeria 2004;
6. Petroleum Technology Development Fund Act Cap P15 Laws of the Federation of Nigeria 2004;
7. Deep Offshore and Inland Basin Production Sharing Contracts Act Cap D3, Laws of the Federation of Nigeria 2004; and

¹ As it then was in 2012. Note that the 2012 PIB has been utilised for this review. This is important as there have been different copies of the PIB in circulation in the industry before now.

8. Petroleum Profits Tax Act Cap P13 Laws of the Federation of Nigeria 2004.

However, all the subsidiary legislations made pursuant to the above repealed laws which are not inconsistent with the provisions of the PIB were expected to continue in operation until revoked or replaced by subsidiary legislation made under the PIB and shall be deemed to have been made for all purposes by the PIB.² The repeal of the Nigerian National Petroleum Corporation Act Cap N123 Laws of the Federation of Nigeria 2004, was suspended until the date the Minister of Petroleum signifies, by legal notice in a Gazette, that the assets and liabilities of the NNPC have been transferred to a successor company.

In terms of what was labeled a new fiscal regime, a wide range of additions and amendments are projected to occur to the Companies Income Tax Act, Cap. C21 Laws of the Federation of Nigeria. Similarly, Section 221 of the 2012 PIB sought to provide for a fully deregulated downstream petroleum products market, thus, effectively rendering the Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003 as overtaken by the new law, and invariably repealed. In section 200, the PIB sought to make provisions for Environmental quality management while section 201 seeks heavier penalties for gas flaring and was thus projected to have the effect of taking the place of the Associated Gas Reinjection (Continued Flaring of Gas) Regulation.

The other laws currently in operation in the Nigerian Petroleum industry which the PIB was meant to have repealed, re-enacted or affected covers the various segments of the upstream, downstream and midstream sectors of the Nigerian Petroleum industry.³

² As provided in section 354(2) of the PIB 2012.

³ These laws and regulations include Petroleum Production and Distribution (Anti Sabotage) Act Cap P12 Laws of the Federation of Nigeria 2004; Oil Pipelines Act, Cap O7 Laws of the Federation of Nigeria 2004; Oil in Navigable Waters Act 1968, Cap O6, Laws of the Federation of Nigeria 2004; Nigerian Oil and Gas Industry Content Development Act, 2010; Offshore Oil Revenue (Registration of Grant) Act No. 23 1972; Oil Terminals Dues Act; Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004; Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) Act; West African Gas Pipeline Project (Special Provision) Act; Treaty of West African Gas Pipeline Project (Ratification and Enforcement) Acts 2004; Pre-Shipment Inspection Act; Territorial Waters Act; Coastal and Inland Shipping (Cabotage) Act; Companies Income (Amendment) Act 2007; Education Tax Act; Federal Inland Revenue Service Act, 2007; Value Added Tax Act; Nigeria Investment Promotion Commission (NIPC) Act; Foreign Exchange (Monitoring and Miscellaneous Provisions) Act; Energy Commission of Nigeria Act; Finance (Control and Management) Act; Niger Delta Development Act; National Oil Spill Detection and response Agency (Establishment) Act Cap N86 Laws of the Federation of Nigeria 2004; Oso Condensate Project Act; National Environmental Standards and regulations Enforcement Agency (Establishment etc.) Act, Cap N164 Laws of the Federation of Nigeria 2004; Exclusive Economic Zone Act cap E 17 Laws of the Federation of Nigeria 2004; Environmental Impact Assessment Act Cap E2 Laws of the Federation of Nigeria 2004; Nigerian Extractive Industries

Uncertain Legal Regime and a Suffering Petroleum Industry

The Nigerian Petroleum industry requires a lot of investments - both local and foreign before it can achieve anything near its full potential; and the lack of a predictable and stable legal regime within the industry can only ensure that investment decisions are delayed or not made at all. The industry has thus not had as many investments as it should ordinarily have, had the legal regime been more clearly delineated for this lengthy period. There is no gain-saying the fact that no investor would wish to commit significant funds without certainty in the law. While the various push-backs from different stakeholders and the introduction and reintroduction of different versions of the PIB are ongoing in and outside of the National Assembly, the industry continues to feel the negative impact of this uncertain and unpredictable state of affairs.

The paradigm shift in the legislative approach – Stepping back to propel forward movement

The mandate given to Dr. Ibe Kachukwu, first as the Group Managing Director (GMD) of the Nigerian National Petroleum Corporation (NNPC) and subsequently as Minister of State for the Petroleum Industry by President Muhammadu Buhari, GCFR, appears to be very clear: to reposition the NNPC and the Nigerian petroleum industry. Armed with relevant field experience, having worked for Oil multinationals in the Petroleum industry prior to his appointment, Dr. Ibe Kachukwu was clearly persuaded that without certainty in the legal regime, the desired investments would not come into the industry. It was also a no-brainer that there must be a paradigm shift in approach if the PIB, which has been with the legislature for close to 2 decades, will become law. The new thinking thus prevailed that the PIB should be restructured into segments to ensure speedy passage into law.

Notwithstanding that the executive arm of government was clear on the way forward and has even issued policies and a roadmap on some of the things it intends to do to reform the industry;⁴ it has failed to present the bills as expected to the National Assembly. The good news however, is that the National Assembly has now taken it upon itself to bequeath appropriate

Transparency Initiative (NEITI) Act No. 69, 2007; Petroleum Training Institute Act Cap P16 Laws of the Federation of Nigeria 2004; Niger Delta Development Commission (Establishment etc.) Act Cap I57 Laws of the Federation of Nigeria 2004; Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and other Resources in Areas of the Exclusive Economic Zone of the Two States (Ratification and Enforcement) Act Cap T27 Laws of the Federation of Nigeria 2004; and African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004

⁴ For example the Nigerian National Petroleum Policy approved by the Federal Executive Council in February 2017.

Petroleum industry laws to Nigeria within a shorter time than the years we have spent trying to pass the PIB as a single bill. The National Assembly; and particularly the senate President must be given kudos for taking the initiative to move what used to be the PIB to the level it is currently. The senate had to hire consultants to work on the various bills into which the PIB has been divided.

The PIB has now been divided into the following 4 segments: Petroleum Industry Governance Bill (PIGB), the Downstream Oil and Gas Administration, Petroleum Fiscal, and Petroleum Revenue Management and Petroleum Host Community Fund (PHNF). The PIGB was passed by the Senate on the 25th May 2017 and it is before the House of Representative for concurrent passage before assent by the President. This is the closest the industry has come towards having some certainty in the law governing it. It appears we are now moving forward after stepping back, taking stock and re-strategising. One of the key reasons for the progress now being made as far as legislative work is concerned on what used to be the PIB is the unbundling of the PIB into segments so that they can be passed separately as opposed to the hitherto contemplated wholesale passage into law. As reported in the news, the consultants to the senate on the PIB, who have worked on the bills are now almost ready to present same to the senate and for public hearings to take place any moment from now.⁵

Although the expected changes to the laws governing the Nigerian petroleum industry will hopefully still be radical, one of the lessons learned in the trajectory of the PIB is that it is difficult to consolidate several laws for passage into a single enactment. Another one is that a single law, once made, cannot continue to efficiently and effectively regulate the Nigerian petroleum industry for all times and for all purposes without constant review and adjustments as the needs of the industry demands. Although this is an industry based on constantly changing technology, the Nigerian petroleum industry nevertheless deserves a stable and predictable legal regime to attract appropriate investments. Obviously, we do not have to wait for all issues to be resolved in one single bill before it is passed into law.

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⁵ This was reported by Energy Mix at <http://energymixreport.com/pib-ready-public-hearing-2-weeks-lead-consultant/> accessed on 7th November 2017.