

Overview of proposed petroleum industry bill

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Introduction

Critics of the Petroleum Industry Bill 2012 – which was not passed into law before the end of the Seventh National Assembly on June 4 2015 – argued that it was too ambitious in scope and unwieldy. The bill sought to provide consensus regarding disparate aspects of Nigeria's rapidly evolving and complex petroleum sector in a composite statute, 46 years after the passage of the first Petroleum Act in 1969. Advocates for reform appear to be refining their efforts by splitting the bill's focus areas into digestible and prioritised segments.

The new Petroleum Industry Governance and Institutional Framework Bill 2015 aims to:

- introduce an effective institutional framework for the Nigerian petroleum industry;
- set up structures for the establishment of commercially driven petroleum entities; and
- promote transparency in the administration of Nigerian petroleum resources.

In short, the bill seeks to address the problem of administering petroleum resources in line with global best practice and to provide for efficient and independent sector regulation.

Regulation

The bill reduces the minister of petroleum resources' existing regulatory powers significantly and limits his or her role to that of national petroleum policy driver. The aim of this proposal is understandable, as it appears difficult for the main sector regulator to carry out its functions efficiently and transparently (ie, without any form of complicity) while also overseeing the affairs of the state-owned oil company.

The bill also proposes to subject the minister's power to grant, amend, renew, extend and revoke petroleum licences and leases (a key function) to the recommendations of a petroleum sector regulator, the Nigeria Petroleum Regulatory Commission.

The regulatory commission would assume the functions of the Department of Petroleum Resources and the Petroleum Products Pricing Regulatory Agency. It would exercise comprehensive oversight functions over the petroleum sector value chain, including:

- administering and enforcing policies, laws and regulations relating to all aspects of petroleum operations;
- issuing licences and other authorisations required for petroleum-related activities; and
- conducting bid rounds for the award of exploration and production licences and leases.

While these powers may seem extensive, the occasional overlap of existing regulator roles and

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uncertainty regarding the scope of their duties make the case for a more integrated sector regulator.

Subject to public consultation, the bill also proposes empowering the regulatory commission to make and enforce regulations and issue guidelines separately from the minister under the Petroleum Act. Recently, the Department of Petroleum Resources has taken the lead in issuing petroleum sector guidelines, which have had a regulatory component. While the department's actions have been viewed occasionally as *ultra vires*, they could be connected to the fact that the department directly monitors the activities of petroleum sector operators (unlike the minister). The proposal to grant the regulatory commission the power to draw up regulations and guidelines appears to be a practical and legal remedy for its existing practices.

The bill also provides for a governing board, headed by an executive vice-chairman, which would be responsible for directing and supervising the regulatory commission's affairs. Governing board members would be appointed by the president, subject to confirmation from the Senate.

While the minister's regulatory powers would be significantly reduced, the bill states that he or she could still issue general directions to the Nigeria Petroleum Regulatory Commission on matters concerning the industry and that the commission would be mandated to implement these directions. It is unclear what these general directions could entail, but the minister's ability to influence the regulator could serve to undermine the planned independence of the commission.

Institutions

The bill proposes that the Nigeria Petroleum Assets Management Company and the National Petroleum Company take over some of the Nigerian National Petroleum Corporation's (NNPC) concerns. However, the minister may incorporate other entities to undertake and manage some of the NNPC's liabilities.

The bill also recommends that three months after it comes into effect, the minister incorporates a management company. Its shares would be held by the Federal Ministry of Finance and the Bureau of Public Enterprises on behalf of the government. The bill is unclear regarding the steps that the minister would be required to take in this regard.

The management company would be responsible for the NNPC's oil and gas investment in assets for which the government is not obliged to provide funding upfront, including the NNPC's assets from production-sharing contracts, which would be transferred to the management company. The management company's other functions would include:

- owning and managing petroleum assets on behalf of the government;
- entering into new exploration and petroleum agreements with petroleum companies; and
- undertaking the sale of crude oil or other petroleum derivatives produced from relevant assets.

The management company would be entitled to charge the government fees for managing its oil and gas assets based on a percentage of the revenue generated, as determined by the National Assembly.

The bill also requires the minister to incorporate a national petroleum company. The national petroleum company's shares would be held by the Federal Ministry of Finance and the Bureau of Public Enterprises on behalf of the government. It would operate as an integrated oil and gas company, divesting at least 30% of its shares to the public within six years of its incorporation.

The national petroleum company's initial capitalisation is recommended to be no less than the five-year average of the amount that the National Assembly appropriates to fund the NNPC's share of cash calls for joint ventures. This indicates that the NNPC's interests in such operations would be vested in the company. Further, Part 4 of the bill – which provides for the delisting of NNPC subsidiaries listed under the Public Enterprises (Privatisation and Commercialisation) Act – suggests that the national petroleum company would assume the NNPC's interests in such concerns.

However, the national petroleum company would be entitled to retain revenue from its operations and defray all expenses, including cash call obligations regarding its joint venture assets and

petroleum operations, as well as its obligations to lenders and financiers from such revenues.

Dividing the NNPC's concerns into separate institutions is arguably a step in the right direction. The proposal to transfer the country's most profitable upstream assets to a management company – thereby insulating them from the national petroleum company's cost-bearing obligations – corresponds with the bill's aim to establish profit-driven and commercially viable entities. The national petroleum company's ability to utilise its revenue to meet obligations to joint venture partners and financiers should result in it becoming a more acceptable business partner than the NNPC.

Latest developments

On March 9 2016 the incumbent minister of state petroleum resources and group managing director; Dr Ibe Kachikwu, announced the creation of seven divisions of the NNPC: upstream, downstream, refineries, gas and power, ventures, finance and corporate services. In addition, 20 sub-set companies will be created as subsidiaries of these units. The minister intends for five of these units to be profit driven, while the other two will provide services. To effect this change, the minister converted the group executive directors to chief executive officers (CEOs) and redeployed them to oversee each of these various business components.

The creation of these units appear to have been expected. However, critics regarded the move as controversial, contending that the minister may be acting beyond the scope of his authority under the Petroleum Act.. The minister was therefore called before the Senate Committee on Petroleum Resources (Upstream) to explain the reasoning behind the 'unbundling' of the NNPC. The minister took the position that he had intended to 'restructure' the NNPC, rather than 'unbundle' it; which the committee held was in line with his powers.

However, should the minister have absolute discretion to make such far-reaching decisions? Such powers are among those which the bill seeks to limit. The supporters of the proposed restructure take the view that it will encourage more independent decision making in the petroleum industry, as the new CEOs will need to structure their units in the best way possible to yield profits and provide better services, which should promote efficiency and transparency in line with the bill. It is unclear how these units will fit within the proposed institutional structure should the bill be passed.

Comment

The concerted effort to improve petroleum legislation reflects the government's commitment to implementing sector reforms. The proposal to curb the minister's powers and make the regulator more independent, coupled with the creation of the new units by the minister, should provide the measure of confidence that investors require. However, the president's involvement in the Nigeria Petroleum Regulatory Commission's selection process, as well as the minister's power to issue general directions, suggest that not much will change if the bill is passed as drafted. Further, the creation of new units by the minister may necessitate a revision of the bill, because it is unclear how these units will fit into the proposed institutional structure under the bill. It is conceivable that the move could slow down the passage of the bill or possibly lead to it being revoked. Nonetheless, if the establishment of these new units promotes efficiency, profitability and transparency, this should benefit Nigeria's ability to earn revenue and manage its petroleum resources. These units could also test the extent to which the proposed institutions could be sufficiently independent of governmental influence. The level of diligence with which the National Assembly will treat the bill when it is officially presented by the Senate for wider legislative consideration remains to be seen.

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