

PETROLEUM INDUSTRY ACT 2021



THE PETROLEUM INDUSTRY ACT 2021: REQUIREMENTS FOR INVESTING IN THE NIGERIAN PETROLEUM INDUSTRY

The Petroleum Industry Act 2021 (PIA) is now the uniform legal framework in the Petroleum Industry in Nigeria. The PIA provides legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry and the development of host communities. This article highlights salient provisions and steps a potential investor (local or foreign) needs to take into cognizance.



1. There are two main regulators in the Nigerian Petroleum Industry: the Nigerian Upstream Regulatory Commission (the Commission) for regulating upstream petroleum operations and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) for regulating midstream and downstream petroleum operations.
2. To engage in upstream petroleum operations, in addition to being an incorporated company in Nigeria, the following licenses and lease must be obtained from the Commission:
 - Petroleum exploration license: it gives the holder the non-exclusive right to carry out petroleum exploration for 3 years. It is renewable for additional 3 years upon fulfilment of prescribed conditions and does not include the right to win, extract, or carry away any petroleum discovered in the licensed area.
 - Petroleum prospecting license: it gives the holder the exclusive right to drill exploration and appraisal wells, non-exclusive right to carry out petroleum exploration operations and the right to carry away and dispose of crude oil and natural gas extracted. A petroleum prospecting license for onshore and shallow water acreages is for a period of not more than 6 years, consisting of an initial exploration period of 3 years and an optional extension of 3 years while for deep offshore and frontier acreages, it is for a period of not more than 10 years, consisting of an initial exploration of 5 years and an optional extension of 5 years.
 - Petroleum mining lease is granted to a licensee of a petroleum prospecting license for each commercial discovery of crude oil or natural gas or both upon satisfaction of prescribed conditions and the approval by the Commission of the applicable field development plan. A petroleum mining lease is granted for a maximum period of 20 years inclusive of the development period sufficient to construct required infrastructure and the development of the field. Where a petroleum mining lease continues to produce in paying quantities, it may be renewed for one or more successive additional terms of not more than 20 years each upon fulfilment of the prescribed conditions.
 - A licensee or lessee in the upstream or midstream petroleum operations is required to submit an environmental management plan in accordance with laws in that regard and as a condition to granting a license or lease or approving an environmental management plan, a licensee or lessee is to make a financial contribution to an environmental remediation fund established by the Commission or the Authority for the rehabilitation or management of negative environmental impacts with respect to the license or lease. The PIA prohibits gas flaring and venting pursuant to the Flare Gas (Prevention of Waste and Pollution) regulations, but makes an exemption for flaring and venting of natural gas for a specified period where it is required for a facility start-up or for strategic operational reasons including testing.
3. To engage in midstream and downstream petroleum operations, licenses or permits must be obtained from the Authority upon fulfilment of the terms and conditions for the grant of such license or permit.
 - Activities in midstream and downstream gas operations requiring a license or permit are: processing of natural gas, storage of natural gas, transportation of natural gas, distribution of natural gas, importation or exportation of natural gas, engagement in wholesale gas supply, retail trading of gas, and operation of a gas distribution network.
 - Activities in midstream and downstream petroleum liquids operations requiring a license or permit are: operation of a crude oil refinery, storage of petroleum liquids, transportation of petroleum liquids, distribution of petroleum liquids, importation or exportation of crude oil or petroleum products, sale of petroleum liquids and operation of a petroleum liquids transportation network.
 - Licenses with respect to the establishment of refineries is to be issued by the Minister of Petroleum on the recommendation of the Authority.



4. A holder of an interest in a petroleum prospecting license or petroleum mining lease whose area of operations is located in or appurtenant to any community or communities is required to incorporate a host communities development trust for the benefits of the host communities and therefore referred to as a settlor. In setting up this trust, the settlor in consultation with the host communities will appoint a Board of Trustees to be registered under the Company and Allied Matters Act 2020 whose members will come from the host communities. It is also required that a host communities development trust fund be established. This trust fund is to be funded by an annual contribution of an amount equal to 3% of the settlor's actual annual operating expenditures (OPEX) in upstream petroleum operations affecting the host communities, donations, gifts, grants, profits and interest accruing to the reserve funds of host communities development trust.
5. According to the fiscal framework provided by PIA, revenues from the petroleum industry due to the Government include taxes (hydrocarbon tax, companies income tax and tertiary education tax), royalties, production shares, profit shares, signature bonuses, production bonuses, renewal bonuses, rents, fees, fines, and other levies due in relation to grant, assignment, termination, and breach of licenses, leases and permits.



In conclusion, the enactment of the PIA is a remarkable step towards the reinvigoration of the Petroleum Industry thus encouraging investments in the industry. The two main regulators have commenced operations, and it is expected that they will put forward regulations and procedures for carrying out the provisions of the PIA.

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KMO Legal is happy to advise potential investors on petroleum industry act.

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