

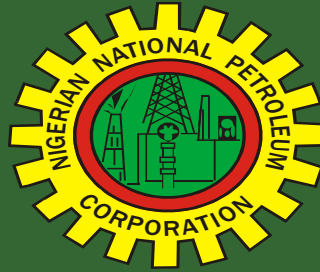


# Governance Structure, Host Communities Fund, and Fiscal Provisions of the Petroleum Industry Act (PIA)

*The Role of the Regulators*



# INTRODUCTION



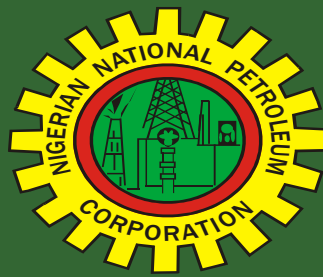
On the 16th of August 2021, President Muhammadu Buhari signed the Petroleum Industry Bill (PIB) into law causing the transition from a Bill to an Act.

The newly enacted Petroleum Industry Act (PIA) delivers the much needed stability for the Petroleum industry. The scale of the changes implemented by the PIA in the industry is widespread and profound.

It overhauls the administrative, regulatory and fiscal regime, as well as the key petroleum institutions.

In this presentation, we will consider the provisions in the Act on governance structure, host community obligations, and fiscal provisions.

# OBJECTIVE OF PIA



## Objectives (S.2)

Create efficient and effective governing institutions with clear and separate roles for the petroleum industry

Establish a framework for the creation of a commercially oriented and profit driven national petroleum company

Promote transparency, good governance and accountability in the administration of petroleum resources of Nigeria

Foster a business environment conducive for petroleum operations; and

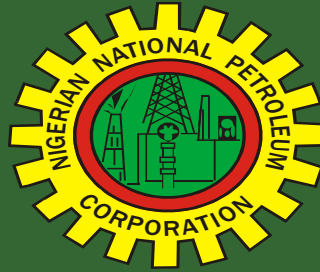
Deepen local content practice in Nigeria oil & gas industry





# Governance Structure

# Governance



- Under the Act, Governance in the Petroleum Industry primarily rests on the two new regulatory bodies.
- While the Minister of Petroleum Resources continues to oversee the oil and gas business, his regulatory powers and activities have been delegated to these new regulatory agencies.
  - Nigerian Upstream Regulatory Commission (the Commission) S. 4
  - Nigerian Midstream and Downstream Regulatory Authority (the Authority) S. 29 PIA

# Governance



## Minister

*Policy formulation & General supervision*

## Commission

*(Nig. Upstream Regulatory Com. S.4)*

## Authority

*(Nig. Midstream & Downstream Regulatory Authority S.29)*

## NNPC Limited



# Minister of Petroleum

## Commentary

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The powers of the Minister to regulate has been ceded to the Commission and authority respectively

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The exercise of certain powers of the Minister is now on the recommendation of the commission such as powers to grant, assign, revoke interest in PPL & PML.

## Powers of the Minister (S.3)

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Formulate, monitor and administer govt. policies

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General supervision/oversight over the petroleum industry

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Represent Nigeria on Int'l orgs on petroleum matters.

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Order cut back on production levels in context of Int'l oil pricing agreements.

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General policy directive to the commission and authority.



## Objectives (S.6)

Regulate upstream petroleum operations including technical, operational and commercial activities.

Ensure compliance with all applicable laws and regulations governing upstream petroleum operations.

Promote, healthy, safe, efficient/effective conduct of upstream petroleum operations in an environmentally acceptable manner.

Ensure the implementation and maintenance of technical standards, codes, practices & specifications applied in upstream operations in accordance with good Int'l petroleum industry practices



# Nigerian Upstream Regulatory Commission



## Technical Regulatory Functions



- Implement policies, applicable laws and regulations for upstream petroleum operations.
- Issue of permits for upstream activities and conducting bidding rounds for award of Petroleum Prospecting Licences (PPLs).
- Set and enforcing approved standards and regulations for design, construction of plants and installations used in upstream operations.
- Advise the minister on fiscal, operational technical & other matters

## Commercial Regulatory Functions







- Review and approve commercial aspects of Field Development Plans for all licensees, lessees or permit holders.
- implementing cutbacks of crude oil or condensate production ordered by the Minister.
- Develop cost studies and benchmarks for the evaluation of upstream operations (cost control)

# Nigerian Upstream Regulatory Commission







## Frontier Basins Functions S.9



-  Promote the exploration of the frontier basins of Nig.
-  Develop exploration strategies & portfolio management for exploration of unassigned frontier acreages
-  Identify opportunities and increase information about the petroleum resources base within the frontier acreages in Nigeria
-  Undertake studies, analyse and evaluate unassigned frontier basins in Nigeria

## Powers of the commission S.10



-  Enforcement of laws, regulations, policies related upstream activities formerly administered by DPR.
-  Recommend to the Minister the revocation and suspension of licences and leases
-  Require leases and permit holders to publish non-proprietary information.
-  Issue guidelines and regulations, renew licenses and leases



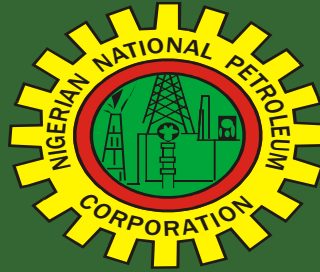
## Notation

(S.9(2)-(4))

A Frontier Exploration Fund (FEF) shall be established into which 30% of NNPC Ltd's profits oil and profit gas from Production sharing, Profit sharing & Risk Service contracts shall be paid.

Where in the judgement of the Commission data from Petroleum Exploration Licence requires testing or drilling of prospects & leads and no company desires to test or drill such prospects, the Commission shall request NNPC Ltd to drill or test such prospects and leads on a fee basis charged to the Frontier Exploration Fund

Where commercial discovery is made NNPC Limited shall have right of first refusal in the award for subsequent development of the acreage



## Objectives (S.31)

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Regulate midstream and downstream petroleum operations including technical, operational and commercial activities

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Promote, healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations in an environmentally acceptable and sustainable manner.

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Determine, administer and ensure the implementation of technical standards, Codes, practices and specifications applicable to midstream & downstream operations

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Promote the supply and distribution of natural gas and petroleum products and security of natural gas supply to domestic market

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Ensure compliance with applicable laws and regulations governing midstream and downstream of petroleum operations.





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# Nigerian Midstream and Downstream Regulatory Authority







## Functions of Authority S.32



-  Regulate and monitor technical and commercial midstream & downstream petroleum operations
-  Provide pricing and tariff framework for natural gas in midstream and downstream gas operations & petroleum products on fair market value of the products
-  Establish parameters and code of conduct for operators
-  Promote competition and private sector participation in the midstream and downstream petroleum operations

## Regulations by Authority S.33



-  issue rules governing the processing, refining, transmission, distribution, supply, sale, and storage of petroleum and petroleum products,
-  prerequisites for obtaining licenses/permits, the duration and conditions for same and procedure for transfer, surrender and revocation of the license and permits
-  regulate pricing regimes for midstream and downstream petroleum activities.
-  laws governing the retail sale and distribution of petroleum products, as well as competition in the petroleum sector and anti-competitive activity



# Nigerian Midstream and Downstream Regulatory Authority



## Gas Infrastructure Fund (S.52)

0.5% levy of the wholesale price of petroleum products and natural gas sold in Nigeria

Funds & Grants from multilateral agencies & bilateral institutions, dedicated for development of infrastructure for gas operations

Money received from gas flare penalties which shall be used for environmental remediation and relief of host communities where the facility is located

## Authority Fund (S.47)

Fees paid for use of facilities of authority

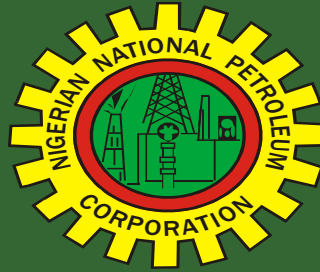
Fees charged for services rendered to licences and lessees

Income from publications

Grants, aid, gifts

0.5% of the wholesale price for petroleum products sold

# Nigerian National Petroleum Corporation Limited (NNPC Limited



## NNPC Limited Sec 53.

Within 6 months after the commencement of the PIA, the Ministry shall cause to be Incorporated the NNPC Limited under CAMA and shall replace the NNPC as we know it.

Government shall own the shares in NNPC Limited's which shall be held by:

Ministry of Petroleum Incorporated - 50%

Ministry of Finance Incorporated - 50%

The shares are not transferrable unless approved by Govt and endorsed by NEC

The Minister of Petroleum and Minister of Finance shall within 18 months of effective date determine the assets, interest and liabilities of NNPC to be transferred to NNPC Limited or its subsidiaries

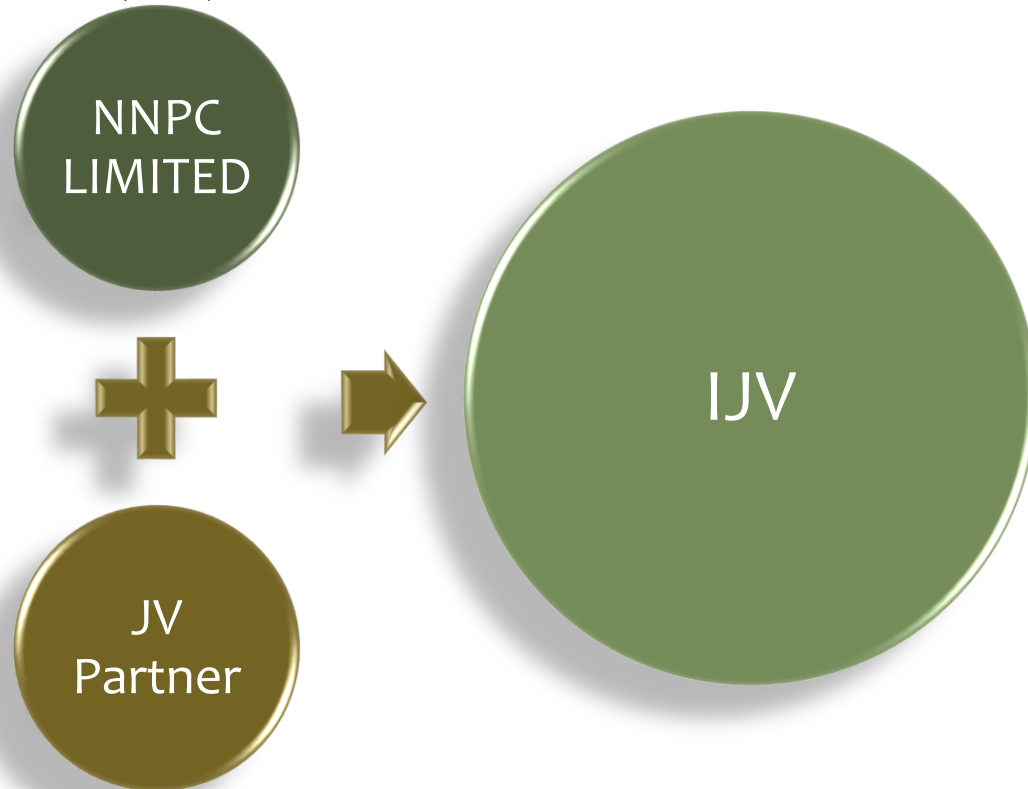
It shall conduct its business on a commercial basis without recourse to government funds and shall declare dividends and retain 20% of profits as retained earnings

It shall pay its share of fees, rents, royalties, profit oil shares and taxes, and other mandatory payments to the Government in a lease or license, just like others.

# Nigerian National Petroleum Corporation Limited (NNPC Limited)



- **IJV:** NNPC Ltd & JV Partners may voluntarily restructure their JOA as a JV carried out as an IJV not subject to FRA & PPA (S.65)



## Objectives (S.64)

Carry out petroleum operations like a private company as such it will be exempted from PPA, FRA, TSA

Be concessionaire of all Production sharing, profit sharing and risk service contracts

Lift and sell royalty oil and tax oil for a fee on behalf commission and FIRS respectively,

Assume the working interest of NNPC in all JVs.

Maintain the role of NNPC under S.54

Lift and sell profit oil and profit gas and remit the proceeds to the federation less 30% for the FEF

Become supplier of last resort for security reasons



# Host Communities Development Fund



## Host Communities Development Fund

### Objectives (S.234)

Foster sustainable prosperity within host communities

Provide direct social and economic benefits from petroleum operations to host communities

Enhance peaceful and harmonious co-existence between licensees or lessees and host communities

Create a framework to support the development of host communities



# Trust Fund Contribution and Allocation



## Host Com Dev.

The Operator (Settlor) shall incorporate a Host Community Development Trust. S.235

## Trust

The Host Community Development Trust shall be incorporated by settlor within 12 months effective date for the existing OML, or existing facilities or new facilities. S.236

Settlor shall develop a community development plant

The commission & Authority shall make regulation for the administration and use of the trust fund

The failure of the holder of the licensee or lease to create the Trust may indeed be grounds for revocation of the applicable license or lease

## Trust Fund

A host community trust fund is to be established by the trust

Each settlor is to contribute an amount equal to 3% of its actual annual operating expenditures in the preceding financial year in the upstream petroleum operations affecting the host communities(S. 240(2) ).

Funds allocating: 75% to the capital fund for projects, while 20% is maintained as a reserve fund to be utilized by trust whenever there is a cessation in the contribution payable by the settlor and 5% as administrative cost of running the trust (S.244)

Settlor shall develop a matrix for distribution of the of the trust fund.



# Effects of the Trust Fund

When settlors or operators transfers or assigns their interest in a license or lease to another person, the transferee inherits the obligation to contribute to the endowment fund (S. 237 PIA)

Where a license or lease is revoked, terminated or expired, the holder is obligated to continue to discharge its surviving obligations under the Act. (S. 237 (3) PIA)

The funds in the trust are tax-free, and that payments made by a settlor to the trust are tax-deductible for hydrocarbon tax and Companies Income Tax purposes (S. 265, 257 PIA)

Note that the Commission and Authority have the powers to impose rules relating to host communities within their areas of competence.

Settlor is required to perform a community needs assessment (social, environmental, and economic) after issuing a license or lease to the Settlor. (S. 251 PIA).

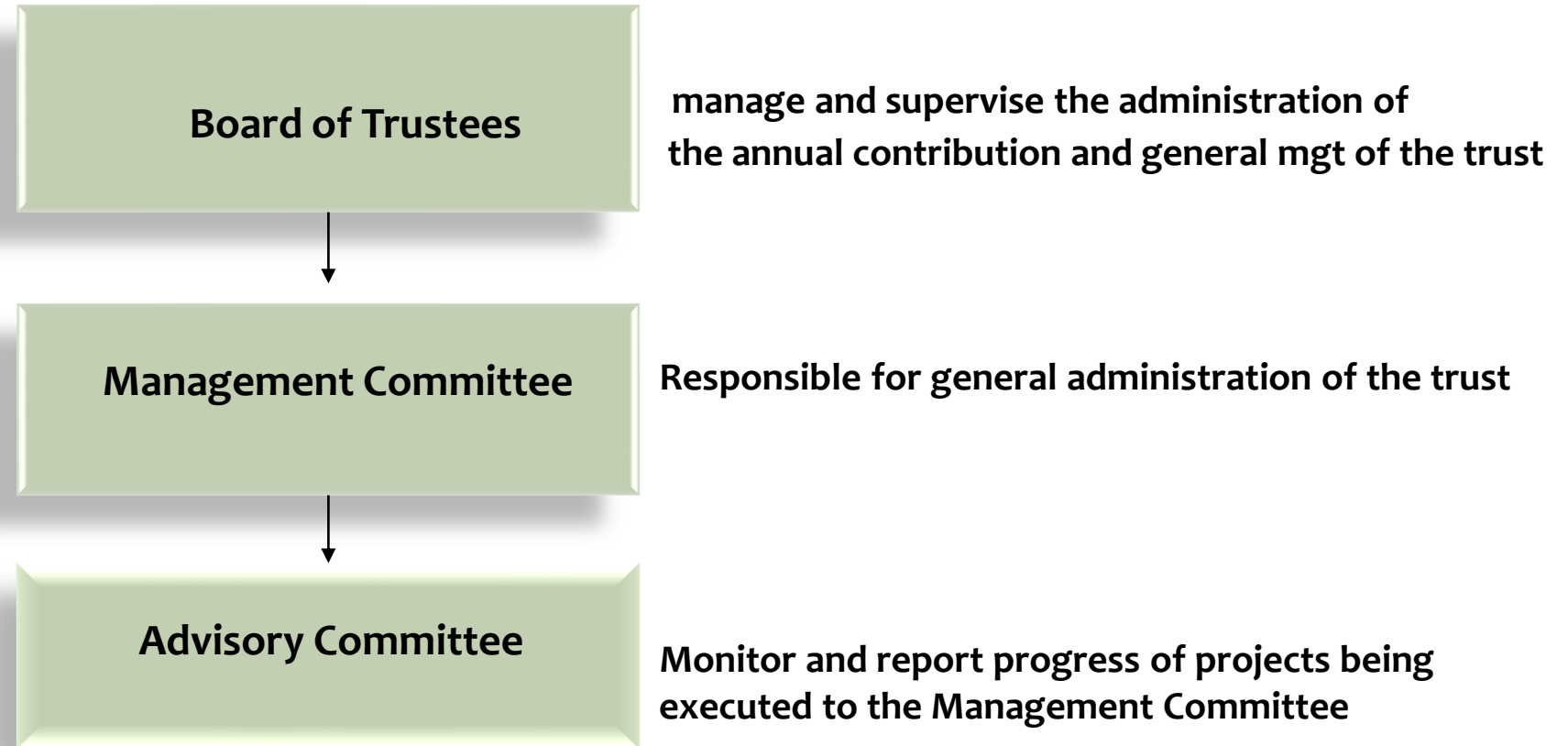
The Settlor is expected to design and implement a development plan, which must be approved by the Commission/Authority. (S. 252 PIA)

The Act clearly specifies the plan's content.

# Host Community Development Trust



- **Governance Structure**





## Fiscal Provisions

# Fiscal Provisions



Objective	Introduction
Establishes a progressive fiscal framework that encourages investment and enhances Federal Government take	Introduces Hydrocarbon Tax that is levied on profits of companies engaged in upstream petroleum operations in relation to crude oil
Provides a forward looking fiscal framework based on principles of clarity, dynamism	
Establish a fiscal framework that expands the revenue base of Government while ensuring a fair return on investment	It applies to crude oil, field condensate and liquid natural gas liquids from associated gas produced upstream of the measurement point and charged during each accounting period. S.260 (1) (a)
Simplify the administration of petroleum tax	
Promote equity and transparency in the petroleum fiscal regime	Companies Income Tax is applicable to companies/concessionaires or contractors engaged in upstream petroleum operations as well.



# Hydrocarbon Tax



## Notation

It excludes deep offshore from the application of HT and by so doing reduces the taxes applicable to deep offshore. S.260(3)

Introduces two layers of taxation for upstream companies: Company Income Tax and HT

Limits the application of stabilization clauses in any PSC or contract entered into after the commencement of this Act in so far as the changes are not discriminatory or the change is one that relates to general taxes, new taxes, levies or duties to comply with principles in respect of the environment, labour law, health and safety and implement Nigeria's commitment to climate change

Introduces new royalty rates (price based and production/terrain based royalties) and tax rates

Royalty may be paid in kind or cash at the discretion of the Commission

Royalty for gas will be based on production only



# Pre-PIA – The Petroleum Profit Tax Regime

PPT:	85% of chargeable profits to concessionaires
	65.75 of chargeable profits for comp not fully amortised all pre-production capitalized expenditure

PSC:	50% of chargeable profits
	ITC prior to 1 <sup>st</sup> July 1998 – 50%
	ITA post 1 <sup>st</sup> July, 1998 – 50%

Baseline Royalty:	10% for deep offshore greater than 200m water depth
	7.5% for frontier & inland basin

Price Sensitive Royalties:	\$0 to \$20	-	0%
	\$20 to \$60	-	2.5%
	\$60 to \$100	-	4.0%
	\$100 to \$150	-	8.0%
	Above \$150	-	10.0%



## PIA Regime

### Hydrocarbon Tax

Applies to crude oil, field condensate and liquid natural gas liquids from AG

30% of profit from PML for onshore & shallow water

15% of profit from crude oil for onshore & shallow waters and for PPL

### Price Based Royalty

Below \$50/barrel - 0%

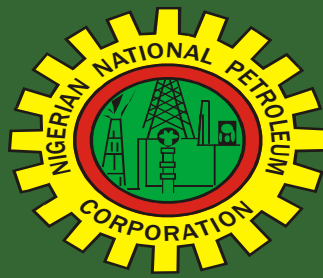
Between \$50 to \$100 determined by linear interpolation

At \$100/barrel - 5%

Between \$100 to \$150 determined by linear interpolation

Above \$150/barrel - 10%

\* At 2021 and each succeeding year, the price levels shall be increased by 2%



## PIA - Royalty

	For price-based royalties, the Commission will calculate the fiscal oil price for each field, taking into account factors like as quality differentials and transportation costs within Nigeria.	
Price based Royalty	The Nigerian Sovereign Investment Authority is the sole beneficiary of royalties based on price (S. 11 Seventh Schedule PIA).	
PIA Production/Terrain based Royalty (Crude & Condensate)	Onshore areas	- 15%
	Shallow waters (up 200m water depth)	- 12.5%
	Deep offshore (greater than 200m water depth)	- 7.5%
	Frontier basins	- 7.5%
	For deep offshore with a production during a month of not more than 50,000bpd - 5%	
Onshore and shallow water terrains, including marginal fields	When production is less than 10,000bpd the following shall be used:	
	i) First 5,000 bopd	- 5%
	ii) For the Next 5,000bopd/production over 5,000bopd	- 7.5%
Royalty for natural gas/NGL	Royalty of 5% shall apply for chargeable volumes of natural gas	
	Royalty of 2.5% shall apply to natural gas produced and utilized in-country	

# Production Sharing, Profit sharing & Risk Service Contracts



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Model licences and Model leases to be developed by commission

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These Model licences/model leases may contain contractual provisions that establish a PSC, profit sharing contract, risk service contract, concession agreement

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A PSC covering a new acreage shall have cost limit for 70% based on oil production and condensate while cost limit for existing PSCs shall be 60%

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Profit oil scale shall be based on cumulative production per field

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Contractors shall be the licensee and lessees and thereby be entitled to capital allowances





# Company Income Taxes/Offences

## CIT

CIT applies to all upstream, midstream, and downstream petroleum companies, concessionaires, licensees, lessees, contractors, and subcontractors (S. 302 PIA)

Company intending to be involved in more than one stream (upstream, midstream and downstream shall incorporate a separate company for each stream except for Integrated Strategic projects in the upstream that seek to produce oil & gas & process for wholesale supply to domestic market.

All companies in domestic midstream petroleum and downstream gas operations and large scale gas utilization industries shall benefit from incentives provided under the CITA

Signature bonuses, fines, and gas flare fees paid for the acquisition of rights are not deductible expenses for CIT purposes. (S. 302(12) PIA)

## Penalties/Offences

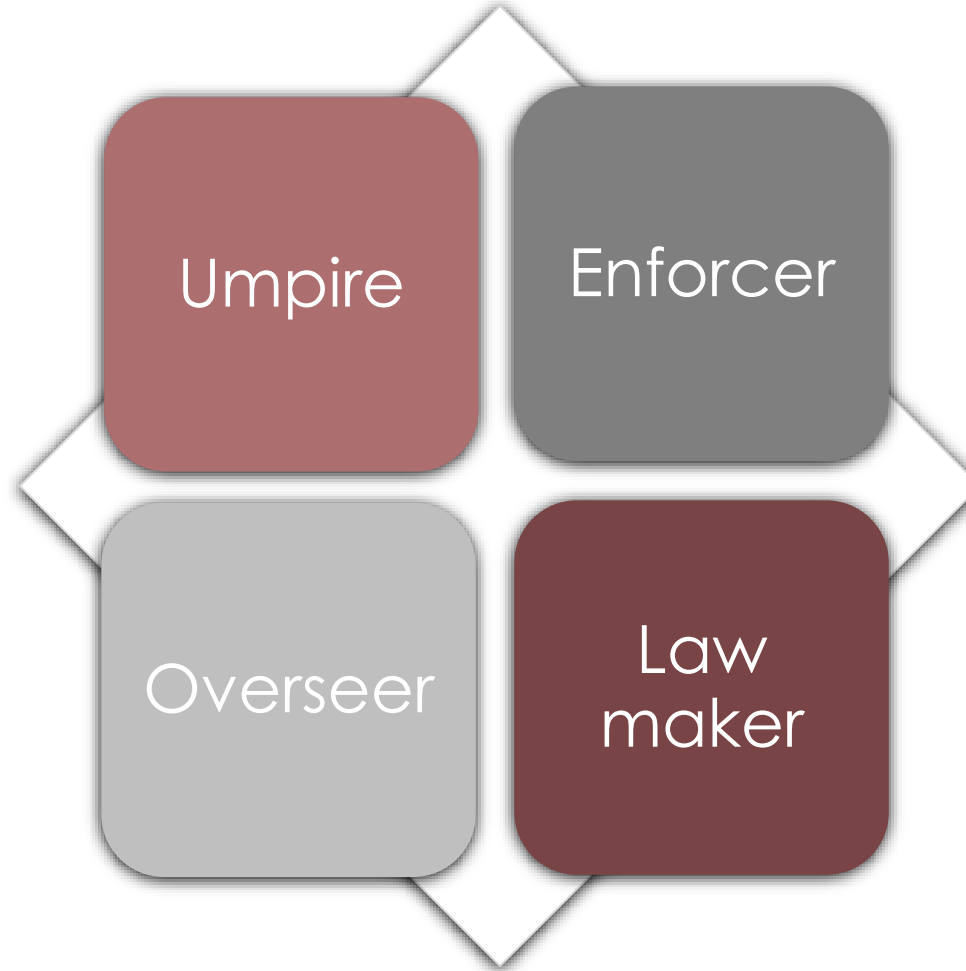
For naira remittances, late payment of tax due from upstream operations will incur interest at NIBOR plus 10% from the due date until paid, and LIBOR or succession rate plus 10% from the due date until paid for foreign currency remittances (S. 302(16) PIA).

Any company that fails to comply with fiscal provisions of the PIA will be subject to an administrative penalty of **NGN N10million**. If the default continues beyond any period stipulated under the Act or a regulation, the person will be subject to a further administrative penalty of **N2million** or such other sum as the Minister of Finance may by Order prescribe, for each day the default continues. (S. 297 PIA)

A person found guilty of contravening the fiscal provisions for where no other penalty is prescribed shall on conviction be liable to a fine of **N20million** or a sum prescribed by Minister of Finance. And where the offence continues, liable to an additional fee of **N2million** for each day or 6months imprisonment.

A person is liable to pay **N15million** or 1% of the amount of tax undercharged as a result of such incorrect accounts, schedule, statement or information

# A Summary of The Role of the Regulators





## Role of the Regulator

- Ensures compliances with policies and existing laws and regulations
- Provides an enabling environment for investment in the industry where all players are subjected to the same rules
- Makes regulation to give effect to the provisions of the Act
- Oversees the activities of industry players to ensure their activities are carried out in a sustainable and efficient manner;
- Protects the interest of the Federal Government and all stakeholders by ensuring value to government and stakeholders is not eroded
- Ensures that international best practices are applied in the industry at all times



**THANK YOU**