

## **IMPACT OF THE PETROLEUM INDUSTRY ACT ON THE MIDSTREAM AND DOWNSTREAM SECTORS OF THE NIGERIAN ECONOMY**

### **INTRODUCTION**

The recently signed Petroleum Industry Act, (PIA) 2021 provides a sturdier structure to steer growth in the oil and gas sector. The main purpose of the PIA is to promote investment and fiscal equity within the oil and gas sector.

Before the enactment of the PIA, the oil and gas industry had various regulations for the prospecting, exploration, development, production and distribution and marketing of petroleum products. Some of these laws includes the Petroleum Act 1969, Petroleum Profit Tax Act, Deep offshore and Inland Basin Production Sharing Contract Act.

We have reviewed the PIA, 2021 as it relates to the midstream and downstream sectors and highlighted the implication of the enactment of the act to the companies operating within these sectors

S/N	Sector	Sections	Provisions	Implication
1.	Midstream	29 (1)	Establishment of the Nigerian Midstream and Downstream Petroleum Authority (“Authority”) which is responsible for the regulation of the midstream and downstream petroleum operations, including technical, operational, and commercial activities	This implies that the functions of the Department of Petroleum Resources (DPR), Petroleum Equalization Fund (PEF) and Petroleum Product Pricing Regulatory Agency (PPRA) will be consolidated. Also, Minister of petroleum, even though still retains general supervision over the petroleum operations, his existing powers to grant and revoke licences and power to approve licence requires recommendations from the Authority.
		174(1)	This stipulates that appropriate licence must be issued before companies in the midstream sector carry out the following activities: <ul style="list-style-type: none"> <li>a) establish, construct, or operate a terminal or other facility for the export or importation of crude oil or petroleum products;</li> <li>b) establish, construct or operate a crude oil refinery;</li> </ul>	The implication of this is that penalties will be incurred for companies engaging in these activities without obtaining approvals to as provided by Section 174 (4). Such penalties include sealing the office premises where the activity is undertaken, dismantling, and seizing the facilities. The directors of such companies can also be prosecuted by

			<p>c) establish, constructs or operate a pipeline for the bulk transportation of petroleum liquids;</p> <p>d) engage in bulk transportation of petroleum liquids by rail, barge, or other means within Nigeria;</p> <p>e) undertake construction or operation of any facility for the production of lubricants and petrochemicals based on petroleum products.</p>	<p>imprisonment of up to one year or fine as prescribed by Section 174 (5) of the act.</p>
		174 (6)	<p>Holders of licence to engage in midstream activities prior to effective date of the Act shall, within 18 months from the effective date, apply to the Authority.</p>	<p>This implies that midstream companies holding licenses are expected to apply to the authority for appropriate license within two years of the effective date of the Act,</p>
		181	<p>This section introduces the national strategic stocks of petroleum product. Part b further provides an amount to be determined and published by the Authority will be charged for financing of the national strategic stocks, which will form part of the retail price of each petroleum product. Such levy is to be determined as a percentage of the retail price and be deducted on wholesale basis.</p>	<p>This section implies that a fee would be charged to operators within this sector to finance the National strategic stock. This amount will form part of the retail price of petroleum products. The actual rate of this fee will be determined and published through a regulation.</p> <p>This will probably lead to increase in price of petroleum product; however, it can help to address price stability and long queues and avoid stock outs</p>
2.	<b>Downstream</b>	117 (1)	<p>A holder of a licence or permit shall not, without the prior written consent of the Authority, assign or transfer its licence or permit any right or obligation arising from the licence or permit</p>	<p>This implies that transfer of right of a licence can only be done with the approval of the authority. Also, during the transfer application window, where no response is received from the Authority on the approval or refusal of the transfer of the licence, the application will be deemed approved.</p>
		122(1)	<p>The Authority shall have the power to design a pricing framework for transportation, distribution and processing of petroleum based on the following principles:</p> <p>a) tariffs for transportation, distribution and processing</p>	<p>This can prevent anti-competitive activities and will also promote investments.</p>

# WYZE NEWSLETTER

			<p>of petroleum shall be on a cost-reflective basis;</p> <p>b) tariff charged shall permit reasonable return for licensees on their investment,</p> <p>c) tariffs shall not discriminate between customers with similar characteristics under section 116 of the Act</p> <p>d) the tariff will be determined in US dollars or other foreign currency as applicable with a view to attracting foreign investment to downstream and midstream operations, provided that payment of the tariffs may be made in the respective foreign currency or equivalent value of Naira at the open market rate published by the CBN as applicable under the regulations.</p> <p>Also, the licensees are required to publish prices as required by the Authority in order for customers to be aware and able to identify and calculate the amount they will incur.</p>	
		212 (1)	The holders of a licence to maintain separate management, accounting, or legal entities of its licenced or permitted activities, which may prohibit the holder of the licence from directly holding license of another type	This implies that any company operating within the downstream sector but also has midstream operations like storage of crude oil will have to separate the two into different companies
		317 (6)	The Government on behalf of the federation may request the services of NNPC Limited as supplier of last resort to ensure adequate supply and distribution of premium motor spirit (PMS) for a period not exceeding six months and all associated costs shall be for the account of the Federation	This implies that the NNPC Limited would act as an emergency supplier of PMS to ensure adequate supply and distribution for a period not exceeding six months.

## CONCLUSION

The PIA has brought clarity on the management and administration of the midstream and downstream petroleum industry. This will allow for proper accountability of companies operating within these sectors.

Contacts:

**Femi Wright**

+234 908 0000 358

[fwright@wyze-ng.com](mailto:fwright@wyze-ng.com)

**Wale Ogunsola**

+234 908 0000 358

[wogunsola@wyze-ng.com](mailto:wogunsola@wyze-ng.com)

**Adedoyin Oriadetu**

+234 908 0000 358

[aoriadetu@wyze-ng.com](mailto:aoriadetu@wyze-ng.com)

**Biodun Akinbo**

+234 908 0000 358

[bakinbo@wyze-ng.com](mailto:bakinbo@wyze-ng.com)

