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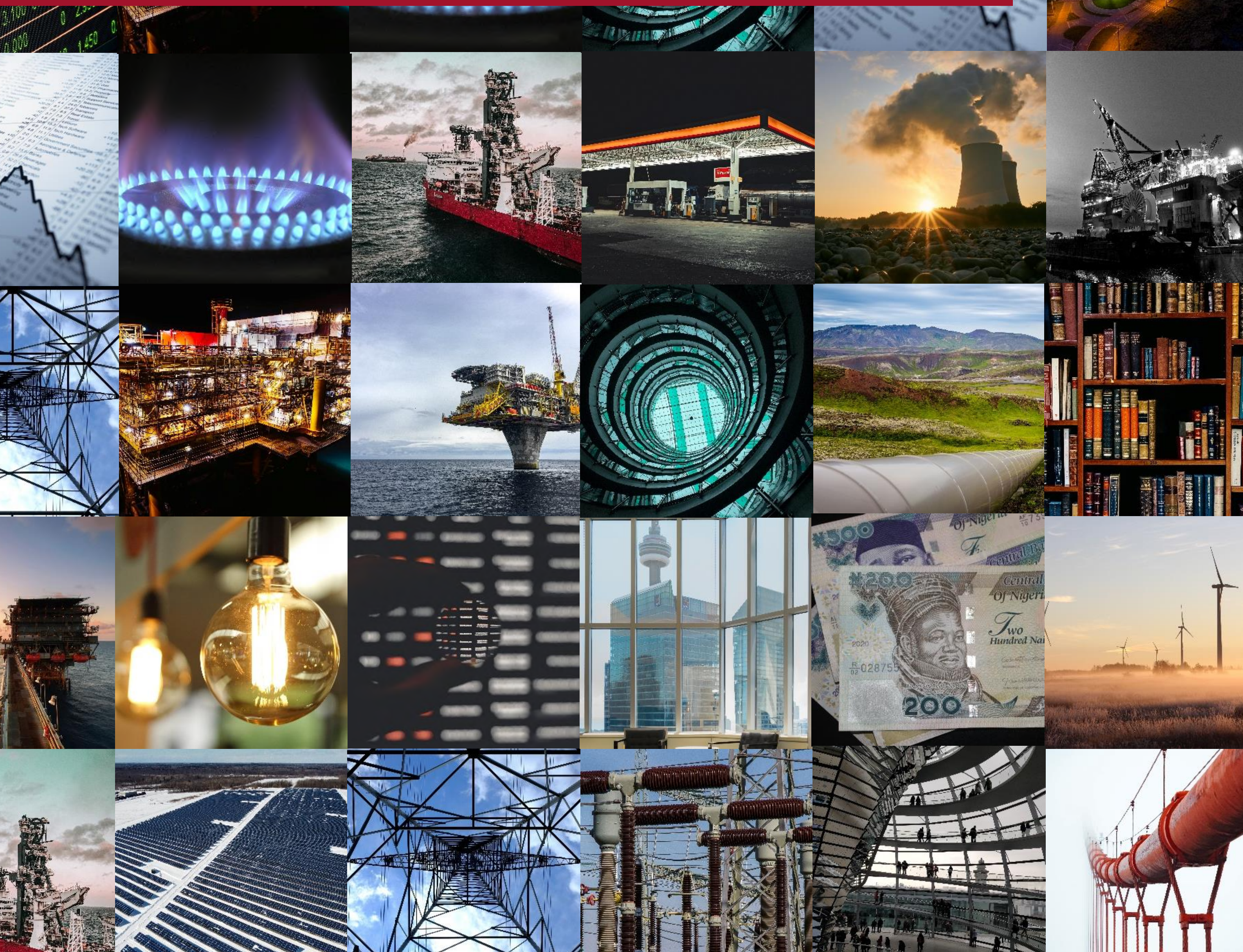
2021 in Review

Some Key Events in the Nigerian Oil and Gas Industry



Some Key Events in the Nigerian Oil and Gas Industry in 2021

*Petroleum Industry Act, 2021 (“**PIA**”): Regulatory*

1. New Sheriffs: The PIA, the most significant legislative development in the Nigerian oil and gas industry in about six decades, created two new regulators, namely the Nigerian Upstream Regulatory Commission tasked with regulating upstream petroleum sub-sector and the Nigerian Midstream and Downstream Petroleum Regulatory Authority, which shall regulate the midstream and downstream segments of the industry. This development marks the advent of both the Commission and the Authority as the new “sheriffs” for the purpose of the commercial and technical regulation of the industry – a marked change from the previous regime where the Minister of Petroleum Resources (often acting through the Department of Petroleum Resources) was the all-purpose regulator.

2. Repeal of Old Sector Laws: All of the Associated Gas Reinjection Act, Hydrocarbon Oil Refineries Act, Motor Spirit Act, Nigerian National Petroleum Corporation (Projects) Act, Petroleum Products Pricing Regulatory Agency Act, Petroleum Equalisation Fund Act and Deed Offshore and Inland Basin Petroleum Sharing Contracts (Amendment) Act have been repealed, with the PIA providing the new rules of engagement in the respective areas these laws once held sway.

3. New Acreage Regimes: Petroleum Exploration Licences (“**PEL**”), Petroleum Prospecting Licences (“**PPL**”) and Petroleum Mining Leases (“**PML**”) all replace the old Oil Exploration Licenses (“**OEL**”), Oil Prospecting Licences (“**OPL**”) and Oil Mining Leases (“**OML**”). Model forms of the new PEL, PPL and PML are still being developed by the Commission. Existing concessions (the OELs, OPLs and OMLs) shall remain valid and subsisting, subject to voluntary conversion to the new regimes or mandatory conversion upon the expiration of their present terms. In any event, PIA provisions on decommissioning, community development trusts and certain other sundry issues are applicable to the old acreage licences.

PIA: Fiscal Matters

4. The New Tax Regime: Players in the upstream segment of the industry are now exposed to a dual income tax regime, namely the sector-specific hydrocarbon tax and the sector-neutral companies income tax. The companies’ income tax rate would be as provided for in the Companies Income Tax Act (as amended) while the workings of the hydrocarbon tax are as provided by the PIA. The PIA also introduced a new royalty regime to be calculated based on production volume and price of oil.

5. Repeal of Petroleum Profits Tax Act (“**PPTA**”): The PPTA, alongside its provisions, created the tax environment for upstream players in the Nigerian oil and gas industry. Under the present PIA, PPTA, however, will continue to govern the old licences to the extent that they do not convert to the new licensing format either compulsorily (during renewals) or voluntarily. New acreages, however, will no longer draw tax precepts from the PPTA.

6. Allowable and Non-Allowable Deductions for Tax Purposes: Rents incurred by an upstream player for the assessment period pursuant to a PPL or PML, royalties in respect of crude oil and associated gas paid by the upstream player during the assessment period, operating expenses for upstream petroleum operations, expenditures directly incurred in connection with the drilling of the first exploration well and the first two appraisal wells in the same field, among others are now tax deductible for hydrocarbon tax purposes – while penalties and gas flare fees, expenditure for the purchase of data on petroleum deposits, bad debts, interest on loans, disputes-related expenses, offshore costs are generally not. As against the full cost recovery before the PIA, there is a cost tax deductibility threshold of 65% of gross revenue, with excess to be carried forward.

PIA: Corporate

7. Host Community Trust: A company with an OPL or OML and those to obtain their equivalents under the new licensing regime are required to incorporate host community development trusts for communities appurtenant to their operations and contribute at least 3 percent of their operating expenditure annually to the fund of the incorporated host community corporate vehicle.

8. The Corporatization of the NNPC: The State-owned flagship oil company, the Nigerian National Petroleum Corporation (NNPC), will have its assets, interests and liabilities transferred to a successor, NNPC Limited – a company incorporated under Nigeria's company enactment. NNPC Limited was incorporated on September 22, 2021, as mandated by the PIA, and its board has been constituted. Information on the movement of assets, interests and liabilities of NNPC to NNPC Limited has not been made public.

Other Sundry (Non-PIA Developments)

9. African Export-Import Bank (Afreximbank) US$1.04bn facility with the NNPC: Afreximbank, during the second Intra-Africa Trade Fair, signed a US$1.04bn facility with the NNPC to finance the exploration of petroleum in Nigeria. The proceeds of the facility will boost tax revenues and foreign currency receipts.[1]

10. 2021 Marginal Field Bid Rounds: The now-defunct Department of Petroleum Resources awarded 57 marginal field assets to a total of 161 successful bidding companies. This bid round comes 18 years after the previous one when the DPR offered 24 marginal field assets to bidders.[2]

11. Divestment by IOCs of Onshore Assets and Interests: International oil companies (IOCs) continue to sell off onshore assets and interests. Many of the IOCs with

[1] G. Elias & Co. advised on this transaction.
[2] G. Elias & Co. advised, and is advising, some awardees of this marginal field bid round.

corporate presence in Nigeria have identified Nigeria as a strategic destination for their respective wider agenda of globally divesting hydrocarbon assets and interests. While fear of a "capital flight" by IOCs has been rife in some quarters, the positive is the opportunity the trend provides to local players to operate and own even more assets and interests in the industry.

12. Emerging Eurobond Routes for Sourcing Capital: Traditional banks have been the historic go-to financiers of the notoriously capital-intensive projects that are the stock-in-trade of the oil and gas industry. The growing reluctance of both local and international banks to finance oil and gas projects have led to more creative and non-traditional funding formats, including the utilization of the international capital markets. In 2021, for example, Seplat's US$650mm issuance was widely reported, and has possibly opened the door for similar issues by industry players in the near future.

13. Dangote Refinery: The refinery is expected to commence operations in the third quarter of 2022. The refinery is an integrated infrastructure billed by some observers to ensure that (i) Nigeria's energy demands are better satisfied and (ii) there is a significant reduction in the importation of refined petroleum. The African Development Bank (AfDB) had reportedly previously granted a $300 million loan in support of the project.

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