General Counsel

The Petroleum Industry Governance Bill 2017

In May 2017, the Nigerian Senate passed the Petroleum Industry Governance Bill, 2017 (the "Bill") as an off shoot of the stalled Petroleum Industry Bill (PIB). The Bill aims to reorganise the regulation of the oil and gas industry by establishing clearly defined roles for a new regulator and splitting the functions of the state oil company, the Nigerian National Petroleum Corporation (NNPC).

Some salient provisions of the Bill include:

- The establishment of the Nigeria Petroleum Regulatory Commission (NPRC) to assume the functions of the Petroleum Inspectorate (PI), the Department of Petroleum Resources (DPR) and the Petroleum Products Pricing Regulatory Agency (PPPRA), and act as primary regulator of the industry (Part 3, section 4(1) and (3)).

- The transfer of the discretionary powers of the Minister of Petroleum (the "Minister") to grant or revoke petroleum licences to the NPRC. Notwithstanding, the Minister remains responsible for supervising the activities of the industry (Part 3, sections 6(1)(s) and 15).

- The creation of three successor enterprises namely; the Nigeria Petroleum Assets Management Company (NPAMC), the National

Petroleum Company (NPC) and Liability Management Company to take over certain assets and liabilities of the NNPC respectively (Part 4, section 37 and Part 6, section 86).

- The establishment of the Ministry of Petroleum Incorporated as the sole investment vehicle of the Nigerian government, holding shares on behalf of the government in the three successor enterprises (Part 4, section 36).

Comments

The Bill attempts to put in place a more effective regulatory system for the oil and gas industry by consolidating the various overlapping regulatory functions into a single regulator, the NPRC. By also splitting the functions of the NNPC, it goes some distance in unbundling the NNPC with the aim of establishing more profitable commercial enterprises holding the interests of the Nigerian government in the oil sector.

Regarding assets and liabilities, the Bill stipulates that the NPAMC will acquire and manage all assets of the NNPC under Production Sharing Contracts (PSCs) and Back-in Rights, while the NPC will manage all other assets of the NNPC. Invariably, it is expected that the subsidiaries of the NNPC will be split between these two enterprises. For example, the operations of the National Petroleum Investment Management Service (an NNPC subsidiary that currently supervises Joint Venture Companies and PSCs in the upstream sector) are likely to be absorbed by the NPAMC, notwithstanding the fact that the Bill is silent on its fate.

Of great comfort to third-party partners and contractors is a savings provision that ensures that subsisting contractual obligations of the NNPC, PI, DPR and PPPRA are enforceable against the successor companies and the NPRC respectively (section 67(5), Part 3, section 4(a) & (b)). This is in line with the contractual principle of protecting third party interests in subsisting contracts.

On the corporate structure of the new enterprises, the Bill introduces corporate governance mechanisms by subjecting the enterprises to the Code of Corporate Governance of the Securities and Exchange Commission (SEC) (ss. 55, 79 and 86). While this is a welcome development and should increase accountability and transparency levels in the operations of the enterprises, there is no indication that a violation of the code is punishable either under the Bill or by SEC. At best, this could simply cause the enterprises to pay lip service to the principles of corporate governance.

Examining the role of the NPRC as an independent regulator, the key concerns revolve around the extent of effective supervision and transparency. The far reaching powers conferred on the NPRC (including the grant of petroleum licenses, hitherto the remit of the Minister) suggest that it is the apex regulator of the industry. The question, however, is whether a regulatory framework built around an independent regulator is more desirable in light of the complexities of the Nigerian state, particularly as the necessary checks and balances are sometimes fraught with difficulties. Notwithstanding, this approach is in keeping with the reality in the banking, capital markets and power sectors where the successes of the Central Bank of Nigeria, Securities and Exchange Commission and the Nigerian Electricity Regulatory Commission are indicative of an effective system of industry supervision. Should the NPRC be able to accomplish as much as it is empowered to do, then the Bill will have accomplished its purpose.

Overall, the passage of the Bill is a welcome development having regard to the laborious journey that the PIB has been fraught with. By attempting to reorganise the administration of the industry, the Bill provides a yardstick by which its success can be measured in future. Having set out to establish a new independent regulatory authority, the Bill effectively reduces the functions of the Minister by concentrating administrative and regulatory powers in the NPRC. This, in theory, should lead to a better and more transparent system of administration.

By creating separate commercial enterprises to take on the assets and liabilities of the NNPC, the Bill is gradually bringing to a close a storied chapter and institution in the annals of the Nigerian oil and gas history. Furthermore, by subsequently opening up the successor enterprises for investment by the general public, the Bill has taken an unprecedented approach in stewarding the investment and assets of the Nigerian government, and by extension, the Nigerian populace.

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