SECURITIES AND EXCHANGE COMMISSION NIGERIA

Petroleum Industry Bill (PIB) and the Nigerian Capital Market

OCE Policy Brief: Nov. 2020

1. Introduction

For many years, Nigeria has been classified globally as a fitting illustration of a nation suffering from the resource curse problem. This describes a paradoxical situation where some resource-rich countries fail to benefit fully from their natural resource wealth. In a bid to break loose from the resource curse classification, attempts have been made to upgrade the Nigerian oil and gas legal framework to boost real growth and development. The proposed legislation, the Petroleum Industry Bill (PIB), is currently under legislative consideration and represents the most comprehensive review of the legal framework for the oil and gas sector in Nigeria since the industry began commercial operations in the 1960s.

The PIB is aimed at overhauling and strengthening the regulatory framework governing the entire value chain of the oil and gas industry and at the same time, promoting transparency in the administration of the petroleum resources in Nigeria. Over the years, there have been several attempts by past administrations to fashion out ways of streamlining the legislative procedures given the complexities and contentious issues associated with the bill.

The most recent of this was in 2015 when the Bill was broken into four parts to ease passage. These parts include; Petroleum Industry Governance Bill (PIGB), Petroleum Host and Impacted Community Bill (PHICB), Petroleum Industry Administration Bill (PIAB) and Petroleum Industry Fiscal Bill (PIFB).

However, President Muhammadu Buhari had recently forwarded a revised PIB to the National Assembly for consideration and passage. The bill has already passed its first reading at the Senate by Wednesday 30 September 2020 and the Senate has promised thoroughness in all matters concerning the PIB by directing the appropriate committees to effect further actions on the Bill as may be necessary.

The bill still awaits its second and third readings, scrutiny and amendment as required by the relevant committees of the National Assembly and finally the Presidential assent for it to be fully operational.

Given that the passage and implementation of the Bill will have implications for various sectors of the

Nigerian economy, this paper specifically looks at its likely implications for the Nigerian capital market. The paper first provides a brief background on the Nigerian oil sector as well as the PIB. It then analyzes the implications of the Bill for the Nigerian oil sector, the economy and the capital market with some and policy recommendations.

2. Background on Nigerian Oil Sector

Nigeria's GDP at the end of 2019 stood at N145.64trn and Crude Petroleum and Natural Gas represent 8.78% of this GDP. As shown in figure 1, Crude Petroleum and Natural Gas' contribution to Nigeria's GDP ranges from 9.61% in 2015 to 8.78% in 2019. Further, figure 2 shows the contribution of the oil and gas sector to total federally collected revenue ranging from 55.4% in 2015 to 53.9% in 2019.

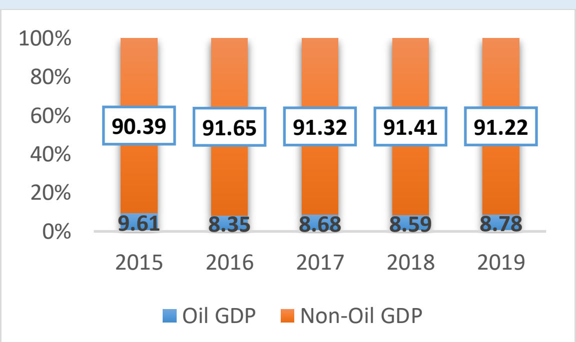

Figure 1: Share of Oil in Nigeria's GDP
Source: NBS Reports

From figure 3, it can be seen that the oil sector contributes 91% on the average to Nigeria's export earnings. Specifically, while the sector contributed 93% of exports in 2015, this proportion maintained in 2016 and declined to 84% at the end of 2019.

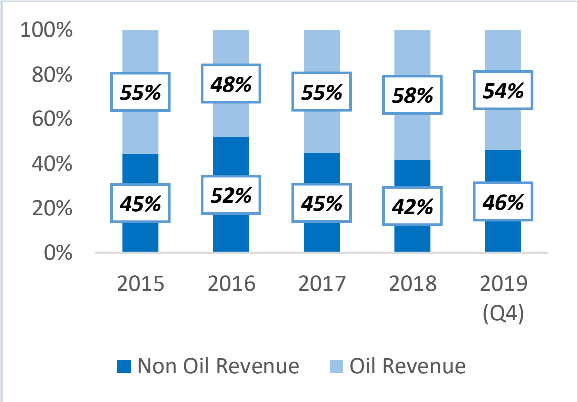

Figure 2: Oil and Non-Oil Revenue
Source: CBN Statistical Bulletin

The foregoing therefore shows that while the oil and gas sector contributes about 8.80% to Nigeria's total output, its impact is mainly felt in its contribution to the country's revenue and exports.

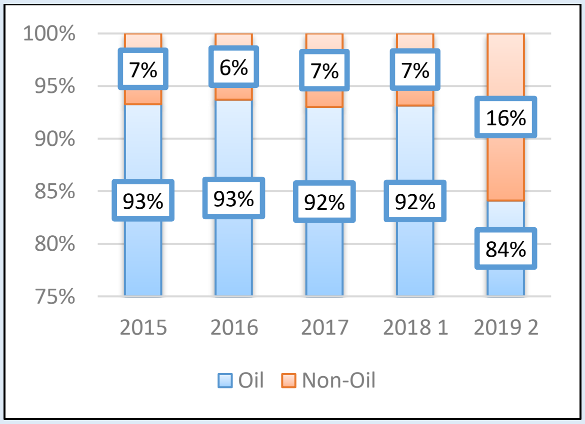

Figure 3: Revenue of Oil and Non-Oil Exports
Source: CBN Statistical Bulletin

Figure 4 indicates that total crude production in Nigeria averaged 1.63 Million barrels per day (mbpd), from 2015 to December 2019. During the period, the highest production was achieved in January 2017 and the lowest was in September 2016 at 1.94 mbpd and 1.10mbpd respectively. Figures in December 2019 put production at 1.66 mbpd. The oil production benchmark for 2020 budget was 1.94mbpd and projected at 1.86mbpd for the 2021 budget.

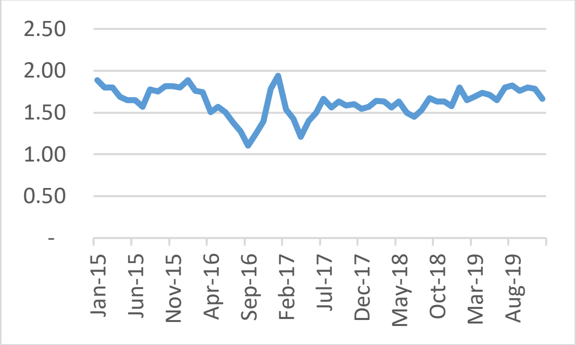

Figure 4: Total Crude Oil Production (mbpd)
Source: SEC Statistical Bulletin

Figure five provides further information on oil prices (Bony Light) which appreciated by 41% from $48 in the January 2015 to $68 in December 2019. The prices fluctuated during the period with a low of $30 in January 2016 and a period-high of $82 in October 2018. The prices, which ended 2019 at $68pb, stood at $36.37 the end of October 2020.

3. The Petroleum Industry Bill

The Petroleum Industry Bill (PIB) is an attempt to implement the much-needed reforms to improve on the structure, governance and the fiscal policy of the Nigerian oil industry.

In 2018, the 8th NASS split the Petroleum Industry bill into four parts namely: the Petroleum Industry Governance Bill, Petroleum Industry Administration Bill, Petroleum Industry Fiscal Bill and Petroleum Host Community Bill in an attempt to hasten its passage into law. The Senate and the House of Representatives passed the PIGB in May 2017 and January 2018 respectively.

After its passage by the NASS, the PIGB was transmitted to President for assent in July 2018, but he eventually declined to sign the bill into law. According to the Presidency, the provision of the PIGB permitting the Petroleum Regulatory Commission to retain as much as 10 per cent of the revenue generated was one of the reasons the President declined to assent to the bill. With electioneering gathering steam a few months before the 2019 elections, the tenure of the Eighth NASS ended without further action on the PIB.

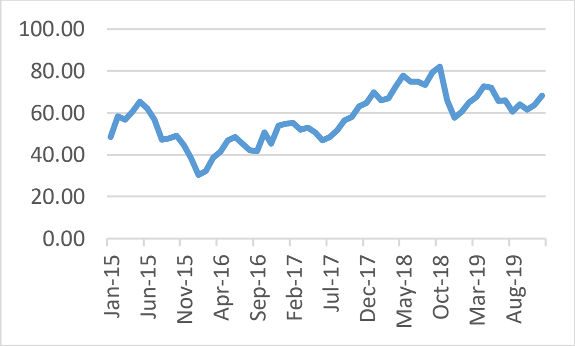

Figure 5: Crude Oil Price: Bonny Light
Source: SEC Statistical Bulletin

The Current version of the Petroleum Industry Bill, is an Executive Bill forwarded to the National Assembly.) The draft copy of the bill, which was prepared by the Petroleum Ministry, is a product of series of consultation between the federal government, oil and gas companies and other industry stakeholders.

The current Bill is divided into five (5) chapters. Chapter one presents ownership of petroleum within Nigeria and its territorial waters, continental shelf and Exclusive Economic Zone which are vested in the Government of the Federation of Nigeria. It further discusses the powers of the Minister, who shall formulate, monitor and administer government policy in the petroleum industry.

It also contains the establishment of the Nigerian Upstream Regulatory Commission (the Commission), which would be empowered to regulate upstream petroleum operations including technical, operational and commercial.

The chapter goes further to establish the Nigerian Midstream and Downstream Petroleum Authority (the Authority) to regulate the midstream and downstream petroleum operations. Both of the agencies would be funded by National Assembly appropriation on a first-line charge among other sources. Also proposed in the chapter is the formation of the Nigerian National Petroleum Company Limited (NNPC Limited) which the Minister shall cause to be incorporated under the Companies and Allied Matters Act, within 6 months from the commencement of the Act.

Chapter two discusses general administration in the sector by promoting the exploration and exploitation of petroleum resources in Nigeria among numerous other objectives. The section on Administration of Upstream Petroleum Operations discusses the administration of acreage and vesting of data in the Government of the Federation of Nigeria to be administered by the Commission.

The chapter also discusses licensing in the sector, National Grid, and Petroleum exploration license. General Administration of Midstream and Downstream Petroleum and Gas Operations are also discussed with details relating to regulations, tariffs, the processes of gas retail, aggregation, and pricing.

It also presents common provisions for Upstream, Midstream and Downstream Petroleum Operations, Consultation with stakeholders for regulations, further discussions on licenses, offences, penalties and administration of administrative penalties among others.

Chapter three discusses development of host communities. Objectives and regulations include how to foster sustainable prosperity within host communities, create a framework to support the development of host communities and incorporation of host communities' development trusts within 12 months of effective date of existing oil mining leases.

A fund would be created with the objectives to finance and execute projects and undertake infrastructural development, among others. Contributors shall make an annual contribution to the applicable host community development trust fund of an amount equal to 2.5% of actual operating expenditure. A board of trustees would also be set up which would allocate the funds as well as set up a management committee to prepare budget for the Trust, determine contractors and report to the Board among other functions.

Chapter four discusses the Petroleum Industry Fiscal Framework which has the objectives of establishing a progressive fiscal framework that encourages investment in the industry and fostering sustainable prosperity within host communities. From the commencement of the PIB Act, the administration and collection of revenue in the industry shall be the function of the Federal Inland Revenue Service (FIRS) and the Commission whereby FIRS is responsible for hydrocarbon tax, companies' income tax and tertiary education tax while the Commission is responsible for rents and royalties and related payments or production shares.

The different classes of chargeable tax are also enumerated along with details on persons chargeable. Details of offences and penalties for non-compliance of the tax provisions are equally provided in this chapter. Particularly it indicates offences which no other penalties are specifically provided, shall be liable to an administrative penalty of N10,000,000, and additional N2,000,000 should defaults continue.

Chapter five presents Miscellaneous Provisions which include legal provisions such as the provisions of the Public Officers Protection Act which shall apply in relation to any suit instituted against the Commission or the Authority. It also details transfer of assets and liability to the Commission and the Authority.

On the issues of transfer of employees and conditions of service, employees in the relevant divisions in the Petroleum Inspectorate or the Department of Petroleum Resources shall be employees of the Commission on terms no less favourable to those in effect immediately prior to such transfer. In addition, employees of each of the Department of Petroleum Resources, the Petroleum Pricing and Product Regulatory Agency, and the Petroleum Equalisation Fund (Management Board), shall be employees of the Authority.

Also, as part of the implementation process of sections 313 and 57 of the Bill, the Minister may within 24 months of the effective date cause an inter-agency transfer of any staff of the institutions listed to the Commission, the Authority or NNPC Limited based on skills and competence requirements of the new institutions.

Analysis and opinions on the introduction of the PIB 2020 have been mixed with analysts calling for either speedy passage of the Bill to address current challenges in the sector or advocating for restrained approach whereby a thorough discussions are made.

However, many notable industry specialists have lamented that international investors in the oil and gas industry were fast losing confidence because of the absence of a petroleum industry law to guarantee a stable investment environment. Nevertheless, there is a general impression that passage of the PIB is overdue and the sector requires significant investments.

According to NEITI, Nigeria has the least contribution of oil to total GDP ratio among OPEC countries. This corresponds with data on the country's refining activity as a ratio of total crude production whereby just 3% of Nigeria's oil is refined domestically. While there has been widespread commendation for the creation of regulatory bodies to oversee the value chains in the industry, some have advocated for caution in the recruitment process and search for competent staff.

Nevertheless, information in the Bill indicates that current staff of Department of Petroleum Resources (DPR), Petroleum Products Pricing Regulatory Agency (PPRA), Nigeria National Petroleum Corporation (NNPC), Petroleum Equalization Fund (PEF), and Petroleum Inspectorate would be redeployed within the three new regulatory agencies, namely Nigerian Upstream Regulatory Commission, Nigerian Midstream and Downstream Petroleum Authority and Nigerian National Petroleum Company Limited (NNPC Limited).

4. Implication of the Bill for the Oil Sector

The eventual passage of the PIB will have implications for the Nigerian oil sector. The Bill will ensure that gas production targets are achieved to meet domestic and industrial market demands; it will also improve crude oil production both at the onshore and deep-water segments. It is also expected to improve dialogue and transparency, ensure effective policy and regulatory oversight and raise government revenue. Further, the legislation is expected to be beneficial to the end users of petroleum products, as it sets to encourage competition in the downstream segment of the industry.

Therefore, the PIB will likely provide the needed impetus to achieve more sustainability in the exploration of oil and gas resources in Nigeria. It is the hope that through the PIB, environmental impacts of oil production will be addressed; investments in the sector will increase through establishments of local standard and modular refineries that will boost local refining capacity as well as increased employment in the oil and gas sector of the economy.

5. Implication of the Bill for the Economy

Effective implementation of the PIB will likely boost the performances of other sectors, thereby leading to a general development of the economy. The legislation has the potential of improving the standard of living of local communities and raising investors' confidence in the sector. The proposed reduction in the cost of subsidizing the oil and gas sector will also free up funds for government to invest in other sectors such as agriculture, health, education and infrastructures.

It is equally expected that more jobs will be created as innovation and indigenous technology grow in addition to increased investments. Moreover, the increase in government revenue will result to more allocations to other federating units, thereby resulting to more investments in critical infrastructure that will grow the economy.

Also, by promoting transparency in the administration of the petroleum resources in Nigeria, the Bill, when passed, is expected to reduce corruption and increase efficiency in the system. Due to local refining and consumption, the exchange rate may be strengthened as new foreign exchange can be earned from export of excess refined petroleum products as well as increased foreign direct investments. The combined effect of these gains is the growth and development of the Nigerian economy.

6. Implication of the Bill for the Capital Market

The passage of the PIB is expected to impact the nation's economy as well as the capital market by attracting both institutional and retail investors as well as local and foreign issuers into the capital market. This will in turn provide the needed funding both on an interim (bridge financing) and long-term bases, thereby making the capital market a veritable part of the financial system that contributes to economic growth and development.

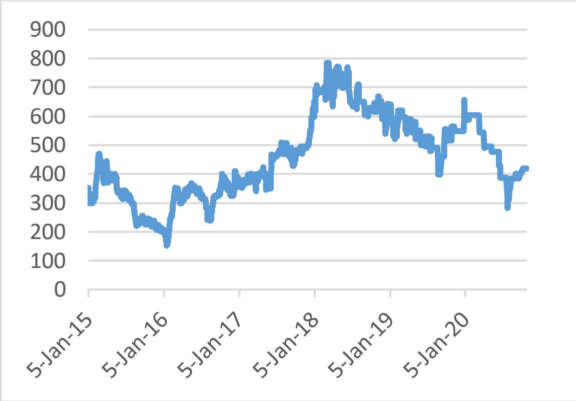

Figure 7: Seplat Plc Share price

Source: NSE Reports

These impacts can be both indirect and direct on the latter. While the expected improvements in the general macroeconomic situation of the country will enhance the environment in which the capital market operates, direct impacts will come as a result of more companies in the sector using the capital market to finance their activities.

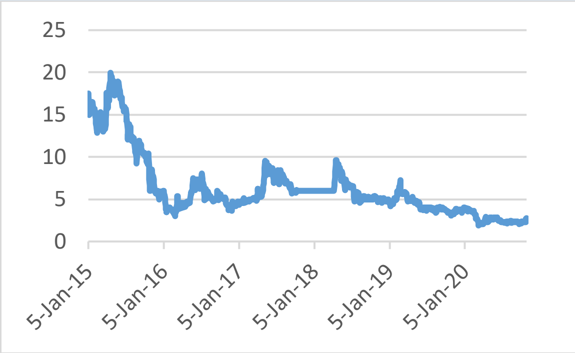

Figure 6: Oando Plc Share price

Source: NSE Reports

Some of the channels of impacts are itemized below:

- Indirect impact
  - *increased GDP;*
  - *relatively stable exchange rate;*
  - *reduction in general prices of goods and services;*
  - *more funds to address infrastructural deficits;*
  - *reduction in unemployment rate;*
  - *increased foreign reserves;*
  - *less conflict in oil producing areas*

- Direct impact
  - *issuances of new securities for entities that want to expand and maximize the gains of deregulation.*
  - *new listings on stock exchanges;*
  - *increased secondary trading activities;*
  - *increased investors' participation, liquidity and market efficiency.*

7. Policy Implications

The various arms of government should work towards ensuring the PIB is passed into law on time so as to provide the necessary and improved framework for the nation's petroleum sector.

Where the passage and implementation of the PIB lead to increased participation of foreign oil companies, the government may look into developing appropriate incentives for encouraging them to issue securities in Nigeria as this will further enhance the benefits that citizens can derive from their operations. In addition, the capital market regulator and infrastructures may enact relevant regulations to encourage such foreign companies issue their securities, trade their products and/or hedge their risks on local capital market platforms.

It is equally expected that the PIB will lead to increased participation of domestic oil companies. It may therefore be necessary to start identifying and engaging with prospective local firms with the aim of sensitizing them on the financing opportunities and options available in the domestic capital market.

One other major potential of the PIB is the development of businesses along the oil value chain and oil servicing firms. These include activities in the areas of fabrication and construction, transportation and logistics, control systems and ICT as well as refining and retailing. Huge opportunities exist in these areas as they hold the gate to the linkage of the oil sector to the rest of the economy. Creating effective engagement channels with operators in these industries may also aid in their appreciation and utilization of capital market to finance their business expansion.