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(9) A licensee or lessee shall—

(a) inform the Commission or Authority, as the case may be, of the establishment of its decommissioning and abandonment fund not more than three months from the date of commencement of production for upstream petroleum operations or the commissioning of the facilities for midstream petroleum operations ; and

(b) furnish the Commission or Authority, as the case may be, on an annual basis with statements of accounts with respect to its decommissioning and abandonment fund with a copy to be provided to the Service.

(10) Where the licensee or lessee is a party to a farm out agreement with one or more third parties, a decommissioning and abandonment plan funded in whole or in part by the applicable third parties shall be provided for in the applicable farm out agreement.

(11) From the effective date, contributions to the decommissioning and abandonment fund shall be eligible for cost recovery and shall be tax deductible, provided that decommissioning and abandonment costs disbursed from the decommissioning and abandonment fund shall not be eligible for cost recovery or deductible for tax purposes.

(12) Where there is excess in the decommissioning and abandonment fund after the decommissioning and abandonment has been carried out and approved by the Commission or Authority, as the case may be, the excess shall be considered income for production sharing or tax purposes and the amount after the withholding of profit oil and any tax shall be returned to the licensee or lessee.

CHAPTER 3—HOST COMMUNITIES DEVELOPMENT

234.—(1) The objectives of this Chapter are to—

- (a) foster sustainable prosperity within host communities ;
- (b) provide direct social and economic benefits from petroleum operations to host communities ;
- (c) enhance peaceful and harmonious co-existence between licensees or lessees and host communities ; and
- (d) create a framework to support the development of host communities.

(2) The Commission and Authority may make regulations with respect to this Chapter on areas within their competence and jurisdiction as specified in this Act.

Objectives
and
regulations.

(3) The regulations under subsection (2) shall include a grievance mechanism to resolve disputes between settlors and host communities.

(4) The regulations under subsection (2) shall include the ability of the settlor to make the following adjustments to reduce expenditures where the available funds for administration under section 244 (c) of this Act are insufficient to fund the ongoing operations—

(a) reduce the number of members of the Board of Trustees and frequency of meetings ;

(b) not fund the reserve fund under section 244 (b) and not hire the respective fund manager under section 246 ;

(c) reduce the number of members of the management committee under section 247 and the frequency of meetings ; and

(d) reduce the frequency of meetings of the host communities advisory committee under section 249.

Incorporation
of host
communities
development
trusts.

235.—(1) The settlor shall incorporate host communities development trust (in this Act referred to as “the trust”) for the benefit of the host communities for which the settlor is responsible.

(2) Where there is a collectivity of settlors operating under a joint operating agreement with respect to upstream petroleum operations, the operator appointed under the agreement shall be responsible for compliance with this Chapter on behalf of the settlors.

(3) For settlors operating in shallow water and deep offshore, the littoral communities and any other community determined by the settlors shall be host communities for the purposes of this Act.

Act No 3,
2020.

(4) The settlor shall for the purpose of setting up the trust, in consultation with the host communities, appoint and authorise a board of trustees (“the Board of Trustees”), which shall apply to be registered by the Corporate Affairs Commission as a corporate body under the Companies and Allied Matters Act in the manner provided under this Chapter.

(5) The name of the corporate body to be registered by the Board of Trustees shall contain the phrase “host communities’ development trust”.

(6) The Commission or Authority, as the case may be, shall—

(a) make regulations on the administration, guide and safeguard the utilisation of the trust fund ; and

(b) have the oversight responsibility for ensuring that the projects proposed by the Board of Trustees are implemented.

(7) The settlor shall undertake needs assessment that will metamorphose into the community development plan for the purpose of determining the projects to be undertaken by the host communities development trust.

236. The host communities development trust shall be incorporated—

- (a) within 12 months from the effective date for existing oil mining leases ;
- (b) within 12 months from the effective date for existing designated facilities ;
- (c) within 12 months from the effective date for new designated facilities under construction on the effective date ;
- (d) prior to the application for field development plan for existing oil prospecting licences ;
- (e) prior to the application for any field development plan under a petroleum prospecting licence or petroleum mining lease granted under this Act ; and
- (f) prior to commencement of commercial operations for licensees of designated facilities granted under this Act.

Timeframe
for
incorporation
of host
communities
development
trust.

237.—(1) Subject to the provisions of this Act, where the whole or part of an interest in a licence or lease governed by this Act is assigned, novated or otherwise transferred to another party, the legal and equitable interest, rights and obligations of the transferor in relation to any associated host communities development plan and host communities development trust, shall be deemed to attach to the property to be transferred to the transferee, the legal and equitable interests, rights and obligations of the transferor shall be deemed to become the interests, rights and obligations of the transferee.

Transfer of
settlor's
interest and
obligations
subject to
host
communities
development
trust
obligation.

(2) Where the whole or part of a licence or lease governed by this Act is surrendered under this Act, the holder or holder nominee will continue to discharge its surviving obligations, notwithstanding that the area that is surrendered may be granted to a new lessee or licensee and where the surviving obligations have been complied with the holder shall have no further obligations relating to the part that was surrendered or the whole of the licence or lease where the entire licence or lease was surrendered.

(3) Where any licence or lease governed by this Act is revoked, terminated or expired, the holder will continue to discharge its surviving obligations, notwithstanding that the area revoked, terminated or expired may be granted to a new lessee or licensee and where the surviving obligations have been complied with, the holder shall have no further obligations.

Failure to incorporate host communities development trust.

238. Unless as otherwise provided for in this Act, failure by any holder of a licence or lease governed by this Act to comply with its obligations under this Chapter, after having been informed of such failure in writing by the Commission or Authority as the case may be, may be grounds for revocation of the applicable licence or lease.

Objectives of host communities development trust.

239.—(1) The constitution of the host communities development trust shall allow the host communities development trust to manage and supervise the administration of the annual contribution of the settlor contemplated under this Chapter and any other sources of funding.

(2) The objectives of the host communities development trust shall be specified in the constitution as set out in subsection (3) (a) to (e).

(3) The objectives of the host communities development trust shall include, to —

(a) finance and execute projects for the benefit and sustainable development of the host communities ;

(b) undertake infrastructural development of the host communities within the scope of funds available to the Board of Trustees for such purposes ;

(c) facilitate economic empowerment opportunities in the host communities ;

(d) advance and propagate educational development for the benefit of members of the host communities ;

(e) support healthcare development for the host communities ;

(f) support local initiatives within the host communities, which seek to enhance protection of the environment ;

(g) support local initiatives within the host communities which seek to enhance security ;

(h) invest part of available fund for and on behalf of the host communities ; and

(i) assist in any other developmental purpose deemed beneficial to the host communities as may be determined by the Board of Trustees.

(4) Notwithstanding the provisions of this Act relating to funding of the trust fund, nothing shall preclude the host communities from their entitlements under any other law.

240.—(1) The constitution of each host communities development trust shall establish a fund comprising of one or more accounts (“host communities development trust fund”) to be funded under this section.

Sources of funding for petroleum host communities development trust.

(2) Each settlor, where applicable through the operator, shall make an annual contribution to the applicable host communities development trust fund of an amount equal to 3% of its actual annual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the applicable host communities development trust fund was established.

(3) Each host communities development trust may receive donations, gifts, grants or honoraria that are provided to such host communities development trust for the attainment of its objectives.

(4) Profits and interest accruing to the reserve fund of host communities development trust shall also be contributed to the applicable host communities development trust fund.

241. The constitution of each host communities development trust shall provide that the applicable host communities development trust fund be used exclusively for the implementation of the applicable host communities development plan.

Matters on which the funds may be utilised.

242.—(1) The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to be set up by the settlor, who shall determine its membership and the criteria for their appointment, provided that the membership of the Board of Trustees of the host communities development trust shall be subject to the approval of the Commission or Authority, as the case may be.

The Board of Trustees, composition and management.

(2) The settlor shall, in consultation with the host communities determine the membership of the Board of Trustees to include persons of high integrity and professional standing, who shall come from the host communities and the Members of the Board of Trustees shall elect a Chairman from amongst themselves.

(3) The settlor shall determine—

(a) the selection process, procedure for meeting, financial regulations and administrative procedures of the Board of Trustees ;

(b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the Board of Trustees ; and

(c) other matters other than the above relating to the operation and activities of the Board of Trustees.

(4) Each member of the Board of Trustees shall serve a term of four years in the first instance and may be reappointed for another term of four years and no more.

(5) Board of Trustees shall have a secretary, who shall be appointed by the settlor to keep the books of the Board.

Duties and functions of the Board of Trustees.

243. The Board of Trustees shall be responsible for the general management of the host communities development trust and shall be responsible for—

(a) determining the criteria, process and proportion of the host communities development trust fund to be allotted to specific development programs ;

(b) approving the projects for which the host communities development trust fund shall be utilised ;

(c) providing general oversight of the projects for which the host communities development trust fund shall be utilised ;

(d) approving the appointment of fund managers for purposes of managing the reserve fund ;

(e) set up the management committee of the host communities development trust and appoint its members ; and

(f) determining the allocation of funds to host communities based on the matrix provided by the settlor.

Allocation of funds.

244. The Board of Trustees shall in each year and under section 240 of this Act allocate from the host communities development trust fund, a sum equivalent to—

(a) 75% to the capital fund out of which the Board of Trustees shall make disbursements for projects in each of the host communities as may be determined by the management committee in furtherance of the objectives set out in section 234 of this Act, provided that any sums not utilised in a given financial year shall be rolled over and utilised in subsequent year;

(b) 20% to the reserve fund, which sums shall be invested for the utilisation of the host communities development trust whenever there is a cessation in the contribution payable by the settlor ; and

(c) an amount not exceeding 5% to be utilised solely for administrative cost of running the trust and special projects, which shall be entrusted by the Board of Trustee to the settlor, provided that at the end of each financial year, the settlor shall render a full account of the utilisation of the fund to the Board of Trustees and where any portion of the fund is not utilised in a given year, it shall be returned to the capital fund.

245.—(1) The settlor shall provide to the Board of Trustees a matrix for distribution of the trust fund to the host communities.

Matrix for
distribution
of trust
fund.

(2) The Board of Trustees shall utilise the matrix provided under subsection (1) for distribution of the funds in the host communities development trust fund to each of its host communities.

246.—(1) The Board of Trustees shall engage a fund manager to invest the reserve fund as the fund accrues.

Engagement
of fund
managers.

(2) The Board of Trustees shall manage the interest and profits accruable from the investment of the reserve fund and allocate the gain in accordance with section 244 of this Act.

247.—(1) The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to set up a management committee for the host communities development trust.

Management
committee,
composition
and powers.

(2) The membership of the management committee shall comprise—

(a) one representative of each host community, who shall be nominated by the host community as a non-executive member ; and

(b) executive members, selected by the Board of Trustees shall be Nigerians of high integrity and professional standing, and may not necessarily be members of the host communities.

(3) A person appointed under subsection (2) (a) and (b) shall serve a term of four years in the first instance and may be reappointed for another term of four years and no more.

(4) The Board of Trustees shall in accordance with the host communities development trust determine—

(a) the selection process, procedure for meetings, financial regulations and administrative procedures of the management committee ;

(b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the management committee ; and

(c) any other matter relating to the operations and activities of the management committee.

(5) The management committee shall have a secretary, who shall be appointed by the Board of Trustees to keep the books of the committee.

248. The management committee shall be responsible for the general administration of the host communities development trust on an ad hoc basis and be responsible for the—

Duties and
functions of
the
management
committee.

(a) preparation of the budget of the host communities development trust and submit it to the Board of Trustees for approval ;

(b) development and management of the contracting process for project award on behalf of the host communities development trust subject to approval of the Board of Trustees ;

(c) determination of project award winners and contractors to execute projects on behalf of the host communities development trust through a transparent process subject to approval of the Board of Trustees ;

(d) supervision of projects execution ;

(e) nomination of fund managers for appointment by the Board of Trustees for approval, to manage the reserve fund ;

(f) reporting on the activities of the management committee, contractors and other service providers to the Board of Trustees ; and

(g) undertaking of any other function and duty that may be assigned to it by the Board of Trustees to enhance the performance of the host communities development trust.

Host
communities
advisory
committee
and
composition.

249.—(1) The constitution of the host communities development trust shall contain provisions mandating the management committee to set up an advisory committee (“host communities advisory committee”), which shall contain at least one member of each host community.

(2) The management committee shall in accordance with the constitution of the host communities development trust, determine—

(a) the selection process, procedure for meetings, financial regulations and administrative procedures of the host communities advisory committee ;

(b) the remuneration, discipline, qualification, disqualification, suspension and removal of members of the host communities advisory committee ; and

(c) any other matter relating to the operations and activities of host communities advisory committee.

(3) Decisions of the management committee with respect to subsection (2) shall be subject to the approval of the Board of Trustees.

Duties and
functions of
the host
communities
advisory
committee.

250. The host communities advisory committee shall perform the following functions—

(a) nominate member to represent the host communities on the management committee ;

(b) articulate community development projects to be transmitted to the management committee ;

(c) monitor and report progress of projects being executed in the community to the management committee ; and

(d) advise the management committee on activities that may lead to improvement of security of infrastructure and enhancement of peace-building within the communities and the entire area of operation.

251.—(1) The settlor shall after the grant of any licence or lease issued under this Act, conduct a needs assessment (“host communities needs assessment”) in accordance with this Act and regulations made under this Act.

Host
communities
needs
assessment.

(2) Each host communities needs assessment shall, from a social, environmental, and economic perspective—

- (a) determine the specific needs of each affected host communities ;
- (b) ascertain the effect that the proposed petroleum operations might have on the host communities ; and
- (c) provide a strategy for addressing the needs and effects identified.

(3) Each host communities needs assessment shall show that the settlor has—

- (a) engaged with each affected host communities to understand the issues and needs of such host communities ;
- (b) consulted with and considered the reasonable concerns of women, youth and community leaders ; and
- (c) engaged with each affected host communities in developing a strategy to address the needs and effects identified in the applicable host communities needs assessment.

(4) The settlor shall develop a host communities development plan and shall submit to the Commission or Authority, as the case may be, based on the findings of the host communities needs assessment, in order to undertake its oversight function preparatory to the establishment of the trust.

252. The host communities development plan shall be based on the matrix provided for in section 245 and such single plan shall—

Host
communities
development
plan.

- (a) specify the community development initiatives required to respond to the findings and strategy identified in the host communities needs assessment ;
- (b) determine and specify the projects to implement the specified initiatives ;
- (c) provide a detailed timeline for projects ;
- (d) determine and prepare the budget of the host communities development plan ;

(e) set out the reasons and objectives of each project as supported by the host communities needs assessment ;

Act No 2,
2010.

(f) conform with the Nigerian content requirements provided in the Nigerian Oil and Gas Industry Content Development Act ; and

(g) provide for ongoing review and reporting to the Commission.

Financial
year of the
host
communities
development
trust.

253. The financial year of the host communities development trust shall commence on 1st January and end on 31st December of each year or any other date set for this purpose by the Board of Trustees.

Accounts
and audit.

254. The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to—

(a) keep account of the financial activities of the host communities development trust ; and

(b) appoint auditors to audit the accounts of the host communities development trust annually.

Mid-year
and annual
reports.

255. The constitution of the host communities development trust shall contain provisions requiring the—

(a) management committee to submit a mid-year report of its activities to the Board of Trustees not later than 31st August of the particular year ;

(b) management committee to submit an annual report accompanied by its audited account to the Board of Trustees not later than 28th February of the succeeding year ;

(c) Board of Trustees to submit an annual report of the activities of the host communities development trust accompanied by its audited account to the settlor not later than 31st March of the particular year ; and

(d) settlor to submit an annual report of the activities of the host communities development trust accompanied by its audited account to the Commission or Authority, as the case may be, not later than 31st May of the particular year.

Exemption
from income
tax.

256. The funds of the host communities development trust created under this Act shall be exempted from taxation.

Deduction
of payment
for
petroleum
host
communities
development.

257.—(1) Any payment made by the settlor under section 240 (2) of this Act, shall be deductible for the purposes of hydrocarbon tax and companies income tax as applicable.

(2) Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host communities, the community shall forfeit its entitlement to the extent of the costs of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year :

Provided the interruption is not caused by technical or natural cause.

(3) The basis for computation of the trust fund in any year shall always exclude the cost of repairs of damaged facilities attributable to any act of vandalism, sabotage or other civil unrest.

CHAPTER 4 —PETROLEUM INDUSTRY FISCAL FRAMEWORK

PART I—OBJECTIVES AND ADMINISTRATION

258.—(1) The objectives of this Chapter are to—

Objectives.

(a) establish a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria ;

(b) provide a forward-looking fiscal framework that is based on core principles of clarity, dynamism and fiscal rules of general application ;

(c) establish a fiscal framework that expands the revenue base of the Federal Government, while ensuring a fair return for investors ;

(d) simplify the administration of petroleum tax ; and

(e) promote equity and transparency in the petroleum industry fiscal regime.

(2) All money collected from the petroleum industry that are due to the Government shall be transferred to the Federation Account in a timely manner, subject to this Act and these payments shall include taxes, royalties, production shares, profit shares, signature bonuses, production bonuses, renewal bonuses, rents, fees, fines, and other levies due in relation to the grant, assignment, termination, and breach of licences, leases and permits.

259. From the commencement of this Act, the administration and collection of Government revenue in the petroleum industry shall be the function of the Federal Inland Revenue Service (the Service) and the Commission, and—

Administration.

(a) the Service shall be responsible for the assessment and collection of—

(i) hydrocarbon tax and enforcement of the provisions of this Act as it relates to hydrocarbon tax assessment and revenue collection, and