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AN EXAMINATION OF THE ADMINISTRATION AND ORGANISATIONAL STRUCTURE OF THE NIGERIAN NATIONAL PETROLEUM CORPORATION LIMITED UNDER THE PETROLEUM INDUSTRY ACT, 2021

Tosin Ezekiel Ayo, Ph.D*

Department of Public Law, Faculty of Law, Ekiti State University, Ado-Ekiti-Nigeria

Abstract

The landmark Petroleum Industry Act (PIA) of 2021 marked a pivotal moment in the Nigerian oil and gas industry, introducing sweeping reforms and transforming the Nigerian National Petroleum Corporation (NNPC) into a limited liability company (NNPC Limited). This desk-based paper embarks on an analysis of NNPC Limited's structure and administration in the context of the PIA 2021, dissecting its implications for the company's operation and governance. The paper commences by providing an introduction, tracing the incorporation and shareholding structure and the challenges that necessitated the PIA's reforms. It then proceeds to herald an examination of the PIA's provisions pertaining to NNPC Limited, unravelling the intricacies of its ownership, governance and management structure. Moving beyond the structure, it scrutinises NNPC Limited's administration. It assesses the company's preparedness to navigate the PIA's regulatory framework and its ability to serve the interest of over 200 million Nigerians, who are the shareholders. Overall, this research contributes to the existing body of knowledge on NNPC Limited and the petroleum industry in Nigeria. It sheds light on the complexities of its structure and management practices, enabling readers to grasp the intricacies of its operations. The paper serves as a valuable resource for academics, policy makers and industry professionals seeking to gain a deeper understanding of NNPC Limited and its role in the petroleum sector. It concluded by stating that although vital for the modernization and commercialization of Nigeria's oil and gas industry, the move from NNPC to

NNPC Limited is not without its challenges. The industry has seen substantial changes as a result of the Petroleum Industry Act (PIA) of 2021, but it has also raised some fundamental implications worthy of careful consideration regarding the efficacy of NNPC Limited, which continued success is deemed largely predicated on the level of commitment exhibited by the government towards ensuring its proper functionality and success.

KEYWORDS: NNPC Limited, PIA 2021, Nigerian Petroleum Industry, Administration, Company and Nigeria.

* LL.B (Hons), BL, LL.M (Aberdeen), Ph.D, Lecturer, Department of Public Law, Faculty of Law, Ekiti State University, Ado-Ekiti, Nigeria. Email: tosin.ayo@eksu.edu.ng +2348069637678.

1.1 Introduction

On July 19, 2022, former president Muhammadu Buhari officially announced the successful transition of the Nigerian National petroleum corporation (NNPC) into NNPC Limited (NNPCL).⁸⁵ This transformation signifies the corporation's shift towards becoming a limited liability company with a commercialised focus, dedicated to driving the oil and gas business operations in Nigeria.

The catalyst behind this metamorphosis was the passing of the Petroleum Industry Act (PIA) on August 16, 2021. Under the PIA 2021, NNPC is mandated to restructure itself into a commercially viable entity in the form of a limited liability company. Since 1977, NNPC has operated as a state-owned and state-run corporation, undergoing various transformations and restructurings. The PIA 2021 thus outlined the criteria and structure for the new NNPC Limited, including its objectives and governance, in sections 53 to 65 of the Act.⁸⁶

This paper seeks to examine the administration, operation and operability of the organisational structure of the NNPC Limited as a limited liability company with its hybrid underpinnings as enabled under the Petroleum Industry Act 2021 whilst the specific objectives include:

- i) To examine the shareholding structure of the NNPC Limited, including the transferability of its shares, assets and liabilities in view of its recent incorporation as a limited liability company;

⁸⁵ Buhari unveils NNPC Limited, says Transformation will Strengthen Oil Sector. The Cable. <<https://www.thecable.ng>>amp; Accessed 12th October, 2023.

⁸⁶ The Petroleum Industry Act 2021.

- ii) To appraise the workability of NNPC as an agent of NNPC limited, including the legal implication of the incorporation on the transfer of previous employees of NNPC to NNPCCL and their general conditions of service;
- iii) To examine the organisational structure of the NNPC limited's Board Composition, its annual auditing systems, functions and responsibilities, the establishment of its incorporated Joint venture companies;
- iv) To herald the major challenges to the seamless operation of the NNPCCL with a view to finding lasting solutions to addressing them.

Based on the above research aim and objectives, this paper seeks to answer the following research questions:

- i) Whether or not the NNPCCL functions as a limited liability company, despite the exclusive ownership of its shares by government ministries and the statutory non-transferability of its shares and assets;
- ii) Whether or not the appointment of NNPC as an agent of NNPC limited is in good light and in national best interest and whether the statutory transfer of previous employees of NNPC to NNPCCL and their general conditions of service was not like leaving the old wine in a new wineskin;
- iii) Whether or not the organisational structure of the NNPC limited's Board Composition, its annual auditing systems, functions and responsibilities, the establishment of its incorporated Joint venture companies were in order to effectively discharge the mandates of the NNPCCL;
- iv) Whether or not there are any challenges to the effective operation of the NNPCCL with a view to finding lasting solutions to addressing them.

1.2 Incorporation and Shareholding of NNPC Limited

The most significant change with the new development is that the Nigerian National Petroleum Company (NNPC) will be replaced by the Nigerian National Petroleum Company Limited, a commercial and profit-oriented Limited Liability Company (LLC) that will be incorporated in line with the provisions of the Petroleum Industry Act, 2021 and under the regulation of the Companies and Allied Matters Act, 2020, as amended. The PIA 2021 expressly places the obligation of the incorporation of NNPC Limited under the Companies and Allied Matters Act on the Minister of Petroleum Resources which is to be done within six (6) months from the commencement of the Act.⁸⁷ Following incorporation, NNPC Limited was billed to be recognised as a distinct legal entity from the Nigerian National Petroleum Corporation (NNPC). This implies that NNPC Limited will be subject to the same laws and regulations as other companies in Nigeria. The NNPC Limited was eventually incorporated on 21st of September, 2021 in accordance with CAMA 2020. The goal is to ensure that the company is substantially concentrated on profit-making and commercial activities. The

⁸⁷ Petroleum Industry Act, 2021, s 53(1).

company made history by being the one with the largest share capital in the country when it was incorporated in September 2021 with a 200 billion Naira share capital.

The PIA also makes provision for the Minister of Petroleum resources to consult with the Minister of Finance to determine the number and nominal value of the shares to be allotted, which shall form the initial paid-up share capital of NNPC Limited and the Government shall subscribe and pay cash for the shares.⁸⁸ Section 53(2) of the PIA 2021 is a key provision that sets out the ownership structure of NNPC Limited at the time of its incorporation. It means that the Federal Government will be the sole owner of NNPC Limited at the time of its incorporation. The government's subscription to the initial-paid up share capital of NNPC Limited is required to furnish the company with the requisite financial resources it needs to commence operations. Ownership of all shares in NNPC Limited shall be vested in the government at incorporation and held by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated in equal proportions on behalf of the Federation.⁸⁹ Accordingly, the ownership of NNPC Limited now rests solely with the Federal Government, with the two ministers entrusted to hold the shares on behalf of the government. This appears to be a notable departure from the previous arrangement where NNPC functioned as a state-owned corporation lacking a well-defined ownership structure. A noteworthy observation regarding NNPC Limited shares is that the shares are not transferable including by way of sale, assignment, mortgage or pledge unless approved by the government and endorsed by the National Economic Council on behalf of the federation.⁹⁰ It thus remains to be seen whether or not a company, which shares are not transferable and fully owned by government can be deemed a limited liability company properly so-called. From the wordings of section 53(6), any sale or transfer of shares of NNPC Limited shall be at a fair market value and subject to an open, transparent and competitive bidding process and the sale or transfer of the shares of NNPC Limited shall be on equal proportion basis of shares held by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated. In the event that the said shares are transferred, it shall be on an equal proportion basis of the shares held by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated.⁹¹ In order to ensure fairness and transparency, the Nigerian government is required to conduct a bidding process if it intends to sell or transfer any of its shares in NNPC Limited.

From the provisions of section 53(7) of the PIA 2021, the NNPC Limited and its subsidiaries are required to operate in a commercially viable manner, ensuring profitability without relying on government funds and these restrictions are to be stated in their memorandum and articles

⁸⁸ *Ibid*, s 53(2).

⁸⁹ *Ibid*, s 53(3).

⁹⁰ *Ibid*, s 53(5).

⁹¹ Chinedu Anyanso, Esther Samuel, Chijoke Obute 'The Petroleum Industry Act, 2021 and the Unveiling of the Nigerian National Petroleum Company Limited' available at <<https://www.paulusoro.com/resources/the-petroleum-industry-act-2021-and-the-unveiling-of-the-nigerian-nationalpetroleum-company-limited/>> accessed 24th October, 2023.

of association. Furthermore, NNPC limited is to function as a Companies and Allied Matters Act entity, declare dividends to its shareholders and retain 20% of profits as retained earnings to grow its business⁹² and wherever NNPC Limited has a participating interest or 100% interest in a lease or licence, NNPC Limited shall pay its share of all fees, rents, royalties, profit oil shares, taxes and other required payments to the government, as any company in Nigeria.⁹³ It is imperative that NNPC Limited receives no preferential treatment from the government, as this requirement ensures that the company is subject to the same standards as any other company operating in

Nigeria, including the payment of taxes and fees.

1.2.1 An Appraisal of Transfer of Assets, Interests and Liabilities

Section 54⁹⁴ of the Petroleum Industry Act (PIA) 2021 stipulates that the entirety of the assets, interests and liabilities of the Nigerian National Petroleum Corporation (NNPC) shall be transferred to NNPC Limited. The Minister of Petroleum and the Minister of Finance shall within 18 months of the effective date determine the assets, interests and liabilities of NNPC to be transferred to NNPC Limited or its subsidiaries and upon the identification, the Minister shall cause such assets, interests and liabilities to be transferred to NNPC Limited.⁹⁵ In simple terms, it is the duty of the Minister of Petroleum and the Minister of Finance to identify the assets, interests and liabilities of the NNPC that must be transferred within the first eighteen (18) months of the PIA's implementation. Section 54(2) stipulates that the NNPC shall retain ownership of any assets, interests, or liabilities that have not been transferred until they are either extinguished or transferred to the government. Following a period of six (6) months from the determination outlined in section 54(1), it is required that the Minister of Petroleum, the Minister of Finance and the Attorney-General of the Federation develop a framework for the payment of the liabilities not transferred to the NNPC Limited. In the event that the determination of which assets, interests and liabilities to be transferred is not completed within the designated 18-month period, the assets, interests and liabilities in question shall be considered as transferred to the NNPC Limited.⁹⁶ NNPC will cease to exist once the transfer of assets, interests and liabilities transferred to NNPC Limited or its subsidiaries is concluded, or they are extinguished within 18 months from the commencement of the PIA.⁹⁷

The PIA provides that bonds, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements with regards to assets, interests or liabilities transferred to NNPC Limited or any of its subsidiaries under subsection (1) of this section and which remains subsisting before the date of transfer shall begin from the date of transfer, be effective

⁹² PIA 2021, s 53(7)

⁹³ *Ibid*, s 53(8).

⁹⁴ *Ibid*, s 54.

⁹⁵ *Ibid*, s 54(1).

⁹⁶ *Ibid*, 54(2).

⁹⁷ *Ibid*, 54(3).

and enforceable against or in favour of NNPC Limited.⁹⁸ This implies that all existing contracts, agreements, and other legal documents pertaining to assets, interest, or liabilities that are transferred to NNPC Limited or any of its subsidiaries will retain their validity and enforceability subsequent to the transfer. The inclusion of this clause lies in its assurance to safeguard the interests of businesses and individuals who have contractual agreements with NNPC prior to its transition into NNPC limited, even after its restructuring. Their rights and obligations under the contracts will remain enforceable, despite NNPC no longer being the legal entity on the other side of the contract.

Additionally, this provision explicitly clarifies that NNPC Limited will possess the authority to enforce its rights and fulfil its obligations made prior to the transfer. This aspect holds great importance as it enables NNPC Limited to safeguard its interests and maintain its operational continuity as a viable entity on one hand and transferring its interests and liabilities to the transitioned entity on the other hand.

Also, any pending action or proceeding brought by or against NNPC before the transfer date with regards to assets, interests or liabilities transferred to NNPC Limited under subsection (1) may be enforced or continued by or against NNPC Limited as the successor of NNPC.⁹⁹ This implies that NNPC Limited assumes full responsibility for all legal obligations of NNPC, regardless of their occurrence prior to the transfer date. This pivotal measure ensures that creditors and other concerned parties holding legal claims against NNPC, retain the ability to pursue their claims against NNPC Limited following the transfer. Equally worthy of note is that any action or proceeding shall not be commenced against NNPC Limited, its subsidiary, director, officer, employee or agent with regard to asset, interest or liability of NNPC Limited, where the time for commencing the action or proceeding would have expired had such asset, interest or liability not been transferred to NNPC Limited or its subsidiaries.¹⁰⁰ It is observed that the aforementioned clause is designed to shield NNPC Limited and its subsidiaries from legal action pertaining to assets, interests or liabilities that were transferred from NNPC, in the event that the statute of limitations for such claims had expired prior to the transfer. The transfer, in no manner whatsoever, is considered to have established a new cause of action for the creditors of NNPC or any party involved in a contract, agreement or arrangement with NNPC that was entered into prior to the transfer date.¹⁹

Another provision contained in the PIA 2021 is that debt to NNPC related to outstanding cash calls under joint venture agreements will become the debt of NNPC Limited if the assets related to those joint ventures have been transferred to NNPC Limited. However, if the assets related to those joint ventures have not been transferred to NNPC Limited, the debt will

⁹⁸ *Ibid*, 54(4).

⁹⁹ *Ibid*, 54(5).

¹⁰⁰ *Ibid*, 54(6).

remain the debt of the government.¹⁰¹ This would extend to obligations to decommission as the case may be in accordance with the entity's JV with international oil companies.

1.2.2 Appointment of NNPC Limited as an Agent of NNPC

Section 55 of the Petroleum Industry Act (PIA) 2021¹⁰², outlines the responsibilities of NNPC Limited during the transition period. The transitional period refers to the period between the effective date of the PIA and the period when all the assets, interests and liabilities of NNPC are transferred to NNPC Limited. NNPC Limited is not only to assume the role of replacing the NNPC, but also appointed as an agent of NNPC during the transitional phase. The PIA provides that the Minister of Petroleum shall upon incorporation of NNPC Limited, consult with the Minister of Finance to appoint NNPC Limited as an agent of NNPC for the purpose of managing the process of winding down the assets, interests and liabilities of NNPC.¹⁰³ The major job of the 'agent' is to wind down the assets, interests and liabilities.¹⁰⁴ As a result of this appointment as an agent, NNPC Limited has the power to deal with the applicable assets, interests and liabilities of NNPC and may enter into contract with third parties on such assets and liabilities.¹⁰⁵ However, one peculiar nature of the nature of agency created under section 55(1) of the PIA is that unlike, the general notion of agency in law where the principal is not legally restricted in dealing with the subject matter under the agency, the PIA has barred NNPC from dealing with the applicable assets, interests and liabilities subject to the winding process. Also, NNPC is to pay an administrative charge of \$1USD as a nominal fee for the applicable assets, interests or liabilities.¹⁰⁶ According to Section 55(4)¹⁰⁷, the government is responsible for bearing the costs associated with winding down the NNPC's assets, interests and liabilities. Section 55(5) of the PIA, 2021¹⁰⁸ has however imposed additional restrictions on NNPC, effectively limiting its ability to pursue legal action against NNPC Limited in relation to the winding down process.

1.2.3 Transfer of Employees and Conditions of Service

It is noted that the establishment of NNPC Limited does not result in the consequential dismissal of the workforce of NNPC and its subsidiaries. The Employees and other staff members of the former NNPC remain employed notwithstanding the establishment of the new

¹⁰¹ *Ibid*, s. 54(8).

¹⁰² *Ibid*, s 55.

¹⁰³ *Ibid*, s. 55(1).

¹⁰⁴ SPA Ajibade & co, 'Salient Statutory and Institutional Changes to the NNPC Limited' available at <<https://spaaajibade.com/1405-2/>> accessed 24th October, 2023.

¹⁰⁵ Petroleum Industry Act 2021, s 55(2).

¹⁰⁶ Billion Promise Agunia Esq, 'Legal appraisal of NNPC Limited Under the Petroleum Industry Act: Issues and Challenges' *African Journal* [2023] 7 (79) <<https://ajjeel.com/index.php/a/article/download/50/51>> accessed 24th October, 2023.

¹⁰⁷ Petroleum Industry Act 2021, s 55(4).

¹⁰⁸ *Ibid*, s 55(5).

NNPC Limited. The provisions of section 57(1) of the PIA, 2021¹⁰⁹ signifies that all employees previously employed by NNPC will now be considered as employees of NNPC Limited upon its incorporation. While the transfer of employees subsists, it also includes the transfer of conditions of service. Section 57(1) also stipulates that the terms and conditions must not be less favourable than that enjoyed prior to the transfer of service. This means that the employees transferred to NNPC Limited will retain their salaries, benefits and other terms of employment. However, it is imperative to note that the terms and conditions are not set in stone and can be altered. It is possible for the terms to be altered or modified, but only on the ground that the terms and conditions cannot be less favourable than what was previously enjoyed. Lastly, section 57(2)¹¹⁰ of the PIA requires NNPC Limited to continue fulfilling the statutory obligations of the defunct NNPC in regards to the pension scheme of retired employees of NNPC and its subsidiaries. The inclusion of this provision holds significant importance as it assures the employees of NNPC and its subsidiaries that their pension benefits will remain safeguarded, even subsequent to the incorporation of NNPC Limited.

1.2.4 Composition of the Board of NNPC Limited

It is imperative to note that the management of the daily operations of NNPC Limited's is entrusted to the Board of NNPC Limited, which was established under section 58 of the PIA.¹¹¹ The Board is expected to execute its duties in compliance with the provisions outlined in the PIA, the Companies and Allied Matters act 2020 and the articles of association of NNPC Limited.¹¹²

The Board of the company is to be composed of a non-executive chairman, the Chief Executive of NNPC Limited, the Chief Financial Officer of NNPC Limited, a representative of the Ministry of Petroleum not below the rank of a director, a representative of the Ministry of Finance, not below the rank of a director and six non-executive members with at least 15 years post qualification cognate experience in petroleum or any other relevant sector of the economy from each geopolitical zone who are all to be appointed by the President.¹¹³ The six non-executive members are expected to be carefully selected based on their extensive experience, expertise and track record in their fields. Also, the inclusion of the non-executive members to reflect the six geopolitical zones is key in preserving federal character. An individual with at least 15 years post-qualification experience who possesses extensive managerial, technical and professional knowledge in the petroleum or other relevant industry is eligible to be appointed as the Chief Executive of NNPC Limited.¹¹⁴ The collective set of requirements is to ensure that the topmost official of the NNPC Limited is a highly qualified and experienced individual capable of effectively leading the company to success.

¹⁰⁹ *Ibid*, 57(1).

¹¹⁰ *Ibid*, 57(2).

¹¹¹ *Ibid*, s 58.

¹¹² *Ibid*, s. 58(1).

¹¹³ *Ibid*, s. 58(2).

¹¹⁴ *Ibid*, s. 58(3).

In the event that the Chairman is absent, the members of the Board of NNPC Limited are granted the authority to appoint a non-executive member of the Board to act as alternate chairman.¹¹⁵ It is worthy of note that the applicability of the provisions stated in section 59 is contingent on the condition that the government retains full ownership of NNPC Limited. Conversely, in the event that the NNPC Limited is not entirely owned by the government, the composition of the Board of NNPC Limited shall be determined by the shareholders of NNPC Limited in accordance with the provisions of the Companies and Allied Matters Act 2020 as amended and the articles of association of NNPC Limited. This provision appears, unfortunately, to be distant from coming to actualisation in the near future for the hopeful Nigerians eagerly anticipating the sale of NNPC Limited's shares to the general public via an Initial Public Offer (IPO). Even though NNPC's Group Chief Executive Officer, Mele Kyari, had during the transition ceremony in Abuja, stated that the company would be ready to launch an IPO by mid-year in 2023- a declaration that unfortunately did not happen. During an IPO, the shares of a firm are sold to institutional investors interested in owning stakes in that particular company.¹¹⁶ Presently, it's past the year 2023, yet the Nigerian National Petroleum Company has missed the deadline for the launch of its Initial Public Offering (IPO). This is contained in the national oil company's latest quarterly report. According to the quarterly publication, the NNPC was expected to be IPO-ready by the end of the second quarter (Q2), but it's way past the third quarter of 2023, yet no IPO has been launched.¹¹⁷

1.2.5 Annual Audit of NNPC Limited

Auditing plays a crucial role in every company as it guarantees transparency within the financial and accounting system. The financial statements of NNPC Limited are mandated to be audited annually by an independent, competent, experienced and qualified auditor.¹¹⁸ In order to provide an external and objective assurance, the PIA mandates that the auditor must be independent of NNPC Limited. In essence of this, the auditor cannot be employed or have any financial ties with the company. The auditor is responsible for providing an external and objective assurance to the Board and shareholders of NNPC Limited that the financial statements fairly represent the financial position and performance of NNPC Limited.¹¹⁹ In other words, the auditor of NNPC Limited is saddled with the responsibility of offering an independent and unbiased evaluation to the Board of NNPC Limited and its shareholders. In the event that the auditor of NNPC Limited cannot provide an assurance that the company's financial statements fairly represent the financial position and performance of the company,

¹¹⁵ Ibid, s. 58(4).

¹¹⁶ Okechukwu Nnodim, 'No Plan to Sell NNPC Shares— Official'

<<https://punchng.com/no-plan-to-sell-nnpcl-shares-official/#:~:text=The%20shares%20are%20held%20in,Nigerian%20oil%20and%20gas%20industry.>> accessed 30th December, 2023.

¹¹⁷ Bunmi Aduloju, 'NNPC misses Deadline for IPO Launch'

<<https://www.thecable.ng/nnpc-misses-deadline-for-ipo-launch>> accessed 31st December, 2023.

¹¹⁸ Ibid, s 62(1).

¹¹⁹ Ibid, s 62(2).

the Board of NNPC Limited must immediately convene an Extraordinary General Meeting (EGM) to notify the shareholders of NNPC Limited and consider any action that may be necessary in that regard.¹²⁰ However, the process for the selection and appointment of the auditor is not specified in the PIA. It thus appears that the Board of NNPC Limited has the discretion to choose the auditor in any way they deem fit.

1.2.6 Responsibilities of the Board of NNPC Limited

The Board of NNPC Limited plays a crucial role in the petroleum industry, as outlined in section 63 of the Petroleum Industry Act, 2021.¹²¹ This section provides a comprehensive framework for the responsibilities and obligations of the Board of NNPC Limited. The Board of NNPC Limited holds significant authority and is entrusted with a diverse array of duties. The Board is required to perform its responsibilities stated in the PIA in addition to its responsibilities under the Companies and Allied Matters Act, 2020 and the articles of association. The first responsibility of the Board explicitly provided for in the PIA is the responsibility of the Board for the strategic guidance and determining of the business structure of NNPC Limited.¹²² This means that the Board will be able to set the company's overall direction and determine how it will be organised and operated. The Board is also responsible for approving the annual budget of NNPC Limited.¹²³ The board bears a significant responsibility to act in good faith and exercise due diligence and care. This responsibility extends not only to the best interests of NNPC Limited but also its shareholders and sustainable development.¹²⁴ The Board has the duty to apply the highest ethical standards in performing its duties, taking into account the interest of its stakeholders and the fiduciary duty of the directors to NNPC Limited.¹²⁵ The Board has the responsibility to make decisions guided by commercial and technical considerations that represent good international petroleum industry practices.¹²⁶ It also determines and reports to the shareholders of NNPC Limited on key performance indicators on an annual basis.¹²⁷

It is affirmed that the Board of NNPC Limited has the responsibility to review and guide corporate strategy, major plan of action, risk policy and business plan.¹²⁸ It sets performance objectives for NNPC Limited, the Board of NNPC Limited, member of NNPC Limited's management and individual business units and subsidiaries of NNPC Limited.¹²⁹ The Board monitors NNPC Limited's corporate performance, oversees major capital expenditures,

¹²⁰ *Ibid*, s 62(3).

¹²¹ *Ibid*, s 63.

¹²² *Ibid*, s 63(1)(a).

¹²³ *Ibid*, s 63(1)(b).

¹²⁴ *Ibid*, s 63(1)(c).

¹²⁵ *Ibid*, s 63(1)(d).

¹²⁶ *Ibid*, s 63(1)(e).

¹²⁷ *Ibid*, s 63(1)(f).

¹²⁸ *Ibid*, s 63(1)(g).

¹²⁹ *Ibid*, s 63(1)(h).

acquisitions and divestitures and also has the responsibility to monitor the effectiveness of NNPC Limited's governance practices and impose and implement changes.¹³⁰ It selects, compensates, monitors and replaces management executives and oversees succession plans.¹³¹

The Board is required to align key executives and Board of NNPC Limited remuneration with the longer term interests of NNPC Limited, its shareholders and stakeholders.¹³² It monitors and addresses potential conflicts of interest of management and members of the Board of NNPC Limited and breach of fiduciary duty by members of the Board of NNPC Limited, it also ensures the integrity of NNPC Limited's accounting and financial reporting systems, including auditing of NNPC Limited's accounts by an independent third party.¹³³ The Board of NNPC Limited ensures that appropriate system control is in place for risk management, financial and operational control, and compliance with applicable laws and relevant standards.¹³⁴ Lastly, the Board has the responsibility to oversee the process of disclosure and communications to shareholders and the public and also to determine the dividend policy of NNPC Limited, ensure sustained growth and a sound financial base for NNPC Limited.¹³⁵

1.3 Establishment of Incorporated Joint Venture companies

The NNPC Limited and other parties involved in a Joint Operating Agreement are allowed, under the Act, to voluntarily restructure their agreement into a joint venture. This restructuring process will be facilitated by a limited liability company called the Incorporated Joint Venture Company (IJVC).¹³⁶ It is important to note that the IJVC will not be subjected to the provisions of the Fiscal Responsibility Act and Public Procurement Act.¹³⁷ The IJVC is to exist as an independent entity, having a strong

commercial orientation and transparent company operation for the IJVC shareholders, with clear rules of accountability.⁵⁸ The IJVC can carry out upstream, midstream and downstream petroleum operations. It is thus imperative to note that this model was conceptualised out of the need to encourage a healthy business culture and achieve optimum growth in the energy sector. This IJVC will serve as a veritable commercial entity that can source funds from the financial markets, raise capital for the business and pay dividends to their shareholders. This arrangement will eliminate the need for cash calls and annual funding strategy suffered by the

¹³⁰ *Ibid*, s 63(1)(i)(j)(k).

¹³¹ *Ibid*, s 63(1)(l).

¹³² *Ibid*, s 63(1)(m).

¹³³ *Ibid*, s 63(1)(n)(o).

¹³⁴ *Ibid*, s 63(1)(p).

¹³⁵ *Ibid*, s 63(1)(q)(r).

¹³⁶ *Ibid*, s 65(1).

¹³⁷

defunct NNPC and will create transparency across JV partners while also reducing the government's bureaucracy.¹³⁸

1.4 Unveiling the Major Challenges to the Operation of NNPC Limited

It is observed that the implementation of the Petroleum Industry Act (PIA) in 2021 sparked a wide range of opinions among participants in the Nigerian petroleum value chain. This can be attributed to the complex nature of the PIA, which has left many with divergent views on its effectiveness and implications. One of the main reasons for these mixed reactions is the inherent complexity of the PIA itself- thus, making many pundits remark that the legal framework solution provided came with more barrage of problems for the industry.¹³⁹ This complexity has made it challenging for stakeholders to fully grasp and understand the implications of the PIA, leading to differing opinions on its impact.

Thus, NNPC Limited, as a major player in the petroleum industry, faces specific challenges due to the ambiguous and redundant provisions of the PIA. The objectives of the company stated in the PIA of the company appear unclear, vague, repetitive, duplicitous, manifestly unrealistic and inherently conflicting. The primary criticism directed towards these objectives as stated above is perhaps their excessive, boundless breadth, which allows for varying and multifarious misleading interpretations regarding the suitable domain of emphasis for the company and the uncertainty regarding its place as a hybrid regulator/operator as a state-owned company, with all the benefits and privileges of a limited liability company and the perks of a government parastatal, including a transfer of liabilities including pensions and gratuities of all its employees. It is thus the considered view of this paper that the move to retain the cloak of NNPC as a government institution that is duty-bound to pay its workers and Ex-workers their due wages and retirement benefits- whether or not it can afford to do so, whilst still masquerading as a limited liability company with an untransferable shares is not only counter-productive, it reiterates the fact that the state/company wants to eat its cake and have it, take the benefit without the burden, confirms that the government has no business in business and wants to foist disposable government liabilities on a company that should ordinarily be profit-oriented by refusing to let it shed its bureaucratic jackets. This lack of clarity can create uncertainty and hinder NNPC Limited's ability to effectively plan and execute its operations.

One other major challenge the NNPC Limited faces is the government's ongoing influence. Despite the NNPC Limited's commitment to maintaining complete autonomy from government influence, the reality is that it remains under full ownership and control of the government and as such does not qualify as a limited liability company properly so-called. Section 53(5)¹⁴⁰ of

¹³⁸ Lilian Adat and Izuchukwu Gideon Okpara, 'Transitioning from Regulator to Operator: Challenges of Enforcing NNPC's JV Obligations' available at <<https://www.lexology.com/library/detail.aspx?g=dd4f5ed5-5727-404a-91da-ca5f00787199>> accessed 4 November, 2023.

¹³⁹ Petroleum Industry Act: Issues arising, Two Years After- Thecable.ng <<https://www.thecable.ng>>amp> Accessed 13th December, 2023.

¹⁴⁰ Petroleum Industry Act 2021, s 53(5).

the PIA also provides that all shares of the company held by the government will not be transferable or mortgaged unless approved by the government and the National Economic Council. To own is to control in any business enterprise, so it is unclear how government influence would be avoided in NNPC Limited when it is wholly owned and capitalised by the government. A better approach would be to provide for a mechanism that splits the shares between the government and the public in a particular ratio such that while the government may understandably retain controlling shares to protect national interest, there are checks and balance measures in place to avoid arbitrariness.¹⁴¹ This is especially so as the alleged corruption in the system cannot change if the same bureaucrats involved in NNPC are still the same running the affairs of NNPC Limited, but only under a new name and designation within the firm control of government's influence. This is thus a change, with no distinction.

The provisions in the PIA thus appears to be a mere nomenclature change from the defunct NNPC to NNPC Limited. In the Daily Trust of 21st June, 2022, Malam Mele Kyari provided an explanation stating that all Nigerians are shareholders of the newly commercialised national firm. However, his subsequent remarks have raised doubts about the accuracy of his previous statements. He further stated that "NNPC Limited is owned by over 200million Nigerians. We are the shareholders of the NNPC Limited. The shareholders are always represented. And in this context, it's now represented by the Ministry of Petroleum (incorporated) and the Ministry of Finance (incorporated) on behalf of the rest of the federation. That's on behalf of all of us."¹⁴² The problem with the above plan is whether the entire staff of the both ministries would file out to represent the over two hundred million Nigerians, and if all the staff of the two ministries, how many are they? Also, to be noted is, would it be that only the two ministers would represent the two ministries on behalf of all Nigerians?

Then also, how would two Federal Ministries of the Federal Government be the ones to represent the thirty-six (36) states and Abuja, the Federal Capital Territory (FCT), the seven and seventy-four hundred local government areas and the over two hundred and fifty ethnic nationalities that make up Nigeria? Would it be equitable to do so amidst the tendency of government appointees to favour their own area over the others? Can the appointed relevant Ministers or any of their cronies at the helms of affairs be validly held to be representing the interest of 200 million Nigerians when in fact Nigerians never elected them, but their appointors? In that case, would the representative promote the common good of all? Further, what is the justifiability and equitability of making two Federal Ministries to represent the over

¹⁴¹ Centurion, 'The Birth of NNPC Limited and What It Means for the Nigeria's Oil and Gas industry' available at <<https://centurionlg.com/2022/08/16/the-birth-of-nnpc-limited-and-what-it-means-for-nigerias-oil-and-gas-industry/>> accessed 14th November, 2023.

¹⁴² Daily trust 'All Nigerians are Shareholders in New NNPC' available at <<https://dailytrust.com/all-nigerians-are-shareholders-in-new-nnpc-mele-kyari/>> accessed 4 November 2023.

200,000,000 Nigerians?¹⁴³ These are some of the questions which have arisen after the supposed “rebranding” of the defunct NNPC to the new company, NNPC Limited.

The potential hindrance to the achievement of the company's goals lies in the President's overwhelming authority to appoint members of the Board of NNPC Limited, which lacks the necessary oversight from the National Assembly or any other body to guarantee transparency and accountability. The lack of oversight in the appointment process raises concerns about the potential for nepotism, favouritism or the appointment of individuals who may not possess the necessary qualifications or industry expertise. This thus allegedly compromises the effectiveness and efficiency of the board in making informed decisions that are in the best interest of the company and the Nigerian people. Given Nigeria's heavy reliance on the petroleum sector for economic progress, it is crucial that the selection process for the board of NNPC Limited be meticulous, competence-based and rigorous.

Another challenge is the transfer of employees and conditions of service under section 57 of the PIA. The retention of former NNPC staff by NNPC Limited, without any modifications, implies that the NNPC Limited will continue to operate with the same organisational structure and culture as its predecessor. This provision of section 57 of the PIA is comparable with placing old wine in a new bottle and expecting it to taste better. It is understandable that the lawmakers were wary of leaving the employees of the former NNPC redundant upon the transition. However, the automatic retention of former NNPC staff is counterproductive because NNPC Limited essentially inherits all of its predecessor's employees, some of whom are controversially unqualified, allegedly manifestly corrupt, implicit in the many scandals and bureaucratic misfortunes befuddling the old NNPC and redundant thereby stunting its growth potential.¹⁴⁴ It is further noted that the composition of the NNPC Limited is largely made up of officers and employees who have allegedly, previously failed the country. This implies that the current workforce may not possess the necessary skills, competence, or trustworthiness required to effectively promote local content practices and create a favourable business environment for petroleum operations. A more plausible restructuring should have allowed NNPC Limited to recruit its new staff, whilst laying off the old ones (with their entitlements paid) found unworthy under the new NNPC Limited structure.

It is noted that the exemption of NNPC Limited from the Public Procurement Act, Fiscal Responsibility Act, and Single Treasury Act aims to streamline operations, reduce bureaucratic

¹⁴³ Stephen L. W. Nyeenenwa and Omiete Idoniboye, ‘Nomenclature Change from NNPC (Public Corporation) to NNPC Limited (Private Liability): An X-Ray and Dissection of the Rebranded NNPC Ltd Using Rousseau’s General Will’ *International Journal of Public Administration and Management Research (IJPAMR)* [2023] 8 (4)26.

¹⁴⁴ Centurion ‘The Birth of NNPC Limited and What It Means for the Nigeria’s Oil and Gas industry’ available at <<https://centurionlg.com/2022/08/16/the-birth-of-nnpc-limited-and-what-it-means-for-nigerias-oil-and-gas-industry>> accessed 4 November 2023.

hurdles and enable NNPC Limited to operate more efficiently and competitively in the global oil and gas market. However, it is crucial to acknowledge the potential drawbacks associated with this exemption. One major concern this exemption raises is the potential transparency and accountability issues. Thus, NNPC Limited may not be fully subject to the same level of scrutiny as private companies, thus increasing the risk of corruption, mismanagement, or lack of due diligence in financial transactions and its procurement processes. Without the oversight mechanisms of these Acts, there is a risk that NNPC Limited may not adhere to sound financial management practices, leading to wasteful spending or misappropriation of funds- which were alleged recurrent decimals under the old NNPC. This may also affect the revenue sharing arrangements between the Federal Government and the States. As NNPC Limited is no longer obligated to make monthly remittances to the Federal Account Allocation Committee (FAAC), States may receive a smaller share of oil revenue, potentially impacting their budgets and development programs.

Finally, the PIA leaves a critical loophole when it comes to the selection of an “independent, competent, experienced and qualified auditor” as provided for in section 62 of the Act. The absence of a transparent and standardised procedure for selecting an independent auditor raises questions about the integrity of the auditing process. Without a well-defined selection process, there is a risk that the independent auditor may be influenced or controlled by vested interests, compromising their ability to provide an objective assessment of NNPC Limited's financial affairs. This could lead to potential financial mismanagement, corruption or the concealment of irregularities within the company. While the Companies and Allied Matters Act (CAMA) 2020 outlines the general procedure for auditor appointment, there are no specific provisions in the PIA to prevent manipulation or misconduct in the context of NNPC Limited's audit engagement. The PIA's silence on this matter is particularly a vehement issue of concern, given the recent reports of financial fraud and dishonesty within the former NNPC. A clear and transparent auditor selection process would have helped to address these past issues and prevent their recurrence.

1.5 Conclusion

This research has outlined significant transformations in the governance and regulation of the Nigerian Petroleum Industry, following the transition from the Nigerian National Petroleum Corporation (NNPC) to NNPC Limited with the objectives of this transition being in line with the objectives of the PIA 2021, which is to promote transparency, good governance and accountability in the administration of petroleum operations in Nigeria. Although vital for the modernization and commercialization of Nigeria's oil and gas industry, the move from NNPC to NNPC Limited is not without its challenges. The industry has seen substantial changes as a result of the Petroleum Industry Act (PIA) of 2021, but it has also raised some fundamental implications that should be carefully considered. In essence, the efficacy of NNPC Limited, the National Oil Company is undeniably dependent on the level of commitment exhibited by the government towards ensuring its proper functionality and success. This study has also brought to the fore the implausibility and inoperability of the NNPC Limited as presently constituted under the

enabling Act should its objectives be realised. It is thus hoped that the laws and policy would be reviewed in line with existential realities and appropriate corporate governance code of ethics.

It was found that the NNPC rarely functions as a limited liability company, because of its exclusive ownership of its shares by government ministries and the statutory non-transferability of its shares and assets.

It was found that the appointment of NNPC as an agent of NNPC limited is not in good light and in national best interest and the statutory transfer of previous employees of NNPC to NNPC and their general conditions of service is like leaving the old wine in a new wineskin, especially as the retention of old personnel and payment of their emoluments as public servants largely erodes corporate profitability and demotes efficiency.

It was discovered that there exists a number of challenges with the organisational structure of the NNPC limited's Board composition, its annual auditing systems, functions and responsibilities, the establishment of its incorporated Joint venture companies that continually hampered the effective discharge of the mandates of the NNPC and compromises the board's independence and accountability.

Finally, it was found that there are many challenges to the effective operation of the NNPC.

To address the issues and challenges facing NNPC Limited under the Petroleum Industry Act (PIA) 2021, the following recommendations are hereby proposed:

1. Establish a more balanced approach to appointing NNPC Limited's board members, involving input from stakeholders beyond the Presidency. This will strengthen the board's independence and accountability and ensure that it acts in the best interests of the company.
2. Initiate legislative amendments to clarify ambiguous provisions regarding the proper status of NNPC as a regulator or an operator and address identified complexities in the PIA. This formal process will ensure that the Act remains up-to-date and reflects the evolving needs of the oil and gas industry.
3. Ensure broader ownership and economic participation through an IPO that would allow Nigerians to directly own shares in NNPC Limited, an amendment of the provision on the non-transferability of the shares as this will provide Nigerians with a stake in the company's success which would promote a deeper sense of belonging amongst Nigerians, promote accountability and contributing to a more inclusive and participatory economy. This widespread ownership would align the interests of NNPC Limited with those of the Nigerian people, ensuring that the company operates in a manner that benefits the nation as a whole.
4. The fact NNPC Limited still employed a large number of former NNPC workers who failed the nation suggests that the company continues to employ people with dubious backgrounds, which could exacerbate existing issues and limit NNPC Limited's capacity to reach its full potential. To truly reform the Nigerian petroleum industry, NNPC Limited needs to undergo a thorough overhaul of its personnel. This involves identifying and retaining individuals with proven competence and integrity, letting go those with the barrages of congenital graft and corruption, while also recruiting new talent who share the values of probity and competence.
5. To ensure transparency and accountability, the PIA should include provisions that establish a rigorous selection process for independent auditors. This process should involve thorough due

diligence to assess the auditors' qualifications, independence, and track record. Additionally, the PIA should mandate regular rotation of auditors to minimise the risk of long-term relationships that could compromise their independence.

6. A total renaming of the organisation is equally recommended as the name NNPC, with or without an 'L' has come to be identified with a lot of scandals, corruption and mismanagement as a name is as important as its connotation. This is the perception conundrum.