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PETROLEUM INDUSTRY ACT, NO. 6, 2021
MIDSTREAM PETROLEUM (HOST COMMUNITIES
DEVELOPMENT TRUST) REGULATIONS, 2024



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S. I. No. 41 of 2024

PETROLEUM INDUSTRY ACT, NO. 6, 2021
MIDSTREAM PETROLEUM (HOST COMMUNITIES
DEVELOPMENT TRUST) REGULATIONS, 2024

[30th Day of October, 2024]

Commence-
ment

In exercise of the powers conferred on it by sections 33, 234(2) and 235(6)(a) of the Petroleum Industry Act, No. 6, 2021 (“the Act”) and all other powers enabling it in that behalf, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (“ Authority”) makes the following Regulations—

PART I —OBJECTIVES AND APPLICATION

1.—(1) The objectives of these Regulations are to —

Objectives

(a) provide substantive and procedural requirements and general rules for the establishment and administration of the Trust and the Fund for Nigerian midstream petroleum host communities;

(b) outline the parameters for the administration and safeguard of the Fund; and

(c) prescribe a grievance resolution mechanism for settlement of disputes between host communities and licensees.

2. These Regulations shall apply to Nigerian midstream petroleum host communities and a holder of a licence engaged in midstream petroleum operations as prescribed in section 318 of the Act.

Application

PART II — ROLE OF THE AUTHORITY AND LICENSEES IN RELATION
 TO MIDSTREAM HOST COMMUNITIES’ DEVELOPMENT TRUST

3. The Authority shall —

(a) ensure that a licensee fulfills its obligations in relation to Host Communities Development Trust in accordance with the provisions of the Act and these Regulations ; and

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

Supervisory
and
oversight
role of the
Authority

4.—(1) A Licensee shall ensure that the Board of Trustees complies with the provisions of the Act and these Regulations.

Responsibility
of the
licensee to
ensure
compliance

(2) Where a licence is held by more than one licensee under a joint operating agreement or other agreement, the licensee who is appointed as the operator under the joint operating agreement or other agreement, shall, on behalf of the licensees, ensure that the Board of Trustees complies with the provisions of the Act and these Regulations.

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Determination
of Host
Communities

5.—(1) A licensee shall, in determining which community is a host community within its area of operation consider the following —

(a) for pipelines appurtenant to the host communities, a distance of 500 metres measured on both sides of the pipeline;

(b) for operational facilities that are appurtenant to the host communities, a distance of 2 kilometres measured from the battery limit of the facility;

(c) its operational activities and impact on communities in the area of operation;

(d) pipeline communities through which petroleum liquids and natural gas are transported;

(e) facility hosting communities;

(f) service rendering communities, including communities where licensees have constructed staff housing or personnel accommodation; and

(g) any other community as may be determined by the licensee.

(2) A host community which is a beneficiary of a trust shall not be excluded by the licensee or Authority from the trust except where —

(a) the boundary of the operational area changes, such that a community previously selected as a beneficiary is no longer within the operational area of the retained area of the licence ; or

(b) a court of competent jurisdiction has by a final judgment, determined that a community previously selected as a host community does not qualify as a host community under the Act, these Regulations or any other relevant law.

PART III — HOST COMMUNITIES' DEVELOPMENT TRUST

Incorporation
of the Host
Communities
Development
Trust

6. A licensee undertaking midstream petroleum operations in designated facilities as prescribed in the Act shall, not later than 12 months from the commencement date of these Regulations, incorporate a host community development trust in accordance with the provisions of these Regulations.

Pre-approval
of Host
Communities
Development
Trust
registration
by the
Authority

7. A licensee shall, prior to incorporation of a trust at the Corporate Affairs Commission, submit to the Authority for approval, the following documents in relation to the trust to be registered —

(a) a copy of the proposed constitution of the trust to be registered ;

(b) the details of the proposed trustees of the trust, intended to form the Board of Trustees as stipulated in these Regulations ;

(c) the criteria for the selection of the trustees, in accordance with these Regulations ;

(d) a copy of the applicant's licence with a map identifying the applicant's area of operations annexed to it ;

(e) the list and location of host communities to be covered by the trust ;

(f) the host communities development plan as prescribed in these Regulations ; and

(g) a fund matrix as prescribed in these Regulations.

8.—(1) The Authority shall within 60 days of receipt of the documents submitted by the licensee pursuant to regulation 7 of these Regulations, notify the licensee of its decision to approve or refuse the application.

Approval
by the
Authority

(2) Where the Authority refuses the licensee’s application, the Authority —

(a) shall provide the licensee with the reason for refusal ; and

(b) may direct the licensee to amend its application and resubmit it within 30 days.

(3) Where the Authority fails to communicate its decision to the licensee within the 60 days period specified in sub-regulation (1) of this regulation, the licensee’s application is deemed approved, and the licensee shall be entitled to proceed with the implementation of its obligation in relation to the host community development trust.

9.—(1) Where a licensee or operator appointed by a licensee fails to incorporate a trust as stipulated in section 236 (c) and (f) of the Act, the Authority may issue to such defaulting licensee or operator, a notice in writing of its failure to incorporate a trust and direct the licensee to incorporate the trust within 90 days.

Failure to
incorporate
a trust

(2) Where a licensee applies for the approval of the Authority to incorporate a trust outside the time limit stipulated by section 236 (c) and (f) of the Act and regulation 6 of these Regulations, the Authority shall not approve such application until the licensee has paid to the Authority the administrative penalty prescribed in regulation 37 (2) of these Regulations.

(3) The penalty referred to in subregulation (2) of this regulation shall not be applicable where the Authority is satisfied that the failure to incorporate the trust within the prescribed time was as a result of circumstances outside the control of the licensee.

10.—(1) A trust shall be administered in accordance with the provisions of the Act, these Regulations, the constitution of the trust and any other applicable law, not inconsistent with the provisions of the Act.

Trust
administration

(2) The Authority, in the exercise of its supervisory and oversight responsibilities, may —

(a) require information from the licensee, the Board of Trustees or the Fund Manager relating to the administration of the trust or the Trust Fund ;

(b) enter into any project site owned or being administered by the trust to inspect the progress of any project embarked on by the trust;

(c) carry out enquiries, audits or investigations and take other steps to monitor the activities of the trust; and

(d) take any other step prescribed by the Act and regulations made by the Authority, to ensure compliance with the provisions of the Act and these Regulations.

(3) The Board of Trustees shall ensure that the trust and fund are equitably administered and managed in accordance with the provisions of the Act and these Regulations.

(4) Where the Authority determines that there has been or likely to be —

(a) a contravention of the Act, these Regulations or the constitution of the trust ; or

(b) any misconduct or mismanagement in the administration of the fund, the Authority shall give notice to the licensee of the contravention, misconduct or mismanagement, and shall direct the licensee to take remedial action, within such time frame, as may be specified by the Authority in the notice.

Dissolution
of trust

11.—(1) The licensee or trustees shall not dissolve the trust without the prior approval of the Authority.

(2) Where the licensee or trustees intend to dissolve the trust, the licensee or trustee shall submit to the Authority —

(a) the reason for the dissolution of the trust;

(b) the proposed timeframe for the dissolution of the trust;

(c) process for the dissolution of the trust; and

(d) any other information the Authority may require.

(3) The Authority may approve the dissolution of a trust where the —

(a) object of the trust has been fully realised;

(b) licence of the licensee has been revoked;

(c) Fund has been exhausted and not replenished; or

(d) trust has not carried out the objects for which it was set up.

(4) Where the Authority refuses to approve the proposed dissolution of a trust, it shall give reason for such refusal.

(5) Where the Authority approves the dissolution of a trust, the trust shall be dissolved in accordance with the provisions of the Companies and Allied Matters Act or any other applicable law.

(6) The cost of dissolving the trust shall be defrayed from the Fund.

12.—(1) Subject to the provisions of these Regulations, a licensee shall — Appointment
of Trustees

(a) prior to the incorporation of a trust, appoint the first trustees in consultation with the host communities; and

(b) in consultation with the relevant host communities, appoint additional or replacement trustees, where required.

(2) The number of the Trustees shall be an odd number, not exceeding nine members, reflecting the diversity of the host community.

(3) The licensee shall, in accordance with the provisions of these Regulations and the constitution of the Trust, be responsible for —

(a) establishing the criteria for qualification of members of the Board of Trustees ;

(b) establishing process for selection of members of the Board of Trustees ;

(c) the appointment of the members of the Board of Trustees ;

(d) determination of the remuneration of members of the Board of Trustees ; and

(e) the suspension, disqualification and removal of members of the Board of Trustees.

(4) Without prejudice to the provisions of the Act and these Regulations, a licensee shall consider age, gender and physical disability in determining the criteria for appointment to the Board of Trustees.

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

13.—(1) The licensee shall, prior to the appointment of a trustee, submit to the Authority an application for approval of the trustee. Approval of
trustees by
the
Authority

(2) The application shall be submitted to the Authority with the following information and documents —

(a) the draft constitution of the trust ;

(b) the draft advert prior to its publication ;

(c) the resolution by the licensee and the host community for the incorporation of the trust ;

(d) the full name, address and phone number of the proposed trustee ;

(e) a copy of a valid means of identification of the proposed trustee ;

(f) a short profile of the proposed trustee including the qualifications and professional background ;

- (g) evidence that the trustee comes from the relevant host community; and
- (h) any other information or document as the Authority may determine.

(3) The Authority shall within 60 days of receipt of the application, give notice to the licensee of the approval or rejection of the appointment of the trustee.

(4) Where the Authority fails to give notice to the licensee within the time specified in sub-regulation (3) of this regulation, the appointment of the trustee is deemed approved, provided that the trustee meets the criteria specified under the Act, these Regulations and the constitution of the trust.

(5) The Authority may reject the appointment of a trustee, where it determines that the —

(a) selection process of the trustee did not comply with provisions of the constitution of the trust ;

(b) trustee does not meet the criteria for appointment as provided in the constitution of the trust and Companies and Allied Matters Act ; or

(c) trustee is disqualified from acting as a trustee under these Regulations.

Minimum qualifications of a trustee

14. Without prejudice to the provisions of the Act, a person shall not be qualified to be appointed as a trustee of a trust, where the person —

(a) is less than 18 years of age;

(b) is of unsound mind;

(c) is an undischarged bankrupt;

(d) has been convicted of an offence involving fraud or dishonesty within a period of less than 10 years before the proposed appointment; or

(e) does not meet any other criteria as the Authority may prescribe by notice or guidelines.

Duties of the Board of Trustees

15. The Board of Trustees shall administer the trust and perform the duties provided under section 243 of the Act.

Removal of a trustee by a licensee

16.—(1) A licensee may remove a trustee from office provided that such removal shall be in accordance with these Regulations and the constitution of the trust.

(2) A trustee shall be removed from office where at any time during the trustee's tenure, the trustee becomes disqualified as a trustee in accordance with these Regulations and the constitution of the trust.

(3) A licensee shall remove a trustee within 45 days of being aware that the trustee has become disqualified in accordance with these Regulations and the constitution of the trust.

(4) Where a licensee fails to remove a trustee as specified under these Regulations or any applicable law, the licensee is liable to pay an administrative penalty of ₦100,000 for every day the disqualified trustee continues to hold office.

(5) A licensee is deemed to have notice of any matter which disqualifies a trustee under these Regulations where such matters are publicly known or ought to have been known by the trustees or the licensee.

(6) A licensee shall within 14 days of removal of a trustee on grounds of disqualification, notify the Authority of such removal and provide the Authority with supporting documents evidencing the grounds for such disqualification and removal.

(7) The licensee shall, within 30 days of the removal of a trustee, take immediate step to replace the trustee.

(8) A trustee is deemed to have vacated office upon disqualification as a trustee in accordance with these Regulations and shall not participate in the activities of the Board of Trustees.

17.—(1) A trustee may resign from office voluntarily at any time by giving 21 days notice of resignation to the licensee.

Resignation
by a trustee

(2) The licensee shall notify the Authority of the voluntary resignation of a trustee, not later than 21 days from the date of submission of the resignation letter.

PART IV — HOST COMMUNITIES’ DEVELOPMENT TRUST COMMITTEES

18.—(1) The Board of Trustees shall, not later than 30 days of the establishment of the trust, set up and appoint members of the management committee and notify the Authority within 30 days of the appointment.

Management
Committee
for the Host
Communities
Development
Trust

(2) The management committee shall comprise —

(a) a representative of each host community, nominated by the relevant host community as a non-executive member;

(b) five executive members, who shall include —

(i) a person qualified to practice as an accountant in Nigeria, with not less than 5 years’ experience as a practicing accountant in Nigeria,

(ii) a contract and procurement professional with not less than 5 years’ experience,

(iii) a person, qualified to practice in Nigeria as an engineer with not less than 5 years’ experience, and

(iv) any other person as may be determined by the Board of Trustees.

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(3) A person shall not be qualified to act as a member of the management committee, where the person —

- (a) is less than 18 years of age;
- (b) is of unsound mind;
- (c) is an undischarged bankrupt; or
- (d) has been convicted of an offence relating to fraud, dishonesty or vandalism of any oil installations and gas assets in Nigeria.

(4) The remuneration, qualification, disqualification, discipline, suspension or removal of members of the management committee by the Board of Trustees shall be in accordance with the constitution of the trust or such policies as may be approved by the Board of Trustees from time to time.

(5) A member of the management committee shall serve for a term of four years in the first instance and may be reappointed for another term of four years and no more.

(6) The Board of Trustees may remove any member of the management committee, and shall within 30 days of the removal —

- (a) notify the Authority of such removal; and
- (b) appoint another person to complete the term of office of such member.

(7) The management committee shall be responsible for the general administration of the trust on an *ad hoc* basis and shall perform the duties set out in section 248 of the Act.

Host
Communities
Advisory
Committee

19.—(1) The management committee shall, not later than 30 days from the constitution of the management committee, set up and appoint members of the host communities advisory committee.

(2) The remuneration, qualification, disqualification, discipline, suspension or removal of members of the host communities advisory committee by the management committee shall be in accordance with the constitution of the trust or internal policies as approved by the Board of Trustees from time to time.

(3) The host communities advisory committee shall comprise one representative from each host community.

(4) Notwithstanding the provisions of sub-regulation (2) of this regulation, a person shall not be qualified to act as a member of the host communities advisory committee, where the person —

- (a) is less than 18 years of age;
- (b) is of unsound mind;
- (c) is an undischarged bankrupt; or

(d) has been convicted of an offence relating to fraud, dishonesty or vandalism of any oil and gas assets in Nigeria.

(5) The decisions of the management committee with respect to the appointment of members of the host communities advisory committee shall be subject to the approval of the Board of Trustees.

(6) The host communities advisory committee shall perform the duties set out in section 250 of the Act.

20.—(1) A licensee shall in consultation with the host community carry out a host community needs assessment, within six months following the grant of a licence.

Host
Communities
needs
assessment

(2) In the case of existing licenses, the licensee shall in consultation with the host community carry out host community need assessment prior to the establishment of the trust.

(3) A licensee shall review the host communities needs assessment every 5 years, to determine the current needs of the host communities.

(4) The host communities needs assessment shall require an evaluation of the —

- (a) level of primary, secondary and tertiary education in the community;
- (b) availability of basic utilities including water, electricity, and shelter;
- (c) access to healthcare;
- (d) level of infrastructure development in the community including roads, and telecommunications infrastructure;
- (e) social, environmental and economic needs of the community; and
- (f) such other needs of the host communities as the designated facility owner or licensee may determine.

(5) The host communities needs assessment shall demonstrate that the licensee has complied with the provisions of section 251(3) of the Act.

(6) The host communities needs assessment shall form the basis for the Host Communities Development Plan.

(7) The licensee shall, not later than 30 days from the completion of the host communities needs assessment, prepare and submit to the Authority for approval a host communities development plan pursuant to section 252 of the Act.

21.—(1) The host communities development plan shall —

- (a) specify the communities development initiatives required to respond to the findings and strategy identified in the host communities needs assessment;

Host
Communities
Development
Plan

B 902

(b) determine and specify the projects to implement the specified initiatives;

(c) provide a detailed timeline for projects;

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

(e) provide for ongoing review and reporting to the Authority; and

(f) contain such other matters as may be prescribed by the Authority from time to time.

(2) An approved host communities development plan shall not be amended without the written approval of the Authority.

Fund
distribution
matrix

22.—(1) The licensee shall provide the board of trustees with a matrix for the distribution of the trust fund to host communities.

(2) The fund distribution matrix shall set out —

(a) the basis for proposed allocation of funds to host communities based on equitable and economic principles in accordance with the approved development plan;

(b) a description of the existing program of host community support prior to the Act, where applicable; and

(c) such other matters that the Authority may specify.

**PART V — ESTABLISHMENT AND MANAGEMENT OF THE HOST
COMMUNITIES' DEVELOPMENT TRUST FUND**

Establishment
of the Host
Communities
Development
Trust Fund
by the
licensee

23.—(1) A licensee shall establish a Host Communities Development Trust Fund (the Fund) in the name of the trust.

(2) The Fund shall be deposited in a designated account, in a commercial bank duly licensed by the Central Bank of Nigeria with a minimum credit rating of 'BBB' issued by at least, two rating agencies, one of which shall be a rating agency incorporated in Nigeria and registered with the Securities and Exchange Commission.

(3) The Board of Trustees shall maintain in the same commercial bank the following accounts —

(a) the collection account, into which the licensee shall pay its annual contribution to the Fund;

(b) the capital fund account, into which 75% of the amount standing to the credit of the collection account shall be paid and utilised in accordance with these Regulations;

(c) the reserve fund account, into which 20% of any amount standing to the credit of the collection account shall be paid and utilised in accordance with these Regulations; and

(d) the administrative cost account to be entrusted to the licensee, into which an amount not exceeding 5% of any amount standing to the credit of the collection account shall be paid and utilised in accordance with these Regulations.

(4) The funds in each of the accounts comprising the Fund shall remain distinct and shall not be co-mingled.

(5) Upon establishment of the Fund, the licensee shall submit to the Authority —

(a) details of each of the bank accounts and sub-accounts comprising the Fund;

(b) details of signatories to the bank account and sub-accounts, which shall comprise representatives of the licensee and Board of trustees;

(c) a copy of the licensee's board resolution approving the opening of the bank accounts and sub-accounts comprising the Fund and the bank account mandate; and

(d) a forecast of the contributions for the subsequent five years.

(6) Where the credit rating of a bank in which the Fund is domiciled declines below the prescribed rating under these Regulations, the Board of Trustees shall within one month, transfer the fund to a bank with the prescribed rating and shall submit to the Authority —

(a) details of each of the bank accounts and sub-accounts comprising the Fund;

(b) details of signatories to the bank account and sub-accounts, which shall comprise representatives of the licensee and board of trustees; and

(c) a copy of the Board of Trustees' resolution approving the opening of the bank accounts and sub-accounts comprising the fund and the mandate of bank account.

(7) The Board of Trustees or licensee shall not change the signatories, mandate, name or other details of the Fund or change the bank where the Fund is domiciled, without the prior approval of the Authority.

(8) Where the Authority approves a change contemplated in sub-regulation (7) of this regulation, the Board of Trustees shall within 10 working days of making such a change submit to the Authority the information and documents set out in sub-regulation (6) of this regulation.

24.—(1) A licensee shall make an annual contribution to the applicable Fund of an amount equal to 3% of its actual operating expenditure for the preceding financial year in the midstream operations affecting the host communities for which the applicable Fund was established.

Sources of
the Fund

B 904

(2) 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.

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

(4) The licensee shall make its first annual contribution to the Fund within one month after the Fund has been established by the Board of Trustees, and thereafter make contributions on an annual basis within three months to the end of each year.

(5) The annual contribution made in the preceding year shall not form part of the operating expenditure for the determination of annual contribution for the succeeding year.

(6) Where the licensee is responsible for host communities in different areas of operation, the 3% share of the operating costs due to each community shall be determined based on the operating costs that are proportionally attributable to each area of operation, except for shallow and deep offshore midstream operations that the operational areas have been tied to corresponding communities.

(7) Where the licensee establishes “any other community” as a host community, the licensee, subject to the prior approval of the Authority, shall allocate a share of the operating cost to the new community.

(8) Contributions for littoral communities shall be pooled and distributed amongst beneficiary trusts equitably.

(9) In determining operating expenditure, the licensee shall take into consideration non-capital production costs, cost of sales, administrative expenses and any other expenses incurred for the operations of the business on a day-to-day basis as included in the audited financial report provided that such expenditures shall not include capital expenditures, impairment, depreciation or amortisation.

(10) The licensee may, subject to obtaining the approval of the Authority, discontinue contribution to the reserve fund or disengage the Fund Manager or decline to hire a Fund Manager in order to reduce expenditures, where the available funds for administration are insufficient to fund ongoing operations.

(11) The licensee shall, in support of its application for approval to discontinue contribution to the reserve fund, disengage the fund manager or decline to hire a fund manager, provide to the Authority such additional information as it may direct.

25.—The Board of Trustees shall in each year allocate from the Fund, a sum equivalent to —

Allocation
of fund

(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 the Act, provided that any sum 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 trust whenever there is a cessation in the contribution payable by the licensee; 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 Trustees to the licensee, provided that at the end of each financial year, the licensee 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.

26.—(1) Money standing to the credit of the Fund shall be utilised in accordance with these Regulations and the constitution of the Trust.

Utilisation
of the Fund

(2) Money in the capital fund shall be disbursed for projects in each of the host communities as shall be determined by the Board of Trustees in accordance with these Regulations and the development plan as approved by the Authority.

(3) Money in the reserve fund shall be invested by the Fund Manager in accordance with these Regulations, for utilisation of the trust in the event of a cessation of contribution payable by the licensee in accordance with regulation 25(b) of these Regulations.

(4) Money in the administrative expense fund account shall be utilised solely for administrative costs in accordance with regulation 25(c) of these Regulations.

(5) Administrative costs shall consist of reasonable —

(a) out-of-pocket expenses for the Board of Trustees;

(b) remuneration for executive members of the management committee;

(c) out-of-pocket expenses for non-executive members of the management committee;

(d) out-of-pocket expenses for members of the advisory committee;

(e) fees for services rendered by the Fund Manager;

(f) fees payable to auditors appointed; and

(g) costs necessary for administration of the trust and the Fund.

B 906

(6) Any money not utilised from the administrative expense fund at the end of each year shall be remitted into the capital fund account.

Withdrawals
from the
Fund

27. Withdrawals shall not be made from the Fund —

(a) unless one of the signatories to the account authorising the withdrawal is the representative of the licensee;

(b) unless the withdrawal complies with an annual host community development plan submitted to the Authority; or

(c) where the withdrawal overdraws or takes the account into negative balances.

Reduction of
administrative
cost

28.—(1) Where the available sum for the administration of the Fund is insufficient, the licensee shall have the power to make the following necessary adjustments to cater to the ongoing operations —

(a) reduction of the number of members of the Board of Trustees, provided that the number of members of the Board of Trustees shall not be less than three at any given period;

(b) discontinue contribution to the reserve fund, disengage the Fund Manager or decline to hire a Fund Manager in accordance with these Regulations;

(c) reduction of the frequency of meetings of the Board of Trustees, provided that the number of meetings held by the Board of Trustees in a year shall not be less than four;

(d) reduction of the number of members of the management committee under section 247 of the Act, provided that such number of members shall not fall below five at any given period;

(e) reduction of the frequency of meetings of the management committee, provided that the management committee shall meet at least four times in a year; and

(f) reduction of the frequency of meetings of the host communities advisory committee under section 249 of the Act, provided that the number of meetings shall not fall below four times in a year.

(2) Where there are more host communities than the required seats on the Board of Trustees, the licensee shall, in consultation with the communities involved and with the prior approval of the Authority, place the host communities into clusters and membership of the Board of Trustees shall be rotated among the clusters.

29.—(1) The capital fund and administrative cost fund shall be managed by the Board of Trustees and licensee respectively, who shall ensure that any payment into and out of the accounts shall be in accordance with the Act and the host communities development plan approved by the Authority.

Management of the Capital Fund and the Administrative Cost Fund

(2) The Board of Trustees and licensee in administering the capital fund and administrative cost fund shall —

- (a) act with honesty and fairness;
- (b) act with skill, care and diligence;
- (c) act in the interest of the host communities;
- (d) act with independence, objectivity and in accordance with the Act;
- (e) apply the sums in accordance with the host communities development plan and the Act;
- (f) not participate in any business relationship or accept any gift that may affect its independence or objectivity;
- (g) disclose any conflict of interest; and
- (h) keep proper account and accurate records.

30. The reserve fund shall be managed by the Fund Manager in accordance with the provisions of the Act and these Regulations, provided that where requested by the licensee and the Board of Trustees, the Fund Manager shall disburse the funds for utilisation.

Management of the Reserve Fund

31.—(1) The licensee shall submit its annual report to the Authority in relation to the Fund, not later than 31st May of the particular year.

Annual report on the Fund

(2) The annual report shall include —

- (a) an audited financial account of the Fund detailing amongst others, payments into and out of the funds and the purposes for which such payments were made;
- (b) any approved withdrawals outside of the approved host communities' development plan and the basis for such withdrawals; and
- (c) any other information as may be prescribed by the Authority from time to time.

32.—(1) The Board of Trustees shall, within one month of the establishment of the Fund, appoint the Fund Manager on the recommendation of the management committee.

Appointment of the Fund Manager

(2) A person shall not be appointed as a Fund Manager in respect of the reserve fund unless —

- (a) it is incorporated under the Companies and Allied Matters Act;
- (b) the total market value of assets managed by the Fund Manager is not less than 5 years projected value of the value of the Reserved Fund;

Duties of
the Fund
Manager

(c) it is registered as a Fund Manager with the Securities and Exchange Commission; and

(d) it is registered with the Authority.

33. The Fund Manager shall in administering the reserve fund —

(a) act with honesty and fairness;

(b) act with skill, care and diligence;

(c) act in the interest of the host communities;

(d) act with independence and objectivity;

(e) communicate with the Board of Trustees in a timely and accurate manner;

(f) not participate in any business relationship or accept any gift that may affect its independence or objectivity;

(g) exercise due diligence in ensuring the maintenance of the reserve fund and shall ensure that there is no avoidable deterioration in value;

(h) institute mechanisms to ensure that proper care is taken for the collection, monitoring and supervision of the reserve fund;

(i) avoid conflict between its interests and the interest of the host communities;

(j) disclose the interests of its directors and management to the Board of Trustees; and

(k) keep proper and accurate records, including details of its decision-making process in dealing with any investment with justifications for such decisions and forward same to the Board of Trustees.

Cessation of
office of the
Fund
Manager

34.—(1) The Fund Manager shall cease to act as a Fund Manager where —

(a) its registration with the Securities and Exchange Commission is withdrawn or revoked in accordance with the Investments and Securities Act;

(b) it becomes bankrupt or makes a compromise with creditors or a moratorium is granted on its debt or such other comparable measures are taken against the Fund Manager;

(c) it is found guilty of a crime involving fraud or dishonesty or any other felony or it is sanctioned for misconduct by Securities and Exchange Commission or any professional body or association; or

(d) it resigns its appointment as Fund Manager by a notice to the Board of Trustees.

(2) The Board of Trustees shall notify the Authority through the licensee of the removal or resignation of a Fund Manager within 14 days of the removal or resignation.

(3) The Board of Trustees shall appoint another Fund Manager not later than 30 days after the removal or resignation of a fund manager and notify the Authority of such appointment through the licensee.

PART VI — INVESTMENT OF THE RESERVE FUND
AND REPORTING OBLIGATIONS

35.—(1) Money standing to the credit of the reserve fund may be invested by the Fund Manager —

Criteria for
investment
in securities

- (a) on the approval of the Board of Trustees; and
- (b) with the objectives of safety and maintenance of fair returns on amounts invested.

(2) The Fund Manager shall only invest in allowable instruments prescribed under the relevant Regulation on Investment of Pension Fund Assets subject to the quality ratings set out in that Regulation.

(3) The funds in the reserve fund shall not be invested in unlisted securities by the Fund Manager, where the investment —

- (a) is in early or start up stage of the target company, or may qualify as seed capital;
- (b) shall cause the value of the fund so invested in the securities of the unlisted company to exceed 5% of the net asset value of the reserve fund; or
- (c) is in a company where the board, management, or affiliate of the Fund Manager or licensee jointly or severally have more than 5% equity stake.

(4) Fund Managers shall not invest funds in the reserve fund in any instrument that is subject to any type of prohibition or limitation on sale or purchase of such investment except close-ended funds.

(5) Fund Managers shall maintain a diversified portfolio of allowable instruments and avoid undue concentration in one of the allowable instruments.

(6) The proportion of reserve fund invested in a particular allowable instrument shall not exceed 5% of the amount in the reserve fund.

(7) Fund Managers shall not apply funds in the reserve fund by way of loans or credit or as collateral for any loan taken by any person including the licensee.

(8) Interests derived from any investment shall be dealt with as directed by the Board of Trustees subject to section 246 of the Act.

(9) In accordance with section 256 of the Act, interests, dividends, profits, investments and other incomes accruable to the reserve fund shall be tax exempt.

(10) For the purpose of this part of these Regulations, where the Authority is required to make a decision and the Authority's approval or refusal is not communicated to the licensee within a period of 90 days, the licensee's application for approval is deemed approved.

Reports

36.—(1) A licensee shall submit an annual report of its activities on the trust in the preceding year accompanied by the audited accounts of the trust to the Authority, not later than 31st May of the particular year.

(2) The annual report shall be in such form as the Authority shall specify from time to time and shall contain sufficient details to show the financial position of the Fund at any given time, the list of proposed projects for the host communities for the following year and status of executed or ongoing projects for the host communities and cost of the individual projects.

(3) The Authority may, for the purpose of clarifying a statement in the annual report, require the licensee to provide additional documents or information which may include receipts of purchase, contracts with third parties, bank statements, or title documents.

PART VII — MISCELLANEOUS PROVISIONS

Contravention
of these
Regulations

37.—(1) A person who —

(a) fails to comply with any of the requirements specified in these Regulations;

(b) makes false, inaccurate, incomplete, or misleading information in any record or report;

(c) fails to comply with a notice, guideline or directive issued by the Authority;

(d) fails to remit funds within the stipulated period pursuant to section 253 of the Act;

(e) fails to discharge surviving obligations pursuant to section 237 of the Act; or

(f) fails to provide any information, document or report required to be provided to the Authority pursuant to the Act or these Regulations within the prescribed period,

is liable to an administrative penalty issued by the Authority not exceeding ₦5,000,000 and in addition, the Authority may suspend or revoke the licence or in the case of a refinery make a recommendation to the Minister responsible for Petroleum Resources, for the revocation of the refinery licence.

(2) A licensee or an operator appointed by the licensee who fails to incorporate a trust within the timeline stated in the notice under regulation 9(1) of these Regulations, is liable to an administrative penalty of ₦1,000,000.

(3) The Authority may, in addition to the penalty prescribed in subregulation (2) of this regulation, revoke the licence of the defaulting licensee or operator or in the case of a refinery make a recommendation to the Minister responsible for Petroleum Resources, for the revocation of the refinery licence.

(4) Where the licensee fails to undertake the remedial action or fails to comply with the directives of the Authority pursuant to regulation 10(4) of these Regulations, the licensee is liable to an administrative penalty of ₦5,000,000.

(5) A licensee who fails, neglects or refuses to submit its annual returns to the Authority in line with regulation 31 (1) of these Regulations is liable to —

- (a) an administrative penalty of ₦100,000.00; and
- (b) in the case of a continuous offence, to an additional administrative penalty of ₦100,000.00 for each day during which the offence continues.

(6) Where the licensee provides evidence that the inability to submit annual returns within the prescribed period is due to the refusal of the Board of Trustees to provide same promptly, the licensee shall be entitled to deduct the administrative penalty paid pursuant to sub-regulation (2) of this regulation from the 3% annual contribution.

(7) Where a withdrawal from the Fund is not in compliance with the Act, these Regulations or the approved host communities development plan, the licensee is liable to an administrative penalty not exceeding ₦5,000,000.

(8) A person who fails to comply with the provisions of regulation 32 of these Regulations is liable to an administrative penalty of not less than ₦2,500,000 and a further sum of ₦250,000 for every day during which the contravention persists.

(9) A Fund Manager who fails to comply with the provisions of regulation 35 of these Regulations is liable to an administrative penalty of ₦10,000,000 or such additional sum as may be prescribed by the Authority and where the investment resulted in a diminution of the fund, the Fund Manager shall be personally liable to make up for the loss.

38.—(1) Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to designated facilities or disrupts petroleum operations 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 the Act within that financial year.

Vandalism

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

(3) Where an act of vandalism, sabotage or civil unrest occurs that causes damage to the facilities used in petroleum operations of the licensee within the host communities or disrupts petroleum operations, the licensee shall notify the Authority within 24 hours of the disruptive act.

(4) A licensee shall within 15 days of the disruptive act, submit a report on the disruptive act to the Authority and the Board of Trustees.

(5) The report referred to in subregulation (4) of this regulation shall contain —

- (a) a description of the disruptive act;
- (b) the area of the licensee's operations affected by the disruptive act;
- (c) the extent of damage to the licensee's facilities used in midstream or downstream petroleum operations;
- (d) an estimate of the value of petroleum liquids spilled or natural gas released as a result of the act;
- (e) the estimated cost of repair of damage to the licensee's facilities used in midstream petroleum operations, and where the damage requires a replacement of the facility, the estimated cost of the replacement; and
- (f) in case of a shut-down of the licensee's operations, the operating expenditures incurred during the shutdown period;

(6) The damage calculated shall not include loss of profits or other losses not specifically included in this regulation.

(7) The Authority shall, on the basis of the reports from the joint investigation team and loss adjusters appointed by the licensee, determine whether the disruptive act was due to technical or natural cause or third-party interference and establish the costs and tax recovery and any adjustment required in the cash flow.

Cessation of
licensee's
interest

39.—(1) Where a licence is assigned, transferred or surrendered, revoked, terminated or expired in accordance with the Act, the licensee shall fulfil its surviving obligations and where these obligations have been complied with, the licensee shall have no further obligations, partly or wholly, with respect to the area that was surrendered.

(2) Where a licensee adjusts its area of operations in a manner that increases or reduces the host communities earlier covered by the trust, the area of operations shall be considered adjusted for the purpose of calculating the annual contribution to the Fund.

(3) A licensee shall, in the event of the adjustment stated under subregulation (2) of this regulation, apply to the Authority for its approval of the —

- (a) host communities that the licensee —
 - (i) proposes to include in the trust, or
 - (ii) no longer considers its responsibility;

- (b) revised or new Board of Trustees;
- (c) revised constitution and the Host Communities Development Trust;
- (d) revised forecast of contributions pursuant to section 240(2) of the Act;
- (e) revised host communities' development plan; and
- (f) amount in the reserve fund to be allocated to the host communities for which the operations of the licensee has ceased.

(4) Surviving obligations of the licensee shall not include any matter related to the management and utilisation of the reserve fund pursuant to these Regulations.

(5) Where an amount in the reserve fund is remaining upon the cessation of activities by the licensee, the Board of Trustees shall continue to manage the funds and report to the Authority in the manner contemplated by the Act as if it were the licensee.

(6) With respect to the host communities for which the operations of the licensee have ceased, pursuant to subregulation (2) of this regulation, the Board of Trustees shall continue to manage the funds and report to the Authority in the manner contemplated by the Act as if it were the licensee.

40.—(1) Where a dispute arises between one or more host communities or between a host community and a licensee or in connection with a trust, the disputing parties shall follow the procedure set out in this regulation to resolve the dispute.

Grievance
mechanism
and conflict
resolution
procedure

(2) In the case of a —

(a) community dispute with the licensee, the aggrieved host community shall give a dispute notice to the licensee and the Board of Trustees, support the notice with relevant documents and after service of the dispute notice, the licensee and the Board of Trustees shall attempt in good faith to resolve the dispute; and

(b) Board of Trustees dispute with the licensee, the Board of Trustees shall give a dispute notice to the licensee, support the notice with relevant documents and after service of the dispute notice, the licensee and the Board of Trustees shall attempt in good faith to resolve the dispute.

(3) A copy of the dispute notice and the resolution agreed to by the parties shall be submitted to the Authority.

(4) Where a licensee and Board of Trustees are unable to resolve the dispute within 30 days after service of the dispute notice in sub-regulation (2) of this regulation, any of the disputing parties may refer the dispute to the Authority or another party for mediation.

(5) A mediation, whether referred to the Authority or otherwise, shall be initiated by a party serving a mediation notice in writing to the other party to the dispute, referring the dispute to mediation.

(6) A copy of the mediation notice, whether the mediation has been referred to the Authority or otherwise, shall be sent to the Authority.

(7) The resolution of a dispute referred to the Authority shall be undertaken by the Midstream and Downstream Petroleum Alternative Dispute Resolution Centre (Centre) in the following manner —

(a) the Centre Coordinator shall appoint a mediator to resolve the dispute in accordance with the rules of the Centre;

(b) the mediation shall commence not later than 30 days after the service of mediation notice; and

(c) unless otherwise agreed by the parties, the mediation shall be concluded within 60 days of the issuance of the mediation notice.

(8) A mediation under these Regulations shall be held in Nigeria at a venue agreed by the parties, failing which, it shall be held in the state capital of the host community.

(9) Any settlement reached between the disputing parties pursuant to the mediation, whether by themselves or through the Authority, and duly signed by disputing parties or their representatives is final and binding on the parties.

(10) Where the Authority is unable to resolve the dispute within 60 days of the dispute being referred to it, the disputing parties may refer the dispute to an Arbitrator under the Arbitration and Mediation Act, No. 74 of 2023.

(11) Final resolution of the dispute by the Authority shall not increase the budget of the trust unless the dispute relates to inaccurate calculation of the budget.

Transfer of
existing
Host
Communities
Development
projects and
schemes

41.—(1) Prior to the incorporation of a trust pursuant to section 235(1) of the Act, the licensee shall make arrangements for the effective transfer of existing host community development projects and schemes to the Trust, and upon the establishment of the trust and Fund —

(a) select and transfer all the communities under any of its existing memorandums of understanding or any other agreement, community development programmes and corporate social responsibility schemes as host communities' beneficiaries under the applicable trust to be established pursuant to the Act;

(b) transfer any money accrued in any account as its annual payment obligation under such arrangements to the host community Fund;

(c) transfer all investable instruments under any existing memorandum of understanding or any other agreement to the reserve fund;

(d) transfer all development projects, schemes, assets and liabilities under any existing memorandum of understanding or any other agreement to the trust; and

(e) ensure the continued execution of all development projects or schemes in paragraph (d) of this sub-regulation by the trust.

(2) The licensee shall notify the Authority of the arrangements made under this regulation.

42.—(1) A holder of a petroleum prospecting licence or petroleum mining lease who has established a host communities development trust that applies to midstream designated facilities that ordinarily may have been the subject of these Regulations shall —

Exemptions

(a) not later than three months from the commencement of these Regulations apply to the Authority to be exempted from establishing a Trust and Fund for the midstream designated facilities; and

(b) submit an annual report of its host communities activities in respect of the midstream designated facilities in the preceding year accompanied by the audited accounts of the trust to the Authority, not later than 31st May of the particular year.

(2) Where the holder of a petroleum prospecting licence or petroleum mining lease divests its licence or lease in accordance with the Act and retains its midstream facilities, it shall —

(a) notify the Authority of the divestment; and

(b) not later than three months from the conclusion of the divestment incorporate a trust for the midstream designated facilities in accordance with these Regulations.

43. The Authority may issue guidelines, frameworks, rules, templates and directives for the effective implementation of these Regulations.

Authority to make guidelines, etc

44. In these Regulations —

Interpretation

“*Act*” means the Petroleum Industry Act, No. 6, 2021;

“*advisory committee*” means the host communities advisory committee set up pursuant to section 249 of the Act;

“*annual contribution*” means at least 3% of a licensee’s actual annual operating expenditure of the preceding financial year in the midstream petroleum operations affecting the host communities for which the applicable host communities development trust fund was established;

“*applicable law*” means all applicable laws, statutes, rules, regulations, official directives, ordinance, licence, permits or orders of any competent authority (whether administrative, legislative, executive or otherwise) including judgments, orders and decrees of courts, commissions or bodies exercising similar functions in each case as is in effect from time to time;

“*area of operation*” has the meaning ascribed to it under the Act;

“*Authority*” means the Nigerian Midstream and Downstream Petroleum Regulatory Authority;

“*Board of Trustees*” means the governing board of the Trust established under section 242 of the Act;

“*Companies and Allied Matters Act*” means the Companies and Allied Matters Act, No. 3, 2020;

“*designated facility owner*” means the owner or operator of petroleum crude oil and natural gas transportation pipelines, bulk storage tank farms, refineries and gas processing plants in midstream petroleum operations and petrochemical plants;

“*designated facilities*” has the meaning ascribed to it under the Act;

“*disruptive act*” means an act of vandalism, sabotage or other civil unrest that causes damage to designated facilities or disrupts petroleum operations within the host communities and includes lock out or lock down of the facility by the host community;

“*Fund*” means the host communities development trust fund established by a licensee pursuant to the Act and these Regulations;

“*host community*” means communities situated in or appurtenant to the area of operation of a designated facility owner or licensee and any other community as may be determined under the Act or these Regulations;

“*licence*” means a licence issued by the Authority in respect of midstream or downstream petroleum operations;

“*licensee*” means a holder of a licence whose area of operation is located in or appurtenant to a host community, and shall include the owner or operator of designated facilities as prescribed in the Act;

“*littoral community*” means a community appurtenant or adjacent to Nigerian territorial waters where midstream petroleum operations are undertaken in shallow or deep water;

“*management committee*” means the committee set up under section 247 of the Act;

“*midstream petroleum operations*” means midstream gas and petroleum liquids operations;

“*NGN*” means Nigerian Naira;

“*Trust*” means the midstream host communities development trust;

“*trustee*” means a member of the Board of Trustees; and
“*year*” means a period of a year from any day during the year, in
accordance with the Gregorian calendar.

45. These Regulations may be cited as the Midstream Petroleum (Host Communities Development Trust) Regulations, 2024. Citation

MADE at Abuja this 30th day of October, 2024.

ENGR. FAROUK AHMED
Authority Chief Executive
Nigeria Midstream and Downstream
Petroleum Regulatory Authority