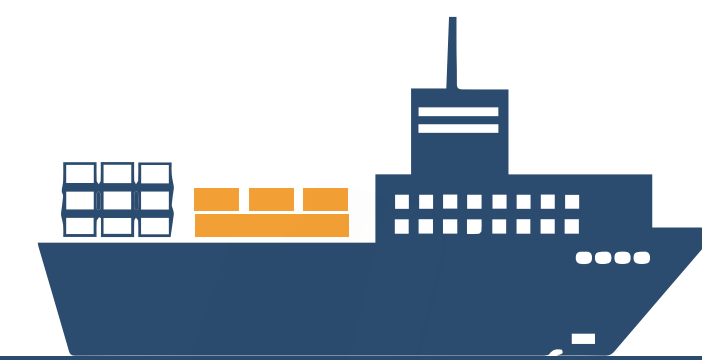




ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



INTRODUCTION

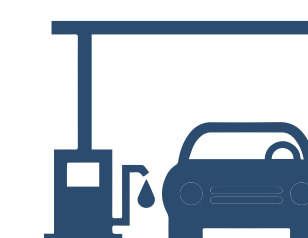


25%
of the job is
technically done

Technically, the job is only 25 percent done. The Petroleum Industry Governance Bill — one of the four bifurcations of the ageless Petroleum Industry Bill (PIB) — was passed by the Senate last week (the other three are still pending). Well, half loaf — even a quarter loaf, in this case — is better than none!

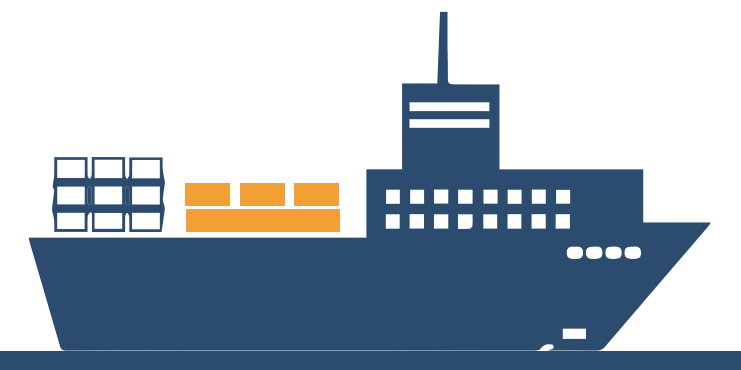


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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



1

WHAT IS THE PETROLEUM INDUSTRY GOVERNANCE BILL



This is not the Petroleum Industry Bill. This is the Petroleum Industry Governance Bill. It does **NOT** have details on fiscal arrangements (taxes and royalties) and host communities.

It is sponsored by the Senators led by Senator. Tayo Alasoadura and co-sponsored by 28 other senators. This is a Private Members' Bill

The bill will replace Nigeria's main legislation in the Oil and Gas Industry written in 1969 and NNPC Decree of 1997.

THE MAIN OBJECTIVES OF PIGB

3

To promote transparency and accountability

2

To establish framework for creation of commercially viable petroleum entities

1

To create the governing institutions with clear and separate roles

4

To foster a conducive business environment for petroleum industry operations.



THERE WERE SEVEN INSTITUTIONS IN THE PROPOSED BILL BUT TWO INSTITUTIONS WERE ADDED IN THE FINAL BILL

THE MINISTER

THE MINISTRY OF PETROLEUM INCORPORATED

THE NIGERIA PETROLEUM REGULATORY COMMISSION

THE NIGERIA PETROLEUM ASSETS MANAGEMENT COMPANY

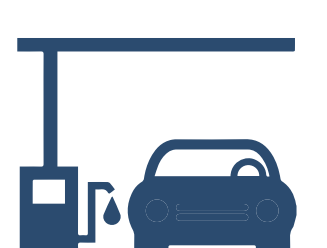
THE NATIONAL PETROLEUM COMPANY

PETROLEUM EQUALISATION FUND

NIGERIA PETROLEUM LIABILITY MANAGEMENT COMPANY



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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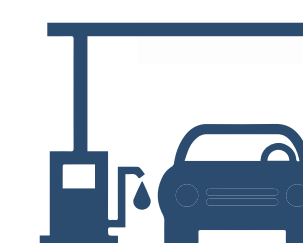
HOW POWERFUL IS THE MINISTER OF PETROLEUM



The powers of the Minister of Petroleum were reduced in the final bill, as s/he may NO longer commission, grant, amend, renew, extend or revoke any licence. This role shall now be handled by the National Petroleum Regulatory Commission. The Act assigns s/he the responsibility of determining, monitoring and formulating these policies.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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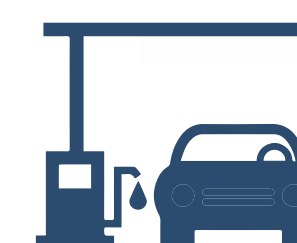
HOW WIDE ARE THE POWERS OF THE MINISTER



In case of national emergency, the Minister has the right to all petroleum and petroleum products obtained. The Minister, in the interest of the nation, has the first right to buy petroleum products, specifically products refined locally. If anyone fails to obey the instruction issued by the Minister on such issues, s/he is liable on conviction to forfeiture of the petroleum product and facilities that are the subject of the offence. The number of years in the proposed bill was raised from six months to 10 years to properly cite this act as economic sabotage. The passed bill removed the option of fine.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



4

WHO IS THE CURRENT MINISTER OF PETROLEUM

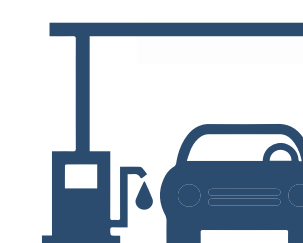
?

This position is currently shared between the President who is the current Minister of Petroleum and the State Minister of Petroleum. The law does not state if the President may still hold conflicting roles of being a Minister of Petroleum and also lead the country.

Without this clarity, the position of the Minister held by the President can lead to abuse of power.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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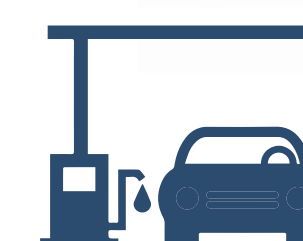
WHAT IS THE NIGERIA PETROLEUM REGULATORY COMMISSION



The Commission is the most powerful entity created under the Act. It takes up the assets, resources, funds properties, liabilities, interests and obligations of the **Department of Petroleum Resources (DPR), the Petroleum Inspectorate and the Petroleum Products Pricing Regulatory Agency (PPPRA)**. It shall be in charge of regulating the entire industry. It shall keep award and keep register of oil blocks, monitor them, conduct regular audit of activities and also conduct bid rounds for oil blocks and administer unalloted crude oil acreages.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL

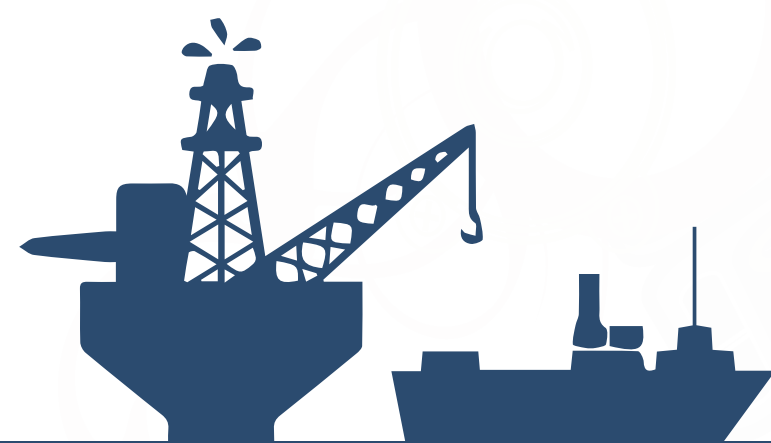


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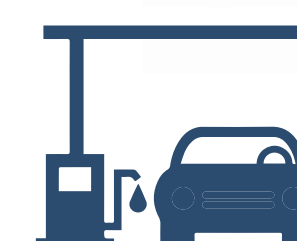
WHAT ELSE WILL THE REGULATORY AUTHORITY DO

?

In addition to its other advisory, monitoring and regulatory functions, the Nigeria Petroleum Regulatory Commission also has the prerogative to release the information provided by a petroleum operator to the public, if the Governing Board decides that such action is in the public interest.



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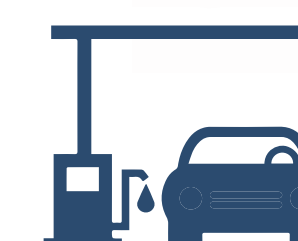
7 HOW SHALL THE BOARD OF REGULATORY AUTHORITY BE APPOINTED



The Commission shall be governed by a Governing Board and this Board shall be made up of eleven persons with representatives from Ministry of Finance, Ministry of Petroleum and Ministry of Environment. The Board shall be responsible for steering, providing direction and supervising the activities of the Commission.



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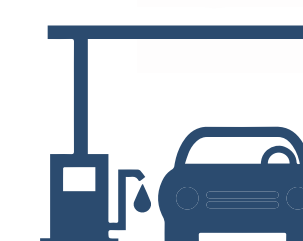
HOW SHALL THE BOARD BE APPOINTED

?

They shall all be appointed by the President, subject to confirmation by the Senate. Appointment of Chairman and non-executive heads will be a tenure of four years, renewable only once. The executive heads shall be appointed for a tenure of five years subject to be renewable for another term.

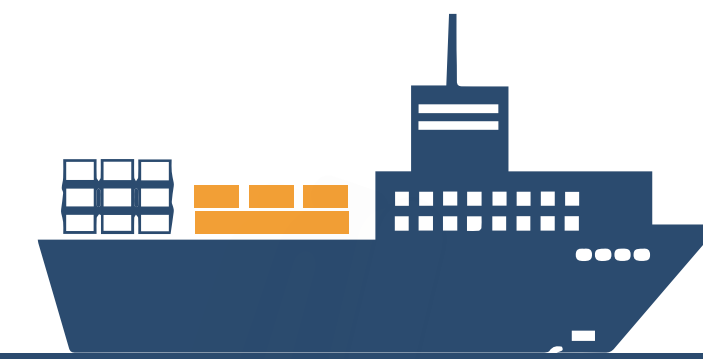


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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL

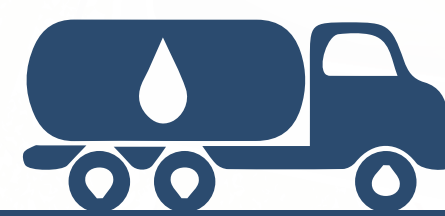


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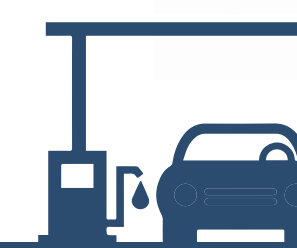
DOES THE MINISTER OVERSEE THE COMMISSION' BOARD

?

Yes, the Minister shall oversee the work of the Commission and issue general policy directions to the Commission as long as they are not in conflict with the Act. **We hope this will not be abused.**

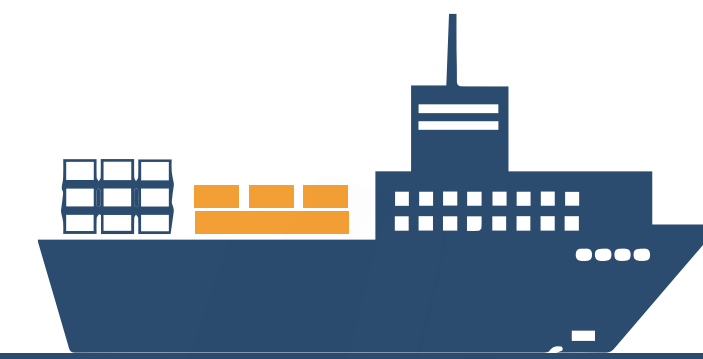


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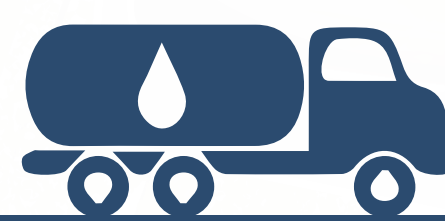


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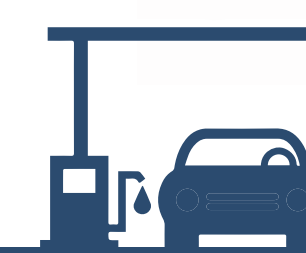
HOW DOES THE NIGERIA PETROLEUM REGULATORY COMMISSION RELATE WITH OTHERS



In the final bill passed by the legislature, it was stated that the Commission does not need to consult with Ministry of Environment on the issue of environmental protection. **We wonder why.**



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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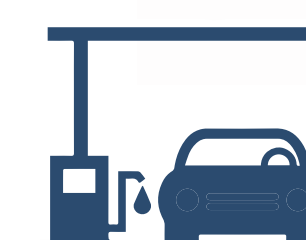
**IS THE REGULATORY COMMISSION ALLOWED TO MAKE
NEW REGULATIONS BASED ON THE ACT**

?

The Bill allows the Commission to make new rules subject to public hearing. Any rule made without public hearing **shall not last more than six months**. In cases of conflict, the commission may seek technical advice or direct anyone affected by its order to seek judgment from the Federal High Court.



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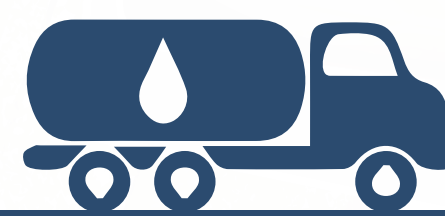
12

**CAN THE PRESIDENT REMOVE A MEMBER OF THE
REGULATORY COMMISSION**

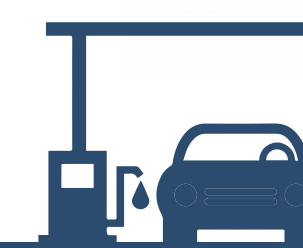
?

Yes, for numerous reasons and also if the President thinks s/he can no longer function in the office. Express reply to the President's query is allowed and such removal is not subject to ratification by the Senate.

Is this fair for an independent body? No chance!



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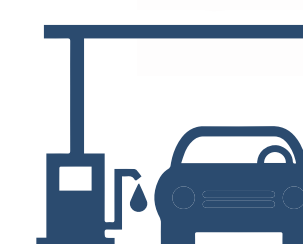
**CAN SOMEONE INVOLVED IN THE OIL INDUSTRY
BECOME MEMBER OF THE BOARD**

?

Yes. If such person declares their interest and it is satisfactory to the President that there shall not be a conflict of interest. **We believe this should not be allowed at all. They should be no clauses.**



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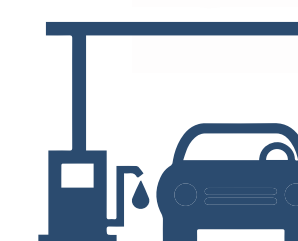
MAY THE REGULATORY COMMISSION ACCEPT GRANTS

?

Yes. It may accept grants/gifts if they are not received from persons or organisations being regulated by the commission. A board member may not also accept such gifts for personal use. **We think this should be removed totally.**



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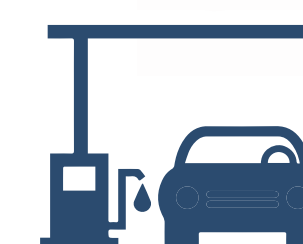
**IS ANYONE ALLOWED TO SUE THE REGULATORY COMMISSION
IN THE COURT OF LAW**

?

Yes. However, NO one shall sue the commission within one year after the bill is passed. The Commission shall have a Special Investigation Unit for detection of offences and also keep surveillance of oil and gas installations.

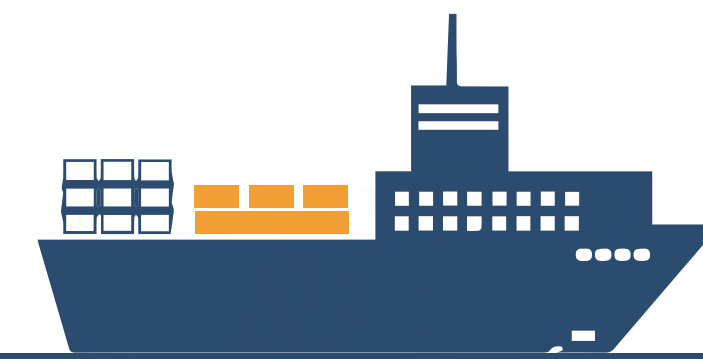


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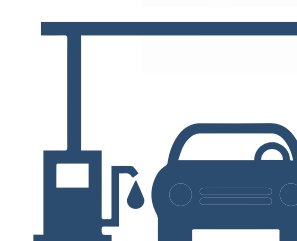
16

FUNCTION OF THE MINISTRY OF PETROLEUM

The Ministry of Petroleum, now to be known as the Ministry of Petroleum Incorporated, shall hold the shares of government in all successor companies from government investments, such as NNPC.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



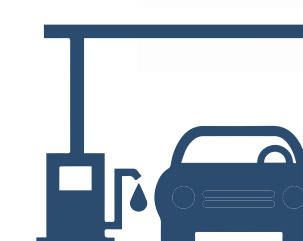
17

THE FATE OF NNPC

Upon signing the bill into law, and within six months, the Minister, through the CAC, shall incorporate two companies known as **Nigeria Petroleum Assets Management Company & National Petroleum Company.** The Nigeria Petroleum Assets Management Company shall manage the Production Sharing Contracts while National Petroleum Company shall be responsible for all other assets such as Joint Ventures.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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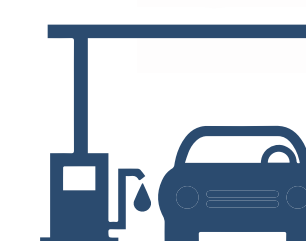
WHAT HAPPENED TO THE MINISTER'S POWERS



The Minister does not have powers to create new entities as stated in the initial bill presented to the Senate - **discretionary powers of the Minister reduced**. However, the Minister shall prepare the clear plan and timeline for transitioning of new entities.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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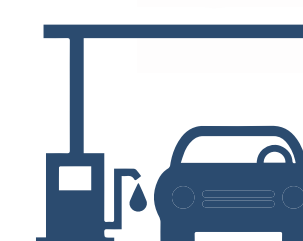
HOW WILL NNPC SUCCESSOR COMPANIES BE HELD



The shareholding was amended. The Ministry of Petroleum Incorporated shall now hold 40%, **The Ministry of Finance Incorporated shall hold 40% and 20% shall be held by Bureau of Public Enterprises.** The Minister shall determine the composition of the Board of the Management Company and this company shall hold the shares on behalf of the Nigerian government.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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WHO LEADS THE NNPC SUCCESSOR COMPANIES

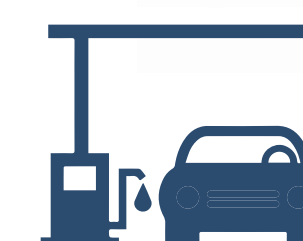


The Nigeria Petroleum Assets Management Company and the National Petroleum Company shall be managed by different boards of 11 persons each. It was nine persons in the initial bill. The shareholders of the successor companies shall appoint an independent committee to choose the Board of Directors.

Appointment of such directors are still subject to the approval of the President.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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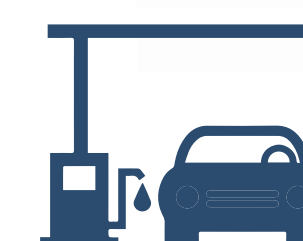
EMPLOYEES, ASSETS, RIGHTS, LIABILITIES ETC.

?

The Minister shall, within 12 months of incorporation, issue an order to transfer some employees, assets, liabilities, rights, financial arrangements and obligations to the successor companies. With the Minister leading this all the way, **this raises a red flag that requires one to approach with caution.**



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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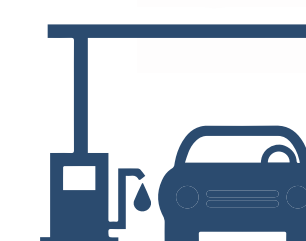
HOW SHALL THE ASSET MANAGEMENT COMPANY BE FUNDED

?

The Minister shall present a budget within six months for appropriation of funds for initial capitalisation. All costs shall be paid from the budget and the dividends shall be paid to the government coffers. The shareholders appointed by the government shall approve the budget and operational plan.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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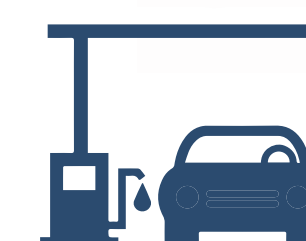
HOW INDEPENDENT IS ASSET MANAGEMENT COMPANY



The Minister still plays a huge role here. S/he may make further discretionary transfer orders on NNPC transition but her transferred staff must enjoy no less than the favourable terms they had with NNPC. The successor companies shall continue with current pension contributions and no stamp duty or capital gains tax can be charged on its transactions, except in few cases.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL

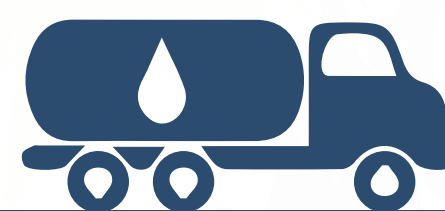


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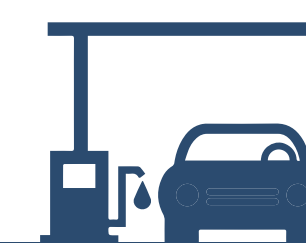
WHAT HAPPENS TO THE SHARES OF THE SUCCESSOR COMPANY

?

After incorporation, within five years, government shall sell 10% of its shares and shall sell at least another 30% within next five years. After divestment of 10% in five years, appointment of the Board of the National Petroleum Company shall NOT be subject to approval of the President. The initial bill recommends that this should happen after 10 years.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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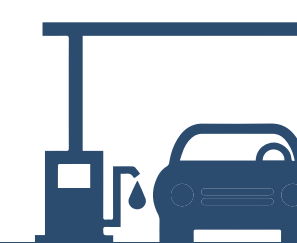
WHAT HAPPENS TO DPR AND PPPRA



Within three months of the passage of the bill, all the staff, liabilities, assets and others shall be transferred to the Nigeria Petroleum Regulatory Commission. The Minister must submit a detailed transition plan within 30 days.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL

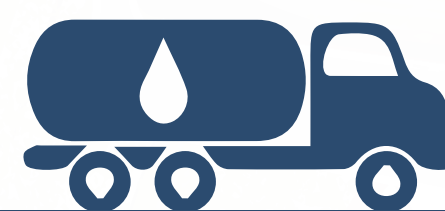


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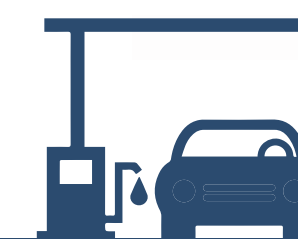
WHAT WILL HAPPEN TO THE LIABILITIES OF NNPC AND OTHER AGENCIES



Unlike the initial bill, the new entities will not directly bear the liabilities of the NNPC. They will only own the assets. A new entity of Nigeria Petroleum Liability Management Company will assume and manage the liabilities of NNPC and pensions of DPR.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL

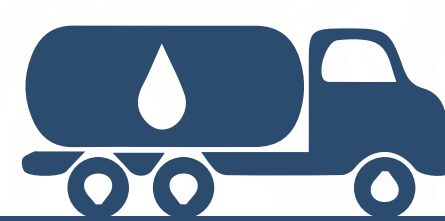


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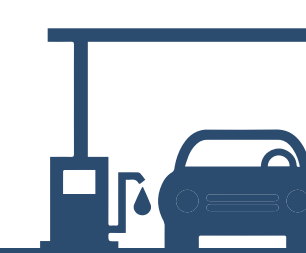
WHO ARE THE OWNERS OF NIGERIA PETROLEUM LIABILITY MANAGEMENT COMPANY



The Nigeria Petroleum Liability Management Company, formed after the Effective Date of the Act, shall be owned by the NNPC successors (National Petroleum Company, National Asset Management Company) and Nigerian Petroleum Regulatory Commission in ratio of **their debts or liabilities assumed by the new company.**

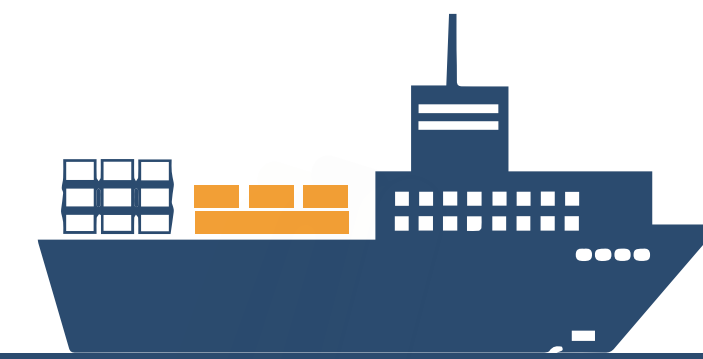


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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



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WHEN SHALL THE LIABILITIES END

?

Within 12 months, the Liability Management Company shall define a timeline and clear plan to exit all liabilities and the shareholders (NNPC successors and regulatory commission) shall develop clear plan to provide revenues for settlement of their respective liabilities.

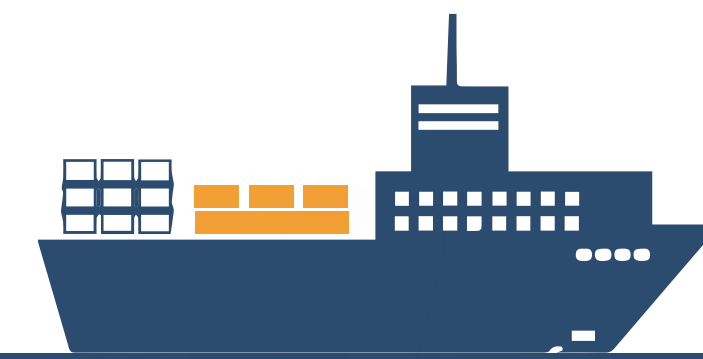


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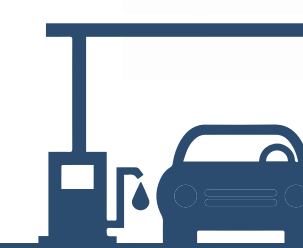
WHAT HAPPENS TO PETROLEUM EQUALIZATION FUND



This institution was not in the initial bill but was added to the passed document. There shall be a 5% levy on all petroleum products to ensure balance in price of petroleum products across the country, subject to the approval of the Minister. All surplus recoveries shall also be paid into this Fund.



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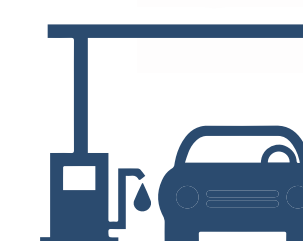
HOW POWERFUL IS THE INFLUENCE OF THE MINISTER ON PEF



The law allows the fund to be used for infrastructure purposes and the Minister may also discretionarily approve use of funds for other vague financial purposes. **This needs to be reviewed.** The board shall be constituted by 12 persons.



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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



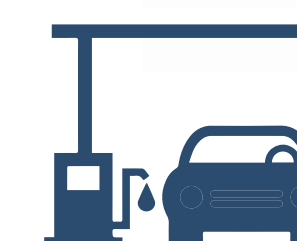
31

OUR THOUGHTS

The Minister is very powerful. Can any President allow such powers assigned to the minister be handled by another person but him/her? Can this entire process be completed in just one democratic term of four years? It is important for Nigeria to invest more powers in the institutions rather than in the Minister.

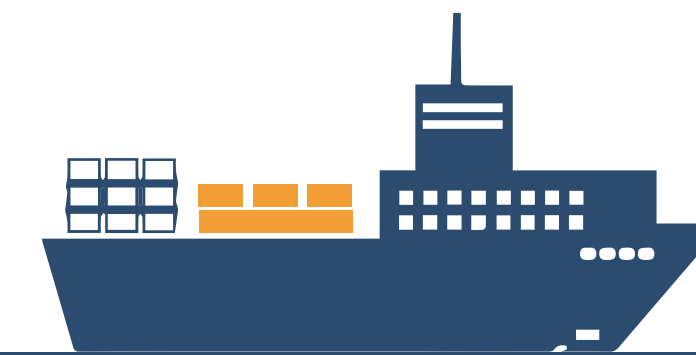


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ANALYSIS OF THE PETROLEUM INDUSTRY GOVERNANCE BILL



1

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2

To establish framework for creation of commercially viable petroleum entities

3

To promote transparency and accountability

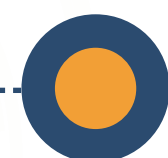
4

To foster a conducive business environment for petroleum industry operations.

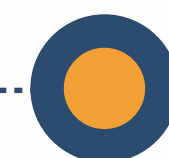




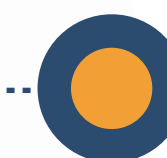
THERE WERE SEVEN INSTITUTIONS IN THE PROPOSED BILL BUT TWO INSTITUTIONS WERE ADDED IN THE FINAL BILL



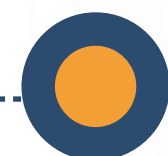
THE MINISTER



THE MINISTRY OF
PETROLEUM
INCORPORATED



THE NIGERIA PETROLEUM
REGULATORY
COMMISSION



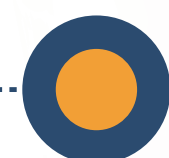
THE NIGERIA PETROLEUM
ASSETS MANAGEMENT
COMPANY



THE NATIONAL
PETROLEUM
COMPANY



PETROLEUM
EQUALISATION
FUND



NIGERIA PETROLEUM LIABILITY MANAGEMENT COMPANY



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