

REPORT OF THE CONFERENCE COMMITTEE ON THE PETROLEUM INDUSTRY GOVERNANCE BILL, 2018

The Conference Committee Report on the Petroleum Industry Governance Bill, 2018 was taken and approved in the *Senate* on Wednesday, 28 March, 2018.

In line with its standard practice, the National Assembly referred the Bill to the Legal Directorate of the National Assembly for *Clean-up* to enable the Clerk to the National Assembly transmit same to Mr. President and Commander in chief of the Armed Forces of the Federation for his assent. The Legal Services Directorate made some observations that required further legislative action.

FURTHER LEGISLATIVE ACTION

In view of the foregoing, the Conference Committee met to fine tune the areas of concern pointed out by the Legal Services Directorate as follows:

1. In its observations, the Legal Directorate stated that ***“Clause 13 of the Bill establishes the Board for the Commission and there is no provision for the Secretary of the Board”***.

Committee Recommendation

Rationale: *The recommendation of the Legal Directorate of the National Assembly (hereafter “Legal Directorate”) suggests the need for provisions for appointment of Secretary for the Board of the Commission and for the Commission. The Committee accepts the request to create the office of the Secretary for the Commission who shall also serve as the (non-member) Secretary of the Board, while rejecting the request for creating a Secretary for the Board of the Commission. In line with this, the request for creation of Secretary for the Board in Section 13 is denied while the request for same in Section 20 of the Bill is granted. The Committee recommends the inclusion of the following provisions as Section 20 subsection 4 of the Bill:*

- 20. (4) There shall be appointed by the Commission a Secretary who shall be in charge of legal matters of the Commission. The Secretary who shall not be a***

member of the Board shall keep the records, issue notices of meeting, conduct the correspondence of the Board and perform such other duties as the Chairman or Chief Executive Commissioner may from time to time direct.

2. In its observations, the *Legal Directorate* stated that *"In Clauses 17 (1) (e) and 47 (1) (d) of the Bill, the phrase, "serious misconduct", is used but it is not defined anywhere in the Bill"*.

Committee Recommendation.

The Committee retains the provision in the Bill.

Rationale:The term "serious misconduct" or "gross misconduct" is used in legislative drafting as omnibus legal phrase to encompass all manners of grave misconduct whose particulars, facts or forms cannot be covered by any specific definition. A rule of interpretation of law will confine the interpretation of this provision to the act defined in the exclusion of any other unforeseen occurrence. Therefore we might be doing more than good in trying to define it.

3. In its observations, the *Legal Directorate* stated that – *"Clauses 33 (1) and 63 (1) of the Bill are ouster clauses and in conflict with the provisions of Sections 20 and 44 of the Sheriff and Civil Process Act Cap. S6, Laws of the Federation, 2004. The Combined effect of Clauses 33(1) and 63 (1) of the Bill is that the Court cannot levy execution process either by attaching the physical property of the Commission or National Petroleum Company, or by garnishee proceeding unless a 3 months' notice is given. However, if this is permitted, the power and independence of the judiciary is seriously undermined"*.

Committee Recommendation.

The Committee retains the provision in the Bill.

Rationale:Clauses 33 (1) and 63 (1) are not in any way ouster clauses they merely state that the public assets of the commission or company cannot be attached in any judgment execution. This is a general rule of law globally, that you cannot attach a lien on a public property, the philosophy being that, for the protection of the public good, one person cannot purport to own an asset belonging to the entire public by reason of a judgment. He should rather derive his judgment from

the earnings, or monies due to the public institution. Ouster Clauses on the other hand are clauses which seek to exclude the jurisdiction of the court to review or adjudicate on a particular matter.

4. In its observations, the *Legal Directorate* stated that – ***“In clause 95 (2) of the Bill, the Article of Association of the Management Company prepared by the Minister states the composition of the Board without a secretary. This conflict with section 293 of the Companies and Allied Matters Act Cap. C20 Laws of the Federation of Nigeria, 2004 which requires that every company shall have a Secretary”.***

Committee Recommendation.

The Committee retains the provision in the Bill.

The National Asset Management Company is a company that is to be incorporated in line with the provisions of the Companies and Allied Matters Act. The Act provides for the appointment of a Company Secretary for which the necessary procedures are contained in the Act. It is therefore unnecessary for this statute to provide further requirement for what has already been covered by the relevant extant law.

5. In its observations, the *Legal Directorate* stated that – ***“Under clause 102 of the Bill, the National Petroleum Company shall not be subjected to the provisions of the Fiscal Responsibility Act, 2007 and Public Procurement Act, 2007. The implication of this provision is that the National Petroleum Company shall neither be subjected to the accountability and transparency in fiscal operations required under the Fiscal Responsibility Act nor the due process in audits and public procurements under the Public Procurement Act.”***

Committee Recommendation.

The Committee retains the provision in the Bill.

The exclusion of the operation of the Nigeria Petroleum Company from the provisions of the Fiscal Responsibility Act 2007 and the Public Procurement Act is designed to insulate the Company from the bureaucratic draw-backs to which most government-owned companies and agencies are subject. The concept or


ideology behind the creation of the Nigeria Petroleum Company must be recalled, which is to create a private-public entity which can effectively compete in a competitive market. To burden this same institution with the requirements of government bureaucratic procurement processes will be antithetical to the concept of creation.

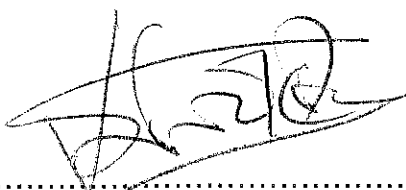
CONCLUSION

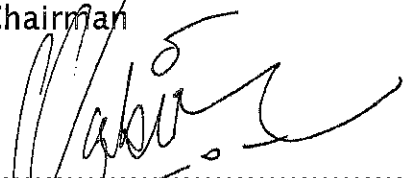
The *Senate* is called upon to approve the recommendations of the Conference Committee.

CONFERENCE COMMITTEE REPORT ON A BILL FOR AN ACT TO PROVIDE FOR THE GOVERNANCE & INSTITUTIONAL FRAMEWORK FOR THE PETROLEUM INDUSTRY AND FOR OTHER RELATED MATTERS, 2018

ENDORSEMENT PAGE


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Senator Omotayo D. Alasoadura
Chairman



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Hon. Victor Nwokolo
Co- Chairman

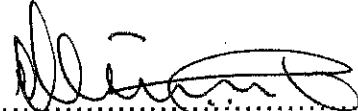

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Senator Kabir G. Marafa
Member

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Hon. Pwajok E. Gyang
Member

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Senator Albert Bassey Akpan
Member

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Hon. Lawal Abubakar Garba
Member


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Senator Gershom H. Bassey
Member

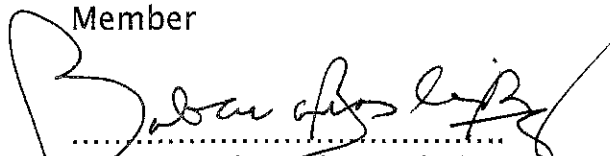

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Hon. Henry Nwawuba
Member

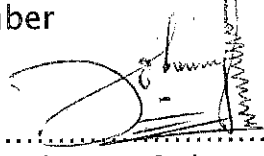
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Member

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Hon. Kehinde Odeleye
Member

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Senator Moallahyiddi Abubakar
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Hon. Sheriff Nur Mohammed
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Senator Baba Kaka Garbai
Member


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Hon. Johnson Oghuma
Member