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THE MIDSTREAM AND DOWNSTREAM PETROLEUM FEES REGULATIONS 2024: KEY CHANGES AND IMPLICATIONS FOR OPERATORS

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The Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) has released the gazetted Midstream *and Downstream Petroleum Fees Regulations 2024* (the "Fees Regulations"). This follows a stakeholder consultation, where operators, and other key industry players shared valuable insights on the draft regulations. The Fees Regulation was made pursuant to the powers conferred on the NMDPRA under the Petroleum Industry Act, No. 6, 2021,[1] with the approval of the Minister.

The objective of the Fees Regulations is to establish a clear framework for regulating midstream and downstream petroleum operations by prescribing the activities that require a licence, permit, authorization, or approval from NMDPRA. The Fees Regulations also set out the fees payable for the issuance, reissuance, and renewal of such regulatory licenses, permits, authorizations, and approvals, ensuring transparency and consistency in the licensing process. Lastly, the Fees Regulations defines the procedures for the payment of levies stipulated under Sections 47(2)(c) and 52(7)(a) of the Petroleum Industry Act ("PIA"). Below, we highlight the key points in the Fees Regulations and explore the potential implications for stakeholders in the sector.

KEY HIGHLIGHTS IN THE FEES REGULATIONS

Revised Fee Structure for Midstream and Downstream Petroleum Operations

Following stakeholder consultations, the *Fees Regulations* introduce revised fees for the grant, reissuance, and renewal of licenses, permits, authorizations, and approvals for midstream and downstream petroleum operations. These fees are specified in United States Dollars (USD) and Nigerian Naira (NGN) and are both non-refundable and non-transferable[2].

The Fees Regulations revoke and replace previously prescribed fees under various regulations, including the ***Petroleum Measurement Regulations 2023*, *Assignment or Transfer of Licence and Permit Regulations 2023*, *Midstream and Downstream Petroleum Operations Regulations 2023*, *Gas Distribution Systems Regulations 2023*, *Midstream Gas Flare Regulations 2023*, *Gas Trading and Settlement Regulations 2023*, *Midstream and Downstream Environmental Regulations 2023*, and the *Petroleum (Drilling and Production) (Amendment) Regulations 2019***.[3]

The updated fees are categorized into different schedules. The First Schedule covers fees for Wholesale Supply Licenses, replacing the fees in the ***Midstream and Downstream Petroleum Operations Regulations 2023*.** The Second Schedule details fees for establishing hydrocarbon processing facilities, petroleum liquids terminals, and service permits. The Third Schedule specifies measurement system fees, superseding the ***Petroleum Measurement Regulations 2023*.** The Fourth Schedule outlines environmental compliance fees for activities such as audits, studies, and impact assessments, replacing the ***Midstream and Downstream Environmental Regulations 2023*.** The Fifth Schedule provides fees for gas trading licenses, clearing house authorizations, and annual administrative charges, replacing those in the ***Gas Trading and Settlement Regulations 2023***[4].

Further, the Sixth Schedule prescribes fees for the assignment or transfer of licenses and permits, replacing those in the **Assignment or Transfer of Licence and Permit Regulations 2023.** The Seventh Schedule covers fees for pipeline-related activities under the *Petroleum Industry Act*. The Eighth Schedule specifies gas flaring fees for midstream petroleum operations, replacing the ***Midstream Gas Flare Regulations 2023*.** Lastly, the Ninth Schedule provides the fees for granting

[1] Sections 32 (a) and 33 (b) and (v) of the PIA
[2] Regulation 5(2), Fees Regulations 2024
[3] Regulation 7(1) & (2), Fees Regulations 2024
[4] Schedules 1-5, Fees Regulations 2024

and renewing gas distribution licenses, which replace those in the ***Gas Distribution Systems Regulations 2023*** [5]

Shift in threshold for classification of "Wholesale Customers"

The *Fees Regulations* introduce a significant reclassification of wholesale customers for crude oil and natural gas, modifying the thresholds set under the ***Midstream and Downstream Petroleum Operations Regulations 2023*** *("MDPO Regulations")*. Previously, wholesale customers were categorized as either purchasers of crude oil and petroleum liquids or purchasers of natural gas. However, the new Fees Regulations distinguishes between purchasers of crude oil and petroleum products, with increased capacity thresholds. Under the MDPO Regulations[6], a purchaser of crude oil and petroleum liquids was deemed a wholesale customer with an annual capacity of 500 litres or its equivalent and above[7]. The new Fees Regulations significantly raises this threshold, requiring an annual capacity of 65,000 barrels and above for a purchaser to be classified as a wholesale customer of crude oil. For petroleum products, a purchaser must now have an annual capacity of 10,000,000 litres or is equivalent and above to be classified as a wholesale customer[8]. These amendments ensures that only large-scale purchasers are subject to wholesale levies, reducing the financial burden on smaller operators and streamlining regulatory oversight for suppliers and the NMDPRA.

Statutory Levies and Remittance Obligations

The *Fees Regulations* outlines the procedure for remitting the statutory levy into the NMDPRA Fund ("Authority Fund") and the Midstream and Downstream Gas Infrastructure Fund ("MDGI Fund"). These levies are mandated under the *PIA 2021*, and requires that 0.5% of the wholesale price of petroleum products sold in Nigeria be paid into the Authority Fund, while an additional 0.5% of the wholesale price of petroleum products and natural gas sold in Nigeria is remitted to the MDGI Fund[9]. These levies apply to both imported petroleum products and those produced, processed, refined, and sold within Nigeria, ensuring adequate funding for regulatory oversight and infrastructure development in the sector[10].

The Federal High Court of Nigeria, in ***IHS (Nigeria) Limited & Anor v NMDPRA***[11], has upheld the NMDPRA's authority to impose and collect these levies. The court interpreted the phrase ***"sold in Nigeria" to include: (i) goods sold free on board (FOB) Nigeria or its territorial waters, (ii) goods loaded or offloaded for sale within Nigeria, and (iii) transactions that originate, occur, or conclude within Nigeria***"[12]. This ruling aligns with ***Regulation 13* of the *MDPO Regulations,*** further reinforcing NMDPRA's enforcement powers.

To ensure compliance, suppliers to wholesale customers must deduct and remit the levies to the Authority Fund and the MDGI Fund no later than the 21st day of the month following the sale, or as otherwise directed by the NMDPRA[13]. Suppliers must also include details of the levies collected in agreements, invoices, and receipts. Additionally, by the 30th day of each month, suppliers must submit reports to the NMDPRA detailing (i) the name of the wholesale customer, (ii) the wholesale price and volume of petroleum products or natural gas sold, and (iii) copies of relevant purchase agreements, invoices, or receipts[14]. Non-compliance attracts a monthly administrative penalty of 10% of the unpaid levy, and the NMDPRA may suspend the supplier's license and halt facility operations until full payment is made[15].

[5] Schedules 6-9, Fees Regulations 2024.
[6] Regulations 48, MDPO Regulations 2023
[7] Regulation 8, Fees Regulations 2024.
[8] Ibid.
[9] Regulation 4(1) & (2), Fees Regulations 2024
[10] Ibid
[11] Suit No: ABJ/CS/1480/2023
[12] See also Regulation 4(3), Fees Regulations 2024
[13] Regulation 4(4) & (5), Fees Regulations 2024
[14] Regulation 4(6) & (7), Fees Regulations 2024
[15] Regulation 4(10) & (11), Fees Regulations 2024

CONCLUSION

With the revision of licensing fees, reclassification of wholesale customers, and clear procedures for statutory levy remittances, the Fees Regulations introduces significant reforms for midstream and downstream operations. These changes impose new financial and operational obligations on operators, making it essential for stakeholders to fully understand their responsibilities under the updated regulations. As businesses navigate this evolving landscape, adherence to the prescribed fees, reporting requirements, and remittance timelines will be crucial to avoiding pitfalls and maintaining operational continuity. Given the complexities of these regulatory adjustments, companies are encouraged to seek expert legal and regulatory guidance to ensure compliance and optimize their engagement with the NMDPRA under the new regime.

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