
The logo for Global Legal Group (GLG) features the letters 'GLG' in a bold, sans-serif font. The 'G' and 'L' are white, while the 'G' is orange. The logo is positioned in the top left corner of the page, which has a background image of a gas burner with a blue flame.

Global Legal Group

The International Comparative Legal Guide to: Gas Regulation 2011

A practical cross-border insight into Gas Regulation work

Published by Global Legal Group, in
association with Ashurst LLP, with
contributions from:

ÆLEX

Ali Budiardjo, Nugroho, Reksodiputro

Allens Arthur Robinson

Bell Gully

BNG Legal

Chandler & Thong-ek Law Offices Limited

CMS Cameron McKenna

Cogan & Partners LLP

Criales, Urcullo & Antezana

Debarliev, Dameski & Kelesoska

Dr Kamal Hossain & Associates

Duane Morris LLP

Estudio Gálvez Abogados

Fortunati & Asociados

Garrigues

Gorrissen Federspiel

Haavind AS

Hogan Lovells

InterJuris Abogados, S.C

JeantetAssociés AARPI

KALO & ASSOCIATES

King & Spalding LLP

Loyens & Loeff N.V.

Mohamed Ridza & Co

O'Flynn Exhams

Pachiu & Associates

Rosenberg, Hacoheh, Goddart & Ephrat

Schoenherr

SNR Denton

Studio Legale Bonora e Associati

TGC Corporate Lawyers

Uría Menéndez

Vellani & Vellani

Nigeria



Adebite Adeniji



Sina Sipasi

ÆLEX

1 Overview of Natural Gas Sector

1.1 A brief outline of Nigeria's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

Nigeria has abundant gas resources. As the world's seventh largest, and Africa's largest, deposit of natural gas, with a current reserve of over 185 TCF, Nigeria is described as a gas province with some oil in it. Nigeria's natural gas reserves are largely unexploited. However, large quantities of associated gas are flared in the process of oil production. The Federal Government of Nigeria is currently implementing policies to reduce gas flaring by stimulating domestic gas utilisation.

The major export gas in Nigeria is LNG. The Nigerian Liquefied Natural Gas Company Limited (NLNG) (Nigeria's only operating LNG company), has six trains and is building the seventh. Other major LNG projects in different stages of development include the US\$ 3.5 billion Brass LNG and the US\$ 7 billion OKLNG project. Recently, a number of floating LNG projects have been proposed. Apart from the export of LNG, pipeline gas is being exported through the West African Gas Pipeline (WAGP) to countries in West Africa such as Togo, Benin Republic and Ghana.

The Nigerian Gas Company (NGC), a subsidiary of the Nigerian National Petroleum Corporation (NNPC), is responsible for gas transmission in Nigeria through an unintegrated gas pipeline network. Current pipeline infrastructure comprises basically of two unintegrated pipeline networks totalling approximately 1,100 kilometres: the Alakiri-Obigbo-Ikot Abasi Pipeline, (the Eastern Network), and the Escravos-Lagos Pipeline System (ELPS), (the Western Network), and dedicated pipeline infrastructure owned by the NLNG and the NNPC/SPDC/Total joint venture. There are also local distribution companies such as Gaslink Limited and Shell Nigeria Gas, which distribute natural gas to major industrial areas in the western and eastern parts of Nigeria.

The government has recently developed and is promoting the Nigerian Gas Master Plan (NGMP), which is expected to underpin the development of gas infrastructure, including central processing facilities and transmission pipelines in Nigeria.

1.2 To what extent are Nigeria's energy requirements met using natural gas (including LNG)?

A mix of energy sources is used to meet Nigerian energy needs. They include firewood (used predominantly as cooking fuel in the rural areas), hydro-energy, refined petroleum products and natural gas. Nigeria's energy requirements are met through oil (64%), natural gas (27%) and hydro-electricity (8%). It is estimated that about 80% of natural gas utilised in Nigeria is used for power generation. The remaining 20% is utilised as industrial fuel in the cement, fertiliser, rubber, manufacturing, aluminium and steel industries. LNG is not used in Nigeria.

1.3 To what extent are Nigeria's natural gas requirements met through domestic natural gas production?

Nigeria's natural gas requirements are met entirely by local production. Previously, LPG was imported from Cotonou, Benin Republic. However, due to the fact that all the volumes of LPG consumed in the country are largely from the NLNG facility and Nigeria's six off-takers supply 90% of LPG in Nigeria today, there has been no cause to import any significant volumes.

1.4 To what extent is Nigeria's natural gas production exported (pipeline or LNG)?

Nigeria currently exports 22 million tonnes of LNG to Italy, Spain, Belgium Portugal, the US and Mexico. Natural gas is currently being supplied through the WAGP to Ghana at a steady rate of approximately 30 million standard cubic feet per day. It is expected that by the end of 2010, export of natural gas through the WAGP to Ghana will increase to 170 million standard cubic feet.

2 Development of Natural Gas

2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

The Constitution of the Federal Republic of Nigeria 1999 vests the Federal Government with title over all petroleum, which includes

gas, under or upon any land in Nigeria, its territorial waters and its exclusive economic zone. The principal legislation regulating the exploration, production and distribution of natural gas in Nigeria is the Petroleum Act. The Petroleum Act vests in the Federal Government, the ownership of petroleum resources in Nigeria. Petroleum is defined in the Act to include natural gas. Under the Act, prospecting, exploration, production and distribution of petroleum (including natural gas) may only be done with the consent of the Minister in charge of petroleum (Minister). The Act gives the Minister power to issue necessary regulations necessary for the discharge of its duties under the Act. The Petroleum Drilling and Production Regulations is a subsidiary legislation made pursuant to the Petroleum Act and it regulates in detail natural gas exploration and production activities.

The Oil Pipelines Act and the Oil Pipelines Regulations govern the licensing and permitting processes for the construction, operation and maintenance of gas pipelines. The Petroleum Profits Tax Act and the Companies Income Tax Act regulate the taxation of profits made from the production and distribution of natural gas respectively. The National Environmental Standards and Regulations Enforcement Agency Act (NESREA), the Environmental Impact Assessment Act (EIA) and the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) prescribe environmental and emission standards applicable to natural gas activities in Nigeria.

The government recently approved the Nigerian Gas Master Plan (NGMP), which is comprised of three main sections. The first is the Gas Pricing Policy, which provides a framework for establishing the minimum gas price that any category of gas buyer can be charged. The second is the Domestic Gas Supply Obligation, which assures gas availability for critical domestic gas utilisation projects that will advance the economic growth in Nigeria. The third, the Gas Infrastructure Blueprint, provides for the establishment of three gas gathering and processing facilities, a network of gas transmission lines, which will result in a reduced cost of gas supply from Nigeria. Pursuant to the NGMP, the Minister has issued the National Gas Supply and Pricing Regulations to regulate the supply of gas to the domestic sector.

The Department of Petroleum Resources (DPR) regulates gas activities in Nigeria. The Department of Gas, established under the National Gas Supply and Pricing Regulations, is expected to ensure the availability of gas supply to the domestic market.

2.2 How are the State's mineral rights to develop natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

The rights to win and carry away petroleum, including natural gas, in Nigeria are granted to investors by the Minister through the Oil Prospecting Licence (OPL) and the Oil Mining Lease (OML). An OPL or OML is held by companies either in joint venture with the Nigerian National Oil Corporation (NNPC) or as a sole risk operation. Since the early nineties, the government has shown preference for PSCs, which allow investors to bear exploration and production risks in return for cost oil and part of profit oil. The PSCs do not however grant investors a right to gas. Under PSCs, investors may only develop gas reserves and shares in gas produced under a gas development agreement, to be agreed between the NNPC and respective investors.

2.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

The term/duration and the scope of rights differ according to the respective licence. An Oil Exploration Licence (OEL) has a one-year term; it terminates on the 31st of December following the date of the grant, and can be renewed for one further year. An Oil Prospecting Licence (OPL) has a duration of not more than five years including any renewals, while an OML has a duration of not more than 20 years. The rights conferred by these licences are slightly different. An OEL confers a non-exclusive right to explore for petroleum, while for both an OPL and OML an exclusive right to explore, carry away and dispose of petroleum.

2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?

Section 1 (1) of the Petroleum Act vests the entire ownership and control of petroleum, which includes natural gas, in the State. In addition, by virtue of paragraph 35 (b) (i) of the First Schedule of the Petroleum Act, the government has the right to take associated gas produced by the licensee or lessee free of cost at the flare or at an agreed cost and without payment of royalty.

The State participates through the NNPC in the exploration and production by entering into joint ventures with private investors, and lately, by signing PSCs with contractors. The joint venture and PSC structure entitles the State to share in production.

2.5 How does the State derive value from natural gas development (e.g. royalty, share of production, taxes)?

Nigeria derives value from natural gas development from royalties, taxes and a share of production.

Royalties for offshore fields is 5% and for onshore fields is 7% of the natural gas production. Taxes include: the petroleum profits tax of 85% on chargeable profits from exploration and production; the companies income tax of 30% on the total profits of a company derived from gas supply and distribution; education tax of 2% on the profits of all Nigerian companies; and the Niger-Delta Development Commission (NDDC) levy of 3% of the total annual budget of any oil-producing company operating offshore and onshore of the Niger Delta area. Gas-processing companies are also subject to this tax.

Royalty and petroleum profits tax are not applicable to gas transferred from a natural gas liquid facility to a gas-to-liquid facility.

Revenue accruing to the NNPC under its joint ventures and PSCs is paid into the Federation Account.

2.6 Are there any restrictions on the export of production?

Under the National Gas Supply and Pricing Regulations, gas producers are restricted from exporting gas except when they meet their domestic gas supply obligation.

2.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

No, there are no currency exchange restrictions or restrictions on the transfer of funds derived from production out of Nigeria.

2.8 What restrictions (if any) apply to the transfer or disposal of natural gas development rights or interests?

Under the OPL and the OML, disposal or transfer of gas development rights may only be done with the consent of the Minister.

2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?

Participants are not obliged to provide any security or guarantees in relation to natural gas development. However, in order to qualify for participation, they are to provide evidence of financial resources and technical capability.

2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

The rights to develop natural gas reserves are granted as OPL or OML in Nigeria. These rights cannot be pledged as security. This is because it will amount to an assignment which cannot be validly made without the Minister's consent. There is no restriction on booking the rights for accounting purposes.

2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

During exploration and production, several permits are to be obtained from the DPR and the Federal Ministry of Environment (FMoE). The work obligations have to be approved by the DPR. Safety standards and environmental permits for the different stages of operation are obtainable from the DPR and the FMoE respectively.

2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?

Abandonment is regulated by the Petroleum (Drilling & Production) Regulations. The plugging or abandonment of a well may only be done with the written permission of the Director of DPR. The Director of the DPR may direct that no borehole or well may be plugged, or no work may be executed, except in the presence of an officer of the minister in charge of mines. An abandoned borehole or well may only be re-drilled with the written permission of the Director of the DPR.

2.13 Is there any legislation or framework relating to gas storage? If so, what are the principle features/requirements of the legislation?

The construction and operation of gas storage facilities is regulated

by the Petroleum Act, which is implemented in accordance with guidelines issued by the DPR. The storage of natural gas requires a licence granted by the DPR.

3 Import / Export of Natural Gas (including LNG)

3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

There are currently no specific rules that apply to cross-border sales or deliveries of natural gas. Such activities are regulated by contract between the parties. An export permit issued by the Ministry of Commerce is however required to export natural gas.

The recently issued National Domestic Gas Supply and Pricing Regulations, however, impose some limitations on cross-border sales of natural gas. Under these regulations, the proposed Department of Gas would have the power to impose a domestic gas supply obligation on every gas producer. This obligation would require each gas producer to dedicate a specified volume of its gas to the domestic market. The supply of gas to any export projects is subject to compliance by the supplier of gas, with its reserves obligation as may be specified by the Department.

4 Transportation

4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

The transportation pipelines, gas-processing facilities and other associated infrastructure are currently owned by individual upstream gas producers and are dedicated to their respective operations.

In order to enable flexible deployment of gas to domestic and export markets, the Ministry of Energy has developed a Gas Master Plan Infrastructure Blueprint. This includes a network of gas hubs, which will comprise of secondary gas-gathering facilities from designated nodes of the upstream gas producers to a network of gas-processing facilities, where gas will be processed to a national specification and evacuated via transmission pipelines. Under this framework, transportation pipelines, from the well heads to the designated nodes, will be owned and operated by the gas producers, while pipelines for the transportation of gas from the designated nodes to the transmission pipelines will be owned and operated by the hub operator.

The Oil Pipelines Act, 1956 regulates the construction, operation and maintenance of gas pipelines and associated infrastructure and the Petroleum Act. These laws are implemented by the DPR, a department under the Ministry of Energy.

4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?

The governmental authorisations required are a permit to survey a route for a proposed gas pipeline and an oil pipeline licence, both issued under the Oil Pipelines Act. The oil pipeline licence confers on the holder the right to construct, maintain and operate a gas pipeline. It also confers the right to construct, maintain and operate

installations that are ancillary to the construction, maintenance and operation of such pipeline, such as pumping stations, storage tanks and loading terminals. A licence to construct and operate a refinery issued under the Petroleum Act is required to construct and operate gas-processing facilities.

An environmental impact assessment approved by the FMoE is required for the construction and operation of any natural gas transportation and storage facilities.

4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

By virtue of the Land Use Act, 1978, the use of land for the construction of gas pipelines constitutes an overriding public interest for which the government may compulsorily acquire land. Such acquisition is subject to the payment of compensation to the owner/occupier of the land.

The right to use land for the purposes of a gas pipeline is inherent in the grant of an oil pipeline licence as the licence confers on the holder the right to enter upon, take possession of, or use a strip of land of such width as may be specified in the licence upon the route specified in the licence.

4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?

Any person that requires access to a gas pipeline may make an application to the Minister who would consider the application in consultation with the applicant and the owner of the pipeline. The Minister would grant the application if he is satisfied that the pipeline can conveniently convey the substance which the applicant desires to convey. The terms and conditions of access are to be determined by agreement between the parties and failing such agreement, shall be determined by the Minister. The Minister may impose such requirements as he thinks necessary for the purpose of securing the access right of the applicant and regulating the access charge.

4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

The transportation pipelines are currently not interconnected. However, upon the implementation of the gas infrastructure blueprint, it is expected that transportation pipelines will be interconnected.

4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

Refer to question 4.4.

4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

Parties are free to determine the terms upon which natural gas is to be transported. However, the government has fixed the tariff for the transportation of gas to government-owned power plants.

5 Transmission / Distribution

5.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

The main pipeline transmission system in Nigeria is owned and operated by the Nigerian Gas Company (NGC), a subsidiary of NNPC. This comprises of the Escravos-Lagos Pipeline System (ELPS), also known as the Western Network, and the Alakiri-Obigbo-Ikot Abasi Pipeline, also known as the Eastern Network. The NGC has granted distribution licences to local distribution companies.

5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

Refer to question 4.2.

5.3 How is access to the natural gas distribution network organised?

Refer to question 4.3.

5.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

Under the existing legal framework, the Minister cannot require a distributor to grant capacity or expand its system to accommodate new customers.

5.5 What fees are charged for accessing the distribution network, and are these fees regulated?

The access charges may be determined by the parties but are subject to the approval of the Minister. The Minister may determine this fee in the event that the parties fail to agree.

5.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

There are no restrictions or limitations that apply to the acquisition of interest in a gas utility or the transfer of assets that form part of a distribution network.

6 Natural Gas Trading

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

Currently, natural gas trading is being undertaken by the NGC, which, because of its ownership of transmission infrastructure acts as a gas merchant in Nigeria. The NGC created local distribution zones and grants franchises to private companies for the distribution of gas within the local distribution zones.

Recently, the government issued the National Gas Supply and Pricing Policy, which provides a pricing framework for gas supplied to different sectors in the domestic market. It also issued the National Gas Supply and Pricing Regulations, which established the Gas Department, provided for the formation of a Domestic Gas Aggregator and imposed domestic supply obligations on natural gas producers. The Policy and the Regulations underpin domestic natural gas trading in Nigeria. The fulfilment of domestic obligation is a prerequisite for an export gas project.

6.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?

Natural gas commodities are majorly traded as bundled products in Nigeria. However, the National Gas Policy contains a framework for the unbundling of natural gas trade. Pursuant to the National Gas Policy, regulations are being developed to separate supply, transmission, distribution, pipeline ownership and network operation activities. When the regulations are enacted, gas commodities will trade as separate products.

7 Liquefied Natural Gas

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

The Nigerian Liquefied Natural Gas Company (NLNG) is the only company that produces liquefied natural gas in Nigeria. It is jointly owned by NNPC, Shell, Total and Eni.

LNG activities are regulated under the Petroleum Act and its subsidiary regulations, which include Petroleum Refining Regulations. LNG export is regulated by the Oil Terminals Act, Crude Oil (Transportation and Shipment) Regulations, the Nigerian Ports Authority Act, the Pre-shipment Inspection of Export Act, the Customs and Excise Act, the Foreign Exchange (Monitoring & Miscellaneous Provisions) Act, and the Foreign Exchange Manual (issued by the Central Bank of Nigeria).

7.2 What Governmental authorisations are required to construct and operate LNG facilities?

Environmental Impact Assessment is mandatory for the construction of LNG facilities. This is issued by the FMoE. A licence to establish/construct an LNG plant is issued by the Minister upon DPR recommendation. A licence to operate an LNG plant is issued by the Minister upon DPR recommendation. Approval for plant design specifications, purpose and location is granted by the Minister upon DPR recommendation.

A permit to survey a gas pipeline route is issued by the DPR. A licence to construct and operate a Gas Pipeline is issued by the DPR. A licence to establish an Oil Terminal at site is issued by the Minister of Petroleum. A licence to store LNG at site is to be obtained from the Minister. Industrial waste discharge/disposal permit is issued by the DPR.

7.3 Is there any regulation of the price or terms of service in the LNG sector?

There is no regulation of the price or terms of service in the LNG sector.

7.4 Outline any third-party access regime/rights in respect of LNG Facilities.

There are no detailed provisions regulating third party access to natural gas or LNG facilities. However, the Oil Pipelines Act provides that any person who requires access to any pipeline may make an application to the Minister who would consider the application in consultation with the owner of the pipeline. The Minister will grant the application if he is satisfied that the pipeline can conveniently convey the substance the applicant desires to convey. The terms and conditions of the access will be as negotiated and agreed upon between the parties. Where the parties fail to reach an agreement, the Minister may impose such terms and conditions that he deems expedient to secure the access rights of the applicant and to regulate the access charge.

8 Competition

8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

There is no competition law in Nigeria that is applicable to the gas sector.

The Securities and Exchange Commission (SEC), however, has powers under the Investment and Securities Act, 2007 to order the breakup of the company into separate entities where it determined that the business practices of a company substantially prevents or lessens competition.

8.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

See question 8.1.

8.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

See question 8.1.

8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

The Securities and Exchange Commission (SEC) has the

responsibility of regulating mergers. Section 118 of the Investment and Securities Act, 2007, provides that, notwithstanding anything to the contrary contained in the enactment, every merger, acquisition or business combination between or among companies shall be subject to the prior review and approval of the SEC. The SEC has specific guidelines and rules to be followed to ensure that the public and national economy are protected against monopolies. These guidelines apply to every sector including the natural gas sector.

In addition, the approval of the Minister will be required where any mergers or changes in control results in the direct or indirect assignment of an OPL or OML.

9 Foreign Investment and International Obligations

9.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

Save for the requirement to incorporate a subsidiary in Nigeria, there are no special requirements for foreign companies who wish to acquire interests in the natural gas sector.

9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

Regulatory policy in respect of the natural gas sector is influenced or affected only to the extent that such treaties and multinational agreements have been passed into law by the National Assembly of Nigeria.

10 Dispute Resolution

10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.

Disputes arising between the Minister and the holder of an oil mining lease or oil-prospecting licence in connection with any such lease or licence are required to be settled by arbitration in accordance with the Arbitration and Conciliation Act. This act adopts the UNICITRAL Arbitration Rules.

Disputes arising from a domestic gas sales and purchase transaction are to be referred to the Department of Gas for resolution.

10.2 Is Nigeria a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the

Convention has been ratified and incorporated as the second schedule to the Nigerian Arbitration and Conciliation Act.

Nigeria is also a signatory to and has ratified the ICSID convention.

10.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

Most government authorities require a pre-action notice at least one month before the commencement of the suit. In most cases the suits must be instituted within 12 months from the date of the act, neglect or default complained of. There is usually a restriction on the execution of judgments against the property of such government authorities.

10.4 Have there been instances in the natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

No, there have been no instances of this.

11 Updates

11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Nigeria.

The government recently approved the Nigerian Gas Master Plan (NGMP), which is comprised of three main sections. The first is the Gas Pricing Policy, which does not fix gas prices but provides a framework for establishing the minimum gas price that any category of gas buyer can be charged. The second is the Domestic Gas Supply Obligation Regulation, which assures gas availability for critical domestic gas utilisation projects that will advance the economic growth in Nigeria. The third, the Gas Infrastructure Blueprint, specifically provides for the establishment of three gas gathering and processing facilities, a network of gas transmission lines, which will result in a reduced cost of gas supply from Nigeria. Pursuant to the NGMP, the Minister has issued the National Gas Supply and Pricing Regulations to regulate the supply of gas to the domestic sector.

Further to the National Domestic Gas Supply and Pricing Regulations, the Gas Aggregation Company Nigeria Limited (GACON) has been incorporated to manage the implementation of the domestic (gas) supply obligation and to act as an intermediary between suppliers and purchasers of gas. A template Gas Sale and Aggregation Agreement has also been finalised and negotiations have commenced between suppliers and purchasers of gas for the supply of gas to the domestic market.

In addition, there are ongoing efforts by both the federal government of Nigeria and the World Bank to develop a domestic gas to power credit risk management arrangement which gives comfort to gas producers regarding payments for the gas sold to government-owned power plants. The World Bank will provide a guarantee directly to local banks issuing standby letters of credit and indirectly to gas sellers for the fulfilment of the financial and payment obligations of government-owned power plants.



Adegbite Adeniji

ÆLEX - Legal Practitioners & Arbitrators
7th Floor Marble House, 1 Kingsway Road
Ikoyi, Lagos
Nigeria

Tel: +234 1 473 6296
Fax: +234 1 269 2072
Email: aeadeniji@aelex.com
URL: www.aelex.com

Adegbite holds a Bachelor of Laws Degree [LL.B.] from the University of London, a Master of Laws Degree [LL.M.] from Georgetown University Law Centre, Washington DC and a Certificate of Studies in Natural Resources and Environmental Law & Policy from the University of Denver Sturm College Of Law.

He was admitted to practice law [BL] in Nigeria in 1987. Adegbite's main areas of practice are Oil, Gas and Mining Law, Infrastructure development, Corporate and Commercial Law and Environmental Law.

He is the chair of the natural resources practice at ÆLEX. He was a senior consultant at the World Bank (Oil, Gas, Chemicals & Mining Department) in Washington, DC where he participated in the development of a Strategic Gas Plan for Nigeria.

He has advised the Government of Nigeria on several policy and regulatory matters concerning the energy, mineral and infrastructure sectors. He was appointed to the Presidential Committee on solid minerals development (legal sub-committee); advised on mining policy and was retained by the Government to prepare the basis of the current Minerals and Mining Act.

He moderated dialogues between Government and industry during the development of the Nigerian Gas Masterplan and prepared regulatory instruments such as the National Gas Policy document, a Downstream Gas Bill, the National Domestic Gas Supply and Pricing Policy and the National Domestic Gas Supply and Pricing Regulations.

He advised on the establishment of the domestic gas aggregator, led the preparation of the template Gas Sale Agreement for wholesale gas transactions in the domestic gas sector, assisted with the negotiations with the World Bank for its first Partial Risk Guarantee programme for Nigeria and prepared related documentation for the application of the PRG for gas supply to Government - owned power plants.

He is project counsel on a number of natural gas, crude oil development, electric power and mining projects.

He has written and speaks regularly on a variety of issues relating to energy and natural resources law and policy.



Sina Sipasi

ÆLEX - Legal Practitioners & Arbitrators
7th Floor, Marble House, 1 Kingsway Road
Ikoyi, Lagos
Nigeria

Tel: +234 1 473 6296
Fax: +234 1 269 2072
Email: osipasi@aelex.com
URL: www.aelex.com

Sina is a senior associate in the energy and natural resources practice of ÆLEX. He regularly advises multinational oil companies and project developers on diverse contractual and regulatory issues including the acquisition of interests in petroleum concessions, gas, sales and transportation agreements, establishment of LNG facilities and environmental obligations associated with project development and operations. Sina has recently been involved in the preparation of the National Gas Supply and Pricing Regulations and he is a part of the legal team advising the federal government and industry on the National Gas Masterplan. In this capacity, he has been involved in advising on the establishment of a domestic gas aggregator, drafting a template gas sale agreement and related escrow agreement in respect of wholesale gas transactions in the domestic sector.

Sina holds a Bachelor of Laws Degree (LL.B.) from the Lagos State University in 1997 and he qualified to practice law in Nigeria in 1999.

ÆLEX

ÆLEX is the recognised leader in providing legal services to meet the expanding and increasingly complex requirements of the gas sector. Our participation in some of Nigeria's major gas projects has equipped us with a wealth of knowledge and experience of issues that confront governments and private sector participants.

Our gas practice is unique due to the firm's involvement in the design of the emerging legal, regulatory, policy and commercial landscape for the sector. Through a number of assignments on behalf of Government on the Strategic Gas Plan for Nigeria (Gas Master Plan) spanning a period of seven years, the leader of our Gas practice has gained recognition as the architect of the emerging legal, regulatory and policy framework for the sector. The in-depth understanding of Nigeria's natural resources policies and regulatory framework thus gained by the firm has given us unique insights into how best to meet our clients' needs.

The International Comparative Legal Guide to: Gas Regulation 2011

Other titles in the ICLG series include:

- Business Crime
- Cartels & Leniency
- Class Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment Law & Climate Change
- International Arbitration
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Product Liability
- Public Procurement
- Real Estate
- Securitisation
- Telecommunication Laws and Regulations

To order a copy of a publication, please contact:

Global Legal Group
59 Tanner Street
London SE1 3PL
United Kingdom
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk