



FEDERAL REPUBLIC OF NIGERIA

PETROLEUM HOST AND IMPACTED COMMUNITIES DEVELOPMENT BILL 2018

A Bill for:

*An Act to Provide for Petroleum Host and Impacted Communities
Development Trust, for incorporation of Petroleum Host and Impacted
Communities Trusts and
for Other Related Matters*



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1. Objectives

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Part 1: Objectives of the Act

1. Objectives

- (a) To foster sustainable shared prosperity amongst host and impacted communities.
- (b) To provide direct social and economic benefits from petroleum operations to host and impacted communities.
- (c) To enhance peaceful and harmonious coexistence between settlor and host and impacted communities;
- (d) To create a framework to support host and impacted communities development.

Part 2. Incorporation of Petroleum Host and Impacted Communities Development Trusts, structure, etc. and funding of the Trust

2. Incorporation of Petroleum Host and Impacted Communities Development Trusts

(1) Every company or collectivity of companies (hereafter, “settlor”) with interest in a licence to prospect for and/or produce petroleum or licensee of Designated Midstream Assets or Designated Downstream Assets whose area of operations are located in or appurtenant to any community or communities, shall incorporate a trust for the benefit of the community or communities within such area of operation.

(2) Any other licensee or lessee of upstream, midstream or downstream assets to whom the provisions of subsection 1 of this section is not applicable may decide to incorporate a trust for communities designated by the licensee or lessee, whereupon the provisions of this Act shall, at the election of the licensee or lessee, become applicable to it as a settlor as defined by subsection 1 of this section.

(3) For the purposes of setting up the trust, the settlor shall appoint and authorize a body of trustees (hereafter, the “Board of Trustees”) who shall apply to the *Corporate Affairs Commission* to be registered as a corporate body under *Part C* of the *Companies and Allied Matters Act* in the manner hereafter provided.

(4) The name of the corporate body to be registered by the Board of Trustees shall contain the phrase “Host and Impacted communities Development Trust” and shall be registered in conformity with the provisions of the *Companies and Allied Matters Act*.

3. Timeframe for incorporation of Petroleum Host and Impacted Communities Development Trust

The timeframe for incorporation of the Petroleum Host and Impacted Communities Development Trust shall be as follows:

- (a) for existing oil mining leases, the Petroleum Host and Impacted Communities

Development Trust shall be incorporated within twelve months of the commencement of this Act.

(b) for existing Designated Midstream and Downstream, Assets, the Petroleum Host and Impacted Communities Development Trust shall be incorporated within twelve months of the commencement of this Act.

(c) for existing oil prospecting licences, the Petroleum Host and Impacted Communities Development Trust shall be incorporated prior to the application for Field Development Plan.

(d) for upstream licences granted pursuant to the provisions of the Petroleum Industry Administration Act oil mining leases, the Petroleum Host and Impacted Communities Development Trust shall be incorporated prior to the application for Field Development Plan.

(e) for licensees of Designated Midstream and Designated Downstream Assets granted pursuant to the provisions of the Petroleum Industry Administration Act oil mining leases, the Petroleum Host and Impacted Communities Development Trust shall be incorporated before commencement of commercial operations.

4. Transfer of settlor's interest and obligations subject to Petroleum Host and Impacted Communities Development Trust obligation

Subject to the provisions of this Act, where the whole or part of the interest in the settlor's licence or lease is to be transferred to another party, the legal and equitable interest and other rights and obligations of the transferor in relation to the Petroleum Host and Impacted Communities Development Trust shall be deemed to attach to the property to be transferred to the transferee and such legal and equitable interest and other rights and obligations of the transferor shall, mutatis mutandis, be stated and provided for in the transfer deeds or other instruments.

5. Failure to incorporate Petroleum Host and Impacted Communities Development Trust

Failure of a licensee to whom this Act is applicable to incorporate the Petroleum Host and Impacted Communities Development Trust shall be a ground for suspension of the licence by the Commission.

6. Objectives of Petroleum Host and Impacted Communities Development Trust

(1) The constitution of the Petroleum Host and Impacted Communities Development Trust shall contain provisions that provide for the Petroleum Host and Impacted Communities Development Trust to take charge of the responsibility of managing and supervising the application and utilization of the annual contribution of the settlor and other sources of funding therefrom.

(2) The Board of Trustees shall include in the constitution of the Petroleum Host and Impacted Communities Development Trust paragraph (a) to (e) of subsection (3) of this section as the main objectives of the Petroleum Host and Impacted Communities Development Trust.

(3) Subject to subsection (1) of this section, the main objectives of the Petroleum Host and impacted community Development Trust shall include:

- (a) to finance and execute projects for the benefit and sustainable development of the settlor's host and impacted communities;
- (b) to undertake infrastructural development of the settlor's host and impacted communities within the scope of funds available to the Board of Trustees for such purposes;
- (c) to facilitate economic empowerment opportunities in the settlor's host and impacted communities;
- (d) to advance and propagate educational development for the benefit of members of the settlor's host and impacted communities;
- (e) to support healthcare development for the settlor's host and impacted communities;
- (f) to support local initiatives within the settlor's host and impacted communities which seek to enhance protection of the environment;
- (g) to support local initiatives within the settlor's host and impacted communities which seek to enhance security;
- (h) to invest certain part of available fund for and on behalf of the settlor's host and impacted communities;
- (i) to secure fund and loans for specific projects for and on behalf of the settlor's host and impacted communities;
- (j) to assist in any other developmental or charitable purpose deemed beneficial to the settlor's host and impacted communities in general as may be determined from time to time by the Board of Trustees .

7. Sources of funding for Petroleum Host and Impacted Communities Development Trust

(1) The constitution of the Petroleum Host and Impacted Community Development Trust shall contain provisions requiring that the Petroleum Host and Impacted Community Development Trust shall have an Endowment Fund to which the following monies shall be paid:

- (a) an annual contribution of an amount equal to 2.5% (two and a half per cent) of the actual operating expenditure (Opex) of the settlor for the accounting period of the preceding year relating to the settlor's operations in the particular licence or lease area for which the Petroleum Host and Impacted Community Development Trust is established;

(b) donations, loans, grants or honorariums that are extended to the Petroleum Host and Impacted Community Development Trust for the attainment of its objectives;

(c) incomes derived from the interest or profits from Reserved Fund; and

(d) any other income granted to the Petroleum Host and Impacted Community Development Trust for the attainment of its objectives.

8. Matters on which the funds may be Utilised

The constitution of the Petroleum Host and Impacted Community Development Trust shall contain provisions requiring that the funds accruable to the Petroleum Host and Impacted Community Development Trust and contained in section 7 of this Act shall for the benefit of the settlor's host and impacted communities be utilized exclusively for the following:

(a) infrastructural development;

(b) creation of employment opportunities;

(c) advancement and propagation of education and learning;

(d) empowerment programmes for any special groups;

(e) training and skill acquisition of members of host and impacted communities;

(f) medical facilities and personnel;

(g) any other matters which may be approved by the settlor for the benefit of the settlor's host and impacted communities.

Part 3. Governance of the Petroleum Host and Impacted Communities Development Trust

9. The Board of Trustees, composition, management, etc.

(1) The constitution of the Petroleum Host and impacted communities Development Trust shall contain provisions requiring that the Board of Trustees shall be set up by the settlor who shall determine its membership and the criteria for their appointment.

(2) The settlor shall, in the determination of membership of the Board of Trustees, include persons of high integrity and professional standing who may not necessarily be from one of its host and impacted communities.

(3) Pursuant to the provisions of subsection (1) of this section, the settlor shall determine selection processes; procedures for meeting, financial regulations and administrative procedures of the Board of Trustees and the remuneration,

discipline, qualification, disqualification, suspension and removal of members of the Board of Trustees and all other matters relating to the operation and activities of Board of Trustees.

(4) Subject to subsection (3) of this section, each member of the Board of Trustees shall serve a term of four years in the first instance and may be reappointed for another term of four years only.

(5) Board of Trustees shall have a secretary who shall be appointed by the settlor to keep the books of the Board.

10. Duties and functions of the Board of Trustees

Pursuant to the provisions of subsection (1) of section 9 of this Act, the Board of Trustees shall be responsible for the general management of the trust and shall perform the following functions:

(a) receive and manage the funds of the Petroleum Host and Impacted Community Development Trust;

(b) determine the criteria, process and proportion of the fund to be allotted for the development for each host and impacted community;

(c) approve the projects for which the funds shall be utilised;

(d) provide general oversight of the projects for which the funds shall be utilised;

(e) approve the appointment of fund managers for purposes of managing the Reserve Fund of the Petroleum Host and Impacted Communities Development Trust;

(f) set up the Management Committee of the Petroleum Host and Impacted Communities Development Trust and appoint its membership; and

(g) determine the allocation of funds to host and impacted communities based on the matrix provided by the settlor.

11. Allocation of Funds

(1) Of the sum available in the Endowment Fund each year pursuant to section 7 of this Act, the Board of Trustees shall:

(a) allocate a sum equivalent to 70% of the Endowment Fund to the Capital Fund out of which the Board of Trustees shall make disbursements for projects in each Host and Impacted Community as may be determined by the Management Committee in furtherance of the objectives set out in section 7 of this Act, provided however that any sums not so utilized in a given financial year shall be rolled over and utilized in subsequent years;

(b) allocate a sum equivalent to 20% of the Endowment Fund to the Reserve Fund

which sums shall be invested for the utilisation of the Petroleum Host and Impacted Community Development Trust whenever there is a cessation in the endowment payable by the settlor.

(c) allocate a sum equivalent to 10% of the Endowment Fund to the settlor's Special Project Fund to be utilised solely by the settlor for special projects to assist and support the host and impacted communities, provided however that at the end of each financial year, the settlor shall render a full account of the utilisation of the Special Project Fund to the Board of Trustees and where any portion of the Fund is not utilized in a given year, it shall be returned to the Capital Fund.

12. Matrix for distribution of Endowment Fund

- (1) The Settlor shall provide the Board of Trustees matrix for distribution of the Endowment Fund to the host and impacted communities.
- (2) The Board of trustees shall utilize the matrix provided under subsection 1 of this section for distribution of the funds in the Endowment Fund to each of its host and impacted communities.

13. Engagement of Fund Managers

- (1) The Board of Trustees shall engage a Fund Manager to invest the Reserve Fund of the Petroleum Host and Impacted Community Development Trust as the fund accrues.
- (2) The Board of Trustees shall manage the interest and profits accruable from the investment of the Reserve Fund and determine whether it shall be paid to the Capital Fund or rolled back into the Reserve Fund.

14. Management Committee, composition, powers, etc.

- (1) The constitution of the Petroleum Host and Impacted Communities Development Trust shall contain provisions requiring the Board of Trustees to set up a Management Committee for the Petroleum Host and Impacted Communities Development Trust.
- (2) The membership of the Management Committee shall comprise:
 - (a) a representative of each Host and Impacted Community nominated by the Host and Impacted Community who shall be a non-executive member, and
 - (b) executive members, selected by the Board of Trustees who shall be Nigerians of high integrity and professional standing, who may not necessarily be from any of the settlor's host and impacted community.
- (3) Persons appointed under paragraphs (a) and (b) of subsection 2 of this section shall serve a term of four years in the first instance and may be reappointed for another term of four years only.
- (4) Pursuant to the provisions of subsection (1) of this section, the Board of Trustees shall determine the selection process, procedure for meetings, financial regulations and administrative procedures of the Management Committee and the remuneration, discipline, qualification, disqualification, suspension and removal of members of the

Management Committee and all other matters relating to the operations and activities of Management Committee.

(4) The Management Committee shall have a secretary who shall be appointed by the settlor to keep the books of the Committee.

15. Duties and functions of the Management Committee

(1) The Management Committee shall be responsible for the administration of the Petroleum Host and Impacted Communities Development Trust and shall perform the following functions:

(a) determine and prepare the budget of the Petroleum Host and Impacted Communities Development Trust and transmit same to the Board of Trustees for approval;

(b) determine the projects to be undertaken annually by the Petroleum Host and Impacted Communities Development Trust and transmit same to the Board of Trustees for approval;

(c) develop and manage the contracting processes for project award on behalf of the Petroleum Host and Impacted Communities Development Trust;

(d) determine project award winners and contractors to execute projects on behalf of the Petroleum Host and Impacted Communities Development Trust through a transparent process;

(e) supervise the execution of projects;

(f) nominate fund managers for purposes of managing the Reserve Fund of the Host and Impacted Community Development Trust and transmit same to the Board of Trustees for appointment;

(g) Report on the activities of the Management Committee, contractors and other service providers to the Board of Trustees;

(h) undertake any other functions and duties that may be assigned to it by the Board of Trustees to enhance the performance of the Petroleum Host and Impacted Communities Development Trust;

16. Petroleum Host and Impacted Community Advisory Committee, composition, functions, etc.

(1) The constitution of the Petroleum Host and Impacted Communities Development Trust shall contain provisions mandating the Management Committee to require each Host and Impacted Community to set up an advisory committee (hereafter "Petroleum Host and Impacted Community Advisory Committee").

(2) Pursuant to the provisions of subsection (1) of this section, the Petroleum Host and Impacted Community Advisory Committee shall determine the selection processes; procedure for meetings, financial regulations and administrative procedures of the Host and Impacted Community Advisory Committee and the remuneration, discipline, qualification, disqualification, suspension and removal of members of the Petroleum Host and Impacted Community Advisory Committee and all other matters relating to the operations and activities of Petroleum Host and Impacted Community Advisory Committee.

Duties and functions of the Petroleum Host and Impacted Community Advisory Committee

17.

(1) The Host and Impacted Community Advisory Committee shall perform the following functions:

(a) nominate the member to represent the Host and Impacted Community on the Management Committee;

(b) articulate and determine community development projects to be transmitted to the Management Committee;

(c) monitor and report progress of projects being executed in the community to the Management Committee;

(d) advise the Management Committee on activities that will lead to improvement of security of infrastructure and enhancement of peace-building within the community and the entire area of operation;

(e) take responsibility for first line protection of facilities and ensure petroleum operations are uninterrupted by members of their communities failing which benefits from the Trust shall be disallowed.

Part 4. Financial year, Accounts, Audits, Reporting, etc.

Financial Year of the Petroleum Host and Impacted Communities Development Trust

18. The financial year of the Petroleum Host and Impacted Communities Development Trust shall commence on the 1st day of January and end on the 31st December of each year or any other dates set for this purpose by the Board of Trustees.

Accounts and audit

19. The constitution of the Petroleum Host and Impacted Communities Development Trust shall contain provisions requiring the Board of Trustees to:

(a) keep account of the financial activities of the Petroleum Host and Impacted Communities Development Trust; and

(b) appoint auditors to audit the accounts of the Petroleum Host and Impacted Communities Development Trust annually.

Mid-year and Annual Reports

20. Subject to the provisions of section 587 of the Company and Allied Matters Act, the constitution of the Petroleum Host and Impacted Communities Development Trust shall contain provisions requiring:

(a) the Management Committee to submit a Mid-year Report of its activities to the Board of Trustees not later than 31st of August of the particular year.

(b) the Management Committee to submit an Annual Report accompanied by its audited account to the board of Trustees not later than 28th of February of the succeeding year.

(c) the Board of Trustees to submit an Annual Report of the activities of the Petroleum Host and Impacted Communities Development Trust accompanied by its audited account to the settlor not later than 31st of March of the particular year.

(d) the Settlor to submit an Annual Report of the activities of the Petroleum Host and Impacted Community Development Trust accompanied by its audited account to the Commission not later than 31st of May of the particular year.

Exemption from income tax

21. The funds of the Petroleum Host and Impacted Communities Development Trust created pursuant to this Act shall be exempted from taxation.

Deduction of Payment for Petroleum Host and Impacted Community Development

22. The payment made by the settlor pursuant to subsection (1) (a) of section 7 of this Act shall be deductible for the purposes of Petroleum Income Tax and Companies Income Tax.

PART 5: DISPUTE RESOLUTION

23. Dispute Resolution Process

(1) Any dispute between persons who are subject to the provisions of this Act and between any such persons and other persons regarding any matter under this Act shall first be resolved in accordance with the provisions of this Part.

(2) In the event of any dispute involving persons subject to this Act and regarding any matter under this Act, the parties shall first attempt to resolve such dispute amicably through negotiation.

(3) The Commission shall have the power to resolve disputes between persons who are subject to this Act and between any such persons and other persons regarding any matter under this Act.

(4) The Commission shall make regulations setting out the principles and procedures for conciliation, mediation or arbitration that it may adopt in resolving disputes referred to it under the provisions of this Act.

24. Judicial Review

(1) A party that is dissatisfied with the determination of the Commission shall have a right of appeal to the Federal High Court.

(2) A determination of the Commission that is the subject matter of an application for judicial review shall subsist and remain valid and binding until it is expressly reversed by an order of the Court

PART 6. TRANSITIONAL PROVISIONS

25. Transfer of Existing Corporate Social Responsibility (“CSR”) Projects or Schemes

Settlor shall be entitled to transfer any existing CSR Projects or Schemes to a Petroleum Host and Impacted Community Development Trust established pursuant to the provisions of this Act.

(1)

Settlor shall notify the Commission upon such transfer of any of its existing CSR Projects or Schemes.

(2)

Settlor shall be entitled to continue with any ongoing CSR Projects or Schemes. Any financial contribution made by a Settlor towards any ongoing CSR Projects or Schemes shall be taken into account and shall be deemed to form part of the contribution to be made by the Settlor pursuant to section 7(1)(a) of this Act for a period of two years from the commencement of this Act.

(3)

INTERPRETATIONS

26. “area of operation” means the territory which hosts the settlor’s field operational facilities, wells, pipeline right of ways and any other ancillary facilities as may be defined by the settlor;

“Capital Fund” means the fund available to the Board of Trustees for community development projects and other matters on behalf of the settlor as provided for in this Act;

“Commission” means the Nigerian Petroleum Regulatory Commission;

“Designated Midstream Assets or Designated Downstream Assets” means petroleum terminals, crude oil and gas pipelines, refineries, petrochemical plants, gas processing plants;

“Endowment Fund” means all monies or assets which may be transferred to or placed under the control of, or otherwise vested in and received by the Trustees;

“Fund Manager” means a person or company appointed by the Board of Trustees to manage and invest the Reserve Fund established under the provisions of this Act for the benefit of the Trust;

“interest” means sole, joint, legal or equitable interest in an upstream, midstream or

downstream licence.

“Licensee” means every licence holder of OPL, OML, or Marginal field, licensees to refine and process, pipeline and storage facilities in the downstream.

“Petroleum Host and Impacted Community” means any of the Communities situate in the settlor’s area of operation and along the pipeline right of way, and any other communities as the settlor may determine;

“Reserve Fund” means the sum equivalent to 20% of the Endowment Fund allocated and sequestered for savings and investment for the utilisation of the Petroleum Host and Impacted Community Development Trust whenever there is a cessation in the endowment payable by the settlor.

“Settlor’s Special Project Fund” means fund allocated to the settlor for its discretionary special projects for the benefit of its host and impacted communities.

Short title

27. This Act may be cited as the Petroleum Host and Impacted Communities Development Trust Act 2018

Explanatory Memorandum

This Act provides for the incorporation of Petroleum Host and Impacted Communities Development Trusts; sources of funding of the trusts and governance framework for the trusts.

FINANCIAL IMPLICATIONS:

In Pursuance of Senate Standing Order 2015 (As Amended)

1. Statutory Requirement for Financial Implications:

Senate Standing Order 2015 (As Amended), Order 77 paragraph (3) provides that “a compendium of the background information and financial implications shall accompany every bill”. In pursuance of this requirement, the financial implications of the Petroleum Host and Impacted Communities Development Trust Bill 2018 are stated hereunder as follows:

2. Financial Implications of the Petroleum Host and Impacted Communities Development Trust Bill 2018

Petroleum Host and Impacted Communities Development Trust Bill 2018 proposes, inter alia, the incorporation of Petroleum Host and Impacted Communities Development Trusts by every company or collectivity of companies with sole or joint equity interest in a licence to prospect for petroleum or licensees of designated midstream or downstream assets whose area of operations are located in or appurtenant to any community or communities, for the benefit of the community or communities within such area of operation. The Petroleum Host and Impacted Communities Development Trusts are to be operated as charitable trusts in accordance with the provisions of this Act and the relevant provisions of Part C of

the Companies and Allied Matters Act cap 59 LFN 1990.

Petroleum Host and Impacted Communities Development Trust: General Provisions and Financial Implications

(1) General Provisions:

Section 1 of the Bill provides for the incorporation of the Petroleum Host and Impacted Communities Development Trust and for the setting up of its Board of Trustees which is charged with the administration of the funds of the trust. Sections 13 and 15 provides for the establishment of the Management Committee and the Host and Impacted Community Advisory Committee respectively.

(2) Financial Implications

(2) The financial implications for the setting up of the Petroleum Host and Impacted Communities Development Trust is incident on the settlor company. Furthermore, the funding for the administration, projects and other matters to be undertaken by the Board of Trustees, the Management Committee and the Host and Impacted Community Advisory Committee are not to be provided by government. Therefore, there shall be no requirement for financial expenditure in respect of the incorporation of the Petroleum Host and Impacted Communities Development Trusts or its related activities.