

# **Upstream Environmental Remediation Fund Regulations**

## **Establishment of the Fund**

1. (1) These Regulations apply to the environmental remediation fund required under section 103 of the Petroleum Industry Act, 2021.
- (2) The environmental remediation fund is established for the upstream petroleum operations under licences and leases, administered by the Commission under the Petroleum Industry Act, 2021, to be known as the Upstream Environmental Remediation Fund, in these Regulations referred to as the Fund.
- (3) The Fund shall be administered by the Commission pursuant to these Regulations. The Commission shall be responsible to manage the funds of the Fund in accordance with the applicable laws.
- (4) The Fund is a special account under [relevant finance management act] established for the Commission.
- (5) The Fund shall be funded by the financial contributions for remediation of environmental damage levied on licensees of petroleum prospecting licenses and lessees under section 103 of the Petroleum Industry Act, 2021 and under these Regulations.

## **Utilisation of the Fund**

2. (1) The main purpose of the Fund is to provide a source of funding for the rehabilitation or management of negative environmental impacts from petroleum operations, which shall include upstream petroleum operations and petroleum operations that meet the condition of section 8(g) of the Petroleum Industry Act, 2021.
- (2) Such funding referred to in subsection (1) of this section shall be only used if a licensee or lessee who engages in petroleum operations under such licences or leases has failed or unable to undertake necessary rehabilitation or management of negative environmental impacts of such petroleum operations, and the Commission has failed to enforce under the law that such rehabilitation or management of negative environmental impacts is fulfilled by such licensee or lessee.
- (3) If the Commission makes a decision to apply the Fund, the procurement of any goods, works or services required to rehabilitate or manage the negative environmental impact shall be subject to the laws and regulations applicable to public procurement.
- (4) If the Commission makes a decision to apply the Fund to rehabilitate or manage the negative environmental impact relating to a particular licence or a lease, it should provide a written notice to the holder of such licence or a lease that they have defaulted to fulfil their obligation.

## **Amount of the financial contribution**

**3.** (1) The financial contribution shall be paid each year with respect to each petroleum prospecting licence or a lease, including for the year in which a petroleum prospecting licence or a lease have been granted.

(2) For the purpose of this Regulations, petroleum operations under each licence or a lease, shall fall under one of the following categories of areas where operations are located —

- (a) Onshore High-Risk Area, being areas which include any of the following:
  - (i) mangrove areas;
  - (ii) wetland and swamp areas;
  - (iii) a zone of 500 meters along any river and lake;
  - (iv) such other areas as the Ministry of Environment may determine as high-risk.
- (b) Shallow Water High-Risk Area, being:
  - (i) a zone of 10 km seawards of a high-water mark;
  - (ii) such other shallow water areas as the Ministry of Environment may determine as high risk.
- (c) Other Onshore Area, being the part of Nigeria that is defined as onshore and frontier acreages in the Petroleum Industry Act, 2021, other than Onshore High-Risk Areas.
- (d) Other Shallow Water Area, being the part of Nigeria that is defined as shallow water in the Petroleum Industry Act, 2021, other than Shallow Water High-Risk Areas.
- (e) Deep Water Area, being the part of Nigeria that is defined as deep offshore in the Petroleum Industry Act, 2021.

(3) The category, under which a petroleum prospecting licence or a lease shall fall under pursuant to subsection (2) of this section, shall be confirmed in a written notice by the Commission prior to the first payment of the financial contribution. Where:

- (a) all or part of a petroleum prospecting licence or lease is situated in an area that is considered an Onshore High-Risk Area, the entire licence or lease shall be considered as being located in an Onshore High-Risk Area,
- (b) all or part of a petroleum prospecting licence or lease is situated in a shallow water area that is considered a Shallow Water High Risk Area, the entire licence or lease shall be considered as being located in a Shallow Water High-Risk Area,
- (c) all or part of a petroleum prospecting licence or lease is situated onshore and part in shallow water, the entire licence or lease shall be considered onshore, and
- (d) all or part of a petroleum prospecting licence or lease is situated in shallow water and part in deep offshore, the entire licence or lease shall be considered shallow water.

(4) The financial contribution shall be determined as follows—

- (a) The following formula shall be used to determine the annual financial contribution —

*Financial contribution for a year = Fixed Contribution + (Upstream Capital Expenditure x UCER) + (VL x LR) + (VG x GR)*

where —

Fixed Contribution is the fixed contribution in US\$ per year, as determined in accordance with Table 1 of the Schedule to these Regulations;

Upstream Capital Expenditure is the expenditure relating to a licence or a lease, characterised as expenditure of capital nature under the Companies Income Tax Act, incurred during a year for which the financial contribution is payable;

UCER is the rate applicable to the capital expenditure, as determined in accordance with Table 1 of the Schedule to these Regulations;

VL is the volume of crude oil, condensates, and separately produced natural gas liquids, in barrels, produced from a licence or a lease during a year for which the financial contribution is payable;

LR is the rate in US\$ per barrel, applicable to the production of liquids (VL), as determined in accordance with Table 1 of the Schedule to these Regulations;

VG is the volume of natural gas, including any natural gas liquids contained in the raw gas, expressed in million British Thermal Units (MMBtu), produced from a licence or a lease during a year for which the financial contribution is payable;

GR is the rate in US\$ per MMBtu, applicable to natural gas production (VG), as determined in accordance with Table 1 of the Schedule to these Regulations.

- (b) For the purpose of determining the financial contribution, the volume of crude oil, condensates, separately produced natural gas liquids, and natural gas, produced from a licence or a lease during a year for which the financial contribution is payable, shall be the production subject to royalty under the Petroleum Industry Act, 2021 and the Petroleum Royalty Regulations, 2021.
- (c) For the purpose of determining the financial contribution, the Upstream Capital Expenditure shall not include exploration and appraisal expenditure, and contributions to a decommissioning and abandonment fund.
- (d) For the purpose of determining the financial contribution, the Upstream Capital Expenditure shall also include expenditure relating to midstream operations, where a licence or a lease meets the condition of section 8(g) of the Petroleum Industry Act, 2021.

- (e) For the avoidance of doubt, the amounts of expenditure incurred during a relevant year, which is characterised as expenditure of capital nature under the Companies Income Tax Act, shall be included in full amount incurred during the relevant year and shall not be depreciated under the initial and annual allowances rules for the purpose of the calculation of the financial contribution.

(6) The financial contribution shall be paid in United States dollars.

### **Payment of the financial contribution**

**4.** (1) The initial financial contribution shall be paid by the prospective licensee or lessee prior to the granting of the licence or lease and shall apply to the first year in which a licence or a lease is granted. The initial financial contribution shall consist solely of the Fixed Contribution provided for in section 3(4) of these Regulations.

(2) The annual financial contribution for any succeeding year shall be paid by the licensee or lessee prior to each anniversary of the effective date of the licence or lease. Such annual financial contribution shall consist of the Fixed Contribution plus the capital and production related components of the contribution related to the estimated capital expenditures and production for the year prior to the succeeding year pursuant to section 3(4) of these Regulations.

(3) The applicable financial contribution shall be paid prior to the termination of a licence or lease, where the period of a licence or lease terminates prior an anniversary of the effective date of such a licence or lease.

(4) Subject to the provisions of section 5(1) of these Regulations, the financial contribution paid by a licensee or lessee under these Regulations shall not be refunded, credited or otherwise offset against any liability due from a licensee or a lessee, unless an over-payment is made due to an error in which case a refund shall be made to the extent of such over-payment.

### **Reporting**

**5.** (1) The licensee or lessee shall submit the calculation of the annual financial contribution in the form prescribed by the Commission not later than thirty days (30) days after the payment due date and where actual capital expenditures or actual production or both are different from the estimated expenditures or production or both the required adjustment shall be made.

### **Adjustment of the financial contribution**

**6.** (1) Where the Commission is not satisfied with the assessment of the financial contribution determined under section 3, the Commission may appoint an independent assessor to conduct the assessment and determine the financial contribution. The remuneration of the assessor and other costs associated with such assessment shall be borne by the Commission.

(2) The Commission shall exercise the right pursuant to subsection (1) of this section, if the Commission reasonably believes that the financial contribution determined under section 3 does not reflect the size of the operations and the level of environmental risk that may exist from the petroleum operations under a respective licence or a lease.

(3) An independent assessor to be appointed by the Commission under subsection (1) of this section shall be competent and have expertise and experience in environmental matters, natural resource planning and management, management of petroleum operations, and environmental rehabilitation practices.

(4) The Commission must give the licensee or the lessee a written notice within [thirty] days after receiving the application for a licence or a lease, that the financial contribution requires an adjustment and that an assessment has been initiated.

(5) An assessment shall be completed and the Commission shall notify the licensee or the lessee in writing about the adjusted financial contribution, within [sixty] days from the written notice issued to a licensee or lessee under subsection (4) of this section.

(6) Where the Commission does not notify the licensee or the lessee within the timeline prescribed in subsection (5) of this section the financial contributions shall be deemed approved and should be calculated under section 3.

(7) The Commission shall initiate the process identified in subsection (1) of this section where the Commission has evidence that the allocation to environmental categories pursuant to section 3(2) of these Regulations is in error or that capital expenditures or production or both are under-estimated.

### **Annual reports and disclosures**

**7.** (1) The Commission shall keep proper accounts and records in relation to the Fund and shall prepare and publish in respect of each financial year a statement of Fund's accounts.

(2) The annual statement, required under subsection (1) of this section shall be published not later than [180] days after the end of a relevant financial year.

(3) The Commission shall published the annual statement required under subsection (1) of this section in a public domain, and keep it available to the public on the website of the Commission.

### **Audit**

**8.** (1) The financial contribution to the Fund shall be subject to audit by the licensee or lessee, in accordance with guidelines that the Commission may issue.

### **Short title**

**9.** (1) These Regulations may be cited as the Upstream Environmental Remediation Fund Regulations and are regulations under the Petroleum Industry Act, 2021.

## **Definitions**

**10.** (1) In addition to the definitions contained in the Petroleum Industry Act, 2021 and the Definitions Regulations, 2021 the following definitions shall apply to this Upstream Environmental Remediation Fund Regulations.

- (a) "applicable law" shall be the laws, regulations and decrees of Nigeria;
- (b) "PIA" means the Petroleum Industry Act, 2021;
- (c) "royalty" or "royalties" means a royalty or royalties in accordance with section 306 of the PIA;
- (d) "year" means a period of a year from any day during the year.

(2) Any reference to licence or licensee in these Regulations means a petroleum prospecting licence or licensee of a petroleum prospecting licence under the Petroleum Industry Act, 2021.

## SCHEDULE

### RATES FOR THE FINANCIAL CONTRIBUTION CALCULATION

TABLE 1 – Rates for the financial contribution for the upstream petroleum operations:

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Location of petroleum operation under a licence or a lease</b>	<b>Contribution in US\$ per year (Fixed Contribution)</b>	<b>Rate for annual Upstream Capital Expenditure (UCER)</b>	<b>Rate for liquids production in US\$ per bbl (LR)</b>	<b>Rate for natural gas, in US\$ per MMBtu (GR)</b>
Onshore High-Risk Areas	US\$ 25,000	0.010%	US\$ 0.006	US\$ 0.0006
Shallow Water High-Risk Areas	US\$ 20,000	0.005%	US\$ 0.003	US\$ 0.0003
Other Onshore Areas	US\$ 15,000	0.004%	US\$ 0.003	US\$ 0.0003
Other Shallow Water Areas	US\$ 10,000	0.002%	US\$ 0.002	US\$ 0.0002
Deep Water Areas	US\$ 5,000	0.001%	US\$ 0.001	US\$ 0.0001