1.1 Bill Summary
This Bill seeks to provide for the governance and institutional framework for the petroleum industry. Specifically, the Bill seeks to unbundle the Nigerian National Petroleum Corporation into distinct commercial entities and creates a regulator for the petroleum industry. The Bill was introduced on 13th April, 2016 by Hon. Iriase Isumafe O Pally (Edo). The Bill was read for the second time on 15th June, 2017 and referred to the AD-Hoc Committee on PIB. The Ad Hoc Committee presented its report on 18th January, 2018. The Bill has been passed by both houses of the National Assembly. The Bill is at the conference committee stage, after which it will be forwarded to the President for assent.

1.2 Highlights

1.2.1 The objectives of the Bill are to create efficient and effective governing institutions with clear and separate roles for the petroleum industry, establish a framework for the creation of commercially oriented and profit driven petroleum entities to ensure value addition, promote transparency and accountability in the administration of petroleum resources and foster a conducive business environment for petroleum operations.

1.2.2 The Bill creates the Nigerian Petroleum Regulatory Commission (the ‘Commission’) as a regulator distinct from the Minister of Petroleum Resources. The Minister shall be responsible for the determination, formulation and monitoring of government policy for the petroleum industry, promote the development of local content, exercise general supervision over the affairs and operations of the industry and shall advise government on all matters pertaining to the petroleum industry.

1.2.3 The Commission shall be a body corporate and shall, from the commencement of the Bill when passed into law, be vested with all the assets, funds, resources and properties of the Petroleum Inspectorate, the Department of Petroleum Resources and the Petroleum Products Pricing Regulatory Agency. The Commission shall also assume all regulatory functions conferred on the Minister pursuant to the Petroleum Act, the Oil Pipelines Act or on the Chief Executive of the Petroleum Inspectorate pursuant to the NNPC Act.

1.2.4 The functions of the Commission include administration and enforcement of all policies, laws and regulations relating to petroleum operations, monitoring and enforcement of compliance with terms and conditions of licenses, leases, permits and authorizations issued in respect of petroleum operations, development and publication of methodologies for tariffs and pricing relating to third party access to petroleum facilities and keeping a public register of all leases, licences, permits and other authorizations issued by the Commission or the Minister and any renewals, amendments, extensions, suspensions or revocations thereof.
1.2.5 In addition to the foregoing, the Commission is also vested with the power to issue, modify, amend, extend, suspend, review, cancel, re-issue, revoke and/or terminate upstream licences made in compliance with applicable laws and regulations. While the Bill vests these powers in the Commission, which powers were previously vested in the Minister by virtue of section 2 of the Petroleum Act, the 5th Schedule to the Bill does not repeal section 2 of the Petroleum Act but only provides that the Minister shall act upon the recommendations of the Commission. We note that this may be an omission from the review of the Ad-Hoc Committee as the original copy of the Bill provided that the Commission shall recommend licences or leases to the Minister for this purpose.

1.2.6 The Commission is also vested with the powers to regulate downstream activities including gas processing, transportation, transmission and storage and shall grant, renew cancel or modify licences, permits and authorizations granted for downstream gas, petroleum products, storage depots, retail outlets, transportation and distribution facilities. The Commission shall also develop open-access rules applicable to crude oil and petroleum products, promote exploration strategies and portfolio management for exploration of unassigned frontier acreages in Nigeria and collaborate with other agencies in the discharge of its functions.

1.2.7 The Bill establishes a Governing Board for the Commission which shall consist of a non-executive chairman, 2 non-executive commissioners, the chief executive commissioner, 4 other executive commissioners and a representative each of the ministries of petroleum resources, finance and environment.

1.2.8 The Commission is empowered to establish and maintain a fund from which all its expenses shall be defrayed. This fund shall consist of fees charged for services rendered to holders of licences, permits or other authorizations, penalties and fines levied by the Commission, 10% of all monies generated as revenue by the Commission for the government of the Federation and appropriated to it by the National Assembly and grants or loans. The Commission may also impose a special levy on licensees and lessees for the implementation of any project that is of common benefit and value to the oil and gas industry. The Bill is however silent on the determinants for such projects and or the quantum of the levy which may be imposed by the Commission.

1.2.9 The Bill also establishes the Petroleum Equalization Fund into which shall be paid all monies due to the Equalization Fund by way of levies, subventions, fees, charges and all other funding which may from time to time accrue to the Fund. From the commencement of this Bill, the Fund shall be vested with the assets, funds, resources and other properties which immediately before were held by the Petroleum Equalization Fund. The Petroleum Equalization Fund (Management Board etc.) Act is accordingly repealed by the Bill.

1.2.10 The Bill establishes commercial entities for the petroleum industry. The Ministry of Petroleum Incorporated is established as a corporation sole which shall hold on behalf of
the Federal Government shares in the successor commercial entities incorporated pursuant to the Bill. The Bill also establishes the Nigeria Petroleum Assets Management Company (the ‘Management Company’), the National Petroleum Company and the Nigerian Petroleum Liability Management Company (the Liability Management Company).

1.2.11 The Management Company shall be responsible for the management of the assets held by the NNPC under the PSCs and back-in-rights while the National Petroleum Company shall be responsible for all other assets held by NNPC except the PSC assets. The Management Company shall have the power to negotiate and enter into new exploration and production agreements with other petroleum companies as may be required by the Federal Government, monitor the revenue and cost elements of the operation and the production output of its petroleum contracts and undertake the sale of crude oil and its derivatives from the assets. The Minister shall by order require the NNPC to transfer some of its assets, employees’ rights and liabilities to the Management Company including all alternative financing agreements, production sharing contracts, contracts, deeds, securities instruments and working arrangements.

1.2.12 The National Petroleum Company shall take on all financing agreements, joint operating agreements, participation agreements and other such agreements and arrangements as may be specified in a transfer order issued by the Minister. The National Petroleum Company is entitled to retain it revenue from its operations from which it shall defray its expenses including cash call obligations and other financial obligations to lenders and financiers.

1.2.13 The Bill also establishes the Liability Management Company in order not to financially encumber the Management Company and the National Petroleum Company to be established under the Act with substantial liabilities that may impede their operations. The Liability Management Company shall be responsible for the management of the liabilities of the NNPC and the pension liabilities of the Department of Petroleum Resources transferred to it. The Liability Management Company shall be wound up upon confirmation that it has concluded the settlement of all outstanding liabilities. The Bill does not have a sunset provision for the execution of its functions.

1.3 Likely Impact
The passage of Bill into law will affect the operators and players in the oil and gas industry by making significant changes to regulatory compliance and reporting procedure. These entities shall be required to approach the Commission for the issuance of any licences, leases, permits or authorizations as well as for the renewal of same. In addition, the Commission is also empowered to levy such entities for the development of any project which may be of value to the oil and gas industry. Operators will also have to work with the National Petroleum Company in relation to the existing joint ventures where applicable.