Midstream and Downstream Gas Infrastructure Fund Regulations
Under Section 52
Petroleum Industry Act (2021).

DRAFT DATE: 10/06/2022

General

1. The objective of these regulations is to set out the general rules for the administration of the Midstream and Downstream Gas Infrastructure Fund pursuant to section 52 of the Petroleum Industry Act (the "Act").

2. The Authority may, in addition to these general rules, issue guidelines from time to time on the administration of the Fund pursuant to these Regulations.

The Midstream and Downstream Gas Infrastructure Fund (The Fund)

3(1) The Fund shall comprise of all monies provided for in section 52(7) of the Act, which shall be paid directly into the "Midstream and Downstream Gas Infrastructure Fund Account" (the Fund Account) established by the Accountant General of the Federation in the Central Bank of Nigeria.

(2) The monies in the Fund Account shall be subject to appropriation by the National Assembly for use by the Fund and shall be managed by the Council of the Fund.

Administration of the Fund

4(1) The Fund shall be administered by the Council in accordance with these regulations and the rules made from time to time by the Council.

(2) The Council shall be responsible for determining the yearly budget of the Fund.

Functions and duties of the Council

5 The Council of the Fund shall have the following functions –

(a) Invest and supervise the management of such investments;

(b) Establish and approve policies and procedures for the proper management and administration of the Fund;

(c) Co-ordinate and ensure accountability of all monies accruing to the Fund;

(d) Establish criteria, policies and procedures for the investment of the Fund;

(e) Monitor the performance of investment by the Fund.

(f) Maintain separate records for each source of funding listed under section 52(7) of the Act.

6(1) A member of the Council who has any personal interest in any matter to be considered by the Council in respect of any investment of the Fund or in any contract or arrangement to be entered into or proposed to be entered into by the Fund shall disclose in writing the nature of such interest to the Council and shall not vote or participate in the deliberations on any question relating to such matter, contract or arrangement.

(2) A member who contravenes Regulation 6(1) shall cease to be a member of the Council and shall in addition be guilty of an offence punishable under the law.

Allowances of members of the council of the Fund

7. Members of the Council shall be entitled to an annual allowance in accordance with the Act. Such allowance shall be paid from the administrative fund, in accordance with the approved guidelines by the Revenue Mobilisation Allocation and Fiscal Commission. The Council shall disclose the annual allowances paid to members and such disclosure shall be done pursuant to Regulation 21(8)(c) of these Regulations.

Meetings of the Council

8.(1) The Council shall meet not less than four times in every financial year and the time between two meetings shall not be more than four months.

(2) A written notice of every meeting shall be given to every member of the Council by the Secretary of the Council at least 14 days before the meeting.

(3) The Chairman of the Council shall preside at every meeting of the Council. If the Chairman is unable to attend a meeting of the Council, the Chairman shall nominate another member of the Council to act as a Chairman for the purpose of that meeting and that person so nominated shall have the same powers as the Chairman.

(4) The Secretary of the Council referred to under section 52(4)(g) of the Act shall keep a record of minutes of all meetings of the Council.

(5) The quorum for any meeting shall be five members of the Council.

Voting

9(1) At any meeting of the Council, each member present shall have a deliberative vote, unless such member cannot vote under Regulation 6(1) of these Regulations.

(2) In the case of an equality of votes, the Chairman shall have a casting vote in addition to a deliberative vote.

(3) All decisions shall be by a simple majority of votes cast by members attending and voting at any meeting.

Administration

10. The common seal of the Fund shall be authenticated by the signature of the Chairman (or another member authorised by the Council to act in that behalf) and that of the Secretary to the Council.

11. Any document executed under the common seal or on behalf of the Fund shall be received in evidence and presumed to be so executed unless the contrary is proved.

Administrative expenditures and investment of the Fund

12. The Council shall maintain accounts with the Central Bank of Nigeria for its administrative expenditures and for its investment into which funds appropriated for its administration and investments shall be released.

13. The accounts shall be interest-bearing, and any accrued interest shall become part of the earnings of the Fund and shall be treated as part of its investible funds.

14. The monies of the Fund shall not be subject to taxes under the applicable laws.

Management of projects by the Fund

15. The Executive Director, Midstream and Downstream Gas Infrastructure Fund shall have administrative responsibility for the management of projects by the Fund.

Operations of the Fund

16. The Fund shall be staffed with appropriate number of employees with necessary capacity and technical expertise to administer the investments held by the Fund and implement the objectives of the Fund pursuant to section 52(10) of the Act, including –

(a) Perform the day-to-day management and administration of the Fund in accordance with the decisions of the Council;

(b) Organise and execute all administrative duties;

(c) Develop for approval of the Council, all policies and procedures, for the proper running of the Fund;

(d) Execute the policies and measures approved by the Council;

(e) Develop the annual work and formulate annual appropriate investment programme of the Fund and submit them for approval by the Council;

(f) Develop annual administrative budget of the Fund and submit it for approval by the Council;

(g) Prepare financial agreements related to the specific financial instrument to be concluded with third parties as part of the implementation of the activities of the Fund;

(h) Monitor the financial risks of the investment portfolio of the Fund;

(i) Carry out monitoring and evaluation functions, including technical and commercial evaluation of proposals for investments by the Fund;

(j) Perform assessments, analyses, and forecasts necessary for the activities of the Fund;

(k) Maintain bank accounts and record all receipts into the Fund and disbursements from the Fund;

(l) Keep proper accounts and records of the Fund;

(m) Prepare and submit for audit financial statements for each financial year;

(n) Prepare performance reports on the implementation of activities under the Fund;

(o) Arrange business meetings of the Council;

(p) Provide the Council with information as may be required by the Council;

(q) Carry out other functions as the Council may assign from time to time.

17. The Fund may establish and maintain a corporate structure as it may consider necessary for the proper and efficient conduct of its business.

Utilisation of the Fund

18. (1) The Executive Director shall not later than 90 days before the end of a financial year submit to the Council a proposed investment programme for the next year.

(2) The programme referred to in Regulation 19(1) shall include –

(a) Proposed investments for any financial year, with adequate financial justification in terms of return on investments and value addition to the expansion of Midstream and Downstream Gas infrastructure in Nigeria;

(b) Cost implications associated with the investments referred to in Regulation 19 2(a);

(c) Budget for administrative expenses of the Fund for any year, including allowances to members of the Council.

(3) The Council shall within 30 days of the receipt of the proposal, review and finalise the investment programme and authorise the investment(s).

19. The investments authorised by the Council shall be in accordance with-

(a) General criteria for project selection for investments by the Fund;

(b) Criteria for investments qualifying as low-risk pursuant to section 52(16) of the Act, provided that such investments shall have low probability or likelihood of occurrence of losses relative to the funds invested and to expected returns on such investments; and

(c) Criteria for high-risk investments pursuant to section 52(10)(b) of the Act.

20. A payment order for any payment out of the Fund for the purpose of investment shall be duly signed by the Executive Director of the Fund.

Annual reports and disclosures

21. (1) The Fund shall keep proper accounts and records and shall prepare in respect of each financial year –

(a) Annual statement of accounts in the form prescribed by the Council;

(b) Certified annual audited accounts; and

(c) Annual report on the operations of the Fund.

(2) The statement of accounts shall specifically include a breakdown for each source of funding pursuant to section 52(7) of the Act.

(3) The annual report pursuant to Regulation 22(1)(c) shall discuss in detail in respect of the financial year –

(a) Funds received and the source of funding pursuant to Regulation 22(2) of these Regulations;

(b) Investments made;

(c) Earnings and financial performance from the investments held by the Fund;

(d) Quantitative assessment of how the newly made investments and investments held by the Fund meet the objectives under section 52(10) of the Act, and where applicable section 52(7)(d) of the Act.

(e) Costs and expenses of the Fund.

(5) The certified annual audited accounts pursuant to Regulation 22(1)(b) together with the report on the operations pursuant to Regulation 22(1)(c) shall be part of the annual report.

(6) The auditor shall be independent and shall have applicable licence issued by a competent authority in Nigeria. The selection and procurement of the audit services shall be done by the Fund under the applicable public procurement laws and regulations.

(7) The audited annual financial report by the auditor shall be accompanied by a report setting out the auditors observations and recommendations on all aspects of the accounts of the Fund.

(8) The annual statement of accounts pursuant to Regulation 22(1)(a) shall be submitted to the Minister of Finance not later than 90 days after the end of the financial year to which they relate.

(9) The Fund shall within 180 days after the end of the financial year publish in a public domain and keep available to the public on the website of the Fund –

(a) Certified annual audited accounts required under Regulation 22(1)(b);

(b) Annual report under Regulation 22(1)(c);

(c) Disclosure of allowances paid to the members of the Council.

(10) The Council shall indicate on the Funds website that the yearly accounts of the Fund have been disclosed with a link to the information.

Transaction advisor

22. (1) The Fund shall appoint a transaction advisor pursuant to section 52(11) and selected pursuant to section 52(12) of the Act. Such engagement shall be on a need basis only.

(2) A transaction advisor shall be independent, competent, and have an applicable licence issued by a competent authority in Nigeria, where the nature of services provided to the Fund requires a licence under the law.

(3) A transaction advisor shall not –

(a) participate in the implementation of the investment project for which the services were engaged; and

(b) provide transaction advisory services to any bidder in the process of bidding towards participating in the implementation of the investment project in which that transaction advisor has previously provided advisory services to the Fund.

(4) Where the Fund decides to engage the services of a transaction advisor, subject to the rules and regulation provided in the Act, the Council shall approve the selection criteria and the final selection of a transaction advisor.

(5) The transaction advisor shall in performing its duties submit to the Fund report of its findings and recommendations, all documents related to the assignment, and the project financial and economic models.

Interpretation

23. In addition to the definitions contained in the Petroleum Industry Act, 2021 the following definitions shall apply to these Midstream Gas Infrastructure Fund Regulations.

"Act" means Petroleum Industry Act, 2021.

"midstream gas infrastructure" means infrastructure for midstream gas operations, as defined in the Act.

"Ministry" means the Ministry of Petroleum Resources.

"natural gas" shall have the meaning as defined in the Act.

Short title

24. These Regulations may be cited as the Midstream Gas Infrastructure Fund Regulations.