NIGERIAN MIDSTREAM AND DOWNSTREAM PETROLEUM REGULATORY AUTHORITY (NMDPRA)

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PRESS RELEASE

COURT AFFIRMS NMDPRA'S POWERS ON STATUTORY LEVIES

In what is a far-reaching and the first major judicial decision on the Petroleum Industry Act 2021 ("PIA"), the Nigerian Federal High Court has affirmed the power of the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA or Authority) to impose and collect levies on petroleum products sold in Nigeria.

In an action filed by IHS Nigeria Limited and INT Towers Limited against the NMDPRA, the plaintiffs argued that they are not liable to pay statutory 0.5% levies for the 'Authority Fund' and the 'Midstream and Downstream Gas Infrastructure Fund' respectively on petroleum products they import. According to the plaintiffs, their products are not 'sold in Nigeria', but rather used for their respective business operations, and therefore not in the category of petroleum products subject to the levies. They also sought for the court to declare two key regulations for the implementation of the PIA void and illegal - the Midstream and Downstream Petroleum Operations ("MDPO") Regulations 2023 (which define the concept of 'sold in Nigeria') and the Petroleum (Transportation and Shipment) ("PTS") Regulations 2023 (which sets out the information the NMDPRA may demand from a permit holder) – on the basis that they overreach sections 47(2) and 57(7) PIA and amount to a breach of the constitutional right to personal property respectively.

Delivering judgment in the suit on Monday 5th February 2024, Honourable Justice Inyang Ekwo of the Federal High Court Abuja Division, agreed with the arguments of the NMDPRA counsel Dr. Emeka Akabogu, and affirmed the validity of the Midstream and Downstream Operations Regulations 2023 as well as the Petroleum (Transportation and Shipment) Regulations 2023. The court held that the regulations neither overreach nor conflict with sections 47(2)(c) and 57(7)(a) of the PIA which provide for payment of a 1% levy on petroleum products and natural gas sold in Nigeria. The court found that the definition of

'sold in Nigeria' covers three distinct situations – where the goods are sold "fob" in Nigeria or its territorial waters, where they are loaded or offloaded for sale within a wholesale point in Nigeria, or where the transaction originates, occurs or is concluded in Nigeria.

Implication of the Judgement.
The judgment confirms the wide discretion granted to the NMDPRA under section 33 of the PIA to regulate the sector through subsidiary legislation. It also has a far-reaching impact on natural gas and petroleum products meant for export, which are automatically covered by and subject to the provisions of the MDPO Regulations. Thus, petroleum producers who sell and export such products are liable to payment of the levies as a precondition for valid export operations.

For details of the Judgment of the court, kindly visit our website- https://www.nmdpra.gov.ng.

Signed by
AUTHORITY SECRETARY/LEGAL ADVISER
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