



MEMORANDUM ON THE REVIEW OF H.B. 159 - A BILL FOR AN ACT TO ESTABLISH THE LEGAL AND REGULATORY FRAMEWORK, INSTITUTIONS & REGULATORY AUTHORITIES FOR THE NIGERIAN PETROLEUM INDUSTRY, TO ESTABLISH GUIDELINES FOR THE OPERATIONS OF THE UPSTREAM AND DOWNSTREAM SECTORS AND FOR PURPOSES CONNECTED WITH THE SAME (THE PETROLEUM INDUSTRY BILL)

**DELIVERED TO THE HOUSE OF REPRESENTATIVES
COMMITTEE ON PETROLEUM RESOURCES (UPSTREAM)**
BY
TOTAL'S UPSTREAM COMPANIES IN NIGERIA

Honourable Chairman,
Honourable members of the House of Representatives Committee on
Petroleum Resources (Upstream),

I INTRODUCTION

This memorandum is presented by TOTAL's Upstream Companies in Nigeria. We thank you for this opportunity to make our input into this very important Petroleum Industry Bill (PIB) that is currently before the House of Representatives.

TOTAL as a company and also as a member of OPTS is in support of the objectives and ambition to harmonize all existing Legislation while creating the desired enabling environment for the viable operations of the oil and gas industry in Nigeria.

After 40 years of operation of the Petroleum Act, it is indeed true to note that there are still today various problems that impact our industry: JV funding, overlapping regulation and legislation amongst others. We are also facing major security issues. Meanwhile the industry has to cope with the challenges of today: local and international funding constraints, large investment required for domestic gas developments, new frontier technologies in large deep water projects and the development of Nigerian Content.

Clearly, many aspects of the Bill such as the proposed reorganization of the regulatory bodies will solve problems that tend to stifle the efficiency of the operations. However, other aspects like some fiscal terms or definition of permits, etc, seem to harbor potential challenges that could be counter-productive. In addition, in our view there would be a need for clarifications of some provisions of the Bill to ease its implementation.

This memorandum will presently touch on these various aspects as TOTAL currently understands them.

Thanks to the opportunities created by the Federal Republic of Nigeria over the years, TOTAL has prepared itself to be in the current position of having a healthy portfolio mix in terms of projects. It is a fact that we have grown tremendously in the past years and still have the potential to grow even further if the proper environment prevails, thereby increasing investments and Nigeria's production capacity.

Despite all the challenges in our industry we had worked with NNPC, our partner in the Joint Venture (the JV) and the DPR during the harsh years of low oil prices in the early 90s, to increase production by maintaining

our investments in oil and gas. We had also cooperated with NNPC to put in place funding solutions at critical periods for example, during the development of the Amenam / Kpono field and during the development of AKOGEP. Only recently in 2008, we signed two Modified Carry Agreements (MCAs) to finance NNPC's share of investments in the JV's OML 58 Upgrade gas export Project, and OFON Phase 2 field developments. These MCAs, at a level of close to \$3 billion, will be sourced by TOTAL alone.

At TOTAL, our pragmatic approach to fields' development and ensuring delivery of projects within time and cost has placed us in a very active phase of development and growth, with some projects already delivered and others at various stages of realization.

These projects are the OML-58 Upgrade and the Ofon Phase 2, both aimed at optimizing JV reserves, increasing oil production, providing gas to the domestic and the export markets and to finally complete our flare out program.

The very recently inaugurated Akpo deep offshore field came on stream one month earlier than planned and is producing and contributing to the overall production of Nigeria. TOTAL and its partners have started the development of the USAN deep water field with billions of dollars already committed to achieve production in 2011. These commitments were made before this new Bill.

We are already looking forward to the development of the next giant deepwater project, the EGINA field for which we have received approval for its Field Development Plan (FDP). We are hoping that the fiscal

conditions would be such that we are able to continue this development, which should further increase production and create jobs to alleviate unemployment in Nigeria.

In addition we partner with indigenous oil and gas companies for development of shallow and deepwater fields. All these projects come on line with active and very significant Nigerian content which have become a benchmark in the industry. We also provide access to technology and capacity building to these partnerships. The success of all these will depend on the enabling fiscal and investment climate that we expect that this new Bill should provide.

TOTAL has continued on these investment efforts in Nigeria despite the combined effects of the recent world wide economic uncertainties, the high cost environment and the challenging security conditions in our areas of operations.

It is within this context that TOTAL's memorandum will address the issues arising from the PIB.

II TOTAL's POSITION AND COMMENTS

TOTAL supports the Federal Government of Nigeria's (FGN) intention to restructure the Oil and Gas sector, transform NNPC into a fully fledged "National Oil Company" (the NOC) and to seek long term solutions for sustainable funding of oil and gas projects.

TOTAL also supports the concept of incorporating the joint venture provided that the end result is the establishment of a truly commercial,

self - financed, bankable Incorporated Joint Venture (IJV). This IJV should be governed by a structure that is consistent with today's Joint Operating Agreements (JOAs), thus allowing a balanced and fruitful partnership between the NOC and its partners.

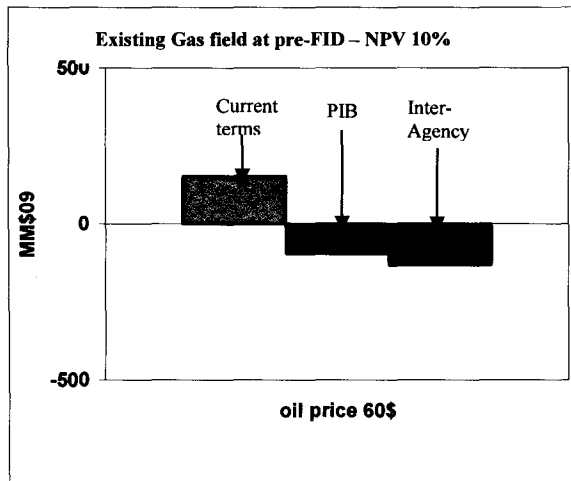
This transformation is challenging and one should not underestimate the complex issues at stake and the time needed to resolve them. Preserving the rights of Government and investors, ensuring operational continuity during the transition phase through continued application of the existing JOAs, as well as addressing the MCA issue, is of utmost importance to enable a smooth process and continuity of investments.

We agree with the statement of the Oil and Gas Sector Reforms Implementation Committee (OGIC) set up by the FGN, as stated in their July 2008 report, where they indicated their objective to be "to maximize the nation's economic rent from the Oil and Gas sector while not jeopardizing the growth and development of the industry".

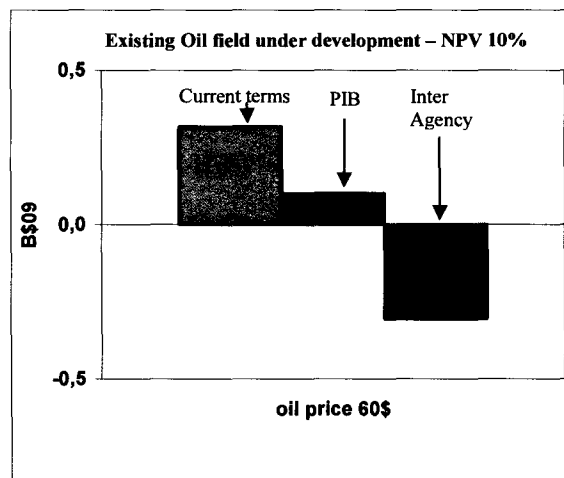
In this regard, our deep concern is that a number of terms in the PIB will seriously and adversely change the outlook for the industry and have significant negative impacts on past and future investments.

For example:

- Most of the potential gas developments in our (mainly lean gas) portfolio will become uneconomic post-PIB, impacting our ability to contribute to the Gas Master Plan and availability of power.



- New oil production will be reduced with a high proportion of new projects becoming unviable (for example, we could not have been in a position to launch the Usan deep water project under the current PIB terms for the PSCs), impacting Government economic rents which will decline in the long-term.



In all these matters TOTAL supports the remarks expressed in the OPTS Memorandum to this esteemed Committee. In addition we have detailed

in the Appendices to this memorandum, some specific points that we wish to bring to your attention.

We would like the proposed Bill to take into account the following:

1) Dispute resolution

The PIB provides that the Inspectorate can intervene and act as a binding arbitrator in a dispute on the invitation of one party. For international investors, access to third party independent adjudication of disputes is a fundamental necessity. Right of recourse to independent dispute resolution should be maintained, using professional arbitrators under internationally recognized rules such as found in the Nigerian Arbitration and Conciliation Act and other international bodies like the ICC and UNCITRAL.

2) I-JVs

- 2.1 Transition period from the Unincorporated Joint Ventures to the I-JVs

Time is of the essence in achieving the transformation of the U-JVs into I-JVs through pro-active good faith negotiation. However the proposed one year time limit would be construed as legally enforcing the migration and end up compromising operational continuity. The process of incorporating two major entities with ongoing operations, staff, processes, financial accounting systems into a functional I-JV will take more than one year.

For example, the incorporation of Nigerian LNG Ltd took longer than one year and that was a new build with none of the issues of an ongoing

concern. We recognise the importance of setting up this structure as quickly as possible but this should be done within a period to be mutually agreed and not mandated by law. (See appendix 2, Issue 1)

The PIB should also clearly provide for a tax-neutral transfer of assets to the I-JVs. The move to the IJVs is mandated by law and not through a voluntary decision made by partners. There should be no penalty of a major tax hit associated with compliance to a Government mandated law.

- 2.2 Incorporating I-JV

We support the provisions of the PIB that allows parties to an I-JV to negotiate and agree all governance documents of the I-JV on a normal commercial basis. We are agreeing to a structure that will govern the administration of a multi billion dollar enterprise, generating the vast majority of the revenue of this nation. Foreign Direct Investments of billions of Dollars, already invested and planned will be affected by the governance. This needs to be done properly so that such investments are secured and other foreign investors will recognise that Nigeria's reputation for respect of investors' rights and sanctity of agreements remains intact.

The PIB should ensure that incorporation and operation of I-JVs should be carried out in compliance with investors' (both Government and private) rights under existing contractual arrangements (JOA, MCAs, etc.) and under terms of the JV mining leases already negotiated.

A critical element in the negotiations of the shareholder agreements will be that major decisions in I-JV including the marketing and dividend policies must be decided on the basis of the voting arrangement in force

in pre-existing U-JVs. This is consistent with the views of the OGIC that shareholder agreements will be based on the existing JV agreements.

- 2.3 I-JV bankability

Another important factor of success for achieving I-JV bankability would be to avoid the IJV being classified by third party lenders as a 'government entity'. Traditionally such a classification has made it harder to raise the large sums of debt that an IJV would require at a competitive rate. Government entities are subject to the sovereign credit rating of the country and lenders are also wary of government regulations that may challenge their ability to recover their debts or take over pledged assets in the event of any default.

This issue can be addressed either through specific legal exemptions of these entities from rules applicable to Government entities (e.g. application of Public Procurement rules and Fiscal Responsibility requirements), or by the NOC reducing its participation to less than 50% as was done in the case of NLNG. However, if NOC participation is to remain above 50%, the continued restrictions imposed by the World Bank Negative Pledge on public assets would still need to be addressed, as this could severely limit bank financing.

An explicit exemption from applicable laws relating to repatriation of export proceeds to Nigeria would be necessary to preserve I-JVs' ability to raise third party financing.

3) Fiscal terms

- 3.1 Fiscal transparency

Fiscal Transparency means tax consolidation at I-JV shareholders' level instead of consolidation at I-JV level. This would allow the shareholders to invest in numerous other ventures. For example, development of onshore or shallow water gas fields to achieve FGN growth objectives will benefit from Fiscal Transparency.

In addition, Fiscal Transparency would help to solve the Modified Carry Agreement repayment issues, allowing the continued operation of the Tax Relief mechanism to pay down the carried amounts.

We feel that Fiscal Transparency will incentivize small oil fields, domestic gas developments, mature fields redevelopments and allow indigenous companies to expand their activities in the oil and gas sector.

- 3.2 Gas

The Nigerian gas sector is facing major challenges as the gas production is expected to more than double over the next few years with the strategic priority put on domestic gas, together with new export projects. This will require a huge investment in infrastructure and fiscal enablers during the infancy of this new industry.

In order to achieve this level of gas production, we highly recommend keeping consolidation to offset gas costs on oil revenues, maintaining royalty rates and current tax allowance (PIA) at existing level, with an income tax rate on gas revenues not above 50%. This framework would guarantee the viability of many projects and in particular lean gas projects.

A savings provision of current tax principles for projects currently under development would have to be put in place for the billions of dollars of CAPEX being incurred, as those tax terms were the basis for the investment decision.

- 3.3 JV Oil

Current JV government take on oil (including royalty and taxes) is already one of the highest worldwide and therefore should not be increased.

- 3.4 PSCs

Significant past investments were made in Deep Water in the early nineties by the Contractor taking the sole exploration, financial and development risks associated with the deep water. When these contracts were signed in 1993, the deep waters were an unknown frontier area, with all the risks taken solely by the investor at a time of very low oil prices. There have been a few giant discoveries which are contributing a significant portion of Nigerian oil production, but most deep water fields cannot be produced even under the 1993 PSC terms. The cost profile for development in those areas makes many fields uneconomic.

TOTAL's position is that the 1993 contracts, which have been the basis of billions of dollars of investments, should be respected. There are provisions in the Deep Water Act that provide how the terms governing those contracts can be renegotiated.

We understand the requirements for new PSC terms to provide improved Government take, but this needs to be balanced with an acceptable rate of return. Sizes and costs of future projects, as well as volatility of oil

prices should be taken into account in the new fiscal terms. Like OPTS, we recommend a limited increase in royalties, keeping an investment tax allowance of 50% and maintaining the current tax rate of 50%.

A progressive tax regime could also be considered that increases government take in case of high ^{prices} profits but that protects smaller size fields in a context of high costs and low oil prices. The Angolan tax regime, which has no royalty but has an uplift on capital expenditure and a profit oil split based on rate of return could be used as a reference.

5) Other matters

- Current licenses for oil and gas should continue in force for the remainder of their duration in accordance with the terms under which they were issued. In particular, there should not be any split of license between oil and gas.
- Any revocation of licenses should only be on the basis of clearly identified grounds, with fair notice and opportunity to cure any breach.
- If introduced by the PIB, a fair and reasonable benchmarked, verified and approved process (BVA) should be based on current local environment and international best practice. All costs whether incurred locally or abroad that meet the 'wholly exclusively and necessarily' test (WEN) should be tax deductible.
- Open Access: The Network Code should be agreed and adopted by all stakeholders with commercial terms and liabilities to be negotiated between parties rather than imposed by a regulator.
- Midstream pricing must be governed by contractual terms.

We have provided further details on the issues raised above in the Appendices to this memorandum and would be grateful for your attention thereto.

III CONCLUSIONS

Honourable Members, the industry is at a critical and historic moment. We have over the years, partnered with NNPC and the rest of the Oil and Gas authorities to ensure the continuation of investments and production even when the oil price went below \$10 that contributed to the growth of Nigeria, for which we are all very proud.

TOTAL's Upstream Companies have been in Nigeria since 1962. Being here for the long haul, our contributions in this forum are those of an established and committed partner who is fully focused on long-term solutions that will work in the mutual interest of all. As such we hope that our contribution will be beneficial to the deliberations of this esteemed Committee.

On the part of TOTAL, we intend to continue to play our role in the development of the Nigerian oil and gas industry, and we look up to you now to consider these very important issues that are weighty to ensure the survival and growth of our industry.

We thank you for the opportunity given to present our memorandum to contribute to your deliberations on this very important matter.

Guy Maurice
Managing Director & Chief Executive



APPENDIX 1

1. Incorporated JVs (I-JV)

TOTAL supports the targets set by the FGN to create autonomous and self-funding entities. To ensure the fulfillment of those objectives, some issues must be adequately addressed in the PIB, namely the transition from the existing Unincorporated Joint Ventures (U-JVs) to an I-JV environment, I-JV governance and I-JV bankability.

1.1. Transition

TOTAL is of the opinion that in order to ensure the continuity of the operations of existing projects managed in the framework of the Upstream U-JVs, a smooth transition process is crucial. As such the existing U-JVs should remain legally and operationally in place until any agreed new I-JV entity is formed and fully operational *(See proposed PIB amendment in Appendix 2 Section 1)*.

Quick progress in achieving the above through pro-active good faith negotiation would be in the interest of all, while any specific time limit as proposed in the PIB, would be construed as legally enforcing the migration and may end up compromising operational continuity *(See proposed PIB amendment in Appendix 2 Section 1)*.

A prerequisite to the full migration of the existing U-JV activities into the I-JV environment should be to address the existing funding arrangements between the JV parties (the "Modified Carry Agreements" or "MCAs"). If carried amounts are not reimbursed by NNPC beforehand, such arrangements may well need to be partially restructured before any new entity is formed, as some related provisions could become inapplicable in an I-JV environment. Our proposed introduction of the 'Fiscal Transparency' concept (See Section 2 of this Appendix) in the PIB would allow retention of the MCA Tax Relief mechanism¹, which addresses a large part of the recovery of the amounts carried under the MCAs.

1.2. Governance

Governance of I-JVs, whether through Shareholders, Boards, Management or otherwise, must be on the basis of joint control by the parties in line with existing U-JV arrangements. No existing U-JV partner should be disadvantaged by the transition to an I-JV structure. Particular principles include:

¹ The MCAs provide that the Carrying Parties retains title to 100% of the Carry Project assets for the period of the MCA. The Carrying Parties can then claim 100% of the related Capital Allowances and thereby recover part of the MCA carried costs through the resulting **Tax Relief**. while the balance and the MCA remuneration shall be recovered through additional oil barrels / gas volumes allocated to the Carrying Parties.

- The PIB should allow parties to an I-JV to negotiate and agree all governance documents of the I-JV on a normal commercial basis.
- Governance documents negotiated and agreed on by shareholders should reflect parties' pre-existing U-JV rights and voting arrangements (*See proposed PIB amendment in Appendix 2 Section 1*).
- In particular, unanimity vote/minority shareholders' protection should be maintained for critical decisions such as dividends, marketing policy and operatorship arrangements (*See proposed PIB amendment in Appendix 2 Section 3*).
- Sound operating principles will have to be discussed at a later stage since effective and efficient control of operations is at stake, and will strongly impact I-JVs' viability and operational credibility.
- TOTAL advocates the right for each I-JV shareholder to buy from the I-JV its share of I-JV oil production for a price reflecting international market prices.
- I-JV management decisions must be driven by commercial principles (*See proposed PIB amendment in Appendix 2 Section 4*).

1.3. Bankability

In order to meet Government's aspiration of achieving I-JV funding independently from Federal Budget, I-JVs should be structured to enable full "bankability", meaning the ability for I-JVs to fulfil its funding needs from its self-generated cash-flows and from external financing.

A critical factor of success for achieving such bankability would be to avoid the IJV being classified by third party lenders as being a 'government entity' and subject to specific legislation or regulations applicable thereto.

In particular the Fiscal Responsibility Act, if applicable to I-JVs, would cause I-JVs to be subject to various requirements in respect of use of loan proceeds and approval process which could preclude I-JVs' ability to raise external financing and undermine I-JVs' financing autonomy.

If the NOC is to have a participation in I-JVs equal to or above 50%, avoiding such constraints could be accomplished through exempting I-JVs from specific regulatory frame, accounting and procurement rules applicable thereto to government entities such as but not limited to the Fiscal Responsibility Act, the Public Procurement Act and the automatic flow of all IJV revenues into the Federation Account (*See proposed PIB amendment in Appendix 2 Section 5*).

In order to raise external debt, I-JVs will need to have the ability to grant to potential lenders appropriate security packages including pledges on some of their assets. If I-JV assets are considered as public assets by the World Bank, then I-JVs would be subject to the restrictions imposed by the World Bank Negative Pledge² (the

² The International Bank for Reconstruction and Development (IBRD) General Conditions provide that if any 'Lien' shall be created on any 'Public Assets' as security for any external debt, such Lien shall also be granted to

'Negative Pledge'), i.e.; any mortgage, pledge or priority of any kind granted by I-JVs to potential lenders should also be granted to the World Bank. Such restrictions would result in severely limiting external financing capacities for I-JVs. If the NOC is to have a participation in I-JVs equal to or above 50%, avoiding the restrictions imposed by the Negative Pledge may be achieved by establishing appropriate I-JV governance rules reflecting joint control by both parties. In any case, the Negative Pledge remains a critical issue for I-JVs' ability to raise external debt and will need to be addressed.

According to capital market practices, potential lenders to I-JVs would typically require that all of I-JVs' export proceeds be deposited and maintained in secured offshore accounts. Third party structured financing is therefore heavily dependent on I-JVs' capacity to freely receive and maintain export proceeds on offshore bank accounts, without obligation to repatriate funds on domiciliary accounts. A specific provision should be added in PIB to secure such capacity (*See proposed PIB amendment in Appendix 2 Section 6*).

Moreover, potential lenders will be keen to ensure that I-JVs are effectively managed in accordance with international practices and without excessive government interference, driven by commercial objectives, on the basis of balanced governance rules among partners. In this regard, implementing appropriate governance structure and rules, as discussed in Section 1.2 above, will be crucial.

Potential lenders will also be concerned to see the preservation of some fundamental I-JV partner rights such as independent dispute resolution and rights related to licences, as discussed in Section 3 below.

Obviously, effective bankability hinges on economic value of assets and is therefore highly sensitive to fiscal framework. Careful consideration should be given to this objective in the PIB implementation process, in order to reach appropriate balance between Government fiscal aspirations and successful I-JV contribution to federal revenues growth.

2. FISCAL TRANSPARENCY

Under the PIB, the U-JVs will be incorporated with the result that in the absence of any specific provision, tax is imposed at the level of the JV companies and not at the level of the participants in the JVs, as is the case under the current JV regime.

This would mean that a shareholder in an I-JV would no longer have taxable income from the I-JV that it will be able to consolidate with profits and expenses derived from other petroleum activities and in particular from indigenous concessions.

the World Bank in order to equally and ratably secure the payment of all amounts payable by the Member Country under any loan agreement the Member Country may have entered into with the World Bank. For the purpose of this provision, the IBRD defines 'Lien' as mortgages, pledges, charges, privileges and priority of any kind. 'Public Assets' are defined by the IBRD as assets of any entity owned or controlled by, or operating for the account or benefit of, the Member Country or any of its political or administrative subdivision.

Furthermore, in connection with the MCAs concluded with the Nigerian National Petroleum Company ("NNPC"), a participant in a U-JV is able to benefit from all capital allowances related to the carried assets. Consequently, the amount which NNPC has to repay is reduced by an amount equal to the tax benefit to the participant related to the deduction of such capital allowances (Tax Relief mechanism).

With the incorporation of the JVs, and in the absence of any specific provision in the PIB, the shareholders would not be able to benefit from all the capital allowances related to the carried assets due to the absence of taxable profits against which they could deduct such charges. In such a case, the Tax Relief mechanism could not be maintained.

In order to address these various issues, it is proposed that a clause be added to the PIB to the effect that an I-JV is transparent for the purpose of profit tax charged under the PIB.

Fiscal transparency would permit the realization of profits and losses at the I-JV's shareholders level and as a consequence, the consolidation of incomes and expenses from various operations and the continued operation of the Tax Relief mechanism for the carried assets, while benefiting from the advantages resulting from the incorporation of the existing JVs and, in particular, the creation of self financing entities.

We feel that the combination of an aggressive acreage management policy by the authorities with tax consolidation at shareholder's level will incentivize small oil fields and domestic gas developments, mature fields redevelopment and indigenous companies will be able to expand their activities in the oil and gas sector.

2.1. What is Fiscal Transparency?

Fiscal transparency means that the I-JVs would not be regarded as entities separate and distinct from their shareholders for profit tax purposes.

It would be achieved essentially by deeming the assets and transactions of the I-JV to be assets and transactions of its shareholders for profit tax purposes

As a consequence, any profit tax related to I-JV activities would be computed and paid directly by the shareholders according to their percentage of shareholding.

Any other taxes payable by the I-JV (such as royalty or education tax) would remain due from the I-JV.

It is not proposed that any changes would be made to the corporate law treatment of the I-JVs which would consequently keep all the legal features of limited liability companies.

It should also be noted that the effect of the transparency would be that the shareholders would be subject to profit tax regardless of whether the I-JV distributes

or retains its profits. The shareholders would therefore be liable to advance and final profit tax payments as provided by the PIB, whether or not they have received dividends from the I-JV.

For the purpose of facilitating the establishment and the control of the amount of profit tax chargeable on a shareholder, each I-JV would deliver a return to the FIRS and to each shareholder including all requisite information regarding the income, expenses, assets and liabilities of the I-JV.

On this basis, the shareholders would be responsible for filing all relevant returns in respect of their appropriate share.

A proposal of wording to be included in the PIB to introduce Fiscal Transparency is presented in Appendix 2 Section 8.

2.2. Examples of Companies Having Fiscal Transparency Operating in Other Jurisdictions

US LLC:

The LLC form was introduced in the US for the purpose of oil, gas and mining projects. The LLC has legal personality and limited liability.

Tax due by an LLC is payable by the members of the company and not by the LLC itself.

Each member calculates its share of income and expenses of the LLC and aggregates it with other income and expenses in order to determine the tax owed.

UK LLP:

The UK LLP has been introduced in 2001 (and so is not historically used for oil and gas operations). The UK LLP has legal personality and limited liability.

The taxable profits are calculated at LLP level but the tax is assessed on each member in accordance with its share in the profits of the LLP as if the profits were earned directly by that member.

The profits derived from the LLP are aggregated with the member's profits from other sources to determine the tax owed.

ANGOLA LNG:

Angola LNG is a limited liability company having a permanent establishment in Angola which holds all the industrial assets of the company.

The Angolan income tax is calculated at Angola LNG level but the shareholders are liable to such tax prorata to their shareholder interest in the company.

For a certain period of time, taxes due by the shareholders on Angola LNG profits are creditable on the income tax due on their other petroleum concessions.

3. Other issues

3.1. License issues

Current licences for oil and gas should continue in force for the remainder of their duration in accordance with the terms under which they were issued. In particular TOTAL strongly proposes that there should be no separation of oil and gas licenses.

Renewal & relinquishment should be aligned with international practices including reasonable terms for fallow acreage

Revocation of licenses should only be on the basis of clearly identified grounds, with fair notice and opportunity to cure breaches.

3.2. Independent dispute resolution

Parties must always have recourse to independent dispute resolution whether that through the courts or independent third party arbitration using professional arbitrators and applying well known standard arbitration rules. Without this right, or with the potential for enforced Regulator involvement, existing contractual arrangements would be overridden and new investments discouraged (*See proposed PIB amendment in Appendix 2 Section 2*).

4. Deepwater Profit Sharing Contracts

TOTAL fully supports the objective of the FGN to maximize the nation's economic rent from the Oil and Gas sector while not jeopardizing the growth and development of the industry.

The best way for the FGN to maximise its rent is to offer an adequate framework to ensure the launching of new projects, taking into account costs of such projects and volatility of oil prices.

New projects are more complicated and are of smaller resource size, therefore more costly than the existing fields. They require a reasonable internal rate of return under any oil price scenario.

The tax regime as proposed in the recent OGIC proposal will make all the new deep water projects unviable.

- This OGIC version proposes excessive rates of royalties. A standard deep water project will reach production levels of more than 50 kbpd and will result in a 25% royalty at the start up of the field, even under low prices which will make the launching of the project impossible.

This 25% royalty may be increased substantially if oil prices are above 70\$/b (+ 4% at 80\$/b, + 16% at 110\$/b).

The Angolan PSC tax regime, which has a good track record in deep water developments, has no royalty.

- TOTAL proposes maintaining the 50% level of taxation on deep water PSCs. Such a tax rate should not be increased by other elements of taxation such as withholding tax on dividends or non deductible items like 20% of Non Nigerian expenditures, especially when such non Nigerian costs would need in any case to be benchmarked, verified and approved (BVA test).
- The production allowances proposed in the recent OGIC proposal (40\$/b up to a cumulative 40Mb production) are not adequate. No carry forward is allowed and hence at low oil prices the taxable basis of small projects will not be sufficient to absorb the annual production allowance which will be lost. The objective of the FGN to boost small projects will not be met. In lieu of this production allowance TOTAL would favour an ITA of 50% - tax allowance up to 50% of the costs of the project – as it exists already, with carry forward of any unused allowance.

Beyond these fiscal items, investors need to have a well defined contractual framework with no discretionary power for NOC to change the rules. If the PIB intends to provide a PSC model for new projects, the levels of cost recovery and profit oil should be clearly stated. TOTAL is not opposed to a maximum cost recovery of 80% and a minimum profit share for NOC of 30%.

TOTAL would propose the option of a progressive tax regime (i.e. rates of royalty and/or taxes and/or profit oil split, depending on a R factor (revenues over costs)), as already used in some PSCs. Rates would vary according to a sliding scale depending on the R factor. The merit of this approach would be to take into account costs and oil prices, boosting small costly projects and creaming off high profits as per the FGN objective. Angola has successfully used this type of model, with no royalty, a 50% tax rate, an uplift for the capital expenditures and a profit oil split depending on the historical rate of return.

TOTAL remains willing to continue investing in deep water projects but would require an economic return on its investments supported by an appropriate legislative framework. Along with other majors, TOTAL massively invested in frontier deepwater acreage during the 1990s, having taken major exploration and technological and financial risks. The PSC contracts were entered into in 1993 in an effort to encourage contractors to venture into the deep waters in a low oil price environment while assuming all the risks. In spite of the 1993 PSC terms only the giant fields have been economic enough to come on stream. Other fields cannot be produced due to the cost of development and the uneconomic returns for both Government and investors.

TOTAL is deeply concerned about the potential implications of the recent OGIC proposals on existing PSCs. We appreciate that there is an ongoing debate about the adequacy of Government Take on the 1993 PSCs but the deep water law and the terms of the contracts provides a mechanism to review PSC terms through negotiation and agreements. TOTAL respects the sovereign right of any nation to

review its laws and tax code. We would respectfully however propose that no government should use legislation to alter the terms of an existing contract to which it is also a party. The current law envisages the parties re-opening the PSC and agreeing new terms on a bilateral basis.

As an example, producing PSCs at January 2010 would not benefit from any production allowance. New PSCs would benefit from such allowances. It is important to recall that the 1993 PSCs have stabilisation clauses designed to address the impact of any changes in laws that affect the economic interests of the Contractors and maintain the global value of the contracts.

It is clear that TOTAL and its partners could not have launched the Usan deep water project under the proposed PIB terms. The impact would have been that the Contractor's internal rate of return as of Jan 2008 (not taking into account past exploration costs) at 60\$/b, would fall to under 5%. No party would invest on that basis considering the risk and up front expenditure involved.

As already mentioned, TOTAL proposes that a properly designed progressive tax regime on existing PSCs could meet FGN objectives with a higher Government Take of high profits in a high oil price scenario while still remaining robust at low prices.

5. Gas issue

The Nigeria Gas Master Plan is promoting a fast expansion of its gas sector with objective to double gas production in the years to come. Such plan has been designed to develop and secure the domestic gas and IPP sectors while feeding gas to existing and future LNG plants and trains.

In order to achieve these goals significant gas resources will have to be developed over the next years. These include (i) growing associated gas production from existing JVs as well as (ii) lean gas developments which provides the flexibility and reliability of security of supply.

At a time where major investments in gas fields developments, processing facilities, gas liquefied plants and pipeline infrastructure are required, it is important that the PIB includes fiscal terms that make such investments possible.

TOTAL's opinion is that gas cost consolidation with oil should be maintained (See proposed PIB amendment in Appendix 2 Section 9), while a tax rate on the gas revenues in the range of 50% could be applied as contemplated in the PIB. This clear and transparent mechanism has been the main enabler to date of the achievements in the Nigerian gas sector allowing both short term and long term objectives to be met by all stakeholders (FGN short term increased cash flows, large gas volumes made available on the market, bankability of projects). The development of lean gas fields will certainly require such a mechanism.

Any other alternative which relates to tax consolidation should be based on oil and gas tax consolidation, uncapped gas allowances, accelerated depreciation (at time of expense), an appropriate royalty level and no ringfencing. Tax ringfencing, as

contemplated in the PIB, will impact negatively the development of new gas OMLs and discourage exploration and appraisal efforts on new acreage.

TOTAL strongly believes that without either gas cost consolidation or oil & gas tax consolidation any other fiscal package proposals might not meet FGN objectives leaving many gas field developments uneconomic and un-bankable.

In addition to the overall tax framework, Total, as said earlier, advocates Fiscal Transparency to provide clear incentives for gas development across different JV operations, in particular between IJV and JVs involving Sole Risk Blocks with Indigenous Companies. Fiscal Transparency will clearly further incentivize Indigenous Companies to diversify or expand in Gas.

The PIB should also provide grandfathering clauses for projects currently under development that have already taken FID, (Final Investment Decision) allowing for the Life Of Project Capex expenditure to benefit from the existing fiscal terms as those terms were the basis for the investment decision.

APPENDIX 2

Issues	<p style="text-align: center;">Proposed Amendments to the Nigerian Petroleum Industry Bill</p> <p style="text-align: center;"><i>(see mark-up in red below, reflecting some of the issues and related proposals presented in Appendix 1)</i></p>
<p>1. Preserve IOCs' pre-existing rights (generally)</p>	<p>Addition to of a new paragraph (8) to S. 246 on Incorporated Joint Ventures, as follows:</p> <p><u>"246. (8) The incorporation of a limited liability company and the terms and conditions for its operation will be carried out in compliance with the rights of parties to existing joint ventures under agreements and related arrangements in force before the adoption of this Act."</u></p> <p>In addition, the following amendment could be proposed to S. 246(2) on Incorporated Joint Ventures, as follows:</p> <p>"246</p> <p>(2) Within twelve months from the commencement of this Act or such longer period reasonably necessary for the parties to complete the process, each joint venture for the exploration and production of petroleum in Nigeria shall be incorporated as a limited liability company."</p>
<p>2. Dispute settlement powers</p>	<p>Deletion of Ss. 68 through 74 Part II on Institutions.</p>
<p>3. Maintain unanimous vote/minority shareholders' protection for critical decisions (such as dividends' policy)</p>	<p>Addition of a new paragraph (5) to S. 254 on Rights of Shareholders, as follows:</p> <p><u>"254. (5) Any matter determined to be for Shareholders' decision, including the marketing and dividend policies of the incorporated joint venture, shall be decided on the basis of the voting arrangement in force in the pre-existing joint venture for exploration and production of petroleum in Nigeria."</u></p>
<p>4. Ensure that I-JVs are acting in a commercial capacity</p>	<p>Amend S.248 on Authority as follows:</p> <p>"248. Subject to the provisions of this and other relevant laws of the State, each incorporated joint venture shall be guaranteed the authority and resources to fulfil their duties in a professional, <u>commercial</u> and objective manner without interference."</p>

<p>5. Ensure I-JV is not subject to :</p> <ul style="list-style-type: none"> - Fiscal Responsibility Act - Federal Account Rule - Public Procurement Act 	<p>Addition of the following language at the end of existing S. 247 on Objective:</p> <p>“247. The objective for the incorporation of joint ventures is to create independent entities, capable of being financially self-sufficient.</p> <p><u>Each incorporated joint venture shall, notwithstanding the level of ownership of the National Oil Company in such incorporated joint venture, be deemed to be a private entity and not a government corporation, government agency or government owned or controlled company. Accordingly each incorporated joint venture shall not be subject to any laws or regulations (including but not limited to the Fiscal Responsibility Act of 2007, the Public Procurement Act No.14 of 2007 and Section 162 of the Constitution of the Federal Republic of Nigeria applying to government owned or controlled companies.”</u></p>
<p>6. Exempt I-JV from application of certain provisions of the Foreign Exchange (Miscellaneous and Monitoring Provisions) Act 2004 . to permit I-JV export proceeds to be paid into, and maintained in, offshore bank accounts without any obligation to repatriate the funds onshore.</p>	<p>Addition of the following language at the end of S. 247 on Objective as modified above:</p> <p><u>“I-JVs export proceeds shall be freely paid into, and maintained in, offshore bank accounts without any obligation to repatriate the funds.”</u></p>
<p>7. Exempt I-JV from Stamp Duty, Capital Gain, Balancing Charge in relation to the transfer of assets from U-JV to I-JV</p>	<p>Addition of the following language at the end of S. 246(2)on Incorporated Joint Ventures, as follows:</p> <p>“246</p> <p><u>(2) Within twelve months from the commencement of this Act or such longer period reasonably necessary for the parties to complete the process, each joint venture for the exploration and production of petroleum in Nigeria shall be incorporated as a limited liability company. The initial capitalization of each incorporated joint venture company established pursuant to this Chapter and the transactions required to create the incorporated joint venture company shall not create any additional direct or indirect tax liabilities (including but not limited to capital gains tax,</u></p>



	<p><u>petroleum profit tax, value added tax, stamp duties and registration duties) for any of the parties to the incorporated joint venture company or for any person or entity, provided all assets are transferred to the incorporated joint venture company at their tax written down value."</u></p>
<p>8. I-JV Fiscal Transparency</p>	<p>Addition of the following language in clause 418A, as follows :</p> <p><u>418A.- (1) an incorporated joint venture company is not to be regarded for the purposes of the charge to tax under section 418 as an entity separate and distinct from its shareholders. An incorporated joint venture company is not liable to account for any tax under section 418. A shareholder in an incorporated joint venture (the "shareholder") shall be charged to tax in respect of the profits of an incorporated joint venture company in accordance with this section.</u></p> <p><u>(2) the petroleum operations and the upstream gas operations engaged in by the incorporated joint venture company are treated for the purposes of the charge to tax under section 418 as if they were engaged in by the shareholder directly to the extent of its appropriate share.</u></p> <p><u>(3) the shareholder's "appropriate share" is determined in accordance with its respective entitlement to dividends of the incorporated joint venture company; provided that there shall be disregarded, for the purposes of determining the "appropriate share" of the shareholder, any additional entitlement of the shareholder to dividends of the incorporated joint venture company if and to the extent that such an additional entitlement arises from modified carry arrangements entered into with the Nigerian National Petroleum Corporation or any equivalent arrangements ("modified carry arrangements").</u></p> <p><u>(4) to the extent that a shareholder actually funds or bears an item of qualifying expenditure (other than in a proportion that equates to its appropriate share determined in accordance with subsection (3)), the shareholder's "appropriate share" of the allowances relating to that item of qualifying expenditure shall be calculated according to the extent (if any) that it has actually funded or borne such item.</u></p> <p><u>(5) where a shareholder has actually funded or borne an item of qualifying expenditure prior to</u></p>

establishment of an incorporated joint venture company and the relevant asset is required to be transferred to the incorporated joint venture company, the shareholder shall be entitled to all allowances related to that qualifying expenditure for the purposes of section 428 as if the relevant asset had not been transferred, notwithstanding any provision to the contrary in the ninth Schedule to this Act. This subsection shall apply in particular to expenditure incurred in connection with modified carry arrangements.

(6) the profits and deductions related to the operations deemed to be performed by the shareholder in accordance with subsections (1) and (2) shall be consolidated with the profits and deductions related to any other operations of the shareholder for an accounting period (including any such operations realized in respect of a participation in another incorporated joint venture company in accordance with this section or in respect of a participation in an unincorporated joint venture (and in particular indigenous concessions)) for the purposes of the charge to tax under sections 418 and 419.

(7) for the purpose of facilitating the establishment of the amount of tax chargeable on a shareholder in accordance with this section, the incorporated joint venture company shall deliver a return (the "I-JV return") to the Service and to each shareholder including all requisite information regarding the income, expenses, assets and liabilities of the incorporated joint venture company within 3 months of the end of an accounting period.

(8) the shareholder shall be responsible for filing all relevant returns ("returns") in respect of its appropriate share. The returns must note any inconsistency with the I-JV return and the reasons for such inconsistency.

Section 465 shall be deleted but for the avoidance of doubt, Section 474 shall continue to apply for the purposes of excluding from any withholding or deduction of tax any dividend which is derived directly or indirectly from petroleum or upstream gas operations.

9. Capital allowances from upstream gas operations to be deducted against income from petroleum operations

Section 419(4) shall be deleted and replaced with:

(4) For any accounting period –

(a) deductions under section 428 relating to petroleum operations may be made in respect of any petroleum operations or any upstream gas operations;

(b) deductions under section 428 relating to upstream gas operations may be made in respect of any petroleum operations or any upstream gas operations;

(c) other deductions and adjustments relating to petroleum operations may be made in respect of only the profits of petroleum operations; and

(d) other deductions and adjustments relating to upstream gas operations may be made in respect of only the profits of upstream gas operations with the exception of production sharing contracts under which deductions and adjustments relating to both petroleum operations and upstream gas operations shall be made from each contract area.