



**THE PRESIDENTIAL EXECUTIVE ORDER TO  
SAFEGUARD FEDERATION OIL AND GAS  
REVENUES AND PROVIDE REGULATORY  
CLARITY 2026;  
A GAME CHANGER OR A HASTY DECISION?**

**By: Philip Ayanfe**

## 1.0 Introduction

On Wednesday, 18th February 2026, President Bola Ahmed Tinubu issued Executive Order No. 9 dated 13th February 2026. The crux of the Executive Order is the direct remittances of all oil and gas revenues due to the Federal Government to the Federation Account. The Executive Order, which will radically alter operations in the Nigerian oil and gas industry, affects the Nigerian National Petroleum Company Limited (NNPC), the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), the Nigerian Midstream and Downstream Petroleum Regulatory Authority, all contractors/operators of oil and gas assets held under Production Sharing Contracts (PSC), all participants in the Nigerian oil and gas industry, the Federal Government and Nigerians, at large.

It is important to consider the following:

- a. The essence of the Executive Order
- b. The nature of executive orders and whether or not it can be used in Nigeria
- c. Whether or not the Executive Order can override or overrule the Petroleum Industry Act 2021
- d. The impact of the Executive Order on foreign investors and the Nigerian environment
- e. The gaps in the Executive Order

## 2.0 The Essence of the Executive Order

It is noteworthy that the rationale behind the Executive Order is traceable to Section 44 (3) of the 1999 Constitution of the Federal Republic of Nigeria as amended (CFRN), which vests ownership and control of all minerals, minerals oils and natural gas in Nigeria in the Government of the Federation. The purpose of the Executive Order is also traceable to Section 162 of the CFRN.<sup>1</sup> Section 162 (1) of the CFRN provides that all revenues collected by the Government of the Federation must be paid into the Federation Account. The revenues exclude proceeds from the Personal Income Tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory Abuja.



<sup>1</sup> See also Section 80 (1) of the CFRN which provides that “all revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.”

The Executive Order provides for five major things, among others to wit:

- Suspension of the NNPC's collection and management of 30% of the profit oil and gas allocated to the Frontier Exploration Fund;
- Suspension of the payment of 30% of profit oil and profit gas, which represents management fee to the NNPC;
- Direct remittance of revenue (royalty oil, tax oil, profit oil and profit gas) to the Federation Account by operators/contractors of oil and gas assets related to PSCs;
- Payment by NUPRC of proceeds from penalties imposed on operators for flaring gas into the Federation Account and cessation of payments of such proceeds into the Midstream and Downstream Gas Infrastructure Fund (MDGIF); and
- Establishment of an Implementation Committee to ensure the effective and coordinated implementation of the Executive Order.

### **3.0 The nature of Executive Orders and whether or not it can be used in Nigeria**

The term executive order is not defined in the 1999 Constitution, nor is it explained in any legislation enacted by the National Assembly or by any State House of Assembly. Similarly, the Interpretation Act offers no definition of the term. Executive orders are formal written directives issued by a President to guide and implement public policy. When grounded in a valid source of authority, whether derived from constitutional powers vested in the President or powers lawfully delegated by the Legislature, such orders carry the full force and effect of law. It is a common instrument used in the United States of America. It is noteworthy that executive orders do not give room for the choice to obey or not. They are therefore not normally directed at individuals in situations where the individual can lawfully exercise a choice of refusal.

The argument that the President can only issue executive orders where expressly empowered to do so by the Legislature or the Constitution is plausible. However, it is generally accepted in law that person(s) conferred with a function or duty are allowed to take steps that are incidental to or consequential upon the performance of such a function. By the provision of Section 5 of the CFRN, the executive powers of the Federation are vested in the President and such powers shall extend to the execution and maintenance of the CFRN, all laws made by the National Assembly and all matters within the legislative competence of the National Assembly. The word "maintenance" means to preserve a condition or situation or ensure the continuous applicability of a condition or situation. In essence, the executive powers of the President will be lawfully exercised when it seeks to execute (implement) and maintain the CFRN, all laws made by the National Assembly and matters within the legislative competence of the National Assembly.

Executive Orders are recognized under Nigerian laws and the validity of these executive orders depends on whether or not the executive orders are issued within the boundaries of the CFRN, all laws made by the National Assembly and all matters within the legislative competence of the National Assembly. Although executive orders are adaptable and useful instruments for directing government policy, they are not permanent.<sup>3</sup> A succeeding administration may amend or rescind the executive orders of a previous President. In addition, the Legislature may alter, limit, or otherwise restrict the legal effect of executive orders in areas where the President does not enjoy exclusive constitutional authority. The Courts also have the power to declare executive orders null and void or unconstitutional.

#### **4.0 Whether or not the Executive Order can override or overrule the Petroleum Industry Act 2021 (PIA)**

It is important to state *ab initio* that by the provision of section 3 (4) of the PIA which the President relied on in issuing the Executive Order, the Executive Order is a “policy directive”. The Executive Order affects several sections of the PIA. These sections include Section 9 (4) (5), Section 52 (7) and Section 64 (c) of the PIA. It is crucial to consider the intent of these Sections.

Section 9 (4) and (5) of the PIA establish the Frontier Exploration Fund (FEF) and empower the NNPC to transfer the 30% of profit oil and profit gas to the FEF, which is dedicated for the development of frontier acreages. It is noteworthy that by the combined reading of Section 80 (1) of the CFRN and Section 162 (1) of the CFRN, all revenues or other moneys raised or received by the Federation must be paid into the Consolidated Revenue Fund of the Federation and the Federation Account. Section 80 (1) of the CFRN creates an exception and it allows revenues or other moneys payable under the CFRN or any Act of the National Assembly to be paid into any other public fund of the Federation established for a specific purpose. The FEF is one of these public funds which is established by the PIA and ultimately recognized by the CFRN. Accordingly, the FEF is a public fund which can lawfully receive revenue or moneys, as stipulated by the PIA.

Section 52 (7) of the PIA provides for the source of the MDGIF. It includes money received from gas flaring penalties by the NUPRC under section 104 (4) of the PIA. Section 64 (c) of the PIA empowers the NNPC to collect 30% management fee after lifting and selling royalty oil and tax oil for an agreed commercial fee. It is my opinion that Section 64 (c) of the PIA is unconstitutional because it empowers NNPC to take out of the revenue that should ordinarily go into the Federation Account. It would have been different if the PIA created a fund like the FEF for the payment of the management fee and clearly defined the purpose or scope of the fund. Such fund would have fallen within the exceptions recognized by Section 80 (1) of the CFRN. In the absence of such creation, Section 64 (c) of the PIA is at variance with the CFRN and ought to be declared void to the extent of its inconsistency.<sup>4</sup>

It is important to consider whether or not the Executive Order “executes” or “maintains” the CFRN or the PIA, as contemplated by Section 5 of the CFRN. This will determine the validity or otherwise of the Executive Order. By the Executive Order, the President has by implication suspended the applicability of Section 9(4) (5), Section 52 (7) and Section 64 (c) of the PIA. In other words, the President has “amended” Sections of the PIA, an Act of the National Assembly. It is more disturbing that the President has suspended the 30% contribution to the FEF, a fund whose validity is recognized by the CFRN and the PIA.

If the President opines that certain portions of the PIA are inconsistent with the CFRN and such an inconsistency has been alleged, the President ought to have allowed the Legislative arm of the Government to amend the PIA. In *President, FRN v National Assembly*,<sup>5</sup> the Supreme Court held that “there is no provision of the Constitution that vests the president with the power to challenge the validity of an Act of the National Assembly that has come into being after his assent or after he had withheld his assent. Also, his assent to the enactment of the said Act operates to estop him on challenging the Act as invalid for any reason.” Essentially, when a President gives an assent to a Bill, and the Bill becomes an Act, that President is *functus officio*, as far as the Act is concerned. He is precluded from amending, rewriting, modifying or repealing that Act. It is pertinent to state that this principle is applicable where the assent to the Bill was given by a former president and a sitting president attempts to amend the Act. This is because a president is not empowered to make or amend an Act. In *Akintokun v L.P.D.C.*,<sup>6</sup> the Supreme Court held *inter alia* that the National Assembly is the only body that makes laws for the Federation of Nigeria.

In so far as the Executive Order No 9 of 2026 does not implement the CFRN and the PIA, the Executive Order is invalid. Furthermore, Section 309 of the PIA provides that “Subject to the Constitution of the Federal Republic of Nigeria, 1999, upon the commencement of this Act, **where the provisions of any other enactment or law** except the Nigeria Oil and Gas Industry Content Development Act **are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other enactment or law shall, to the extent of that inconsistency, be void in relation to matters provided for in this Act.**” By implication, as far as matters in the Nigerian Petroleum Industry are concerned, any enactment, law or rule which is inconsistent with the PIA (except the CFRN and the Nigeria Oil and Gas Industry Content Development Act 2010) shall to the extent of that inconsistency be void. Therefore, where the Executive Order, which is a policy directive, contradicts the CFRN and PIA, it is void to the extent of such inconsistency.

The Executive Order cannot validly amend the PIA or suspend the applicability of Sections 9 (4) (5), Section 52 (7) and Section 64 (c) of the PIA because the PIA, being an Act of the National Assembly, can only be repealed or amended by the National Assembly. Additionally, the FEF cannot be suspended via the Executive Order because it is a public fund whose validity is predicated on Section 80 (1) of the CFRN and Section 9 (4) and (5) of the PIA. In *President, FRN v National Assembly*,<sup>7</sup> the Supreme Court held that “where there is a perceived offensive law, as in the instant case, there are procedures and mechanisms available within the legislature for an amendment of such provision or an entire repeal of the law but not for another organ to interfere.” (Emphasis mine). The Supreme Court held further that “the only role the Constitution assigns to the President after a law is made is to comply with or enforce it...” Hence, the use of an Executive Order by the President to amend the PIA is an illegality and an aberration.

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<sup>6</sup> (2014) 13 NWLR (Pt. 1423) 1

<sup>7</sup> *supra*

It is interesting to note that PIA (Amendment) Bill 2025 contains some of the things the Executive Order intends to address such as a suspension of the 30% contribution to the FEF and a direct remittance to the Federation Account.<sup>8</sup> Thus, the President ought to have ensured the passage of the PIA (Amendment) Bill 2025 instead of using an Executive Order to amend the PIA. In any event, portions of the Executive Order which reinforce the CFRN and which do not amend or repeal the PIA are incontrovertible.<sup>9</sup>

## **5.0 The impact of the Executive Order on foreign investors and the Nigerian environment**

The use of an Executive Order to arbitrarily amend the PIA, which is an Act of the National Assembly, might be a cause for concern and a disincentive to foreign investors. Additionally, it may suggest that the investments of these foreign investors, which are based on assumptions on the state of the law in Nigeria, are not safe, as they may be subject to arbitrary interference by the executive arm of Government. The protections contained in the Nigerian Investment Promotion Commission Act 1995 (NIPC Act) for investors may become insufficient to provide enough comfort in view of such arbitrariness. The PIA has become a victim of the Executive Order. It may be the NIPC Act or any other enactment tomorrow. This creates uncertainty in the Nigerian environment and it has the power to erode the principle of legitimate expectation.

## **6.0 Gaps in the Executive Order**

Whilst the intention behind the Executive Order is commendable, there are some gaps in the Executive Order that may occasion an impasse in the days to come. Paragraph 2 (3) of the Executive Order provides that “All operators/contractors of oil and gas assets held under production sharing contract shall from the date of this Order, pay over the Royalty Oil, Tax Oil, Profit Oil, and Profit Gas and any other interest howsoever described which is due to the Government of the Federation directly and engross (sic) to the Federation Account.”

The drafters of the Executive Order have erroneously assumed that what is shared in a PSC is cash. That is far from the truth. A PSC is a contract which outlines how extracted resources (oil and gas), will be shared by the parties. It is pertinent to state that under the PSCs the extracted resources are shared in the order of Royalty Oil, Cost Oil, Tax Oil and Profit Oil. If the operators/contractors of oil and gas assets held under PSCs must now “pay over the Royalty Oil, Tax Oil, Profit Oil, and Profit Gas which is due to the Government of the Federation directly and engross to the Federation Account”, will the operators transfer Royalty Oil, Tax Oil, Profit Oil, and Profit Gas directly to the Federation Account? The answer to this must be in the negative. Currently and by the provision of Section 64 (c) of the PIA, NNPC is empowered to lift and sell royalty oil and tax oil on behalf of the Commission and the Service respectively for an agreed commercial fee and promptly remit the proceeds of the sales of the profit oil and profit gas to the Federation less its 30% for management fee and 30% for the FEF.

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<sup>8</sup> <https://www.mondaq.com/nigeria/oil-gas-electricity/1697656/the-petroleum-industry-act-amendment-bill-2025-status-reform-themes-and-stakeholder-implications> accessed 27th February 2026.

<sup>9</sup> Paragraphs 4 and 5 of the Executive Order

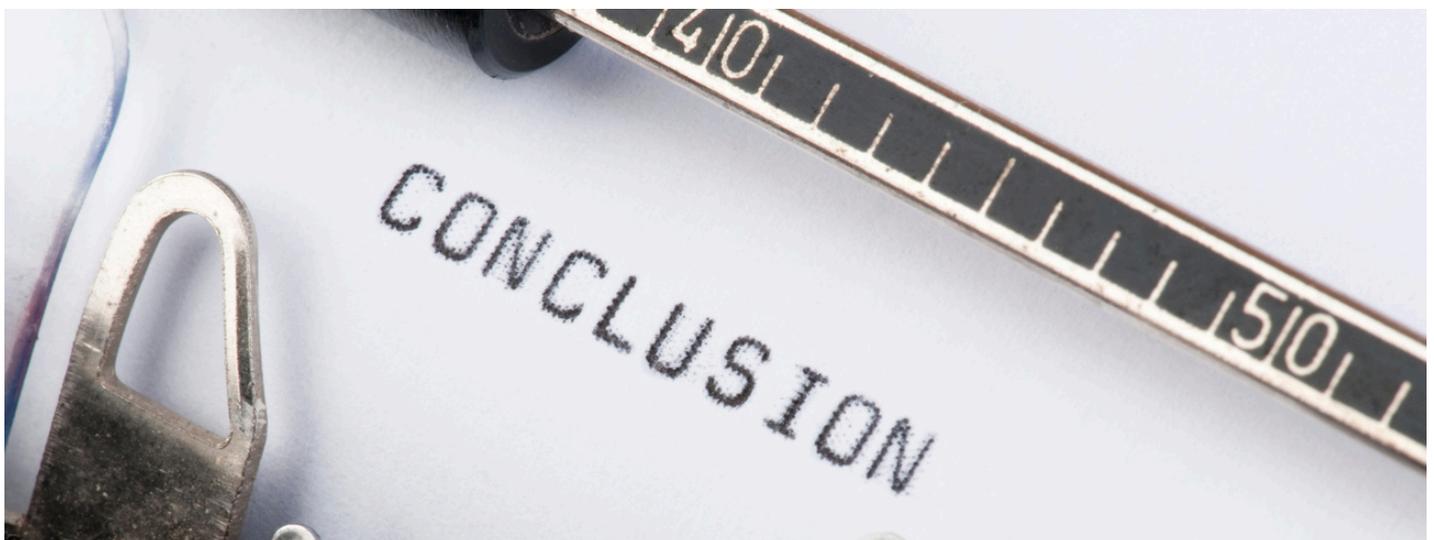
By the provisions of the PIA, it is the NNPC that remits to the Federation Account. The Executive Order has now “amended the PIA” by directing operators to remit directly to the Federation Account. How will the operators pay over the Royalty Oil, Tax Oil, Profit Oil, and Profit Gas which is due to the Government of the Federation directly? Who will they sell the Royalty Oil, Tax Oil, Profit Oil, and Profit Gas to in order to get the cash which will be paid to the Federation Account?

At what prices would the sales be made and who or what mechanisms will be adopted to determine the price to guarantee the integrity of the prices and maximize the returns? This is an important thing for the Implementation Committee established by the Executive Order to address. It appears that the NNPC will continue to be involved one way or the other in order for the direct remittance by operators/contractors of oil and gas assets held under PSCs to be achievable.

Secondly, Paragraph 1 of the Executive Order suspends NNPC’s collection of 30% which is meant for the FEF without providing for how the development of frontier acreages will be achieved. Section 3 (1) (e) of the PIA provides that “the Minister shall promote an enabling environment for investment in the Nigerian petroleum industry.” The purpose of the FEF is to encourage and de-risk investment in frontier acreages which are expensive to explore. It is difficult to see how a suspension of NNPC’s collection of 30% which is meant for the FEF will help to promote an enabling environment for investment in the Nigerian petroleum industry. Besides the unconstitutionality of the suspension of 30% contribution to the FEF, the suspension will adversely affect investment in frontier acreages. It is hoped that this issue will be addressed urgently to ensure that investors are not dissuaded from investing in frontier acreages.

## **7.0 Conclusion**

The intention behind the Executive Order is noble and commendable. However, the way the Executive Order was drafted leaves much to be desired. Whilst the Executive Order was issued to implement the CFRN, the Executive Order has *inter alia* contradicted the CFRN, by suspending the payment into the FEF and thereby disapplying the FEF, a fund whose validity is traceable to the CFRN. The Executive Order could have been drafted in a way that does not contradict the CFRN and the PIA. Considering that the PIA (Amendment) Bill 2025 contains the key things the Executive Order seeks to address, the President could have facilitated the expedited passage of the PIA (Amendment) Bill 2025 and granted his assent to the PIA (Amendment) Bill 2025.



**Babalakin & Co is a firm with broad experience on the subject of energy and extractive and all matters related to it. If you have any questions or would like information on the issues discussed, please contact:**



**Philip Ayanfe**

**Associate**

**[payanfe@babalakinandco.com](mailto:payanfe@babalakinandco.com)**

**—OFFICE LOCATIONS—**

**LAGOS OFFICE**

1261A Adeola Hopewell Street  
Victoria Island, Lagos State.  
(+234)2012718700, 2718806, 2718808,  
2718711, 27188004, (+234)2702802

**ABUJA OFFICE**

4, River Benue Street,  
Off Ibrahim Babangida Boulevard,  
Maitama District, Abuja.  
(+234) 9-2780930, 2780933-9

**PORT HARCOURT OFFICE**

3, Williams Jumbo Street,  
Old GRA, Port Harcourt  
Rivers State.  
(+234)703506876