



TOPE ADEBAYO LP

# **OIL LICENSING REGIME UNDER THE PETROLEUM INDUSTRY ACT 2021 (PART 2a):**



**PETROLEUM PROSPECTING LICENCE**

# OIL LICENSING REGIME UNDER THE PETROLEUM INDUSTRY ACT 2021 (PART 2a): PETROLEUM PROSPECTING LICENCE

## INTRODUCTION

Under the old regime of the Petroleum Act 1969 (PA), upon the grant of an Oil Exploration Licence (OEL) and subsequent discovery of hydrocarbon within the licence area, a licensee who intended to proceed to the next stage of upstream petroleum operations was required to obtain an Oil Prospecting Licence (OPL) from the Minister of Petroleum Resources (the “Minister”). Following the introduction of the Petroleum Industry Act (PIA) in 2021, the OPL is now known as the Petroleum Prospecting Licence (PPL).

We examine below the scope of an OPL vis-à-vis notable changes introduced by the PIA.

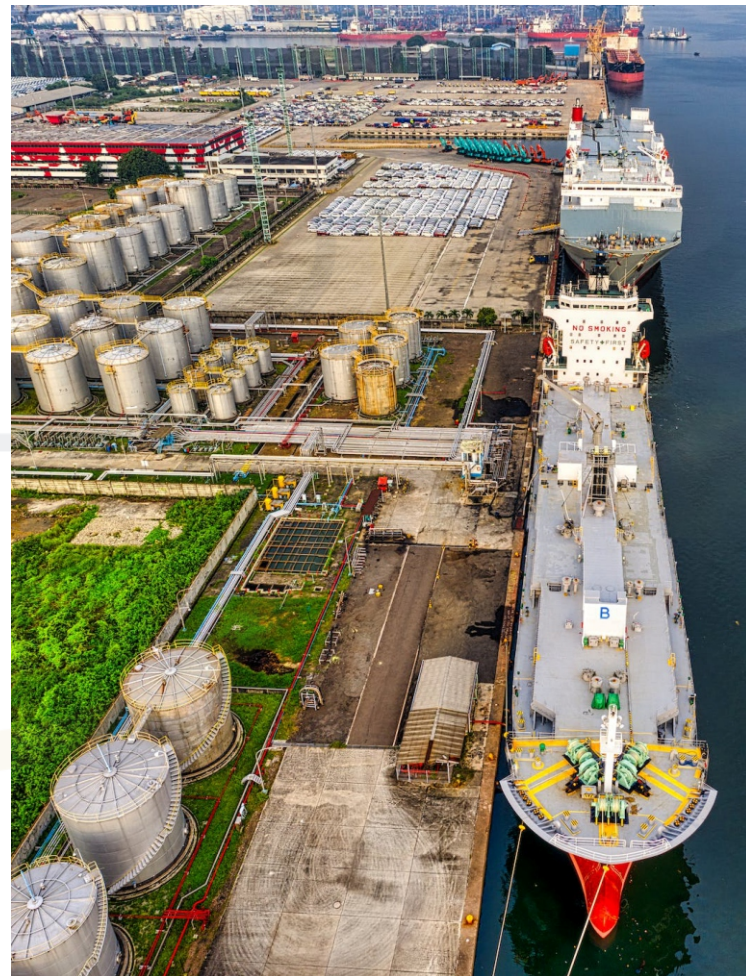
## SCOPE

An OPL, under the PA, was capable of being granted to any company incorporated in Nigeria.<sup>1</sup> The licence gave the holder (the licensee) the 'exclusive right' to explore and prospect for petroleum within the licence area.<sup>2</sup> The licensee was also entitled to carry and dispose petroleum won during prospecting activities, subject to the fulfilment of obligations imposed on him under the PA or by the Petroleum Profits Tax (PPT) Act or any other law imposing taxation in respect of petroleum.<sup>3</sup>

The PIA in contrast grants a holder of a PPL:

1. an exclusive right to drill exploration and appraisal wells; and
2. a nonexclusive right to carry out petroleum exploration operations within the licence area.<sup>5</sup>

That is, under the new regime, the licensee



<sup>1</sup>Section 2(2) of the Petroleum Act

<sup>2</sup>Paragraph 5 of the First Schedule to the Petroleum Act

<sup>3</sup>Paragraph 7 of the First Schedule to the Petroleum Act

<sup>4</sup>Section 70(2) of the PIA

<sup>5</sup>Section 72(a) of the PIA



# OIL LICENSING REGIME UNDER THE PETROLEUM INDUSTRY ACT 2021 (PART 2a): PETROLEUM PROSPECTING LICENCE



right to conduct exploration operations. The licensee however, retains the right to carry and dispose of crude oil or natural gas won or extracted during prospecting activities, subject to the fulfilment of obligations imposed by the PIA.<sup>6</sup>

## GRANTING AUTHORITY

Section 2(1)(b) of the PA empowered the Minister to grant OPLs to qualified applicants. The Act neither elaborated on the procedure for the grant of an OPL nor prescribed the time frame within which approval by the Minister is to be communicated.

PPLs under the PIA are awarded through bidding rounds conducted by the Nigerian Upstream Petroleum Regulatory Commission (the Commission).<sup>7</sup> The Commission has the duty to issue licensing round guidelines<sup>8</sup> and may choose to periodically publish a licensing round plan.<sup>9</sup>

Although the Minister retains the power to grant PPLs under the PIA,<sup>10</sup> this power cannot be exercised without recommendation of the Commission. Furthermore, the Minister is mandated to inform the Commission of his decision either to approve or deny the application within 90 days of filing. Where the Minister fails to notify the Commission within the stipulated period, the licence shall be deemed granted.<sup>11</sup> However, where the Minister refuses to grant the licence, he must inform the Commission in writing of the rationale for refusal.

## PPL AWARD PROCESS

A PPL may now be awarded either through a competitive bidding process<sup>12</sup> or pursuant to a treaty<sup>13</sup>. In the case of a competitive bidding process, a winning bidder shall be determined on

<sup>6</sup>Section 72 (b) of the PIA

<sup>7</sup>Section 7(t) of the PIA

<sup>8</sup>Section 73(1)(b) of the PIA

<sup>9</sup>Section 73(2) of the PIA

<sup>10</sup>Section 72(5) of the PIA, Section 73(3) of the PIA

<sup>11</sup>Section 73(4) of the PIA

<sup>12</sup>Section 74(1) of the PIA

<sup>13</sup>Section 74(3) of the PIA

# OIL LICENSING REGIME UNDER THE PETROLEUM INDUSTRY ACT 2021 (PART 2a): PETROLEUM PROSPECTING LICENCE

the following parameters:<sup>14</sup>

- a. A single bid parameter which is based on either:
  - i. A signature bonus to be paid in full prior to the granting of the licence or lease by or on behalf of the winning bidder;
  - ii. A royalty interest;
  - iii. A profit split or profit oil split;
  - iv. A work programme commitment during the initial exploration period; or
  - v. Any other parameter as may be defined specific to a bid round.
- b. A combination of parameters above, based on a points system in such a manner that the bidder with the highest aggregate number of points shall be the winning bidder.

The Commission is responsible for calling for bids in accordance with a procedure to be published on its website and in at least two international financial newspapers and two national newspapers with wide coverage. The PIA also introduces the use of an electronic bidding process subject to certain conditions and in certain applicable circumstances.<sup>15</sup>



With respect to an award made pursuant to a treaty, section 74(3) of the PIA provides that where there is a bilateral or multi-lateral agreement between Nigeria and another country, the Government may, for strategic purpose and in return for substantive benefits to the nation, direct the Commission to negotiate and award a PPL to a qualified investor identified in the agreement or treaty.

## TERM AND AREA COVERED BY THE LICENCE

According to Paragraph 6 of the First Schedule to the PA, an OPL could be granted for a period determined by the Minister not exceeding five years including any periods of renewal. Under the PIA,<sup>16</sup> the tenure of a PPL is dependent on the area of coverage. A Petroleum Prospecting License for:

- a. Onshore and shallow water acreages shall be for a term not exceeding 6 years; comprising of an initial exploration period of 3 years and an

<sup>14</sup>Section 74(2) of the PIA

<sup>15</sup>Section 74(7) of the PIA

<sup>16</sup>Section 77 of the PIA

## OIL LICENSING REGIME UNDER THE PETROLEUM INDUSTRY ACT 2021 (PART 2a): PETROLEUM PROSPECTING LICENCE

- optional extension period of 3 years.
- b. Deep offshore and frontier acreages shall be for a term not exceeding 10 years; comprising of an initial exploration period of 5 years and an optional extension period of 5 years.

Moreso, the PIA limits the area covered by a PPL as follows:

- a. 350 square kilometres for onshore or shallow water acreages;
- b. 1,000 square kilometres for deep offshore acreages; and
- c. 1,500 square kilometres for frontier acreages.<sup>17</sup>

Other notable conditions for the grant of a PPL under the PIA include:

- a. Requirement that a licensee commits to a work programme contained in the licence;<sup>18</sup>
- b. Submission of a Field Development Plan by the licensee to the Commission within 2 years of the declaration of a commercial discovery;<sup>19</sup>
- c. Incorporation of a Host Communities Development Trust by the licensee for the benefit of the host communities within its area of operation;<sup>20</sup>
- d. Mandatory financial contribution to

an Environmental Remediation Fund prior to the grant of a PPL or the approval of an Environmental Management Plan;<sup>21</sup>

- e. Submission of an Environmental Management Plan to the Commission;<sup>22</sup>
- f. Mandatory submission of a yearly summary detailing royalties, fees, taxes, profit oil shares and other payments made to the Government by a licensee;<sup>23</sup>
- g. Voluntary conversion of OPLs to PPLs;<sup>24</sup> and
- h. Conversion to a PPL, a discovery declared a marginal field prior to 1st January 2021 which is not producing.<sup>25</sup>

### CONCLUSION

While we have highlighted some notable changes introduced to the oil prospecting licensing regime by the PIA, this list is not exhaustive. In a sequel article, we shall examine other significant modifications introduced by the PIA in the areas of assignment, surrender, termination and revocation of an oil prospecting licence.

<sup>17</sup>Section 77(3) of the PIA

<sup>18</sup>Section 78(1) of the PIA

<sup>19</sup>Section 79(1) of the PIA

<sup>20</sup>Section 235(1) of the PIA

<sup>21</sup>Section 103(1) of the PIA

<sup>22</sup>Section 102 of the PIA

<sup>23</sup>Section 83(1) of the PIA

<sup>24</sup>Section 92 of the PIA



PLEASE NOTE THAT THIS ARTICLE IS ONLY INFORMATIONAL AND DOES NOT CONSTITUTE LEGAL ADVICE

## MEET OUR TEAM



**Brought to you by TALP's Energy & Natural Resources Department.**  
For further enquiries, log onto [www.topeadebayolp.com](http://www.topeadebayolp.com)

Do you need to get in touch with us, to know more how we can help you and your business?  
Please contact us using any of the details provided below:

### **TOPE ADEBAYO LP**

25C Ladoke Akintola Street, G.R.A. Ikeja Lagos, Nigeria  
p: +234 (1) 628 4627  
e: [info@topeadebayolp.com](mailto:info@topeadebayolp.com)  
w: [www.topeadebayolp.com](http://www.topeadebayolp.com)

