



TOPE ADEBAYO LP

# OIL LICENSING REGIME UNDER THE PETROLEUM INDUSTRY ACT 2021 (PART 4):



PETROLEUM MINING LEASE

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## INTRODUCTION

Having satisfied all conditions imposed on the licensee and contained in the Oil Prospecting Licence (OPL), and upon commercial discovery of oil, a holder of an OPL was required to obtain an Oil Mining Lease (OML).<sup>1</sup> The OML not only entitled the holder to the right to win and work petroleum discovered but also the right to export such petroleum from site. Although the OML, now referred to as Petroleum Mining Lease (PML) under the Petroleum Industry Act (PIA) 2021, appears to be very similar to the PML, certain features of the lease have been modified under the PIA. In the ensuing paragraphs, we shall briefly examine these changes.

As stated above, an OML was granted only to applicants who had satisfied all obligations imposed and had discovered oil in commercial quantities. The holder of an OML was granted an exclusive right to carry on oil exploration and prospecting operations within the lease area and the right to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the lease area on an exclusive basis.

To secure the grant of a PML under the PIA, an applicant is required to have-

- a. Discovered oil or gas or both in commercial quantity;
- b. Performed conditions imposed on it and contained in the PPL; and
- c. Received approval from the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) in respect of its field development plan.<sup>2</sup>

<sup>1</sup>Paragraph 8 of the First Schedule of the PA

<sup>2</sup>Section 81(1) of PIA



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Furthermore, it is a prerequisite of the grant of a PML for an applicant to commit to developing and producing crude oil or natural gas according to the field development plan or to restart or continue petroleum production within the lease area.<sup>3</sup> It is noteworthy that the exclusivity granted under a PML only covers the right to win, and dispose of crude oil, condensates and natural gas discovered and the right to carry on prospecting operations within the lease area. Exploration operations within the lease area, is on a non-exclusive basis.<sup>4</sup>

### GRANTING AUTHORITY

Prior to the PIA, by virtue of section 2(1)(c) of the PA, the Minister was responsible for granting OMLs to prospective applicants. Although this role is retained under the PIA, the Minister cannot discharge this duty without the recommendation of the NUPRC according to laid down procedures.<sup>5</sup> The Minister is also required to notify the NUPRC of his decision on the application within 90 days of filing. Where the Minister refuses the application, he is mandated to inform the NUPRC in writing of the reason for the refusal.

Additionally, the PIA introduced the concept of 'deemed grant' in the licence application process. Therefore, where the Minister fails to inform the NUPRC of his decision on the application within the specified period, the licence shall be deemed granted to the applicant.<sup>6</sup>

### TERM OF THE LEASE AND RENEWAL

Under the old regime, an OML was granted for a period not exceeding twenty years<sup>7</sup> and was renewable upon an application to the Minister delivered not less than 12 months before the

<sup>3</sup>Section 82(3) of the PIA

<sup>4</sup>Section 70(1) of the PIA, Section 82(1) & (2) of the PIA

<sup>5</sup>Section 3(1)(g) of the PIA

<sup>6</sup>Section 73(4) of the PIA

<sup>7</sup>Paragraph 10 of the First Schedule to the PA

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expiration of the current lease in respect of the entire lease area or a portion thereof. The Minister was empowered to grant the application for renewal only where the lessee had paid all rent and royalty and fulfilled his obligations under the OML.<sup>8</sup>

The PML is granted for a maximum period of 20 years<sup>9</sup> and the lessee is obligated to develop it in line with the development period stipulated in the field development plan.<sup>10</sup> Where the field development plan makes no provision in this regard, the PIA states that the development period of a PML shall be 5 years for an onshore lease and 7 years in respect of leases over shallow water, deep offshore or frontier acreage.

With regard to renewal under the new regime, the NUPRC and not the Minister is the entity saddled with this responsibility.<sup>11</sup> A PML may be renewed for one or more successive terms not exceeding 20 years each, provided the lease area continues to produce in paying quantities and the lessee has satisfied all rents, royalty, and fiscal obligations stipulated by the Act.<sup>12</sup> A holder of a PML is also required to make his application for renewal to the NUPRC either for the entire lease area or a part thereof, not less than 12 months before the expiration of the current lease.<sup>13</sup>

### RELINQUISHMENT

While a holder of an OML was compulsorily required to relinquish one half of the leased area after 10 years of grant,<sup>14</sup> a holder of a



PML is required, after 10 years of grant, to relinquish:

- a. all parcels which are not within the boundaries of the producing field, and
- b. any formation deeper than the deepest producing formation and the Government shall be vested with the deep rights.<sup>15</sup>

### MARGINAL FIELDS

Prior to the PIA, a holder of an OML, with the consent of the President, could farm out any marginal field within the lease area.<sup>16</sup> The President could also occasion a farm out of a marginal field which has been lying fallow for a period not less than 10 years from the date on which the first discovery of the marginal field was made.<sup>17</sup>

The PIA, under the new regime, now requires that producing marginal fields be converted to PMLs within 18 months of the effective date of the Act<sup>18</sup> while marginal fields declared prior to January 1<sup>st</sup>, 2021,

<sup>8</sup>Paragraph 13(1) of the First Schedule to the PA

<sup>9</sup>Section 86(1) of the PIA

<sup>10</sup>Section 84(4) of the PIA

<sup>11</sup>Section 10(j) of the PIA

<sup>12</sup>Section 86(6) of the PIA

<sup>13</sup>Section 87 of the PIA

<sup>14</sup>Paragraph 12(1) First Schedule to the PA

<sup>15</sup>Section 88(5) of the PIA

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which are not producing be converted to Petroleum Prospecting Licence (PPL).<sup>19</sup> And lastly, by virtue of Section 94(9) of the PIA, no new marginal field shall be declared.

### CONCLUSION

Although this article has discussed only five areas in which the PIA has modified the OML, there are other significant modifications the PIA has made. These can be seen in the areas of award, assignment, surrender and revocation of licences and leases. Modifications in these areas are the same as those made in respect of the OPL which have been discussed in the preceding part of this series. Recourse should be made to our previous articles on Petroleum Prospecting Licence for a complete understanding of these areas.

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<sup>16</sup>Paragraph 17(1) of the First Schedule to the PA

<sup>17</sup>Paragraph 17(2) of the First Schedule to the PA

<sup>18</sup>Section 94(1) of the PIA

<sup>19</sup>Section 94(2) of the PIA

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

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