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OIL LICENSING REGIME UNDER THE PETROLEUM INDUSTRY ACT 2021 (PART 2b):



PETROLEUM PROSPECTING LICENCE (CONTD.)

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INTRODUCTION

In the preceding article of this series, we examined a number of modifications made by the Petroleum Industry Act (PIA) 2021 to the Oil Prospecting Licence (OPL) regime in Nigeria in terms of the granting authority, award process and duration of the licence. In the subsequent paragraphs, we shall review modifications relating to the assignment, surrender and revocation of an OPL.

ASSIGNMENT

The Petroleum Act¹ (PA) prohibited a licensee from assigning its OPL or any right, power or interest accruing therefrom without the consent of the Minister of Petroleum Resources (the “Minister”). Under the new regime, such consent of the Minister can only be granted upon recommendation of the Nigerian Upstream Petroleum Regulatory Commission (the “Commission”).² Additionally, a licensee is now prohibited from novating or transferring its interest under a Petroleum Prospecting Licence (PPL) without the prior written consent of the Minister on recommendation of the Commission.³

Whereas the key requirements for obtaining the consent of the Minister under the PA⁴ was that the Minister was satisfied that the



¹Paragraph 14 of the First Schedule to the Petroleum Act

²Section 95(1) of the PIA

³Section 95(1) of the PIA

⁴Paragraph 16 of the First Schedule of the Petroleum Act

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proposed assignee;

- a. had a good reputation,
- b. possessed sufficient technical know-how and financial capability to carry out the work programme and
- c. was acceptable by the Federal Government,

The PIA on the other hand requires that the proposed assignee;

- a. is incorporated in Nigeria,
- b. is of good reputation,
- c. possesses sufficient technical know-how and financial resources to execute the work programme and
- d. complies with the Federal Competition and Consumer Protection Act (FCCPA).

Although the requirement for incorporation in Nigeria was applicable under the PA though not explicitly stated in above referenced section of the PA, the requirement for compliance with the FCCPA is a new addition as the PA predates the FCCPA. Furthermore, the PIA now makes provision for a time frame for processing assignment, transfer and novation applications. Application for the transfer, novation or assignment of a PPL must be acted upon by the Commission within 60 days of receipt.⁵ The Minister is mandated to consider such applications within 60 days of receipt of the recommendation of the Commission and an approval of the application shall not to

⁵Section 95(6) of the PIA

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be unreasonably withheld.

Commendably, the PIA has also introduced the concept of 'deemed approval' in the application for assignment, transfer or novation of a PPL thereby hopefully eliminating delays which formerly plagued the approval process.

Where the Minister rejects an application for assignment, transfer or novation, he is required to state the reason for rejection. However, where no response has been received from the Minister within 60 working days from the receipt of the recommendation of the Commission, the consent of the Minister shall be deemed granted.⁶

However, a licensee is required to obtain only the consent of the Commission where it wishes to, by way of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interests under a PPL, or grant a security interest in respect of its interest.⁷ Such consent is not to be unreasonably withheld⁸ and the 60 days response limitation requirement referred to above also applies to such applications.⁹



SURRENDER

Under the old regime,¹⁰ a licensee could surrender any part of the licence area upon giving the Minister 3 months' notice in writing. Section 83 of the PIA on the other hand permits a licensee to surrender either part or the entire licence area provided the licensee complies with all obligations arising under the licence and gives the Commission 3 months' notice in writing prior to surrender.

REVOCATION OF PARTICIPATING OR SHAREHOLDER INTEREST

One of the novel introductions to the PIA is the revocation of participating or shareholder interest in a PPL.

Where there are two or more holders of a PPL, and as a result of the actions or inaction

⁶Section 95(7) of the PIA

⁷Section 95(9) of the PIA

⁸Section 95(6) of the PIA

⁹Section 95(6) of the PIA

¹⁰Paragraph 19 of the First Schedule to the Petroleum Act

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of one or more of the holders, a ground for revocation¹¹ has arisen, the Minister may, in accordance with the provisions of the Act, revoke the participating or shareholder interest of the defaulting holder(s) without tampering with the rights and interests of the non-defaulting party.¹²

NOTICE OF REVOCATION

By virtue of Paragraph 29 and 30 of the First Schedule to the PA, for a notice of revocation of an OPL to be valid, it was sufficient for the notice to be sent by the Minister to the last known address of the licensee or his legal representative in Nigeria and published in the Federal Gazette. Prior to revocation, the Minister was also mandated to inform the licensee of the grounds of the contemplated revocation and give the latter an opportunity to provide an explanation for his action or inaction.¹³ Where the licensee gave insufficient or no information at all or failed to rectify the situation within the period specified by the Minister (remediation period), the Minister could revoke the licence.¹⁴

The PIA now makes express provision for a 60-day period for remediation¹⁵ after which a notice of revocation will be sent to the



licensee either through any of the means mentioned above or by publication of the notice of revocation on the website of the Commission.¹⁶

CONCLUSION

In our subsequent article on this series, the grounds for revocation of a PPL shall be examined vis-à-vis the PIA.

¹¹Section 96 of the PIA

¹²Section 99 of the PIA

¹²Paragraph 26 of the Petroleum Act

¹³Paragraph 28 of the Petroleum Act

¹⁴Section 97(1)(b) of the PIA

¹⁵Section 97(4)(b) of the PIA

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

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