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# Conducting oil and gas activities in Nigeria

## Laws and regulations

### List the main legislation governing petroleum exploration and production activity in Nigeria.

The relevant legislation in Nigeria is:

- The Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap D3, Laws of the Federation of Nigeria ('**LFN**') 2004;
- The Nigerian Oil and Gas Industry Content Development Act No. 2 of 2010;
- The Petroleum Act, Cap P10 LFN 2004; and
- The Petroleum Profits Tax Act, Cap P13 LFN 2004.

### Identify the Government, regulatory and/or oversight bodies principally responsible for regulating oil and gas activities in Nigeria.

The Minister of Petroleum Resources ('**Minister**'), the Department of Petroleum Resources ('**DPR**'), and the Nigerian Content Development Monitoring Board.

## Entry requirements

### What are the registration requirements for becoming a licensee of an oil and gas production sharing contract/licence/concession ('**Licence**') in Nigeria? For instance, is it necessary to incorporate a subsidiary, or register a branch?

To become a licensee, a company must be incorporated in Nigeria under the Companies and Allied Matters Act, Cap C20 LFN 2004. Licences are typically awarded

in bid rounds, which will usually include more specific requirements, in addition to being incorporated in Nigeria. Requirements which have been prescribed in the past include: (i) requiring the applicant to have a local partner consisting of local entrepreneurs; (ii) requiring a commitment to pursue strategic downstream projects such as petroleum refineries and independent power projects; and (iii) requiring the relevant company alone (or together with its technical partner(s)) to have a specified minimum net worth.

### Are there any foreign investment approval requirements or restrictions when commencing business in your country (e.g. a minimum local shareholding in the entity undertaking the activity)?

There are no oil and gas specific foreign investment approval requirements. However, all foreign investors seeking to incorporate companies in Nigeria are subject to the following requirements:

- Nigerian Investment Promotion Council registration for which a Certificate of Business Registration will be issued. Companies with foreign investors are required to have a minimum share capital of ₦10,000,000 (circa \$50,000); and
- Registration with the Ministry of Interior for which a Business Permit will be issued.

It is important to note that companies with at least 51% equity held by a Nigerian person(s) will be accorded first consideration in the award of licences.

## Licensing

### Identify the main fiscal/legal model granting rights to explore and produce oil and gas.

#### Legal

The Petroleum Act 1969 vests all rights to Nigeria's petroleum resources (including resources situated on land, in the territorial waters, on the continental shelf and in the Exclusive Economic Zone) in the Federal Republic of Nigeria; but the Government (through the Minister) can grant licences that confer exclusive rights (except in the case of an oil exploration licence) to explore and produce petroleum, (each a '**Licence**' or '**Lease**').

The Minister is empowered to grant the following:

- An oil exploration licence, to explore for petroleum, however this is no longer granted in practice. The current practice involves the engagement of a seismic data gathering company to provide seismic information, which is then made available for consideration by prospective oil prospecting licensees;
- An oil prospecting licence, to prospect for petroleum with the right to carry away and dispose of petroleum won during prospecting operations; and
- An oil mining lease, to search for, win, work, carry away and dispose of petroleum.

The format for Licences and Leases, as well as the rights and obligations applicable to such Licences and Leases are as prescribed in the Petroleum Act 1969 and secondary legislation made pursuant thereto. Licences are typically awarded during bid rounds where Licences are auctioned. In recent times, (as opposed to Licences) the Minister (through the DPR) has auctioned production sharing contracts ('**PSC**') with the national oil company, the Nigerian National Petroleum Corporation ('**NNPC**'). Model PSCs for the bid rounds are typically issued when the bid round is announced.

#### Fiscal

##### Rents

The licensee is required to pay the following annual rents to the Government:

- For oil prospecting licences: US\$10 per square km or part thereof; and
- For oil mining leases:
  - US\$20 per square km or part thereof of a producing oil mining lease, for the first 10 years; and
  - US\$15 per square km or part thereof after the first 10 years and until expiration of the lease and on renewal.

## Royalties

The licensee is required to pay royalties to the Government in respect of production of crude oil and casing-head petroleum spirit. The royalty is chargeable as a percentage of the value of production. This is usually in the form of monthly cash payments. The rates are as follows:

- Onshore production: 20%;
- Offshore production in areas up to 100 metres water depth: 18.5%;
- Offshore production in areas up to 200 metres water depth: 16.5%;
- Offshore production in areas from 201 to 500 metres water depth: 12%;
- Offshore production in areas from 501 to 800 metres water depth: 8%;
- Offshore production in areas from 801 to 1000 metres water depth: 4%; and
- Offshore production in areas in excess of 1000 metres water depth: 0%.

The royalty rate payable under the PSCs in the inland basin is 10%.

#### Tax

Oil and gas companies are not subject to the general income tax usually applicable to Nigerian companies, but are instead subject to a special petroleum profits tax with the following rates for crude oil production:

- 65.75% (within the first 5 years) for onshore/shallow water production where a company has not fully amortised all pre-production capitalised expenditure;
- 85% for onshore/shallow water production where a company has fully amortised all pre-production capitalised expenditure (after the first 5 years);
- 50% for production from contract areas under a PSC in the deep offshore waters (beyond 200 meters) and inland basins (as defined by the Minister); and
- 55% for marginal fields operations.

Dividend income from petroleum operations is exempt from tax.

Gas production is generally exempt from the petroleum profits tax but is rather subject to general corporate income tax at the rate of 30%.

Notwithstanding the separate tax regime for gas production, in certain qualifying circumstances (such as investment for separation of crude oil and gas from reservoirs into usable form and for delivery of gas at custody transfer point), licensees and lessees are permitted to consolidate gas production expenses with crude oil expenses for purposes of petroleum profits tax.

In addition to the foregoing taxes, all petroleum companies are also subject to the following:

- A 2% education tax chargeable on assessable profits;
- An Industrial Training Fund contribution of 1% of annual payroll;
- An Employee Compensation Fund contribution of 1% of monthly payroll; and
- A 3% Niger Delta Development levy chargeable on the total annual budget of any oil producing or gas processing company operating, onshore and offshore, in the Niger Delta Area.

**Please outline the procedure to apply to the Government for an interest in a Licence in your country. Please include details of cost and timing for obtaining such interest.**

Applications for Licences or Leases are to be made to the Minister in writing, utilising a prescribed form and accompanied by the requisite documentation, including the following:

- 10 copies of a map on a scale or scales specified by the DPR detailing the boundaries of the area in respect of which the application is made;
- Adequate survey description of the boundaries of that area or, where the area has been blocked out or delineated and described by or on behalf of the Minister, a reference to the particulars of identification used;
- Evidence of the financial status and technical competence of the applicant;
- Details of the work that the applicant is prepared to undertake or a programme for carrying out any minimum working obligations imposed;
- Details of the annual expenditure which the applicant is prepared to make on each application area;
- The date on which the applicant is prepared to begin operations after the grant of the oil exploration licence, oil prospecting licence or oil mining lease to which the application relates;
- Details of a specific scheme for the recruitment and training of Nigerians;

- Evidence of the applicant's ability to market any petroleum produced; and
- Annual reports in respect of the applicant's oil exploration and production activities in the preceding three years.

As above, Licences are generally auctioned in bid rounds organised by the DPR from time to time. Bid rounds have generally been irregular. Additional documentation and information requirements will typically be included in any announced licensing rounds.

Current fees for or in connection with applications are as follows:

- Processing fee: US\$10,000;
- On an application for oil prospecting licence: US\$10,000;
- On an application for an oil mining lease: US\$500,000;
- On an application for renewal of an oil mining lease: US\$1,000,000;
- On an application to withdraw any of the applications specified in the 4 items above: ₦20,000;
- On an application to assign or sublet an oil prospecting licence or an oil mining lease: ₦500,000 (under recent guidelines issued by the DPR, a premium of 1% to 5% of the transaction fee is payable);
- On an application to terminate or effect a partial surrender of an oil prospecting licence or an oil mining lease: ₦50,000;
- On an application for a licence to operate a drilling rig: ₦20,000;
- For a licence to operate a drilling rig: ₦100,000;
- For a permit to export samples for analysis: ₦10,000; and
- For renewal of a permit to export samples for analysis: ₦5,000.

**What is the customary duration of the relevant Licence?**

There are 3 categories of Licences:

- Oil exploration licences: 1 year to terminate on 31 December following the issue date;
- Oil prospecting licences: up to 5 years including any renewals (for onshore and shallow water areas) and a minimum of 5 years and an aggregate of 10 years for deep offshore and inland basin areas, including any renewals; and
- Oil mining leases: a maximum of 20 years but renewable indefinitely for further periods of 20 years each.

**Does the Government have any right to participate and be carried in the Licence? If so, please describe the extent of this entitlement.**

**Is there any mechanism for recovery of carry costs?**

In respect of Licences for concessions for the exploration and exploitation of petroleum in which all or part of the areas are in waters deeper than 200 metres, the Government has the right, pursuant to the Deep Water Block Allocations to Companies Regulations 2003 (the 'Back-in-Rights Regulations'), to acquire 5/6 of the licensees' interest in the relevant Licence or Lease (rounded up to the nearest whole percentage) on such terms and conditions as the Government may determine, provided that the Government had included a reservation to do so in the original grant of the Licence or Lease.

Terms and conditions applicable to the back-in are to be at least as favourable to the Government as those in force at the time of the enactment of the Back-in-Rights Regulations. Otherwise, the terms will be revised such that they mirror the terms applicable to the NNPC as contained in the model contracts in force at the latter of the date of issuance of the Back-in-Rights Regulations and the allocation of the Licence.

The back-in-rights do not come with an express obligation to be carried.

**Does the Government have any right to participate in the operatorship of the Licence?**

The Government does not have the right to participate in the operatorship, except as contractually agreed between the licensee and the Government.

## Assignment

**What Government and/or regulatory approvals are required for the acquisition of oil and gas interests held under a Licence (whether by asset or corporate sale/change of control)? If any, what are the timing requirements and costs of obtaining such Government and/or regulatory approvals?**

The consent of the Minister is required for assignment of any Licence or Lease, or any right, power or interest therein. The rules have also been interpreted by the courts as applying to corporate sales which give rise to a change of control. Recently, the DPR issued guidelines which further expand the interpretation of the requirement to obtain Ministerial consent to cover any arrangements, which may have the effect of transferring the ultimate interest in a Licence or Lease. These arrangements include mergers and acquisitions, public listings, internal restructurings involving licensees or lease holders (or their parent companies), as well as any assignment of interest

in any contract concerning the exploitation of such Licence or Lease. Further, the guidelines require that the DPR be involved by being periodically updated throughout the negotiation process. Failure to provide status updates during the negotiation phase may result in the refusal of consent to any such transfer.

An assignment fee prescribed by the Minister together with a premium is typically charged. The assignment fee and/or the premium may be waived in circumstances where the Minister is satisfied that the assignment is to be made to a company in a group of which the assignor is a member, and is to be made for the purpose of re-organisation in order to achieve greater efficiency and to acquire resources for more effective petroleum operations.

An application for the assignment of Licence or Lease (or of an interest in the same) shall be made to the Minister in writing and accompanied by the prescribed fee, and the applicant shall provide, in respect of the assignee, all such information as is required to be provided in the case of an applicant for a new licence or lease (see above). The recently issued guidelines for obtaining Ministerial consent stipulate that the Minister may charge a consent premium of 1% to 5% of the consideration for such assignment.

**Are there any pre-emptive rights reserved to any Government entities in the event of a proposed assignment of an interest held under a Licence?**

**If so, what are the terms upon, which such entities are allowed to acquire the interest?**

There are no pre-emptive rights reserved to the Government in the event of an assignment, except as contractually agreed between the licensee and the Government.

Subject to the exact terms of the PSC, the amount of the performance bond will usually be reduced annually by the amount of verified expenditures. Ultimately, the bond will be discharged at the end of each phase if the minimum work programme or minimum financial commitment for that phase has been fulfilled.

## Abandonment and Decommissioning

**What abandonment regime is in place?**

**Are security deposits required in respect of future decommissioning liabilities?**

Abandonment is regulated by the DPR. Under subsisting DPR regulations the written permission of the DPR is required for plugging or abandoning wells. Boreholes and wells are to be abandoned in accordance with a strict abandonment programme approved or agreed with the DPR.

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