

An Examination of Upstream Licences and Leases under the Petroleum Industry Act, 2021*

**LAWRENCE ATSEGBUA (Prof), EDAMWEN OGBONNA,
FOLARIN DIMOWO,**

Abstract

The Petroleum Industry Bill was signed into law on the 16th of August 2021. The Petroleum Industry Act, 2021 (PIA) is the most detailed and comprehensive law governing the operations of the petroleum industry in Nigeria. In this article, the authors examine the changes introduced by the PIA on the legal framework governing the grant of licences and leases in Nigeria. In addition, the authors argue that the changes introduced by the PIA will promote the efficient, effective and sustainable development of the petroleum industry.

Introduction

The main subject of this paper is an examination of licences and lease under the *Petroleum Industry Act 2021* (the Act). It is not an examination of the Act, but rather an analysis of the different types of licences and lease that may be granted under the Act¹. In order to give something more than a descriptive account of the types of licences and lease under the Act, some method of assessment needs to be adopted. Here, the licences and lease are assessed according to how far they secure the objectives of the government. These objectives are outlined in Section 66 of the Act. These are:

- a) promote the exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people;
- b) promote the efficient, effective and sustainable development of the petroleum industry;
- c) promote the safe and efficient operation of the transportation and distribution infrastructure for the petroleum industry;
- d) provide the framework for developing third party access arrangements to petroleum infrastructure;
- e) encourage and facilitate both local and foreign investment in the petroleum industry;
- f) promote transparency and accountability in the administration of petroleum resources in Nigeria;

¹ Hereinafter referred to as “the Act”.

- g) develop, where appropriate, competitive markets for the sale and distribution of petroleum and petroleum products;
- h) promote safe and affordable access to petroleum and petroleum products in Nigeria;
- i) promote the processing of petroleum within Nigeria and the development of fuel and chemical industry and other related value added products and activities;
- j) create a conducive business environment for operations in the petroleum industry;
- k) promote the liberalisation of the downstream petroleum industry;
- l) establish an orderly, fair and competitive commercial environment within the petroleum industry; and
- m) ensure that petroleum operations are conducted in a manner that protects the health and safety of persons, property and the environment.

In addition, the administration and management of petroleum resources and their derivatives shall be conducted in accordance with this Act and the principles of good governance, transparency and sustainable development of Nigeria.

Section 70 (1) of the Act provides that there shall be the following licences and lease under this Act:-

- (a) petroleum exploration licence, which may be granted to qualified applicants to explore petroleum on a speculative and non-exclusive basis;

- (b) petroleum prospecting licence, which may be granted to qualified applicants to carry out petroleum exploration operations on an exclusive basis; and
- (c) petroleum mining lease, which may be granted to qualified applicants to search for, win, work, carry away and dispose of crude oil, condensates and natural gas.

A licence or lease may be granted under this Act only to a company incorporated and validly existing in Nigeria under the *Companies and Allied Matters Act*.² The following licences and leases may be granted by the Commission. These are:-³

Petroleum Exploration Licence (PEL)

The Commission shall be responsible for granting the PELs. The holder of a PEL shall have non-exclusive right to carry out petroleum explorations within the area provided in the licence.⁴ A PEL shall be for 3 years and may be renewable for additional period of 3 years subject to the fulfillment of prescribed conditions, but shall not include any right to win, extract, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the licenced area.⁵

A PEL may cover an area that includes Petroleum Prospecting Licence or Petroleum Mining Lease, provided that the holders of such

² Section 70(2) of the Act.

³ Sections 71, 72 and 81.

⁴ Section 71(2) of the Act

⁵ Section 71(3) of the Act

licences or leases, shall have no obligation to purchase the results of any survey conducted under the PEL⁶.

A PEL granted in respect of frontier acreages may include a provision permitting the licensee to select, based on the result of his exploration work and be granted one or more petroleum prospecting licences prior to the termination of the licence containing the fiscal provisions stipulated in Chapter Four of this Act.⁷

The Commission shall have sole right and title over any acquired raw and interpreted data obtained by a licensee pursuant to a petroleum exploration licence, provided that the licensee shall be entitled to grant a data use licence to a third party subject to a written authorisation by the Commission, which shall not be unreasonably withheld⁸.

A licensee is entitled to a fee from a third party for data use licence and shall remit to the Commission any agreed portion of the fee due to the Commission⁹.

Exploration activities conducted pursuant to a PEL shall be monitored and administered by the Commission in accordance with regulations made under this Act.¹⁰ The Commission shall have sole right and title

⁶ Section 71 (4) of the Act.

⁷ Section 71 (5) of the Act.

⁸ Section 71 (6) of the Act.

⁹ Section 71 (7) of the Act.

¹⁰ Section 71 (8) of the Act.

over all acquired and interpreted data from existing speculative survey agreements entered into with the Department of Petroleum Resources on behalf of the Government prior to the effective date¹¹.

Petroleum Prospecting Licence (PPL).

The Minister shall on the recommendation of the Commission, grant PPL to a qualified applicant.¹² Under section 72(1) of the Act, the holder of a PPL shall, subject to the fulfilment of obligations imposed by this Act, have:

- (a) exclusive right to drill exploration wells and non-exclusive right to carry out petroleum exploration operations within the area provided for in the licence; and
- (b) right to carry away and dispose of crude oil or natural gas won or extracted during the drilling of exploration wells as a result of production tests, subject to the fulfilment of obligations imposed by this Act.

A holder of the PPL shall not be granted an extension except as prescribed under sections 78(4), 78(9) and 79(6) of this Act.¹³ Where a holder of a PPL fails to fulfil any term or condition of the licence, it shall not, except as provided in the licence, give the Minister a right of claim against the licensee or be deemed a breach of the licence, if

¹¹ Section 71 (9) of the Act.

¹² Section 72 (5) of the Act.

¹³ Section 72 (2) of the Act.

the failure arises from *force majeure*.¹⁴ Where there is any delay by a licensee in the fulfilment of any term or condition of a PPL caused by *force majeure*, the period of such *force majeure* shall be added to the period fixed for the fulfilment of the applicable term or condition, provided that such period shall not exceed 3 years in total after which, the licence may be terminated by the Commission or the licensee.¹⁵ A PPL for onshore and shallow water acreages shall be for a duration of not more than 6 years, comprising of an initial exploration period of 3 years and an optional extension period of 3 years.¹⁶ A PPL for deep offshore and frontier acreages shall be for a duration of not more than 10 years, comprising of an initial exploration period of 5 years and an optional extension period of 5 years.¹⁷ The area provided for in a PPL shall not exceed:

- (a) 350 square kilometres for any onshore or shallow water acreages;
- (b) 1,000 square kilometres for any deep offshore acreages; and
- (c) 1,500 square kilometres for any frontier acreages.¹⁸

Work Commitment, Commercial Discovery and Significant Gas Discovery

Under section 78(1) of the Act, a PPL shall contain a requirement that the licensee commit to a work programme and such other terms and conditions as the Commission shall determine. In addition, a licensee

¹⁴ Section 72 (3) of the Act.

¹⁵ Section 72 (4) of the Act.

¹⁶ Section 77 (1) of the Act.

¹⁷ Section 77 (2) of the Act.

¹⁸ Section 77 (3) of the Act.

shall, during the initial exploration period and the optional extension period provided for in a petroleum prospecting licence, commit to drill at least one exploration well to a minimum depth specified in the licence for each period, except for frontier acreages, where the work program during the initial exploration period may only consist of geophysical work¹⁹.

Where a licensee makes a discovery during the initial exploration period or the optional extension period provided for in the applicable petroleum prospecting licence, the licensee shall inform the Commission within 90 days of the discovery if he considers that the discovery merits appraisal or is of no interest to him²⁰.

Where a licensee considers that a discovery merits appraisal, the licensee shall submit to the Commission within 180 days for approval²¹

- (a) a commitment to an appraisal programme of not more than 2 years with a scope and nature permitting the licensee to declare a commercial discovery, where the result of the appraisal is positive; and
- (b) the appraisal area, not larger than the outer boundary of the discovery, as determined by the licensee and a zone of not

¹⁹ Section 78 (2) of the Act.

²⁰ Section 78 (3) of the Act.

²¹ Section 78 (4) of the Act.

more than 2 kilometres surrounding the outer boundary; provided that the appraisal area does not extend beyond the area provided for in the applicable petroleum prospecting licence.

A licensee shall, upon the approval of the appraisal programme and appraisal area by the Commission, promptly carry out the committed appraisal programme and the Commission shall act on the appraisal programme within 60 days after its submission.²² Where the Commission fails to act on the appraisal programme within 60 days, the appraisal shall be deemed approved²³. The licensee shall, upon the completion of the appraisal program:²⁴

- (a) declare a commercial discovery;
- (b) declare a significant gas discovery; or
- (c) inform the Commission that the discovery is of no interest to the licensee.

Where a significant gas discovery has been declared, the licensee shall be entitled to retain the area of such significant gas discovery for a retention period as may be determined by the Commission, which shall not be more than 10 years from the day the declaration was made²⁵. The retention area of a significant gas discovery shall continue to subsist pursuant to a petroleum prospecting licence until

²² Section 78 (5) of the Act.

²³ Section 78 (6) of the Act.

²⁴ Section 78 (8) of the Act.

²⁵ Section 78 (9) of the Act.

the expiration of the period under subsection (9) of this section or declaration of a commercial discovery by the licensee²⁶.

The Commission shall approve an area of a significant gas discovery which shall not be larger than the outer boundary of the discovery declared by the licensee, including a zone of not more than 2 kilometres surrounding the outer boundary; provided that such area shall not extend beyond the area described in the applicable petroleum prospecting licence.²⁷ Where, upon the expiry of the retention period, the licensee has not declared a Commercial Discovery, the area declared shall be immediately relinquished by the Licensee.²⁸

Upon the relinquishment of the retention area, the applicable petroleum prospecting licence shall expire²⁹. Where a licensee declare a discovery of no interest, the Commission may require the relinquishment of the parcels that cover the structure of such discovery³⁰. A commitment by a licensee under this section shall be supported by a bank guarantee, letter of credit or performance bond

²⁶ Section 78 (10) of the Act.

²⁷ Section 78 (11) of the Act.

²⁸ Section 78 (13) of the Act.

²⁹ Section 78 (14) of the Act.

³⁰ Section 78 (15) of the Act.

issued by a bank acceptable to the Commission for an amount determined by the Commission³¹.

The licensee shall in each calendar year present an annual work program and status report as prescribed by regulations for approval by the Commission and such program shall as a minimum, contain the committed work³².

An Assessment

Where a licensee has discovered oil and gas, an accurate assessment has to be made about the potential of the discovery. An appraisal programme is to provide cost effective information that will be used during the field development stage. An appraisal plan aims to:

- (a) reduce the range of uncertainty in the quantity of oil and gas *in situ*;
- (b) define the size and configuration of the oil and gas reservoir; and
- (c) collect valuable data so as to be able to accurately predict the performance of the reservoir.

The requirement that a licensee commit to a work programme is to ensure that prospecting in the licenced area is going on vigorously and in line with best international petroleum industry practices. Where the licensee makes a discovery during the initial exploration period or the optional extension period, the Commission shall be

³¹ Section 78 (16) of the Act.

³² Section 78 (17) of the Act.

informed within 90 day of the discovery. The next stage is to prepare an appraisal programme. An appraisal programme in its scope and nature must permit the licensee to declare a commercial discovery. An appraisal programme must not exceed 2 years. A commercial discovery under the Act is a discovery of crude oil, natural gas or condensates within a PPL which can be economically developed in the opinion of the licensee after consideration of all the relevant factors normally applied for the evaluation and development of crude oil, natural gas or condensate. The appraisal programme is subject to the approval of the Commission within 60 days. After the completion of the appraisal programme, the licensee shall declare a commercial discovery or declare a significant gas discovery. A significant gas discovery under the Act is defined as a discovery of natural gas that is substantial in terms of reserves and is potentially commercial, but cannot be declared commercial for one or more of the following reasons:

- (a) no market for natural gas within Nigeria;
- (b) export markets need to be identified and developed;
- (c) no pipeline, processing or liquefaction capacity is available in existing systems where commercial conditions indicate that the best option for development is based on the future expansion of such systems or the use of such systems when capacity will be become available in the future; or

- (d) where the natural gas discovery will only be commercial when jointly developed with other existing natural gas discoveries or potential future natural gas discoveries.

A significant gas discovery entitles a licensee to retain the area of the discovery for a period of not more than 10 years from the day the declaration was made. Where the licensee does not declare a commercial discovery, the area declared shall be relinquished. The above provision shows that the licensee must be conducting operations in a business-like manner. The Government is interested in reaping investment from its petroleum resources. It should also be pointed out that a licensee who fails to conduct petroleum operations in accordance with international petroleum industry practices or interrupts production for 180 consecutive days without justification, may have its licence revoked under Section 96(1)(a) and(b) of the Act.

Commercial Discovery and Field Development Plan

Under Section 79 of the Act, where a licensee under a petroleum prospecting licence declares a commercial discovery under section 78(8)(a) of this Act, the licensee shall within 2 years of the declaration, submit to the Commission a field development plan with regard to the commercial discovery together with a commitment to carry out the work described in the field development plan.

The Commission shall evaluate the technical and commercial terms of the field development plan and shall only approve the field development plan where:³³

- (a) it meets the technical standards required for petroleum operations based on good international petroleum industry practices;
- (b) the location of the measurement point, measurement processes and equipment are acceptable to the Commission;
- (c) it results in the maximum recovery of crude oil, natural gas and condensates from the applicable reservoirs;
- (d) it meets the health, safety and environmental standards, as determined by the Commission;
- (e) it provides for the efficient and commercial use of facilities for midstream petroleum operations;
- (f) it does not involve excessive capital or operating expenditures;
- (g) it includes an approved Nigerian content plan pursuant to the Nigerian Oil and Gas Industry Content Development Act, 2010;
- (h) it includes an environmental management plan in a form that complies with section 102 of this Act;

³³ Section 79 (2) of the Act.

- (i) it includes a decommissioning and abandonment plan and a decommissioning and abandonment fund that complies with sections 232 and 233 of this Act;
- (j) it provides for the elimination of routine natural gas flaring;
- (k) it does not relate to upstream petroleum operations that are in conflict with domestic gas delivery obligation;
- (l) it includes -
 - (i) a detailed programme for the recruitment and training of Nigerians in all phases of petroleum operations handled directly by the licensee or through agents and contractors of the licensee; and
 - (ii) provision for scholarship schemes, internships, continuous professional development and other training requirements;
- (m) it complies with the obligations to host communities under Chapter 3 of this Act; and
- (n) it includes a development period sufficient to construct any required infrastructure and the development of the field.

An Assessment

A field development plan takes place after the completion of the appraisal programme. It provides the best technical solution and guide for optimizing the development of a field. The development of an oil and gas field is capital intensive and may require 5 – 15 years to be fully developed. The cost and the duration of a field development

plan will depend on the location of the oil and gas field and the size and complexities of the facilities needed to develop the field. A good field development plan must consider the following:

- (a) objectives of the development;
- (b) petroleum engineering data;
- (c) operating and maintenance objectives;
- (d) cost and manpower estimates;
- (e) project planning budget proposal.

A field development plan under the Act must amongst others provide for, a local content plan, an environmental management plan, a decommissioning and abandonment plan and a decommissioning and abandonment fund, a scheme for the recruitment and training of Nigerians, a provision for scholarship schemes, etc. With a good field development plan, a licensee will be able to maximize the production from the field. A field development plan is subject to the approval of the Commission under Section 79(9) of the Act. The Commission shall within 180 days approve or disapprove of a development plan. If the Commission approves the development plan, it shall grant a lease. If the Commission fails to respond to the field development plan within 180 days, it shall be deemed approved.

Petroleum Mining Lease (PML)

Section 81(1) of the Act provides that, a PML shall be granted for each commercial discovery of crude oil or natural gas or both, to the licensee of a PPL who has: -

- (a) satisfied the conditions imposed on the licence or the licensee under this Act; and
- (b) receive approval for the applicable field development plan from the Commission.

A PML shall be granted where a prospective lease area contains petroleum field with suspended wells or continuing commercial production, where the corresponding PML has been revoked or has expired.³⁴ A PML granted may include an appraisal phase.³⁵ Under section 82(1), a lessee under a PML shall have the exclusive right to carry out upstream petroleum operations with respect to the formations under the lease area as defined in the lease. A lessee under a PML shall have the right to continue to explore in the lease area.³⁶

A PML for conducting upstream petroleum operations shall only be granted on the basis of a commitment from the applicable lessee to³⁷ -

- (a) develop and produce the commercial discovery of crude oil or natural gas in the area to which the lease relates in accordance with the applicable development plan; or

³⁴ Section 81 (2) of the Act.

³⁵ Section 81 (3) of the Act.

³⁶ Section 82 (2) of the Act.

³⁷ Section 82 (3) of the Act.

- (b) restart or continue petroleum production in the area to which such lease relates.

The Commission shall, during the term of a PML-³⁸

- (a) verify the implementation of the work commitments by the applicable lessee and its compliance with the applicable development plan;
- (b) monitor capital and operating costs incurred by the applicable lessee; and
- (c) ensure that upstream petroleum operations at all times are carried out to conform with the standards required by this Act and by regulation made under this Act.

A PML granted under section 81 of this Act shall be for a maximum period of 20 years, which term shall include the development period.³⁹ Where a petroleum mining lessee does not initiate regular commercial production within the development period, the lease may be revoked by the Commission at the end of the development period.⁴⁰

Where a PML is revoked, the applicable acreage shall vest in the Government and be controlled and administered by the Commission, which may be subject to a new petroleum mining lease granted in accordance with section 81 of this Act⁴¹.

³⁸ Section 82 (4) of the Act.

³⁹ Section 86 (1) of the Act.

⁴⁰ Section 86 (2) of the Act.

⁴¹ Section 86 (3) of the Act.

The development period for a PML shall be the period established in the field development plan and where development period is not stipulated, the development period shall be:⁴²

- (a) 5 years for an onshore lease; and
- (b) 7 years for a Lease in shallow water or deep offshore or a lease in a frontier acreage.

A lessee of a PML may, not less than 12 months before the expiration of the lease, apply in writing to the Commission for a renewal, of leased area or any part of it.⁴³ A PML shall be renewed by the Commission where it is satisfied that the lease:⁴⁴

- (a) has fulfilled its obligations relating to the development of the lease area;
- (b) has fully met all payments requirement under this Act or any other enactment in respect of royalties, rents, taxes and fees relating to the petroleum mining lease;
- (c) is not in default of any obligation or condition relating to the Lease; and
- (d) has discharged all operational obligations in compliance with applicable rules and regulations.

The renewal shall be on terms and conditions determined by the Commission and the lessee shall pay a renewal bonus of an amount specified by the Commission based on the percentage of the market

⁴² Section 86 (4) of the Act.

⁴³ Section 87 (1) of the Act.

⁴⁴ Section 87 (2) of the Act.

value on the renewal date prescribed in the regulation made under this Act.⁴⁵

The Commission may, in public interest, change, impose or add new lease conditions, which shall be published in the Official Gazette.⁴⁶

Bidding Process for the Grant of PPL or PML

A PPL or PML shall only be granted: ⁴⁷

- (a) based on a fair, transparent and competitive bidding process; and
- (b) in compliance with the provisions of this Act, regulations made under this Act and licensing round guidelines issued by the Commission for each licensing round.

The Minister may on the recommendation of the Commission, grant a PPL or PML to a winning bidder, provided that the winning bidder has complied with the requirements of the bid invitation⁴⁸. The Minister shall inform the Commission of his decision within 90 days of the application for licence or lease and where he fails to inform the Commission within the stipulated time, the licence or lease shall be deemed granted⁴⁹.

⁴⁵ Section 87 (3) of the Act.

⁴⁶ Section 87 (4) of the Act.

⁴⁷ Section 73 (1) of the Act.

⁴⁸ Section 73 (3) of the Act.

⁴⁹ Section 73 (4) of the Act.

Similarly, the award process for the grant of a PPL or PML on a previously appraised area of a PPL or PML surrendered, relinquished or revoked PML shall be by an open, transparent, competitive and non-discriminatory bidding process conducted by the Commission.⁵⁰

An Assessment

The bidding process introduced by the Act for the grant of a PPL or OML is a complete departure from the position under the *Petroleum Act 1969*, where the Minister of Petroleum Resources had the discretion to grant licenses or leases. Although, the bidding process was adopted in some cases, it was not a legal requirement under any law. By establishing clear rules on license or lease allocation, the Act seeks to promote public awareness about the legal and regulatory framework that applies to the petroleum industry. The bidding process set out in the Act, enables citizens access essential information about how the country's petroleum resources are being developed. Also, where there are deficiencies in the licensing system, stakeholders can use this information to seek for reforms to ensure more transparent and efficient licensing regimes, which in turn, will attract investment to the petroleum industry. If the bidding process stipulated in the Act is adhered to, the petroleum industry in Nigeria will experience a major turn around with the elimination of corruption through transparency and accountability in licence or lease allocation.

⁵⁰ Section 74 (1) of the Act.

Licensing Round Guidelines and Model Licence and Model Lease

Under section 75 of the Act, the licensing round guidelines shall be accompanied with the model licence for the PPL or model lease for the PML for the bid round and shall include the -

- (a) licence or lease acreages, the term and minimum work obligations;
- (b) requirements to be fulfilled by the bidders and the pre-qualification criteria, as the case may be;
- (c) bid parameter;
- (d) list of documents required and criteria for the evaluation of technical capacity, financial competence and legal status of interested parties, including technical and financial assessment of the bid; and
- (e) details and cost for the acquisition of relevant data and studies.

The model licence or model lease for each bid round shall reflect the conditions of the licensing round guidelines for the bid round and shall in all circumstances include the following clauses:⁵¹

- (a) description of the acreage;
- (b) term of the licence or lease;
- (c) minimum work programme and minimum level of investment;
- (d) details of guarantees to be provided by the licensee or lessee regarding the performance of its licence or lease obligations;

⁵¹ Section 76 (1) of the Act.

- (e) details of obligations regarding relinquishment, decommissioning and abandonment;
- (f) rules for the resolution of disputes, including arbitration, mediation, conciliation or expert determination;
- (g) applicable sanctions in the event of failure by the licensee or lessee to comply with the terms and conditions of the licence or lease; and
- (h) such other clauses as the Commission may deem necessary.

Under Section 84(1) of the Act, a licensee or lessee, unless prohibited by this Act or regulation under this Act, where the Commission grants a licence or lease may enter into a contract with a third party for the exploration, prospecting, production or development of crude or natural gas or both, in respect of any licence or lease held by the licensee or lessee. The power to enter into contracts shall not confer on any licensee or lessee the right to assign an interest in any licence or lease, except in accordance with the provisions of this Act.⁵² The Commission shall develop a model licence and model lease, which may contain an obligation to comply with contractual provisions in a model contract attached to the licence or lease.⁵³ The model licence and model lease shall comply with the provisions of this Act and may contain the following additional contractual provisions:⁵⁴

- (a) a production sharing contract for the exploration, development and production of petroleum on terms under which the

⁵² Section 84(4) of the Act.

⁵³ Section 84 (2) of the Act.

⁵⁴ Section 84 (3) of the Act.

financial risk-bearing party shall recover costs from a share of production as established in the contract from the applicable area;

- (b) a profit sharing contract which is a production sharing contract whereby the profit oil is provided in cash to Government;
- (c) a risk service contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs by a payment in cash or in kind from petroleum produced from the applicable area;
- (d) a concession agreement for exploration, development and production of petroleum, which may include an incorporated or unincorporated joint venture with NNPC Limited; and
- (e) any contract being a variation of the contracts pursuant to paragraphs (a), (b) (c) or (d), of this subsection or a contract which, at the time, is an internationally recognised form of contract for the exploration and production of petroleum.

A licence or lease shall not be granted by the Commission unless the appropriate model contract is attached to the licence or lease and the licensee or lessee is the contractor.⁵⁵

⁵⁵ Section 84 (5) of the Act.

An Assessment

Section 84(3) of the Act, allows NNPC Limited to enter into a Production Sharing Contract (PSC), Profit Sharing Contract, Risk Service Contract (RSC), a Concession agreement with any licensee or lessee, which may be by an Incorporated or unincorporated Joint Venture. PSCs and RSCs are discussed extensively in Chapter 6. Suffice it to mention that the effect of this Section is to allow the parties to these forms of contracts to determine the terms and conditions to govern their contract. Under the PSC, the financial risk bearing party shall recover cost from a share of production. The percentage set aside for cost recovery (Cost Oil) shall be recovered by the financial risk bearing party from a share of production as established in the contract from the applicable area. Section 84(3)(b) also refers to a Profit Sharing Contract, which is defined as a Production Sharing Contract whereby the profit oil is provided in cash to government. Profit Sharing Contract appears to be a contract for the sharing of profit oil under a PSC. It is not clear why the Act requires a separate contract form for the sharing of profit oil. Usually, under a standard PSC, profit oil is what is left after the deduction of cost oil and tax oil and it is shared on a percentage basis between the oil company and the Government. The RSC under this Section allows the risk bearing party to recover costs by payment in cash or in kind from petroleum produced from the applicable area. The NNPC may also enter into a concession agreement for the exploration, development and production of petroleum, which may include an

incorporated or unincorporated joint venture with NNPC Limited. In addition, the model licence or model lease may contain provisions which are variations of the PSC, RSC or concession agreement referred to in Section 84(3) of the Act or variations of an internationally recognized form of contract for the exploration and production of petroleum.

Relinquishment of PEL, PPL and PML

A licensee, prior to the expiration of the initial exploration period of 3 years or of the optional extension period of 3 year, shall relinquish every area that is not an appraised area, retention area or leased area based on parcels or such-parcels under section 69 of the Act⁵⁶ Also, under section 88(2) of the Act prior to the expiration of the initial exploration period of 5 years or of the optional extension period of 5 years, a licensee shall relinquish every area that is not an appraisal area, retention area or lease area on parcel or sub-parcel under section 69 of this Act. Every appraisal area or retention area shall be retained as provided for under this Act and the petroleum prospecting licence shall be extended until the related petroleum mining lease has been granted or denied⁵⁷. A licensee of a PPL may voluntarily relinquish parcels and sub-parcels, provided that the:⁵⁸

- (a) licensee has complied with the obligation in the PPL; and

⁵⁶ Section 88 (1) of the Act

⁵⁷ Section 88 (3) of the Act

⁵⁸ Section 88 (4) of the Act

- (b) shape of a relinquished block shall be approved by the Commission to maintain acreage of shape that is viable for award in future licensing round.

After 10 years of the commencement of a PML:⁵⁹

- (a) the applicable lessee shall relinquish all parcels which do not fall within the boundary of a producing field under this Act; and
- (b) any formation deeper than the deepest producing formation shall be relinquished, and the deep rights shall vest in the Government.

Upon the expiration of any significant gas discovery retention period in respect of a PPL, every area relating to the significant gas discovery retention area shall be relinquished, unless the applicable licensee has declared a commercial discovery in such significant gas discovery retention area⁶⁰.

An area or zone relinquished under to this section, shall be vested in the Government and administered by the Commission and the relinquishments shall be in a north-south, east-west direction and defined in a rectangular or square shaped compact unit.⁶¹

⁵⁹ Section 88 (5) of the Act

⁶⁰ Section 88 (6) of the Act

⁶¹ Section 88 (7) of the Act

An Assessment

The essence of a relinquishment provision is to ensure that areas not appraised or retained are returned to the government. A retention area under the Act is defined as the area approved by the Commission for a significant gas discovery. Areas relinquished are areas with no prospect of oil and gas discovery and licensees are under an obligation to return these areas back to the government. Since these areas are returned back to the Government, it means that they can be reallocated to interested licensees who may have the technology to make a commercial discovery or a significant discovery.

Surrender of Licence or Lease

Under Section 89(1) of the Act, a holder of a PPL, PEL or OML may surrender part or the whole of the licenced or leased area or any zone, provided that the licensee or lessee has:

- (a) complied with obligations imposed by or incurred under the applicable licence or lease; and
- (b) given 3 months' notice in writing to the Commission prior to the surrender.

Any rent or fee paid prior to a surrender, shall not be refundable and the licence or lease surrendered shall be without prejudice to any

obligation or liability imposed by or incurred under the applicable licence or lease⁶².

Voluntary Conversion of an Oil Prospecting Licence to a PPL or Oil Mining Lease to PML

A holder of an existing oil prospecting licence or oil mining lease may enter into a voluntary conversion under the Act.⁶³ A licensee or lessee under a conversion contract shall benefit from applicable fiscal incentives where the licensee or lessee complies with the provisions of this Act.⁶⁴ Where a holder of an existing oil prospecting licence or oil mining lease who wishes to enter into a voluntarily conversion contract under this Act, the conversion contract shall contain a termination clause of all outstanding arbitration and court cases related to the respective oil prospecting licence or oil mining lease and for the avoidance of doubt:⁶⁵

- (a) any stability provisions or guarantees provided by NNPC in respect of oil prospecting licences or oil mining leases to be converted shall be null and void; and
- (b) the incentive provisions contained in sections 11 and 12 of the Petroleum Profit Tax Act shall not apply.

A conversion contract shall be concluded at a date (“Conversion Date”) which is the earlier of:⁶⁶

⁶² Section 89 (2) of the Act

⁶³ Section 92 (1) of the Act

⁶⁴ Section 92 (2) of the Act

⁶⁵ Section 92 (3) of the Act

⁶⁶ Section 92 (4) of the Act

- (a) 18 months from the effective date; and
- (b) the expiration date of the oil mining lease or date of conversion of the oil prospecting licence to an oil mining lease.

Prior to the conversion date, the terms applicable to the oil prospecting licence or oil mining lease prior to the effective date shall continue to apply.⁶⁷

Where a holder of an existing oil prospecting licence or oil mining lease does not enter into a conversion contract prior to the conversion date, the terms and conditions applicable to the oil prospecting licence or oil mining lease prior to the effective date of this Act shall continue to apply to the oil prospecting licence or oil mining lease.⁶⁸

Where an oil prospecting licence is converted, the term of years included in such licence shall apply to the converted petroleum prospecting licence.⁶⁹

National Grid System and Acreage Management

The Act establishes a new system for acreage management known as National Grid System. Under this System, the Commission shall after consultation with the Surveyor-General of the Federation, adopt a national grid system for acreage management.⁷⁰ The grid system shall

⁶⁷ Section 92 (5) of the Act

⁶⁸ Section 92 (6) of the Act

⁶⁹ See section 92 (7) of the Act

⁷⁰ Section 69 (1) of the Act

be based on the UTM system or any other projection system in use by the office of the Surveyor-General of the Federation.⁷¹

The Commission shall establish a system for numbering of parcels, which shall allow for subdivision and aggregation of the parcels.⁷²

The basic unit of the grid system shall be a parcel of one square kilometer, subject to adjustment of the zones and national boundary.⁷³

The Commission may further subdivide parcels into equal units of one hectare or such sub-units as the Commission may deem appropriate.⁷⁴

The National grid system shall be used for the administration of upstream petroleum operations, including:⁷⁵

- (a) the definition of licence and lease areas;
- (b) relinquishments;
- (c) bid procedures;
- (d) identification of well locations;
- (e) other regulatory and acreage management procedures.

Any current boundary of a licence or lease, which does not conform with the new national grid system shall remain unaltered and be apportioned in parcels.⁷⁶

⁷¹ Section 69 (2) of the Act

⁷² Section 69 (3) of the Act

⁷³ Section 69 (4) of the Act

⁷⁴ Section 69 (5) of the Act

⁷⁵ Section 69 (6) of the Act

⁷⁶ Section 69 (7) of the Act

An Assessment

The National grid system for acreage management is an innovation created by the Act. Under this system, the basic unit for the grid system is parcel of one square kilometres.⁷⁷ Under the *Petroleum Act 1969*, licensed or leased areas are to be bounded by straight lines running in north to south and east to west directions. The new grid system will make for clarity and easy management with the Surveyor General of the Federation playing a key role.

Assignments, Mergers, Transfers and Acquisitions of PEL, PPL or PML

Section 95(1) of the Act provides that, a holder of a PPL or PML shall not assign, novate or transfer his licence or lease or any right, power or interest without prior written consent of the Minister. The consent of the Minister shall be granted upon the recommendation of the Commission. A change of control in the holder of a licence or lease shall be deemed to be an assignment.⁷⁸ A licensee or lessee wishing to assign, novate or otherwise transfer its interest shall make an application for approval of the transfer of a licence or lease to the Commission in the format prescribed by the Commission, and be accompanied with any other information that may be pursuant to any regulations published by the Commission.⁷⁹

⁷⁷ Section 95(3) of the Act

⁷⁸ Section 95(3) of the Act

⁷⁹ Section 95(4) of the Act

A holder of a licence or lease may by way of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interests under the applicable licence, lease or grant a security interest in respect of the interest, provided that the consent of the Commission shall be obtained.⁸⁰ The Commission shall within 60 days of the receipt, act on the application of the licensee or lessee.

Where no response on the application has been received within 60 working days from the receipt of the recommendation of the Commission, the consent of the Minister shall be deemed to have been granted.⁸¹ Where the consent of the Minister is granted in respect of the application for a transfer, the Commission shall promptly record the transfer in the appropriate register.⁸² The Commission shall communicate the refusal or approval of an application for an assignment, novation or transfer of a licence or lease in writing to the applicant⁸³.

Where the application for an assignment or a transfer of a petroleum prospecting licence or petroleum mining lease is refused, the Commission shall inform the applicant of the reasons for the refusal and may give reasonable time within which further representations

⁸⁰ Section 93(5) of the Act

⁸¹ Section 95 (7) of the Act

⁸² Section 95 (8) of the Act

⁸³ Section 95 (9) of the Act

may be made by the applicant or by third parties in respect of the application⁸⁴.

The Minister may grant consent to an assignment, novation or transfer of a petroleum prospecting licence or petroleum mining lease, subject to the following terms and conditions the Commission may consider appropriate, that the proposed transferee:⁸⁵

- (a) is a company incorporated in Nigeria;
- (b) is of good reputation and standing;
- (c) has sufficient technical knowledge, experience and financial resources to enable it effectively carry out all responsibilities of a licensee or lessee under the licence or lease; and
- (d) shall comply with the Federal Competition and Consumer Protection Act, 2018.

The Commission shall make regulation to prescribe for payment of fees as a condition for any transaction under subsection (1) of this section, which fee shall be based on a percentage of the value of the transaction and shall not be taxable⁸⁶.

Section 95(14) of the Act provides that:

⁸⁴ Section 95 (10) of the Act

⁸⁵ Section 95 (11) of the Act

⁸⁶ Section 95 (12) of the Act

For the purpose of this section, “change of control” means any person or persons acting jointly or in concert, or acquire direct or indirect beneficial ownership of a percentage of the voting power of the outstanding voting securities of the holder, by contract or otherwise, that exceeds 50% at any time.

Similarly, a holder of a PEL shall not assign, novate or transfer his licence or lease or any right, power or interest without prior written consent of the Commission.⁸⁷ The procedure outlined above which holders of PPL or PML are to comply with is also applicable to holders of PEL.

By virtue of the above provisions, any assignment of an PEL, PPL or PML in or outside Nigeria without the prior approval of the Minister of Petroleum Resources is ineffectual.⁸⁸ The above restriction on the assignment of PELs, PPLs or PMLs apply, for example, where a change of control occurs.⁸⁹ In other words, it is an assignment for company ‘A’ to acquire 51% equity shares of company ‘B’. An “Assignment is the act of transferring to another all or part of one’s property... interest, or rights...”⁹⁰ On the other hand, an “acquisition is

⁸⁷ Section 95 (15) of the Act

⁸⁸ G. Oyebode, “Government Regulatory Approval Processes in Nigeria” (1990), Energy Law, 743 at 745.

⁸⁹ Ibid at 745-746.

⁹⁰ Black’s Law Dictionary 9th ed., (St. Paul, Minnesota: West Publishing Co., 2009).

the act of becoming the owner of certain property; the act by which one acquires or procures the property in anything...”⁹¹ Novation is a new word introduced by the Act. It was not in the ***Petroleum Act***. Novation is the act of replacing a legitimate existing contract with a new contract, where the transfer is mutually agreed by both parties concerned. One of the two initial contracting parties is replaced by an entirely new party in most novation cases, where the original party voluntarily decides to revoke any rights originally given to them. For the purpose of Section 95(1) of the Act, an acquisition is the same as an assignment.

An assignment as used herein involves the transfer of a licence, lease or marginal field or an interest, power or right therein by any company with equity, participating, contractual or working interest in the said licence or lease in Nigeria through merger, acquisition, take-over, novation, divestment or any such transaction, that may alter the ownership, equity, rights or interest of the assigning company in question, not minding the nature of upstream arrangement that the assigning company may be involved in, including but not limited to Joint Venture (JV), Production Sharing Contract (PSC), Service Contract (SC), Sole Risk (SR) or Marginal Field Operation.

⁹¹ Ibid. See also Lawrence Atsegbua, “The Assignment and Revocation of Oil Licences and Leases in Nigeria”(1997), OGLTR, Vol. 9, 346.

Instances of an assignment shall include but not limited to the following:

- (i) Assignment by way of exchange or transfer of shares. This entails the acquisition of ownership of a percentage of voting power that exceeds 50% at any time of a company which holds an PEL, PPL, PML or Marginal field in Nigeria.
- (ii) Assignment by way of merger wherein a company which holds an PEL, PPL, PML or Marginal Field combines with one or more companies to form another company by way of payment, exchange of shares or by any other means whatsoever.
- (iii) Assignment by way of acquisition, novation, wherein the acquiring company directly or indirectly takes over or acquires the whole rights or interest in a licence or lease or marginal field and associated assets of the assigning company, including acquisition of interest by an entity in a parent company whose affiliate has interest in a licence, lease or marginal field or associated assets in Nigeria.

Section 95 is wider enough to include an allotment and acquisition of shares, mergers and takeovers which involves “change of control in the holder of a licence or lease”. In *Moni Pulo v. Brass Exploration Nigeria Unlimited*⁹², the Federal High Court had to consider whether ministerial consent was required for an acquisition of shares resulting in the change of ownership of an OPL or OML.

⁹² FHC/L/CS/835/(2012) CLRN

This case was decided under paragraph 14 of the First Schedule to the *Petroleum Act, 1969*.

In the *Moni Pulo's* case, Moni Pulo Limited and Brass Exploration Unlimited were both counterparties to a joint operating agreement on OML 114. By a letter dated 27th January, 2004, the Minister approved Moni Pulo's application to assign a 40% undivided participating interest in OML 114 to the Petroleum Oil and Gas Corporation of South Africa Ltd (PetroSA). In February 2011, all of Brass' shares – as then owned by the PetroSA, were transferred to Camac Energy Services Ltd and Camac Energy Resources Ltd both owned by Camac International Corporation. As a result of the share transfer, the Camac Group became Brass' parent company. The Minister's consent was neither properly sought nor obtained for this subsequent transfer to the Camac Group.

Dissatisfied with the manner of the transfer and unwilling to partner the Camac Group, Moni Pulo approached the Federal High Court to seek a determination of whether the Minister's consent was required for the valid transfer of Brass' 40% participating interest in OML 114 by way of a transfer of 100 percent of the shares of Brass from the PetroSA group to the Camac Group. Brass, PetroSA Nigeria, PetroSA Brass, Camac Energy Services, Camac Energy Resources, Camac International Corporation and the Minister were sued as the first to eight defendant respectively.

The Federal High Court held that the Minister's consent was required before the Camac group could exercise any right or interest in Brass' ownership/control of a 40% participating interest in OML 114.

This case stands for the proposition that ministerial consent is required for an acquisition of shares that will result in change of control of a licence or lease, an assignment of shares that will result in change of control of a licence or lease and a novation that will also result in change of control of a licence or lease. Whatever the type of arrangement, as long as it results in the change of control of a licence or lease, it will be caught by the provision of Section 95 of the Act. It therefore means that if there is no change of control as defined in Section 95(14) of the Act, the Minister's consent will not be required. The important question is whether a change of control has taken place. In *Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria*,⁹³ the dispute centres on the Claimants investment in the oil and gas industry in Nigeria which resulted in a joint venture ownership and operation of Oil Mining Lease 98 (OML 98) and Oil Prospecting Licence 275 (OPL 275), through a Nigerian corporate entity, Pan Ocean Oil Company (Pan Ocean). The joint venture is known as NNPC/Pan

⁹³ ICSID, ARB/13/20. This was the first case in which Nigeria was brought before the International Centre for the Settlement of Investment Dispute. The proceedings took place in Washington and London. The Arbitrators were Professor William Park (President of the Tribunal), Professor Julian D.M. Lew and Hon. Justice Edward Torgbor.

Ocean Joint Venture. The Claimants were 100% beneficial owners of the 40% participating interest in OML 98 and the Respondent was the owner of 60% of the participating interest (as NNPC). The subject of this arbitration is Claimants 40% participating interest in OML 98. The shares in Pan Ocean were 10,000, but only 2,500 were issued and allotted to Dr Fabbri, the original owner of Pan Ocean. Pan Ocean was owned by the Claimants and the Claimants were owned by Dr Fabbri. Subsequently, through a series of events, Dr Fadeyi, the Managing Director of Pan Ocean, allotted 7,500 shares of Pan Ocean to other persons causing the Claimants to lose control of Pan Ocean. Dr Fabbri, who had since left Nigeria, died and before his death transferred his ownership of the Interocean Companies to his wife, who later transferred her ownership to one of Dr Fabbri's sons. The Claimants claimed that the allotment of 7,500 share by Dr Fadeyi required ministerial consent under Paragraph 14 of the First Schedule of the Petroleum Act. Paragraph 14 provides that :”without the prior written consent of the Minister, the holder of an Oil Prospecting Licence or Oil Mining Lease shall not assign his licence or lease or any right, power or interest therein or thereunder.” I argued as an expert witness for the Respondent that Paragraph 14 did not apply and ministerial consent was not required as an allotment of shares was not an assignment as there had been no change in the ownership of Pan Ocean's participating interest in the joint venture. The 40% participating interest after the allotment of 7,500 shares by Dr Fadeyi

still resided with Pan Ocean. The claimants expert witness argued that a change of control had taken place and that the consent of the Minister was required under Paragraph 14. Although the Tribunal did not specifically decide on whether the Minister's consent was required under Paragraph 14 of the First Schedule to the Petroleum Act, it held that *inter alia*, that the respondents were not liable for the Claimants loss of control of Pan Ocean. The *Petroleum Act*, did not elucidate on the meaning of assignment, neither did it provide that a change of control will amount to an assignment. If this case were to be decided under the Act, the allotment of 7,500 shares by Dr Fadeyi would amount to change of control as defined in Section 95(14) of the Act and will consequently require the Minister's consent.

Grounds for Revocation of Licence or Lease

The grounds for which a licence or lease may be revoked are contained in section 96(1) of the Act. Under this section, upon receipt of the written recommendation of the Commission for revocation, the Minister may revoke a PPL, PEL or PML, where the applicable licensee or lessee:

- (a) fails to conduct petroleum operations in accordance with good international petroleum industry practices, the provisions of this Act and any other relevant legislation;
- (b) interrupts production for a period of over 180 consecutive days without justification or as provided for in the applicable licence, lease or approved development plan, provided that an

event of *force majeure* shall be an acceptable justification for interruption;

- (c) fails to fulfil the terms and conditions of the applicable licence or lease or the approved field development plan;
- (d) fails to pay to Government, as they become due, rents, royalties, taxes or other payments or production shares under this Act;
- (e) fails to furnish any reports or data on operations as required by law;
- (f) assigns, novates or otherwise transfers any interest in the applicable licence or lease other than in accordance with section 95 of this Act;
- (g) has obtained an interest, in the applicable licence or lease based on false representation or contrary to corrupt practices and money laundering laws;
- (h) is declared by a court of competent jurisdiction to be insolvent, bankrupt or is liquidated, in each case except as part of a solvent plan or scheme of re-organisation, amalgamation or arrangement;
- (i) has failed to comply with environmental obligations required by applicable law or by the provisions of the applicable licence or lease;
- (j) is owned wholly or in part, directly or indirectly or is controlled by a former or serving public official or member of

- the Government, who obtained his interest in the applicable licence or lease other than as permitted by applicable law;
- (k) where the applicable licensee or lessee does not submit and advance a field development plan and work commitment pursuant to sections 78 and 79 of this Act;
 - (l) fails to abide by any expert determination, arbitration award or judgment arising from the dispute resolution provisions set forth in a licence, lease or this Act;
 - (m) fails to comply with domestic crude oil supply or domestic gas delivery obligations under this Act and any subsidiary regulation; or
 - (n) fails to comply with the host communities obligations under this Act.

If the Minister decides to revoke a PPL or PML under section 96(1) of the Act, the Commission shall:

- (a) serve a notice of default on the applicable licensee or lessee stating the grounds upon which the Commission may recommend a revocation of the licence or lease to the Minister; and
- (b) provide the licensee or lessee with a remediation period of not less than 60 days within which to remedy the default.

Where the Commission is satisfied with the remedy provided by the licensee or lessee pursuant to subsection (1)(b) of this section, the revocation process shall terminate.

Where, at expiration of the remediation period provided under subsection (1)(b) of this section, the default persist, the licence or lease may subject to the provisions of section 99 of this Act, be revoked in accordance with section 96 of this Act.

A notice of default shall be –

- (a) sent by the Commission to the last known address of the licensee or lessee or its legal representative in Nigeria; or
- (b) published in the gazette or on the website of the Commission,
- (c) each of which shall constitute sufficient notice to the Licensee or Lessee of the notice of default.

Revocation of a petroleum prospecting licence or petroleum mining lease shall be without prejudice to any –

- (a) liability or obligation which the licensee or lessee may have incurred in favour of the Commission, the Government or any third party; or
- (b) claim, which the Commission, the Government or any third party may make against the licensee or lessee.

Power of Revocation of Participating or Shareholders Interest

Under Section 99(1) of the Act, where two or more persons are holders of a petroleum prospecting licence or petroleum mining lease and one or more of the grounds for revocation set forth in section 96 of this Act applies to not all of the holders, the Minister:

- (a) may, in accordance with section 96 of this Act, revoke the participating or shareholders interest of the holder or holders to which the grounds apply; and
- (b) shall not revoke the interests of the other holder or holders to which the grounds do not apply.

A holder to which the grounds apply referred to as a “defaulting holder” and a holder to which the grounds do not apply is referred to as a “non-defaulting holder”⁹⁴. Upon a revocation of an interest, the rights of the defaulting holder shall cease without prejudice to any obligation or liability incurred or imposed on the defaulting holder under the terms and conditions of the licence or lease prior to the time of the revocation.⁹⁵

The interests of each non-defaulting holder shall not be affected by a revocation of the interest and the non-defaulting holders shall take such measures as provided for under the joint operating agreement or shareholder agreement to redistribute the revoked participating or shareholder interest to the non-defaulting holders or third parties⁹⁶.

⁹⁴ Section 99 (2) of the Act

⁹⁵ Section 99 (3) of the Act

⁹⁶ Section 99 (4) of the Act

Where an assignment to a third party may require the approvals stipulated under this Act and any replacement of the operator will require the approval of the Commission⁹⁷.

The Minister may revoke a licence or lease, where a non-defaulting holder fails to:

- (c) take responsibility for the payment of rents, royalties, taxes, production shares, profit shares or other contractual payments to Government of the defaulting holder under the licence or lease; or
- (d) comply with any other obligation under the licence or lease in a manner that may result in the revocation of the licence or Lease pursuant to section 96 of this Act⁹⁸.

The effectiveness of this power of revocation has been questioned by Etikerentse. He argues that:⁹⁹

The importance attached to the revocation powers of the grantor in this matter has been eroded to a great extent by the very fact that in nearly all petroleum operations in Nigeria now, the Government through NNPC has participation interests. NNPC's representatives

⁹⁷ Section 99 (5) of the Act

⁹⁸ Section 99 (6) of the Act

⁹⁹ G. Etikerentse, *Nigeria Petroleum Law*, (2nd Ed) 2004, Dredew Publishers, at 38-39. For a general discussion of revocation under the Petroleum Act, see Atsegbua, *supra*, note 91.

have a say in the way the operations are carried out and they would therefore be privy to any defaults deserving of revocation. A revocation would thus affect both parties to the joint venture and the NNPC's inspectorate, being the actual organ charged with effecting any revocation, would be most reluctant to carry out a measure that would indirectly affect its *alter ego*.

The above assertion illustrates one of the disadvantages of equity participation. As a controlling shareholder in the subsidiaries of the IOCs, the government can hardly be expected to effectively exercise its power of revocation of the licences and leases held by the oil companies. The NNPC has 60% participating interest in joint venture agreements with the subsidiaries of the IOCs operating in Nigeria. If the NNPC is the "defaulting holder" under section 99 of the Act, will the Minister revoke the NNPC's participating interest in the joint venture. It is doubtful if the Minister will be willing to take such a drastic step.

Any revocation by the Minister must be done in accordance with the provisions of the Act. In *Federal Government of Nigeria v. Zebra Energy Limited*¹⁰⁰ the respondent wrote an application on 24/11/98 to the Head of State for the allocation of offshore 001 blocks Nos. 248, 249 and 250. The application was made in accordance with the indigenous exploration programme initiated by the Federal

¹⁰⁰[2002] 18 NWLR, 162

Government in 1991 by virtue of the Petroleum Act, Cap. 350. Laws of the Federation of Nigeria, 1990.

On 8/3/99, the application for the allocation of OPL 248 was approved by the Head of State in a letter with Ref. No. P1/BAL/371/S.42/V.11. In the letter, it was stated that the offer was subject to the conditions, *inter alia* that the respondent pay the application and bidding fees of N50,000.00 (Fifty thousand naira) and US\$10,000.00 (Ten Thousand United States dollars) respectively, that the respondents pay the signature bonus and reserved value of US \$20million and that the respondent pay the said statutory fees and confirm the acceptance of the offer within thirty (30) days of the letter i.e by 7/4/ 99 such that if the amount due was not paid by that date, the acreage may be reallocated without further reference to the respondent.

In a reply to the letter of 8/3/99, the respondent accepted the offer in a letter written on 23/3/99. The respondent thereafter made the initial payment of N50,000.00 and \$10,000.00. In a letter dated 13/4/99, the respondent sought further clarification on the breakdown of the payment of the signature bonus and the reserved value of US20 million. On 15/4/ 99, the 4th appellant wrote a letter classifying the signature bonus and reserved value. He stated in the letter that the

payment of the sum could be paid in two instalments within a period of three months from the date of the award.

On 28/5/99, the respondent wrote a letter to the 5th appellant reporting to him that the company had paid US\$1 million (US one million dollars) being part payment for the signature bonus and reserved value. In the same letter the respondent requested for further extension of time for the payment of the second installment. This was to allow its bankers conclude documentation for transfer of funds as well as to allow time for a thorough technical analysis and comprehensive data interpretation. The respondent requested a three-month extension effective from 7/6/ 99 within which to pay the balance. The time for payment was in effect extended to 15/7/99.

On 31/5/99, the 5th appellant wrote to the respondent wherein he informed the respondent that the allocation of OPL 248 to the respondent had been cancelled. The 5th appellant stated that the cancellation was in accordance with the recommendation of the 6th appellant. The respondent petitioned both the 2nd and 6th appellants but no response was received.

The respondent then filed an action by way of originating summons at the Federal High Court, Abuja. On 2/11/999, the respondent filed a motion seeking to restrain the appellants from interfering with the legal and equitable interests of the respondent in respect of the

concession granted to the company concerning OPL. 248. A counter – affidavit was filed by the appellants on 17/1/2000. There were further affidavits and further counter – affidavits filed. On 8/5/2000, the trial court in its ruling held that there were serious questions that would have to be determined between the parties and it granted the motion for interlocutory injunction. The hearing of the originating summons was then adjourned to 8/6/2000 and 9/6/2000.

On 8/6/2000, the hearing had to be adjourned to 26/6/2000 because the counsel for the appellants was not in court. On 26/6/2000, counsel for the respondent moved the application on the originating summons and concluded his address. The appellants were on their part not ready to give their reply although they were well represented. The matter was consequently adjourned to 6/7/2000.

On 6/7/ 2000, before the counsel for the appellants opened his address, he told the court that he had filed a counter affidavit. The counsel to the respondent objected to the consideration of the counter-affidavit because he had just been served with it in the court. The court in its ruling held that the appellants had ample time to file the counter affidavit and that since the counter affidavit was not filled within a reasonable time, the appellants counsel could only address the court on points of law.

At the conclusion of hearing, the trial court found that there was a valid contract between the parties. It held that the proper order to make in the circumstance was not to award damages and it directed the parties to complete their obligations under the contract.

The appellants' appeal to the Court of Appeal was dismissed. The Court of Appeal held that the Public Officers (Protection) Act does not apply to cases of contract and that the contractual relationship created by the parties was governed by the Petroleum Act, Cap 380, Laws of the Federation of Nigeria, 1990 with the effect that the appellants were bound to comply with the statutory provisions. The court also held that the refusal of the trial court to permit the appellants the use of the counter affidavit had not occasioned any miscarriage of justice.

The Court of Appeal affirmed the consequential order made by the trial court.

Dissatisfied, the appellants appealed to the Supreme Court where they contended that as the respondent failed to pay the US\$20million for signature bonus and reserve value within the stipulated thirty (30) days, the offer of the appellants had lapsed and that the offer of forty-five (45) days extension was a counter- offer and up to the time the appellants withdrew the allocation the respondent had not accepted the counter –offer.

The Supreme Court in upholding the decision of the Court of Appeal held that the agreement between the parties constituted a binding contract and that the procedure for revocation contained in paragraphs 23-27 of the first schedule to the Petroleum Act, Cap 350, LFN 1990, was applicable to this case.

Mohammed, J.S.C. said,

“The ordinary and natural meaning of the provisions of paragraphs 23-27 of the 1st schedule to the Petroleum Act is that it regulates the procedure for revocation of an oil prospecting licence. But the appellants revoked the licence of the respondent following a recommendation of the Kolade panel. When a matter is clearly spelt out in a statute and the procedure for carrying out such duty is laid down, a party has no choice but to comply fully with the provisions of the statute”.

Also in the case of *Oil and Gas Nigeria Limited v Ministry of Petroleum Resources*¹⁰¹ the trial judge Sanyaolu, J. held that an oil prospecting licence can only be revoked in accordance with the provisions of the Petroleum Act and the Petroleum (Drilling and Production) Regulations Cap. 350, LFN 1990.

¹⁰¹ Suit No. FHC/L/CS/481/2000, Unreported

Conversion of Oil Prospecting License to Oil Mining Lease

In *South Atlantic Petroleum Ltd v. Minister of Petroleum Resources*,¹⁰² the issue before the court was not revocation, but the interpretation of the Oil Prospecting Licences (Conversion to Oil Mining Leases etc) Regulations 2004.

In 1998, South Atlantic Petroleum was granted on OPL 246 in the Deep Offshore area of Nigeria. In August 2003, South Atlantic petroleum applied to the Minister for the conversion of OPL 246 to an Oil mining lease. This application was approved by the Minister in February, 2005. South Atlantic was granted an OML 130 from the existing OPL 246. South Atlantic asserted in a letter to the Minister that they were entitled to an additional OML from OPL 246.

The Department of Petroleum Resources (DPR) asserted that consequent upon the grant of OML 130, the balance of OPL 246 was relinquished to the Government. It was further argued, that the original OPL 246 which was for 1000 square miles, has ceased to exist once the DPR conveyed the Minister's decision to convert 500 square miles of that OPL into OML 130 out of the area of OPL 246.

This case is principally on relinquishment of the residue of OPL 246 and the application by the Applicant for additional OML out of the

¹⁰² Suit No. FHC/L/CS/361/2006, Unreported

residue of the aforesaid OPL 246. In order words, has the residue of OPL 246, been relinquished to the Government? Abdullahi Mustapha, J, of the Federal High Court, in a well-considered judgment, held that once an OML is granted, the residue of the OPL automatically reverts to the Federal Government in whom ownership of all the nations petroleum resources is vested and that the OPL ceases to exist once the Minister decides not to grant a second or additional OML in respect of an area subject to a previous OPL. The judge further held that there is nothing unlawful in Government policy that the residue of OPL 246 is automatically relinquished and reverted to the Federal Government on the grant of an OML 130 to the Applicant. The application was therefore dismissed. A further appeal by the Applicant to the Court of Appeal was dismissed.

Justice Abdullahi Mustapha observed that: Paragraph 12 of the 1st Schedule to the Petroleum Act Provides that ten years after the grant of an Oil Mining Lease one half of the area of the lease shall be relinquished. This is not the scenario here. What the Government is claiming to have relinquished is the residue of an Oil Prospecting License upon the grant of an Oil Mining Lease. There may be no provision in the Petroleum Act or Regulations for automatic relinquishment but at the same time there is nothing in them prohibiting automatic relinquishment. There is nothing in the Petroleum Act or Regulations showing or suggesting that the claim

that the residue of OPL 246 reverts back to the Government on the grant of an OML is unlawful. The judge further held that the applicant's right to be granted an additional OML stemmed from regulation 2(1) of the Regulations and not from any private contract between him and the Minister and so it is a public law right and therefore subject to Judicial Review.

Although the decision is welcomed, it would be better to amend the Regulation by providing explicitly that upon the grant of an OML, the OPL shall expire.

Unilateral Acquisition of Participating Interest

In the case of *Famfa Oil Limited v Attorney General of the Federation and Nigerian National Petroleum Corporation*¹⁰³ the appellant applied for an OPL in May 1993. The appellant made all necessary payments and the license was granted. In September, 1996, the appellant entered into a joint venture agreement with Star Deep Water and transferred 40% of its interest in OPL 216 to Star Deep. In March 2003, the appellant applied to the Minister for conversion of OPL 216 to OML. This was approved by the Minister in 2004 and OPL 216 was converted to OML 127. In January 2005, the DPR relying on the Deep Water Block Allocation to Companies (Back-in-Rights) Regulations 2003, wrote to the appellant acquiring 5/6 of the appellant's interest in OML 127 and later acquired 50% interest in

¹⁰³ Suit No.CA/A/173/06, unreported

OML 127. The appellant challenged this acquisition in court. The trial judge dismissed the appellant's claim. On appeal to the Court of Appeal, it was held:

- (i) That the compulsory and arbitrary acquisition of the interest of the appellant by the respondent in purported exercise of the provisions of the Deep Water Block Allocation to Companies (Back –in-Rights) Regulations 2003 is illegal, unlawful, unconstitutional, null and void.
- (ii) That the provisions of paragraph 2 of the 2003 Regulations was inconsistent with paragraph 35 , first Schedule to the Petroleum Act which stipulates that such participation or acquisition must be made on terms to be negotiated between the Federal Government and the holder of the OPL or OML.
- (iii) That it is a cardinal principle of law that a subsidiary legislation must conform with the principal law, otherwise it becomes invalid.
- (iv) That the purported acquisition is inconsistent with sections 43 and 44 of the 1999 Constitution and to that extent it is illegal, invalid, unconstitutional, null and void.

Conclusion

The conclusion clearly restates the paper's central argument and effectively highlights the strengths of the licensing and leasing framework under the Petroleum Industry Act 2021. However, it is

largely affirmative and would benefit from a more balanced and critical synthesis of the issues discussed. In particular, brief acknowledgment of potential challenges or implementation concerns, as well as a forward-looking perspective, would enhance its analytical depth and overall impact.

The above examination of licences and leases under the Act shows that the Act promotes the efficient, effective and sustainable development of the Nigerian Petroleum Industry. The work programme and field development plan ensures that licencees and lessees vigorously explore and exploit for petroleum resources in Nigeria for the benefit of the Nigerian people. The bidding process for the grant of PPL or PML ensures fair, transparent and competitive bidding.

All in all, licences and leases granted under the Act conforms with best international practices in the petroleum industry.