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The Anatomy of the Petroleum Prospecting Licence: Our Commentary on the Petroleum Industry Act, 2021

Introduction

Nine months after the enactment of the Petroleum Industry Act, 2021 (the "PIA"), the Government of the Federation of Nigeria ("Government") acting through the Honourable Minister of State for Petroleum Resources granted the first set of petroleum prospecting licences to bidders who emerged as winners following the conclusion of the 2020 marginal field bid round. Instructive to note that the Petroleum Prospecting Licence ("PPL") was introduced by the PIA and is meant to replace the oil prospecting licences issued pursuant to the Petroleum Act, 1969.

CONSIDERATION FOR THE GRANT OF THE PPL

Signature Bonus

A potential grantee of a PPL is required to pay a signature bonus which will be determined by the Nigerian Upstream Petroleum Regulatory Commission (the "Commission") in accordance with the PIA.

THE FRAMEWORK OF THE PPL

The PPL Instrument

The documents that constitute the PPL instrument are the General Licence Conditions, Licence Area Description, Concession Contract, Work Programme and Work Programme Performance Security. All these documents are to be read and construed as the PPL instrument.

- **General Licence Conditions**

The General Licence Conditions provide the default terms and conditions that generally apply to PPLs such as the duration of the PPL, description of the acreage, rights granted by the PPL, financial obligations, and work obligations.

- **Concession Contract**

The Concession Contract is executed by the PPL holder and the Commission. Unlike the General Licence Conditions, the Concession Contract is tailored to the holder of the PPL

as it prescribes the terms and conditions applicable to that holder, especially the fiscal obligations of the PPL holder, work programme commitment, conditions precedent, the specific amount payable as rents and royalties and production allowance. Where the Concession Contract provides for any subject matter already covered in the General Licence Conditions, the terms of the Concession Contract shall be deemed to amend such terms of the General Licence Conditions.

RIGHTS OF THE PPL HOLDER

Exclusive and Non-Exclusive Rights

The rights of a PPL holder under the PIA are delineated into exclusive and non-exclusive rights. The PPL holder has an exclusive right to drill exploration and appraisal wells within the licence area and to carry away and dispose of crude oil or natural gas won or extracted during the drilling of exploration or appraisal wells as a result of production tests.

On the other hand, the PPL holder has a non-exclusive right to carry out geological, geophysical, geochemical and other surveys and any interpretation of data relating thereto, and the drilling of shot holes, core holes and stratigraphic tests related to the exploration for crude oil and natural gas within the licence area.

PPL Holder's Right in the Licence Area

The PPL holder has the right to enter and remain on the land covered by the licence area and utilise the land in any manner necessary or incidental to exercising its rights under the PPL. The PPL holder is also granted access to the right-of-way corridor for the laying of ancillary facilities incidental to its operations.

ASSIGNMENTS

Assignments, Mergers and Acquisitions

The PIA introduced a clearer regime which seeks to resolve the uncertainties and difficulties associated with the assignment and transfer of upstream petroleum assets, particularly indirect interests in upstream petroleum assets. The prior written consent of the Minister of Petroleum Resources (the "Minister") is required to assign, novate or transfer the PPL or any right, power or interest therein. However, such consent is granted subject to the recommendation of the Commission. For an indirect transfer, the requirement for the Minister's consent is only triggered where there is a direct or indirect acquisition of the beneficial ownership of the voting powers of the PPL holder that exceed fifty (50) per cent.

To reduce the administrative hurdle¹, a PPL holder only requires the prior consent of the Commission, to create a security interest in a PPL whether by assignment, pledge, mortgage, charge or hypothecation.

The PIA has introduced a time limit for treating applications for consent and has also introduced the concept of deemed approval for the consent of the Minister. The PIA requires the Commission to complete its review of consent applications within sixty (60) days of receipt of an application, otherwise, consent may be deemed.

¹ Unlike the Ministerial consent requirement in the Guidelines and Procedures for Obtaining Minister's Consent to the Assignment of Interest in Oil and Gas Assets, 2021.

DURATION OF THE PPL

Initial Duration of PPL

The duration of the PPL is based on the terrain of the PPL acreage. The duration of the PPL for onshore and shallow water acreages is three (3) years while for deep offshore and frontier acreages are five (5) years from the PPL commencement date. Expectedly, the duration for deep offshore and frontier acreages is longer because of the difficulty associated with petroleum exploration in those areas.

Extension of the PPL Term

It is important to note that the term of the PPL is not renewable as of right. However, where the PPL holder fulfils its minimum work obligations and is not in breach of any terms of the PPL, the Commission may extend the term of the PPL in respect of onshore and shallow water acreages for a maximum of three (3) years, and five (5) years for deep offshore and frontier acreages.

FINANCIAL OBLIGATIONS

Financial Commitment

To ensure the effective development of the licence area by the PPL holder, the PPL holder is required to spend a minimum value of financial resources to implement the approved work programme which could be a sum specified in the Concession Contract or such other amount that the Commission subsequently anticipates will achieve the full implementation of the outstanding work programme.

Performance Security

The PPL holder is required to furnish performance security to guarantee the performance of its obligations under the PPL. The performance security should be from a licensed financial institution. The Commission may require an increase or decrease in the performance security to match its assessment following the review of the financial obligations of the PPL holder.

It is instructive to note that failure by the PPL holder to maintain the required value of the performance security may constitute a breach of the PPL.

Fiscal Obligations

The PPL holder is required to pay royalties, fees, rents and taxes as prescribed in the Concession Contract and the PIA. A PPL holder with petroleum operations in onshore and shallow water acreages is liable to hydrocarbon tax at the rate of fifteen (15) per cent amongst other taxes.

WORK OBLIGATIONS

Work Programme Commitment

The PPL holder is required to commit to fully fund and implement the work programme submitted and approved by the Commission.

Annual Work Programme and Budget

To ensure the continued operations and funding of the licence area, the PPL holder is required to, not later than 31 August of the preceding year submit an annual work programme for the following year along with a budget setting forth reasonable estimates and forecasts of the cost of the upstream petroleum operations which the PPL holder proposes to carry out in the following year to the Commission for approval.

PPL OPERATIONS

Conduct of Operations

The PPL holder is required to conduct its operations in a diligent, efficient and appropriate manner in adherence to the terms of the PPL and in accordance with the applicable laws and good international petroleum industry practices relating to health, safety and the environment.

Local Content Requirement

In furtherance of the principle that Nigerian companies should contribute towards the growth of the Nigerian economy by increasing the participation of Nigerians in the oil and gas industry, the PPL holder is required to comply with the Nigerian content requirements under the Nigerian Oil and Gas Industry Content Development Act 2010 and its auxiliary legislations.

Insurance

The Commission will be named as co-insured.

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Given the inherent risks in the conduct of petroleum operations, the PPL holder is required to maintain all risks to property, personnel and environmental insurance policies during the duration of the PPL and name the Commission as co-insured in accordance with good international petroleum industry practices.

Escrow Account

Upon the revocation of the PPL, insolvency, liquidation or winding up of the PPL holder, the Commission is deemed to be the sole signatory of the escrow account.

SOCIAL AND ENVIRONMENTAL OBLIGATIONS

Decommissioning and Abandonment

In line with international petroleum best practices, the PIA has established a regime for the decommissioning and abandonment of petroleum wells, installations, structures, utilities, plants and pipelines for petroleum operations.

The PPL holder is required to set up, maintain and manage a decommissioning and abandonment fund in the form of an escrow account accessible by the Commission. Upon the revocation of the PPL, insolvency, liquidation or winding up of the PPL holder, the Commission is deemed to be the sole signatory of the escrow account.

Environmental Management

Given the environmental concerns associated with petroleum operations, the PIA has imposed a clear obligation on the PPL holder to manage the licence area in the best environmentally friendly way. To achieve this objective, the PPL holder is required to submit an environmental management plan to the Commission for its approval and pay a prescribed financial contribution to the environmental remediation fund.

Host Communities Obligation

Communities that host petroleum operations are key stakeholders that must be catered for in the petroleum industry. The PIA has introduced a regime which is aimed at fostering sustainable direct social and economic benefits from petroleum operations to the host communities. The PPL holder is required to incorporate the Host Communities Development Trust (the "HCDT") and make an annual contribution of an amount equal to 3% of its previous year's operating expenditure to the HCDT fund. Failure by the PPL holder to incorporate the HCDT may be a ground for revocation of the PPL.

BREACHES AND REVOCATION

Breaches and Sanctions

In the exercise of its regulatory powers, the Commission may impose administrative penalties against the PPL holder for breach of the terms of a PPL as prescribed in the regulations.

Revocation

Where an event of default occurs as specified under section 96 of the PIA, the Commission shall serve a notice of default on the defaulting PPL holder stating the grounds and a remediation period of not less than sixty (60) days within which the PPL holder shall remedy the default. Where the default persists at the expiration of the remediation period, the Minister may revoke the PPL upon recommendation by the Commission. Where the PPL has multiple holders, the PPL interest of the defaulting participating interest holder may be revoked without affecting the rights of the other non-defaulting parties. Revocation or termination of the PPL does not affect any obligation or liabilities of the PPL holder that have accrued in connection with its upstream petroleum operations.

Conclusion

The PIA has introduced positive changes to the Nigerian petroleum sector. The PPL as designed by the PIA seeks to modernize and institutionalize the conduct of petroleum operations in line with the best international practices bearing in mind environmental and social considerations.

On the face of the PPL terms and conditions, there is a clear path for efficient petroleum operations. However, the continued will to implement and enforce the PPL terms and conditions will determine the success of the new regime. The PPL holder and the regulatory bodies must work hand in glove to realise the vision of the drafters of the PIA.

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