TEMPLARS

TEMPLARS LEGISLATIVE WATCH

Petroleum Industry Bill Overview Series: Part 3: A SUMMARY OF THE NEW UPSTREAM LICENSING AND REGULATORY PROVISIONS

In continuation of our PIB overview series, Part 3 focuses on the licencing and regulatory provisions for the upstream oil and gas sector under the Petroleum Industry Bill (PIB).

National Grid System

The PIB requires the Nigerian Upstream Regulatory Commission (the "**Commission**") to adopt a national grid system for acreage management.

- The grid will be used for the definition of license and lease areas, relinquishments, bid procedures, identification of well locations, petroleum conservation measures, and other regulatory and acreage management procedures.[1]
- The grid system is to be based on the Universal Transverse Mercator (UTM) system or any other projection system used by the office of the Surveyor-General of the Federation.[2]
- Boundaries of subsisting licences or leases which do not conform with the new national grid system shall remain unaltered and be apportioned in parcels.[3]

New Licensing Regime and Award Process.

The Bill establishes a new licensing regime for Nigerian upstream companies by creating the Petroleum Exploration Licence (**PEL**), Petroleum Prospecting Licence (**PPL**) and Petroleum Mining Lease (**PML**).

PEL

The PEL is granted by the Commission (not the Minister) on a discretionary basis.[4] PEL holders will have the non-exclusive right to explore for petroleum on a speculative basis for a a three (3) year term (renewable for an additional three (3) years subject to the satisfaction of prescribed conditions). Raw and interpreted data obtained by the PEL holder from its exploration activities is owned solely by the Commission.

[1] Section 69 (1), (6) of the PIB, 2020.
[2] Section 69 (2) of the PIB, 2020.
[3] Section 69 (7) of the PIB, 2020.
[4] The award of PPL or PML on the other hand will be granted following a fair, transparent and competitive bidding process conducted by the Commission.

PPL

The PPL gives the licensee the exclusive right to drill exploration wells and the non-exclusive right to carry out petroleum exploration operations within the licence area.

The term of the PPL is based on the terrain of operations. A PPL for onshore and shallow water acreages shall be for a term of not more than six (6) years (comprising of an initial exploration period of 3 years and an optional extension period of 3 years).

On the other hand, a PPL for deep offshore and frontier acreages shall be for a term of not more than ten (10) years (comprising of an initial exploration period of 5 years and an optional extension period of 5 years).

PML

Separate PMLs are to be granted for each commercial discovery of natural gas or crude oil to the PPL holder who has satisfied all the conditions imposed on the PPL and has received approval for the applicable field development plan from the Commission. The PIB also allows for a PML to be granted for a commercial discovery of both crude oil and natural gas.

The term of a PML is twenty (20) years and PMLs that do not initiate regular commercial production within the period prescribed within the Field Development Plan or if no such period is prescribed, the development period (5 years for Onshore and 7 years for Shallow Water, Deep Offshore or Frontier Acreage), may be revoked by the Commission at the end of such development period and re-vested in the Federal Government of Nigeria.

PMLs that have ceased production in paying[5] [commercial] quantities for a period of not less than one hundred and eighty (180) days, other than for reasons of Force Majeure or other reasons acceptable to the Commission, may be revoked by the Commission.

Renewal and Revocation

- Application for the renewal of a PML must be made at least 12 months before the expiry of the PML.

- PML may be renewed for one or more successive additional 20-year terms if the lease holder has complied with all requisite conditions.

- Payment of renewal bonus is expressly required under the Bill.

- The Bill introduces additional grounds for revocation of a PPL or PML including but not limited to:

  - Obtaining or acquiring a licence on the basis of false representations or corrupt practices and money laundering laws;

  - Where the licence holder is owned, wholly or in part, directly or indirectly or is controlled by a former or serving public officer or a member of government who has obtained an interest in the licence through an abuse of public office (if the said interest was acquired while the person was in office; and

  - Failure to obtain the prior consent of the Minister for a transfer, novation or assignment of interest.

Voluntary Conversion and Relinquishment

- Current holders of existing Oil Prospecting License (**OPL**) or Oil Mining Lease (**OML**) have the option to convert their subsisting interests to a PPL or PML through a Conversion Contract, after commencement of the Act.

[5] There is no definition or indication as to the meaning of the term "*paying quantities*" in the PIB, 2020. It is not clear if the intention is for this to be clarified via regulation issued by the Commission.

- Upon conversion, the holders are required to relinquish 60% of the acreage of the existing OPLs or OMLs.

- Where an existing OPL or OML holder enters into a voluntary Conversion Contract, such contract is required to contain a termination clause which will bring an end to:

  - all outstanding arbitration and court cases in relation to the relevant OPL or OML;
  - any stabilization provisions or guarantees provided by the NNPC in respect of the OPL or OML to be converted; and
  - any applicable capital allowance on investments made for the utilisation of natural gas.

- Where OPL and OML holders opt not to convert, their licenses and leases shall be converted to a PPL or PML upon the expiration of current OPLs and OMLs.

  - In this case, the previous (now current) regime will continue to apply to the OPL and OML for the remaining of its term.

Deemed Approval

The Bill provides timelines within which certain approvals and consents are to be granted by the Minister.

- The Minister is required to grant or refuse a PPL or PML within ninety (90) days of the recommendation of the Commission, following an open and competitive bid process, failing which the licence or lease shall be deemed to be granted.[6]

- Similarly, the Bill requires the grant / refusal of the Minister's consent to an assignment, novation or transfer of interest within sixty (60) working days of receipt of the recommendation of the Commission failing which, consent will be deemed to be granted.[7]

Assignment or Transfers

- The Bill requires the prior written consent of the Minister (upon recommendation of the Commission) for assignments, novation or transfers of interests in any PPL or PML, farm-outs and creation of security interests.[8]

- A change of control in the holder of a licence (i.e. acquisition of direct or indirect beneficial ownership of the voting power of the outstanding voting securities of a licensee / lessee, that exceeds 50%) shall be deemed to be an assignment.

Marginal Fields

- All existing and producing Marginal Fields are to be granted a separate PML.

- All Marginal Fields (declared prior to 1 January 2020) that are not yet producing or in development are to be converted to PPLs and will benefit from the terms for new acreages under the Bill.

Unitisation

- The holder of a PPL or PML is required to promptly notify the Commission of any petroleum reservoir which extends beyond the boundaries of its licence area. Upon such notification, the Commission may direct the relevant licence or lease holders to enter into a unitisation agreement to be approved by the Commission within a period specified by the Commission.

Domestic Supply Obligations

- The supply of crude oil and condensates for the domestic market

[6] Section 73 (4) of the PIB, 2020.
[7] Section 95 (8) of the PIB, 2020.
[8] Section 95 (1) of the PIB, 2020.

is to be on a willing supplier and willing buyer basis.

- The Commission may issue regulations or guidelines on the mechanism for the imposition of a domestic crude oil supply obligation on lessees of upstream petroleum operations.[9]

- This crude supply obligation is intended to support local refineries; however the Commission is expected to be guided by prevailing international market rates.

- A licensee who has complied with its domestic gas delivery obligation is also permitted to deliver natural gas to non-strategic sector customers on a willing seller and willing buyer basis.[10]

Decommissioning and Abandonment

- Decommissioning and Abandonment is to be in accordance with guidelines issued by the Commission or the Midstream and Downstream Petroleum Regulatory Authority ("**Authority**").[11]

- The Bill prohibits decommissioning and abandonment without a written approval of the Commission or Authority, and a licensee or lessee is required to submit an abandonment and decommissioning programme to the Commission or Authority.[12]

Decommissioning and Abandonment Fund

- A licensee or lessee is mandated to set up, maintain and fund a decommissioning abandonment fund with a financial institution that is not an affiliate of the licensee or lessee.

- The fund is to be used for the settlement of decommissioning and abandonment costs only and amounts to be contributed to the fund will be based on an approved decommissioning and abandonment plan.

Sundry Provisions

- Other salient provisions are contained in the Bill, particularly those relating to:

  - Surrender of licences.
  - Frustration of licences (i.e. failure of a licensee to fulfil a condition of a licence due to *force majeure*).
  - Gas Flaring (pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations, 2018).
  - Environmental Concerns.

Contacts

Dayo Okusami
Partner
dayo.okusami@templars-law.com

Abimbola Atitebi
Senior Associate
abimbola.atitebi@templars-law.com

Bernard Ehigiamusor
Associate
Bernard.ehigiamusor@templars-law.com

Damilola Oshodi
Associate
damilola.oshodi@templars-law.com

[9] Section 109 of the PIB, 2020.
[10] Section 110 (3) of the PIB, 2020.
[11] Section 232 of the PIB, 2020.
[12] Section 232 (2) (6) of the PIB, 2020.