



**THE NIGERIAN UPSTREAM PETROLEUM ASSIGNMENT OF
INTERESTS REGULATIONS, 2023**

PETROLEUM INDUSTRY ACT, NO. 6, 2021

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[.] 2023

In the exercise of the powers conferred on it by section 10 (f) and section 95 of the Petroleum Industry Act, (“the **Act**”) and of all powers enabling it, in that behalf, the Nigerian Upstream Petroleum Regulatory Commission (the “**Commission**”), hereby makes the following Regulations —

PART I Objectives and Application

1. Objectives

- (1) The objective of these Regulations are to make regulations to govern the procedure for the
 - (a) assignment of interest in a licence or lease granted under the Act or any law preserved by the Act; and
 - (b) grant of Consent to any such assignment by the Minister or the Commission in accordance with the Act.
- (2) The Commission may from time to time publish guidelines pursuant to these Regulations.

2. Application

These Regulations shall apply to-

- (1) any person or entity assigning an interest in a licence or lease granted under the Act or under any law preserved by the Act; and
- (2) any of the following types of transactions in relation to a licence or lease:
 - (a) Assignment of legal title or ownership interest (wholly or in part) either directly or indirectly in a licence or lease;
 - (b) Novation of any agreement related to a licence or lease;
 - (c) Use of an interest (wholly or in part) in a licence or lease as security such as a pledge, mortgage, charge or hypothecation;
 - (d) Transfer of any right, power or interest; and
 - (e) In respect of an incorporated joint venture arrangement relating to a licence or lease, the sell or transfer of shares in the incorporated joint venture.

PART II
TRANSACTIONS REQUIRING THE PRIOR CONSENT OF THE MINISTER

3. Assignment of legal title or ownership interest directly or indirectly in a licence or lease

- (1) Assignment of legal title or ownership interest in a licence or lease may be direct or indirect and either in whole or in part.
- (2) An assignment under this paragraph is direct where the assignment relates to the sell or transfer of the licence or lease or any part thereof to a person or entity other than the person or entity to whom the licence or lease was granted.
- (3) An assignment under this paragraph is indirect where the sell or transfer does not directly relate to the licence or lease but the sale or transfer of shares in a company or other legally recognizable entity holding or entitled to any beneficial interest in the licence or lease or a change of control in the holder of a licence or lease.
- (4) In the case of a direct assignment under these regulations, the assignee shall upon the grant of consent to the assignment be issued a title document by the Commission evidencing the transfer of title or ownership interest to the assignee.
- (5) In the case of an indirect assignment, the letter of consent by the Minister conveyed by the Commission shall be evidence of the assignment.

4. Novation of parties to an agreement relating to a licence or lease

- (1) This regulation shall apply to the novation of parties to any of the following types of agreement relating to a licence or lease:
 - (a) Joint Venture Agreements
 - (b) Petroleum Production Contracts
 - (c) Petroleum Production Agreements

5. Transfer of any right, power or interest

- (1) Transfer of any right, power or interest in a licence or lease pursuant to these regulations shall include, but shall not be limited to, any of the following:
 - (a) creation of a power attorney in relation to the licence or lease
 - (b) devolution of ownership of shares or interest in ownership of shares by operation of law or testamentary device. Operation of law may refer to a judgment of a competent court of law, an award from an Arbitration Panel, the appointment of a Receiver, Receiver/Manager or Administrator under the Companies and Allied Matters Act, 2020 or any comparable legislation in a foreign jurisdiction. Testamentary device shall refer to the transfer of shares through a Will or Letters of Administration.

6. The sell or transfer of shares in an incorporated joint venture company.

PART III
PROCEDURE FOR OBTAINING MINISTER'S CONSENT

7. Cases requiring Minister's Consent

- (1) An application for the consent of the Minister pursuant to the Act and these regulations shall be made in the following cases:
 - (a) assignment of title or ownership interest directly whether in whole or part.
 - (b) assignment of title or ownership interest indirectly whether in whole or in part provided that any such indirect assignment involving the transfer of shares of any type which would not amount to a change of control as described in these regulations shall not require an application for consent.
 - (c) novation of an agreement
 - (d) Transfer any right, power or interest in the prescribed form
 - (e) sell or transfer of shares in an incorporated joint venture company in the prescribed form.

8. Application for Minister's Consent

- (1) An application for the consent of the Minister pursuant to the Act and these regulations shall be made to the Commission in the manner prescribed in guidelines.
- (2) A person making the application in sub-regulation 1 of this regulation shall be the Assignor whose power or right to make the application derives from the direct ownership of the title in the licence or lease or the shares to be transferred or is otherwise derived from the operation of law or testamentary device.

9. Change of control and Minister's consent

- (1) A change of control in the holder of a licence or lease is an Assignment requiring the prior consent of the Minister.
- (2) A change of control shall occur where a proposed Assignment or a series of aggregated Assignments shall entitle the Assignee to more than fifty per cent (50%) direct or indirect beneficial ownership of a legal entity or shares of a legal entity holding the licence or lease, whether by contract or otherwise.
- (3) Notwithstanding sub-regulation 2 of this regulation, the prior written consent of the Minister shall be required in a transaction where by way of private placement or public listing, or an acquisition of more than 25% or more, in any Stock Exchange, of a part or of the whole of the shares of a company which holds a Licence, Lease or Interest,

10. Due diligence investigation by the Commission

- (1) The Commission shall conduct a due diligence investigation on a proposed assignee pursuant to these regulations.
- (2) A Due diligence investigation of a proposed assignee under sub-regulations 1 of this regulations may, where the Commission considers it necessary include site visits to

the proposed assignee's operational locations for evaluation of the Assignee's operations.

- (3) The object of a due diligence investigation pursuant to these regulations shall be to establish the following:
 - (a) In the case of a direct assignment of title or ownership interest in the licence or lease, or an indirect assignment where the assignment would result in significant financial and or operational control of the entity that the proposed assignee is likely to have available to it (from its own resources or through other companies in the group of which it is a member or otherwise), sufficient technical expertise and experience and sufficient financial resources to effectively carry out the approved work program commitments attached to the licence or lease in accordance with the terms of the licence or lease and any applicable laws and regulations);
 - (b) In every other cases, that the proposed assignee is
 - (i) qualified under Nigerian law to hold the interest,
 - (ii) is an entity acceptable to the Federal Government of Nigeria;
 - (iii) that the assignment would be of beneficial effect to Nigeria; and
 - (iv) is in compliance with the Federal Competition and Consumer Protection Act
- (4) The Commission's due diligence report shall accompany every recommendation made by the Commission to the Minister on an application for consent under these regulations.
- (5) The assignor shall bear the costs associated with any due diligence exercise pursuant to this regulation.

11. Consent of the Minister

- (1) The Commission shall in accordance with the Act make a recommendation to the Minister on every application for consent pursuant to these regulations and notify the assignor upon making the recommendation.
- (2) The recommendation by the Commission shall be accompanied with a format for the Minister's signature prepared by the Commission to evidence the consent of the minister where consent is granted.
- (3) The notice to the assignor under sub-regulation 1 of this regulation shall inform the assignor of the recommendation, the conditions if any that may be attached to the grant of consent by the Minister including any transaction fees or bonuses.
- (4) The Minister may grant or refuse to grant consent to an application for consent in accordance with the Act, taking into consideration the due diligence investigation report and the recommendations of the Commission, provided that the Minister shall not be bound by the recommendations of the Commission.
- (5) Where the minister grants consent, the Minister shall append his signature to the consent format document accompanying the recommendation by the Commission.
- (6) The Commission shall within 7 days of receipt of notification of grant of Consent by the Minister communicate to the assignor the decision of the Minister on the application.

- (7) Where the Consent is granted on the condition that the assignor shall pay any fees or bonus, the assignor shall have 90 days to pay such fees or bonuses. Failure of the Assignor to pay such fees or bonuses within the time prescribed in this regulation shall vitiate the Consent granted.
- (8) The Commission shall, upon confirmation of payment of any fees or bonus pursuant to this regulation, issue to the Assignor the Consent format document bearing the Minister's signature which shall be conclusive evidence that the Assignee is the legal title holder to the interest assigned in the Licence or lease.
- (9) In the case of a rejection of a recommendation request for consent by the Minister, the Commission shall notify the assignor of the rejection within 7 days of the receipt of the rejection notice from the Minister, stating the reasons stated by the Minister for the rejection.
- (10) Where after 60 days the Minister has not made a decision on a recommendation by the Commission for Consent to an application under these regulations, the Commission shall within 7 days following the 60th day of the submission of the recommendation to the Minister, notify the Assignor that the application is deemed approved subject to the terms of the recommendation.
- (11) An Assignor who has received a notification of deemed approval from the Commission shall have 90 days within which to make any applicable payments relating to the deemed approval.
- (12) A deemed Consent pursuant to these Regulations shall become vitiated if the assignor fails to make payment of any applicable fees within the time provided in these regulations.
- (13) The Commission shall, upon confirmation of payment of any fees relating to any deemed consent approval, issue to the Assignor a format document with the Signature of the Commission's Chief Executive which shall be conclusive evidence that the Assignee is the legal title holder to the interest assigned in the Licence or lease.
- (14) The parties to an assignment shall within 14 days of the receipt of the signed consent format document notify the Commission in writing that they have fully disclosed the details of the transaction to the Federal Inland Revenue Service.
- (15) The Commission shall, within 30 days of the grant of Consent cause to be published in the Federal Government Gazette the full details of the Consent, including the names and addresses of the Parties to the Assignment.

12. Effect Of Minister's Consent

- (1) Consent to an assignment of legal title or ownership interest in a licence or lease shall confer on the assignee the full legal rights and obligations of a licensee or lessee according to the law and the conditions of the licence or lease
- (2) Consent to a novation of a contract shall confer on the assignee the full legal rights and obligations under the Contract to which the novation relates

- (3) Consent to the Transfer of any right, power or interest under these regulations shall confer on the assignee the full legal rights and obligations described in the right, power or interest to which the assignment relates.

PART IV TRANSACTIONS NOT REQUIRING CONSENT

- 13.** A change of name by a company, arising from a corporate restructuring or rebranding, without involving a merger, acquisition, takeover, new company or change in ownership or control of a company, shall not be an assignment under these regulations and shall not require the Consent of the Minister.
- 14.** A licensee or lessee who is subject of a change of name under regulation 13 of these Regulations shall within 90 days of the change of name apply to the Commission and shall pay prescribed fees, for the issue of a new licence or lease in its new name.
- 15.** Any change of the licence or lease under these Regulations shall invalidate any licence or lease held in the previous name of such company.

PART V TRANSACTIONS REQUIRING THE CONSENT OF THE COMMISSION

16. Security Transactions

- (1) A licensee or lessee who creates a security interest over its licence or lease by way of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interest shall within 30 days of the creation of such interest apply to the Commission for consent to such security interest.
- (2) The Commission shall, within 10 days from the receipt of the application, grant consent to the application where in the opinion of the Commission, the creation of such security interest is for the purpose of conducting petroleum operations relating to the licence or lease.
- (3) The consent of the Commission shall be subject to the payment of 1% of the transaction cost.

17. Effect of consent by the Commission

- (1) A secured creditor may, pursuant to a consent granted by the Commission under these regulations, apply to the Minister in the case of foreclosure under the security agreement to have the interest in the licence or lease assigned to:
- (a) the secured creditor; or
 - (b) to a third party.
- (2) An application under sub-regulation 1 of this regulation shall be subject to the requirement for consent of the Minister under these regulations.

18. Assignment by a holder of a Petroleum Exploration Licence

- (1) A holder of a petroleum exploration licence intending to transfer his licence, or any right, power or interest shall first obtain a written consent of the Commission.
- (2) The Commission shall, within 30 days from the receipt of the application, grant consent to the application where in the opinion of the Commission, the transfer of sivhe rigjt, power or interest is for the purpose of conducting petroleum operations relating to the licence.

PART VI GENERAL PROVISIONS

19. General Provisions

- (1) The Commission shall not make a recommendation to the Minister for consent to any assignment where an assignee proposes to enter into a crude handling/purchase agreement with the Assignor unless the Commission is satisfied that the:
 - (a) terms of the prosed crude handling/purchase agreement are not excessively onerous and unduly to the assignee.
 - (b) Assignor has not imposed on the Assignee the execution of a crude handling/purchase agreement as a condition for the consummation of the Assignment, or other conditions, that may impede the takeover or operation of the **licence or lease** in a business-like manner.
 - (c) price for the assignment and transfer of any surface facilities does not include any valuation of such facilities where they have been fully amortised through cost recovery.
 - (d) price for to be paid by an assignee to the assignor and the modalities for any such payment shall not adversely affect the revenue interests of the Federal Government from operations under the licence or lease.
- (2) An application for consent to an assignment which includes the transfer of operatorship under the licence or lease to the assignee shall be accompanied with any of the following as the case may be:
 - (a) Consent by other parties in the licence or lease to the assignment in accordance with any agreements between them relating to the licence or lease
 - (b) Consent by other parties in the licence or lease to the transfer of operatorship
 - (c) Written approval of the Commission that the assignee is qualified to operate a petroleum licence or lease in Nigeria.
- (3) Where the parent company of a company holding interest in a **licence or lease** in Nigeria is taken over by or merged with another company outside Nigeria, the veil of incorporation shall be lifted in such circumstances, to determine if such transaction constitutes an Assignment.
- (4) These Regulations shall apply where the Commission considers that the merger in sub-regulation 1 of this regulation constitutes an Assignment.

PART VII FEES AND REGISTER

20. Fees

- (1) Upon the approval of the Assignment by the Minister, the Minister shall impose a fee or premium or both which shall range from five percent to ten percent of the total value of the transaction as consent fees, same of which shall not be tax deductible.
- (2) The Minister's consent shall not be conveyed until the appropriate fee and or premium has been fully paid.
- (3) The Assignor shall be required to pay the applicable fees, to an official account provided by the Commission.
- (4) The Minister may, at its discretion, waive the payment of the consent fee and or premium payable, where the Assignment is between or among members of a group of companies which are Affiliates.

21. Register

- (1) The Commission shall maintain a register of Assignment(s) of Interest in a licence or lease.
- (2) The Commission shall, within seven days upon a grant of the consent by the Minister for the Assignment of an interest in a licence or lease, record the transfer in the appropriate register.

22. Assignment without prior consent

- (1) Any assignment of interest in a licence or lease without the prior Consent of the Minister in accordance with the Act and these regulations shall not confer any legal rights on the assignee and such assignment shall not be recognized under the Act.
- (2) Any assignment of interest in relation to a licence or lease or of any right or power thereof in a manner that is inconsistent with the provisions of these regulations shall amount to a fraudulent dealing with the licence or lease and may be a ground for the revocation of the licence or lease.
- (3) The provisions of sub-paragraph 2 above notwithstanding, the licensee or lessee in such circumstances shall be liable to the payment of an administrative fine of \$50,000 to the Commission.

PART VII MISCELLANEOUS

23. Repeal

Upon commencement of these Regulations, any guidelines in force relating to the assignment of interests in a licence or lease is hereby repealed and replaced.

24. Definitions and Interpretation

In addition to the definitions contained in section 318 of the Act, in these Regulations, unless the context otherwise requires:

“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“**Assignor**” means the party wishing to dispose of an interest in a licence or lease herein, whether in whole or in part, by way of assignment, as defined in these Regulations.

“**Assignee**” means the recipient of an interest therein, whether in whole or in part, by way of Assignment, as defined in these Regulations.

“**Assignment**” means any assignment, as defined under regulation 3 of these Regulations.

“**Commission**” means the Nigerian Upstream Petroleum Regulatory Commission.

“**Holding Company**” means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

“**Interest**” means any arrangement such as Production Sharing Contract (PSC), Production Sharing Agreement (PSA), Farm-in or Farm-out agreement, sale, purchase, or other business arrangements by which a right, privilege, power, benefit, gain or advantage in a licence or lease is transferred to or conferred either directly or indirectly on a third party.

“**Lease**” means a Petroleum Mining Lease (PML) or an Oil Mining Lease (OML) not yet converted to a PML.

“**Lessee**” means the holder of a Petroleum Mining Lease (PML) or an Oil Mining Lease (OML) not yet converted to a PML.

“**Licence**” means a Petroleum Prospecting Licence (PPL) or, or an Oil Prospecting Licence (OPL) or not yet converted to PPL.

“**Licensee**” means the holder of a PPL or OPL not yet converted to PPL.

“**Minister**” means the Minister of Petroleum Resources.

"Security" means a mortgage, charge (fixed or floating), pledge, lien, assignment, hypothecation, or other Security Interest securing any obligation of a licensee or lessee or any other agreement or arrangement having a similar effect.

"Secured Creditor" means any bank or financial institution or any consortium or group of banks or financial institutions including:

- (a) debenture trustee or security agents appointed by any bank or financial institution as debenture holder;
- (b) special purpose vehicle involved in the securitisation of financial assistance;
- (c) any specially created entity for assets reconstruction which has acquired receivables under any financial assistance with securities therefore, from any Secured Creditor; or
- (d) any trustee holding securities on behalf of banks and financial institution, in whose favour Security Interest is created for due repayment of any financial assistance by the Licensee or Lessee.

"Security Interest" means any mortgage, charge, security, interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law) including set-off, title transfer, title retention and trust arrangements in a licence or lease, the economic or commercial effect of which is, in the reasonable opinion of the Secured Creditor, similar to conferring Security.

"Subsidiary" of a person means any other person:

- (a) directly or indirectly controlled by such person; or
- (b) of whose dividends or distributions on ordinary voting share capital such person is entitled to receive more than fifty per cent (50%).

"Stock Exchange" means an organization which provides facilities for trading in securities by its members and also sets rules for the admission and trading of existing securities as well as rules to guide the business conduct of members.

25. Citation

These Regulations may be cited as the Nigerian Upstream Petroleum Assignment of Interests Regulations, 2023.

MADE at Abuja this ... day of, 2023.

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**Commission Chief Executive
Nigerian Upstream Petroleum Regulatory Commission**

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