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PETROLEUM INDUSTRY ACT, No.6, 2021
NIGERIAN UPSTREAM PETROLEUM (ASSIGNMENT OF INTERESTS) REGULATIONS, 2024



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S. I. No. 67 of 2024

PETROLEUM INDUSTRY ACT, No.6, 2021
NIGERIAN UPSTREAM PETROLEUM (ASSIGNMENT OF
INTERESTS) REGULATIONS, 2024

[13th Day of March, 2024]

Commence-
ment

In exercise of the powers conferred on it by sections 6(a), 10 (f) and 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”), makes the following Regulations —

PART I — OBJECTIVE AND APPLICATION

1.—(1) The objective of these Regulations is to provide the procedure, regarding Upstream Petroleum, for the — Objective

(a) assignment, novation or transfer of an interest in a licence or lease, or a change in the control of a company that holds an interest in a licence or lease; and

(b) creation and enforcement of security, wholly or partly in a licence or lease.

2. These Regulations shall apply, with respect to Upstream Petroleum, to — Application

(a) a person assigning an interest in a licence or lease;

(b) a person creating security, either in whole or in part, over a licence or lease; or

(c) any of the following types of transactions in relation to a licence or lease —

(i) assignment, directly or indirectly, of an interest in a licence or lease,

(ii) creation or enforcement of security, either, in whole or in part, over a licence or lease, or

(iii) change in the control of a company that holds an interest in a licence or lease.

PART II — TRANSACTIONS REQUIRING PRIOR WRITTEN
 CONSENT OF THE MINISTER

3.—(1) Any assignment of an interest in a licence or lease, directly or indirectly, shall be with prior written consent of the Minister. Assignment of a licence or lease and enforcement of security interest

(2) Enforcement of security over a licence or lease, either in whole or in part, shall require prior written consent of the Minister.

(3) A change in the control of a company that holds an interest in a licence or lease, (a "holder"), other than a licensee, lessee or indirect controller of a licence or lease listed on a public exchange, shall require prior written consent of the Minister.

(4) The novation of any petroleum agreement under section 85 of the Act that is not as a result of an assignment to which Ministerial consent has been given shall require prior written consent of the Minister.

(5) An assignment by operation of law shall where it occurs, be notify to the Minister by the party who has become an assignee by the occurrence of such assignment in accordance with subregulation 6(2) of these Regulations.

(6) A change in the control of a public listed company or a company that controls, either directly or indirectly, a company that holds an interest in a licence or lease shall be with the prior written consent of the Minister, where the change in control consists of a person acting jointly or in concert to acquire control of the licensee through a bilateral transaction or off market negotiations.

(7) A change in the control of a public listed company or a company that controls directly or indirectly, a company that holds an interest in a licence or lease, shall be with the prior written consent of the Minister in accordance with regulation 6(2) of these Regulations, where the control is acquired in multiple transactions on the floor of the public exchange.

PART III — PROCEDURE FOR OBTAINING THE CONSENT OF THE MINISTER UNDER THESE REGULATIONS

Procedure for obtaining the Minister's consent

4.—(1) Except in the case of an assignment by operation of law, a holder shall obtain the prior consent of the Minister with respect to the assignment of interest in such licence or lease, or change in control, directly or indirectly, of a company that hold an interest in the licence or lease.

(2) Application for consent of the Minister under the Act and these Regulations shall be made to the Commission in the manner prescribed in these Regulations, or in the Guidelines or Directives issued pursuant to these Regulations.

(3) Save for the provisions of regulation 6(2) of these regulation, the provisions of sub-regulations (4), (5) and (6) of this regulation shall not apply to a change of control falling under regulation 3(7) of these Regulations.

(4) Notification of intention to assign by a holder under these Regulations shall be carried out by the holder —

(a) notifying the Commission in writing of intention to engage in any transaction relating to the licence or lease; and

(b) complying with paragraph (a) of this sub-regulation stating the reason for the intended assignment, the method intended to be used for the conduct of the transaction, and possible technical and economic benefits derivable from the transaction to the operation of the Licence, Lease, asset or the Government of the Federation of Nigeria.

(5) Where a transaction is intended to be carried out through a selective tendering, negotiated transfer or an open bidding process, involving pre-qualification, technical and commercial stages, the procedure shall be stated in the notification of intention under sub-regulation (4)(a) of this regulation.

(6) A holder shall ensure that the process for implementing the transaction is transparent and in accordance with extant laws and global best practices.

(7) The Commission shall within 15 working days from date of receipt of the notification of intention under sub-regulation (4)(a) of this regulation, approve or disapprove the transaction, failing which the application is deemed approved and the holder may proceed to the next stage of the process.

(8) The holder shall not commence any transaction relating to the licence or lease, including making announcements, advertisements, publications or press releases, in respect of the transaction, without prior written approval of the Commission.

(9) Save for the provisions of regulation 6(2) of these regulation, the provisions of subregulations (4), (5) and (6) of this regulation shall not apply to a change of control falling under regulation 3(7) of these Regulations.

5.—(1) A holder shall upon completion of technical evaluation of companies interested in transactions prescribed under these Regulations, submit the list of selected qualified companies to the Commission.

(2) The Commission shall upon receipt of the list of qualified candidates, determine after due diligence, whether such companies are acceptable to the Government of the Federation of Nigeria, and any company found not to be acceptable shall not be allowed to proceed to the commercial stage of a transaction.

(3) The Commission shall within 15 working days from the date of receipt of the list of qualified companies, respond on the eligible companies acceptable to the Federal Government of Nigeria.

(5) Where a holder fails to submit to the Commission the list of qualified candidates for approval and proceeds to the commercial stage, such transaction shall be treated as having failed the eligibility criteria for the grant of consent by the Minister

Notification
of a holder in
respect of
prospective
acquirer

Application
for consent

6.—(1) A Holder may, upon successful completion of the notification stages under regulation 5 of these Regulations, submit a written application to the Commission requesting for the consent of the Minister.

(2) In the case an assignment of law, the party who becomes the assignee under such circumstances shall notify the Commission of the details of the transaction within 30 days of the occurrence of the transaction and require the Minister to subject the transaction and the assignee to the assignment requirement of the act.

(3) In the case of change in control, the party accruing control shall notify the Commission of the details of the transaction within 30 days of the occurrence of the transaction and require the Minister to subject the transaction and the accruing party to assignment consent of the act.

Due
diligence by
the
Commission

7.—(1) The Commission shall conduct due diligence on application for transaction at any stage of such transaction before making any recommendation to the Minister in respect of the application.

(2) The due diligence to be conducted under sub-regulation (1) of this regulation shall cover the following areas —

- (a) technical capacity;
- (b) financial capacity;
- (c) legal requirements;
- (d) decommissioning and abandonment;
- (e) host community trust and environmental remediation fund arrangements;
- (f) industrial relations and labour related issues; and
- (g) data repatriation.

(3) The documents and information required for due diligence shall be as prescribed in guidelines or directives issued by the Commission pursuant to these Regulations.

(4) The due diligence on any transaction under subregulation (1) of this regulation may include site visits to the operational location of the holder, licensee, lessee, or acquirer's operational locations for competency evaluation.

(5) The objective of a due diligence to be conducted pursuant to this regulation shall be to ascertain that —

(a) the proposed acquirer —

(i) is likely to have, from its own resources or through other companies in the group of where the acquirer is a member, or otherwise, sufficient technical knowledge and experience, and adequate financial resources to carry out the assigned interest satisfactorily to the Commission and the Minister,

(ii) has not been incapacitated by any law as to prevent the acquirer from holding the Interest,

(iii) is of good reputation, or is a member of, or an owner of a group of companies with good reputation and standing,

(iv) does not have directors previously convicted of any crime in Nigeria or any other country,

(v) is acceptable to the Federal Government of Nigeria;

(b) the transaction is in compliance with —

(i) requisite provisions of law on local content; and

(ii) the Federal Competition and Consumer Protection Act; and

(c) adequate provisions have been made for decommissioning and abandonments obligations, environmental remediation obligations and host community contributions, in line with related applicable Regulations and Guidelines issued by the Commission.

(6) The Assignor shall bear the costs associated with any due diligence exercise carried out pursuant to these Regulations.

8.—(1) Where the result of the due diligence conducted in respect of the application for consent by a holder is unfavorable, the Commission shall notify the holder within 60 working days from the date of receipt of the application.

Refusal to
make
recommenda-
tions by the
Commission

(2) The Commission may decline to make a recommendation to the Minister in respect of an application made by a holder to the Commission, subject to the provision of this regulation, where additional information or documentation is required by Commission.

(3) Where the Commission declines to make a recommendation, it shall provide the reason for such refusal, and the applicant may, depending on the reason given by the Commission for the refusal, amend the existing application or make a new one.

(4) The regularisation of an existing application or an amendment thereto or submission of a new application, shall be deemed to be an application for consent under Regulations.

9.—(1) The Commission shall within 60 days of the receipt of an application for Assignment requiring the consent of the Minister recommend such application to the Minister.

Consent of
the Minister

(2) An application is deemed to have been received under sub-regulation (1) of this regulation, where the holder has submitted all the documents and information prescribed by the Commission and the Commission confirms the completeness of prescribed documents and information submitted by the holder within five working days of receipt.

(3) The Minister shall give consent to an application for assignment subject to having complied with regulation 7(5) of these Regulations.

(4) The Minister shall within 60 days of receipt of a recommendation of the Commission in respect of an assignment, consider it for approval and where—

(a) the Minister rejects the recommendation of the Commission, the Minister shall provide the reason for such rejection; and

(b) no response has been received within 60 working days from the receipt of the recommendation of the Commission, the consent of the Minister under sub-regulation (1) of this regulation shall be deemed to have been granted.

(5) The Commission shall communicate the refusal or approval of an Assignment of a licence or lease in writing to the applicant within 15 working days of receipt of communication from the Minister.

(6) Where the Minister rejects an application for consent, the Commission shall within 15 working days notify the applicant in writing of the decision of the Minister stating the reason for the rejection and the applicant may, depending on the reason given by the Minister for the rejection, amend the existing application or re-apply accordingly.

(7) The terms and conditions of the deemed grant of consent shall be the same as the terms and conditions contained in the recommendations made by the Commission to the Minister.

(8) The holder shall within 60 days from the receipt of the deemed consent or the payment of any premium levied on the transaction, whichever is last, notify the Commission in writing that the details of the transaction has been made to the Federal Inland Revenue Service.

(9) The Commission shall, within 60 days of receipt of the consent in favour of the holder and payment of any premium levied on the transaction, publish the full details of the Consent, including the names and addresses of the parties to the transaction, in the Federal Government Gazette.

10. An assignment of interest in a licence or lease without obtaining the prior written consent of the Minister in accordance with the Act and these Regulations shall —

(a) be void; and

(b) not be recognised under the Act.

Effect of an Assignment without prior written consent of the Minister

PART IV — TRANSACTIONS NOT REQUIRING CONSENT OF THE MINISTER

11.—(1) A change in the name of a holder, arising from a corporate restructuring or rebranding, which does not involve or constitute a change in control of the holder under these Regulations shall not require the consent of the Minister.

Transactions not requiring consent of the Minister

(2) A licensee or lessee who undergoes a change of name under sub-regulation (1) of this regulation, shall not require the consent of the Minister, but shall, within 30 days of the change of name, notify the Commission of the change, accompanied with the evidence of change of name.

PART V — TRANSACTIONS REQUIRING THE CONSENT OF THE COMMISSION

12.—(1) A licensee or lessee may create security over its licence or lease, as applicable, with the consent of the Commission.

Security transactions relating to a licence or lease

(2) A licensee or lessee wishing to create a security over its licence or lease, as applicable, shall submit a written application to the Commission to obtain its consent.

(3) An application for the Commission's consent shall be accompanied with details of the proposed transaction, including the name of the person entitled to the security, the total amount secured, the type of the security created, particulars of the asset or interest charged, and the secured parties' statement or authentication.

(4) An application for consent of the Commission shall be made in the format prescribed in the guidelines issued pursuant to these Regulations.

(5) The Commission shall, within 60 days of the receipt of an application under this regulation, make a decision regarding the application and inform the licensee or lessee accordingly.

(6) An application is deemed to have been received under sub-regulation (5) of this regulation, where the holder submitted all requisite documents and information prescribed by the Commission and the Commission confirms the complete submission of prescribed documents and information submitted by the holder to the satisfaction of the Commission within five days of receipt.

(7) Where the Commission fails to make and communicate its decision in respect of an application under sub-regulation (5) of this regulation, the consent shall be deemed granted.

(8) The Commission shall within 20 working days of the grant or deemed grant of consent, under this regulation, notify the holder to that effect.

(9) The Commission shall within 30 working days of the grant or deemed grant of its consent to the creation of security under this regulation, register the security so created in its register of charges.

(10) Notwithstanding the failure to register a security in accordance with sub-regulation (9) of this regulation, the Secured Party shall have all the benefits, rights and powers conferred on it under this regulation.

Effect of consent of the Commission

13.—(1) The consent of the Commission to creation of security under regulation 12(8) of these Regulations shall entitle the Secured Party to —

(a) information on its Obligor without further consent of the Obligor upon payment of necessary fees as prescribed in regulations, guidelines or directives issued by the Commission;

(b) step in to a default of its Obligor and remedy same to the satisfaction of the Commission, upon notice to the Commission;

(c) be subrogated to a holder for the purposes of transfer, sale or assignment of the Secured Asset in accordance with these Regulations, in the event of a default by the Obligor, in accordance with the terms of the security document.

(2) The Commission shall not entertain a request for an assignment of a Secured Asset in whole or in part without the consent of the Secured Party, unless a security to which consent has been granted under these Regulations has been discharged and a memorandum of discharge filed with the Commission pursuant to regulation 12 of these Regulations.

(3) Where a security is registered by the Commission under these Regulations and further Security over the same Secured Asset is subsequently registered by the Commission, as between the Obligor, the Secured Party and the Commission, the first in time shall prevail.

(4) Consent to security under these Regulations shall not subordinate the right of the Government of the Federation to royalty, taxes, fees and charges to any rights of the Secured Party.

(5) Nothing under this regulation shall prejudice the right of the Commission to make recommendations for the revocation of a licence or lease in accordance with any relevant law, regulation or terms of a licence or lease.

Discharge of a Security

14.—(1) Where a debt in respect of which security has been registered pursuant to these Regulations has been paid or satisfied in whole or in part, or part of a Secured Asset has been released from a security or transferred, sold or assigned to a third party in accordance with the provisions of these Regulations, the secured party shall deliver a memorandum of satisfaction to the extent necessary to give effect to the Commission and the Commission shall make a note of such discharge and satisfaction in its register of charges.

(2) Upon discharge of the whole or part of a security under subregulation (1) of this regulation, the benefits, rights and powers conferred on the secured party under regulation 13 of these Regulations shall cease in respect of the part discharged.

15. The enforcement of security over a Secured Asset, and the exercise of the power of sale shall follow the procedure prescribed in regulations 4 and 5 of these Regulations, save that the Secured Party shall be subrogated to the holder and shall have the rights of a holder under these Regulations.

Enforcement of security

16. Assignment of an interest in a Petroleum Exploration Licence (PEL) shall be conducted by —

Assignment by a holder of a Petroleum Exploration Licence

(a) direct or indirect assignment of an interest in a PEL and shall require the prior written consent of the Commission;

(b) an enforcement of security over a PEL, in whole or in part, shall require prior written consent of the Commission; and

(c) a change in control of a company that holds an interest in a PEL shall require prior written consent of the Commission.

17.—(1) A holder shall be responsible for securing the consent of the Commission with respect to an assignment of interest in a PEL, except an assignment by operation of law, or enforcement of security over a PEL.

Procedure for obtaining the consent of the Commission

(2) An application for consent of the Commission pursuant to the Act and these Regulations shall —

(a) be made to the Commission in the manner prescribed in these Regulations, and

(b) follow the procedure set out in regulation 4 of these Regulations, provided that reference to the Minister shall be deemed to be a reference to the Commission.

18.—(1) The Commission shall, within 60 days of receipt of an application for its consent to an assignment of an interest in a PEL, make a decision to grant or refuse consent to the application.

Consent of the Commission

(2) An application is deemed to have been received under sub-regulation (1) of this regulation where a holder submitted all relevant documents and information required by the Commission and the Commission confirms the submission of prescribed documents and information by the holder to the satisfaction of the Commission within five days of receipt.

(3) Subject to the provisions of sub-regulation (1) of this regulation, the Commission shall communicate the reason for the refusal or approval of an assignment of an interest in a PEL in writing to the applicant within 60 working days of the receipt of the application.

(4) Where the Commission rejects an application for consent, it shall notify the applicant in writing of its decision, stating the reason for the rejection, and the applicant may, depending on the reason for the rejection, amend the existing application or re-apply.

(5) Where the Commission fails to make decision on an application for consent under this regulation within 60 working days, the consent shall be deemed granted and the Commission shall within 20 working days, notify the holder that its application for consent is deemed granted.

(6) The terms and conditions in an application deemed granted by the Commission shall be published in the guidelines or directives issued pursuant to these Regulations.

(7) The holder shall within 60 days from the receipt of the deemed consent or the payment of any premium levied on the transaction, whichever occurs last, notify the Commission in writing that the details of the transaction has been made to the Federal Inland Revenue Service.

(8) The Commission shall, within 60 days of the receipt of the consent by the holder or payment of any premium levied on the transaction, whichever occurs last, publish the full details of the Consent, including the names and addresses of the parties to the transaction, in the Federal Government Gazette

PART VI — FEES, CHARGES, REGISTER AND PENALTIES

Fees and charges

19.—(1) An application for consent of the Minister relating to an assignment, or obtaining the consent of the Commission in the creation of a security over a licence or lease shall be subject to the payment of an application fee as prescribed in the applicable Regulations of the Commission.

(2) The consent of the Minister in respect of an assignment pursuant to these Regulations shall be by the payment of seven per cent of the value of the transaction, comprising two percent processing fee and five per cent premium, provided that consent to an Assignment in an intra group transfer shall only be subject to the payment of two per cent processing fee.

(3) The value of transaction pursuant to sub-regulation (2) of this regulation shall be by either the amount —

(a) payable to the Assignor, as stated in the application or transaction contract; or

(b) prescribed by the Commission, using the metrics for the determination of good and valuable consideration for the asset at the relevant time.

(4) The consent of the Commission to the creation of a security under the Act and these Regulations on assignment shall be subject to a consent fee as prescribed in the applicable regulations of the Commission.

(5) Any payment made as processing fee, consent fee, or premium under these Regulations shall not be tax deductible.

(6) The consent of the Minister and the Commission shall not be granted until the appropriate application and processing fees have been fully paid.

(7) Every Assignor shall be required to pay an applicable fee to an account provided by the Commission within 90 days of notification of the grant of the relevant consent by the Minister or the Commission under regulation 6(2) of these Regulations.

(8) Where an Assignor fails to pay or fails to pay in full the applicable fee under this regulation within 90 days, the Assignor shall have an additional 30 days within which to pay or complete payment.

(9) Where an Assignor fails to pay in full or complete payment of the applicable fee upon the expiration of the 30 days grace period, the Commission shall impose a surcharge of 0.01% of the stipulated amount per day on a straight-line basis for 90 days failing which the consent is deemed withdrawn.

20.—(1) The Commission shall maintain both electronic and manual register of Assignment of Interest in a licence or lease. Register

(2) The Commission shall enter, in its Register of Assignments, the full details of the assignment, including the names and addresses of the assignee and the assignor, the participating interest transferred to the assignee, and any participating interest retained by the assignor, within 15 working days of the grant or deemed grant of consent by the Minister for the assignment of an Interest in a licence or lease and the fulfillment by the holder or waiver by the Minister of any condition attached to the consent or deemed consent.

(3) The assignor is deemed to remain the holder of the participating interest, until the name of an assignee is entered into the Register of Assignment of the Commission in respect of the assigned interest.

(4) Where consent has been granted by the Minister in respect of an Assignment or change in control, the —

(a) acquirer, in the case of an Assignment, or

(b) a holder in the case of a change in control,

shall give notice of its beneficial owners to the Commission within 30 days of the consummation of the Assignment or change in control, in a manner prescribed by the Commission.

(5) The Commission shall maintain both electronic and manual register of charges in which it shall record security in respect of which consent has been granted.

(6) The Commission shall enter, in its register of charges, the full details of the charge, including the name of the persons or trustees entitled to the security, the total amount so secured, the type of the security created, and short particulars of the asset or interest charged within 15 working days of the grant or deemed grant of consent by the Commission to the creation of Security over an interest in a licence or lease.

Penalties

21.—(1) Notwithstanding the provisions of regulation 6(2) of these Regulations, where Assignment of interest in a licence or lease is done without the written consent of the Minister, the holder of such licence or lease shall be liable to pay an administrative fine of USD 5,000 or the Naira equivalent at Central Bank of Nigeria exchange rate to the Commission for everyday the default continues.

(2) Where an acquirer or a holder, in the case of a change in control, fails to provide the beneficial ownership information in accordance with regulation 20(4) of these Regulations, it shall be liable to pay an administrative fine of USD 2,000 or the Naira equivalent at Central Bank of Nigeria exchange rate to the Commission for everyday the default continues and the persistent refusal to provide such information may also be grounds for the revocation of the Licence or Lease.

PART VII — MISCELLANEOUS

General provisions

22.—(1) An Acquirer shall, by operation of law, have power to bring an application to secure the consent of the Minister or the Commission, with respect to Assignment of Interest”.

(2) In the case of an enforcement of security over a licence or lease, the Secured Party shall be subrogated to the rights of the holder and shall have the power to bring an application to secure the consent of the Minister or the Commission, with respect to the Assignment of Interest in a Secured Asset.

(3) The Commission shall not make any recommendation to the Minister for consent in respect of an assignment, where an Acquirer proposes to enter into a crude handling or purchase agreement with the holder, unless the Commission is satisfied that the —

(a) assignment is not subject to the decision of crude handling or purchase agreement that imposes commercially difficult terms on the Acquirer;

(b) transfer of surface facilities, where applicable, under an assignment takes into consideration any amortisation of such facilities; and

(c) price to be paid by an assignee to the holder and the modalities for such payment shall not adversely affect the revenue interests of the Government of the Federation of Nigeria from operations under the licence or lease.

(4) An application for consent to an assignment, which includes the transfer of operatorship under a licence or lease to the Acquirer shall be accompanied with any of the following documents, —

(a) consent of the other parties in the licence or lease to the assignment relates, if such consent is required in the agreement between them relating to the licence or lease;

(b) consent of other parties in the licence or lease to the transfer of operatorship, if such consent is required in the agreement between them relating to the licence or lease; and

(c) written approval of the Commission as being qualified to operate a licence or lease in Nigeria.

(5) where the assignment or transfer by a licensee or lessee is to a person other than to an affiliate or subsidiary, the Commission shall not make recommendation to the Minister unless the application is accompanied with a report of an Environmental Evaluation Study (EES) conducted in the licence or lease area pursuant to environmental regulations issued by the Commission.

(6) Where the Holding 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 of the entity involved in the transaction shall be lifted in such circumstances, to determine if such transaction constitutes an assignment.

(7) The provisions of these Regulations in respect of Assignment shall apply where the Commission considers that the transaction in sub-regulation (3) of this regulation constitutes an Assignment.

23. The Commission may from time to time, make and publish guidelines pursuant to these Regulations.

Issuance of
Guidelines

24. In addition to the definitions contained in section 318 of the Act, —

Interpretation

“*acquirer*” means the transferee or proposed transferee of all or part of an Interest in a Licence or Lease, as may be applicable;

“*Assignment*” means direct or indirect transfer of an interest, power or right in a licence or lease, as applicable, whether through merger, acquisition, take-over, divestment or any of such transaction that may alter the ownership, equity, rights or interest of a holder, notwithstanding the nature of upstream arrangement that the holder may be involved in, which may include —

(a) assignment by way of merger, wherein a holder combines with one or more companies to form another company by way of payment, exchange of shares or by any other means whatsoever,

(b) assignment by way of acquisition, where the Acquirer directly or indirectly takes over or acquires the entire rights or interest of the holder in a licence or lease,

(c) assignment to a company in a group of which the holder is a member and is to be made for the purpose of re-organisation in order to achieve greater efficiency and to acquire resources for more effective petroleum operations,

(d) assignment by a contractor or joint venture partner under an upstream petroleum arrangement, including joint venture arrangement, production sharing contract, production sharing agreement, service contract, under a sole risk award or a marginal field.

(e) assignment by way of sale or transfer of an interest that does not directly relate to a licence, or lease, but to lead to a control of the holder by persons who did not Control the holder prior to the transaction,

(f) grant of a power of attorney over a licence or lease to a third party;

(g) Assignment by operation of law;

(h) donation or gift of a licence or lease, in whole or in part; or

(i) creation of a trust, other than a security interest, over a licence or lease;

“Assignment by Operation of Law” means a transfer of an Interest in a licence or lease brought about by reason of devolution of ownership of shares or interest in ownership of shares of the holder or holding company of a holder by way of operation of law or testamentary device, including a judgment of a competent court of law, an award from an Arbitral Panel, or the transfer of the shares of a holder or its holding company through a will or letters of administration;

“A person is in control of a company if the person —

(a) legally or beneficially owns more than one half of the issued share capital of the company,

(b) is entitled to a majority of the vote that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of the person,

(c) is able to appoint or veto the appointment of a majority of the directors of the company,

(d) is a holding company, and the company is a subsidiary of the company, and

(e) has the ability to materially influence the policy of the company in a manner comparable to a person who, in the ordinary commercial practice, may exercise an element of control referred to in paragraphs (a) to (d);

“Change in Control” means where a person or persons act jointly or in concert, to control, by contract or otherwise, a person who holds a licence or lease;

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

“*holder*” means the holder of a licence or lease issued by the Commission;

“*holding company*” means, in relation to a company or corporation, a company that controls any other company or corporation in respect of which it is a subsidiary;

“*Interest*” means rights, power or interest in a licence, lease, permit or petroleum agreement;

“*lease*” means a Petroleum Mining Lease or an Oil Mining Lease;

“*Lessee*” means a holder of a Petroleum Mining Lease or an Oil Mining Lease.

“*Licence*” means a Petroleum Prospecting Licence or an Oil Prospecting Licence;

“*Licensee*” means the holder of a Petroleum Prospecting Licence or Oil Prospecting Licence;

“*Minister*” means the Minister of Petroleum Resources or any other person designated by the President as having responsibility for overseeing the upstream petroleum industry;

“*Obligor*” means a holder, who provides security over a licence, lease, permit or petroleum Agreement to secure a financial obligation;

“*person*” means an individual, company or other juristic person;

“*act in concert*” where a person pursuant to an agreement or understanding, whether formal or informal, cooperate to obtain or consolidate control of a company that holds a licence or lease, as applicable;

“*Petroleum Agreement*” includes any or all of the following documents and or arrangements including, production sharing contracts, joint operating agreements, joint venture agreements, farm-in-agreements or any other document or arrangements pursuant to which a person derives its rights, interests, power in a Licence or Lease;

“*Secured Asset*” means a licence, lease, permit or petroleum Agreement upon which a security is created in accordance with these Regulations;

“*Security*” means a mortgage, charge (fixed or floating), pledge, lien, assignment by way of security, hypothecation, security interest, title retention or other security interest securing any obligation of a Licensee or Lessee or any other agreement or arrangement having a similar effect;

“*Secured Party*” 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 a 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,

(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 a licensee or lessee, or

(e) any persons providing credit to a lessee or licensee under the terms of a loan agreement or security document;

“*Security Interest*” includes 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 50%;

“*Stock Exchange*” means an organisation 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;

“*Testamentary Device*” means the transfer of shares through a Will or Letters of Administration;

“*Transaction*” means —

(a) Assignment of Interest in a Licence or Lease,

(b) Change in Control in a company that holds a Licence or Lease,

(c) Assignment by Operation of Law, or

(d) any process incidental to sub-paragraphs (a) to (c) of this paragraph;

“*Value of the Transaction*” means the amount determined by the Commission to be the value receivable by the Assignor for an Assignment, the value of the transaction may be —

(a) sum or amount payable to the Assignor as stated in the application or transaction contract; or

(b) an amount determined by the Commission using the metrics for the determination of good and valuable consideration for the asset at the relevant time

26. These Regulations may be cited as the Nigerian Upstream Petroleum (Assignment of Interests) Regulations, 2024. Citation

MADE at Abuja this 13th day of March, 2024.

ENGR. GBENGA KOMOLAFE, FNSE
Commission Chief Executive
Nigeria Upstream Petroleum Regulatory Commission

EXPLANATORY NOTE

*(This note does not form part of these Regulations
but is intended to explain its purport)*

These Regulations provides procedure for assignment, novation or transfer of an interest in a licence or lease, or a change in the control of a company that holds an interest in a licence or lease; and procedure for the creation and enforcement of security wholly or partly in a Licence or Lease.