



Department of Petroleum Resources

**GUIDELINES AND PROCEDURES**

**FOR OBTAINING MINISTER'S CONSENT**

**TO THE ASSIGNMENT OF INTEREST**

**IN OIL AND GAS ASSETS**

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**GUIDELINES AND PROCEDURES FOR OBTAINING MINISTER'S CONSENT TO THE ASSIGNMENT OF INTEREST IN OIL AND GAS ASSETS PURSUANT TO PARAGRAPHS 14-16 OF THE FIRST SCHEDULE TO THE PETROLEUM ACT CAP.P 10 LFN, 2004 AND SECTION 17 (5) (d) OF THE OIL PIPELINES ACT CAP. O7 LFN, 2004.**

**1 PREAMBLE**

- 1.1 These Guidelines are issued pursuant to the provisions of Paragraph 14 – 16 of the First Schedule to the Petroleum Act, Cap P10 LFN, 2004 and section 17 (5) (d) of the Oil Pipelines Act, CAP. O7 LFN 2004
- 1.2 The purpose of these Guidelines is to establish the procedure for obtaining the consent of the Minister of Petroleum Resources to any assignment of any right, power or interest in an Oil Prospecting Licence (OPL), Oil Mining Lease (OML) or Marginal Field (MF) or Oil and gas Pipelines Licence (OGPL) in accordance with the Petroleum Act and the Oil Pipelines Act.

**2.0 DEFINITION OF TERMS**

**Asset** means the generality of the surface facilities and sub surface resources in an OPL, OML or Marginal field.

**Assignor:** The party wishing to dispose of asset or interest in asset by way of assignment as defined in these Guidelines

**Assignee:** The party who is a recipient of an asset or interest in an asset disposed of by way of assignment as defined in these Guidelines.

**DPR** means Department of Petroleum Resources.

**Interest in a licence or lease** means any arrangement such as PSC, PSA, farm-in or farm-out agreement, sale, purchase, mortgage 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.

**3.0 WHAT CONSTITUTES AN ASSIGNMENT**

- 3.1 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 OPL, OML or marginal field in Nigeria, through merger, acquisition, take-over, 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, Sole Risk (SR) or Marginal Fields operation. Instances of an assignment shall include but not limited to the following:

- i. Assignment by way of exchange or transfer of shares: This shall entail the acquisition of part or all of the shares of a company which holds an OPL, OGPL, OML, or Marginal Field in Nigeria.
- ii. Assignment by way of the private or public listing of a part or of the whole of the shares of a company which holds an OPL, OGPL, OML, or Marginal Field in a Stock Exchange anywhere in the world.
- iii. Assignment by way of merger, wherein a company which holds an OPL, OGPL, OML 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.
- iv. Assignment by way of acquisition, wherein the acquiring company directly or indirectly takes over or acquires the whole rights or interest in a license 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.
- v. Assignment to a company in a group of which the assignor 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.
- vi. Assignment brought about by reason of devolution of ownership of shares or interest in ownership of shares by way of operation of law and testamentary device. Operation of law shall refer to a Judgment of a competent court of law or an award from an Arbitration Panel. Testamentary device shall refer to the transfer of shares through a Will, Letters of Administration, or a Deed of Gift.

#### **4.0 PROCEDURE FOR AN ASSIGNMENT**

- 4.1 Pursuant to the provisions of Paragraph 14 of the First Schedule to the Petroleum Act, CAP P 10 LFN, 2004 and Section 17 (5) (d), of Oil Pipelines Act CAP. O7, 2004, prior consent of the Minister of Petroleum Resources is required before the holder of licence or lease assigns his licence or lease, or any right, power or interest in it. Thus:

- a) The holder of a Licence or Lease or a Marginal Field who is desirous of assigning interest in the licence, lease or marginal field, in whole or in part, or vesting any interest, power or rights therein on a third party, shall notify the DPR prior to the commencement of the transaction and shall not proceed with any process incidental to the transaction until so authorised by DPR.
  - b) To this extent, the assigning party shall not advertise, publish or make press release in respect of the assignment without the prior approval of the DPR.
  - c) It shall be the responsibility of the assignor to secure the consent of the Minister with respect to any assignment of interest in an asset.
- 4.2 The notification to DPR shall state the reason for the proposed assignment, the method for the conduct of the assignment, and the possible technical and economic value such assignment would bring to the operation of the license or lease.
- 4.3 Where the assignment is to be carried out through an open bidding process involving pre-qualification, technical and commercial stages, such procedure shall be transparent and shall be outlined in the letter to the DPR regarding the proposed transaction.
- 4.4 Where the assignor intends to carry out such transaction through selective tendering or negotiated transfer, such shall be made known to the DPR prior to the commencement of the process.
- 4.5 The assignor shall upon the completion of the technical evaluation of candidates shortlisted for any transaction that may constitute an assignment, submit to the DPR the list of such qualified candidates for preliminary due diligence to ensure that any such company that may not otherwise be acceptable to the Government of the Federal Republic of Nigeria is not allowed to proceed to the commercial stage of the transaction. The cost of due diligence shall be borne by the assignor.
- 4.6 Where the assignor fails to submit to the DPR the list of technically qualified candidates and proceeds to the commercial stage, such transaction shall not be eligible for the Consent of the Minister under these Guidelines and the Petroleum Act.

- 4.7 The assignor shall not impose on the assignee, crude sale/purchase agreement as a condition for the consummation of the transaction, and any other conditions that will serve as an impediment to the takeover and/or operation of the asset in a businesslike manner.
- 4.8 The DPR shall, as part of its due diligence, consider the pricing of the asset to ensure that there is no adverse effect on the revenue of the Federation. Ordinarily, reference value of the asset should be the book value.
- 4.9 The assignor shall not impose Domestic Gas Supply Obligations (DGSO) volumes on the assignee without DPR's authorization. Any unauthorised imposition of DGSO volumes shall be set aside by DPR.
- 4.10 Where the assignor is in a Joint Venture arrangement involving the Nigerian National Petroleum Corporation in respect of which a Joint Operating Agreement is in place, the application of the assignor for the consent of the Minister must be accompanied by a letter of waiver of right of pre-emption by the non-assigning parties in the Joint Venture as provided for in the Joint Operating Agreement.
- 4.11 Where the assignor is in a Production Sharing Contract arrangement as Contractor or a member of the Contractor Party to the Nigerian National Petroleum Corporation (NNPC) as the Concessionaire of an asset, the application of the assignor for the consent of the Minister shall be accompanied by a letter from the Nigerian National Petroleum Corporation acceding to the assignment as may be provided for in the Production Sharing Contract Agreement.
- 4.12 Where the right of pre-emption is contained in the Production Sharing Contract Agreement involving a Contractor Party, a letter from the other members of the Contractor Party, waiving their right of pre-emption shall accompany the application for the consent of the Minister.
- 4.13 Where the assignor is the operator in an asset in which the NNPC is either a Joint Venture partner or Concessionaire, the assignor shall not purport to transfer the right of operatorship to the assignee and shall therefore not make the right of operatorship a part of the commercial consideration in the transaction.
- 4.14 In accordance with the provisions of Nigerian Oil and Gas Industry Content Development Act, 2010, Nigerian indigenous companies shall be given first consideration in any assignment and this provision shall be taken into

consideration by the DPR in granting the approval for the commencement of any divestment of interest in asset in the country. Therefore, the divesting party must include the plan for effecting this aspect of the Act in the divestment process.

- 4.15 Where the assignment involves a sole risk asset, not more than 40% of the overall interest in the asset can be assigned to a foreign entity except that in the case of marginal field, where the total interest assignable to a foreign entity is pegged at 49% of the total overall interest in the asset.
- 4.16 Where the parent company of a company holding interest in an asset in Nigeria is taken over by or merged with another company overseas, the veil of incorporation shall be lifted in such circumstance to determine if such transaction constitutes an assignment under the Petroleum Act.
- 4.17 Upon meeting all the required conditions set out in this Guideline and a transaction is consummated leading to the execution of a Sales Purchase Agreement (SPA) between the assignor and assignee , all proceeds from the interest being transferred must from the date of the SPA be paid into an Escrow Account to be opened by the assignor pending the procurement of the consent of the Minister on the transfer.

## **5.0 APPLICATION FOR CONSENT**

- 5.1 An Applicant shall submit a written application to the Director of Petroleum Resources requesting the Minister's consent.
- 5.2 The Applicant shall attach the following documents in triplicate:
- i. Deed of Assignment,
  - ii. Copy of existing Joint Operating Agreement (JOA) or Production Sharing Contract (PSC) where applicable,
  - iii. Farm-in Agreement between the Assignor and Assignee,
  - iv. Catalog of Applicant's Exploration and Production activities carried out in the asset to date,
  - v. Assignee technical and financial track records in Exploration & Production operations,
  - vi. The Assignee's incorporation documents,
  - vii. Technical Service Agreement,
  - viii. Sales Purchase Agreement (SPA),
  - ix. In case of an assignment by way of private or public listing in a Stock Exchange, the approvals, documents and rules governing such listing in any of the stock exchanges involved,

- x. In case of a Merger or acquisition involving a Publicly or Privately quoted Company, a copy of the approvals, documents and rules governing such Mergers and Acquisitions in all the relevant approving jurisdiction.
- xi. In case of an assignment as a result of Operation of Law, the applicant shall give details of the Court Judgment and or the details of the legal administration of the estate or Will or Deed of Gift.
- xii. A bank draft, written in favour of FGN/DPR Fees Account, for the sum of N500, 000 for an assignment in an OPL or OGPL or OML and N50, 000 for an assignment of interest in a Marginal field.

## **6.0 MINISTER'S CONSENT**

6.1 The Minister's consent may only be granted where the Minister is satisfied that:

- (i) The assignee is of good reputation, or is a member of a group of companies of good reputation, or is owned by a company or companies of good reputation
- (ii) The proposed assignee is in all other respects acceptable to the Federal Government, and
- (iii) There is likely to be available to the proposed assignee sufficient technical knowledge, experience and financial resources to work the licence, lease or marginal field, which is being assigned.

6.2 Consideration of the application for consent would involve conducting due diligence on the assignee by the DPR to establish the following:

- i. The technical competence of the assignee,
- ii. The financial capability of the assignee,

In order to confirm the above, due diligence shall be carried out on the assignee, or if part of a group, on the parent company of the assignee by a technical team from the DPR within three months of such nomination, the cost of which shall be borne by the assignor.

6.3 Pursuant to paragraphs 14 to 16 of the First Schedule to the Petroleum Act, the Minister reserves the right to impose a Fee or Premium or both which shall range from 1 to 5% of the total value of the transaction.

MADE THIS 11<sup>TH</sup> DAY OF AUGUST 2014

SIGNED BY: DIRECTOR OF PETROLEUM RESOURCES