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The Petroleum Industry Act and the Marginal Fields

March 2021

Introduction

Marginal fields constitute an important part of the indigenisation policy of the Nigerian Government in the Oil and Gas industry. It involves participatory rights in oil acreages being awarded to indigenous companies.

Let us take a journey to observe the history of the Marginal fields, the regulatory framework before the Petroleum Industry Act (PIA) and also consider the impacts of the changes introduced by the PIA.

What are Marginal Fields

Under the repealed Petroleum Act of 1996, a marginal field was defined as any field identified by the President as a marginal field. The Guidelines for the Award and Operations of Marginal Fields in Nigeria, released by the defunct Department of Petroleum Resources (DPR) in 2020 further identified some characteristics of marginal fields (summarised below):

i. Fields having at least one exploration well drilled and reported as a discovery for more than 10 years with no follow up appraisal or development effort
ii. Fields with high gas and low oil reserves
iii. Fields that have been abandoned by the leaseholders for economic or operational reasons, among others.

What happens after a Marginal Field is declared?

Bidding Rounds & Award

A declaration of a marginal field typically results in the assignment of exploration rights (farm-out) to third parties by the Government. In Nigeria, marginal fields are farmed out through a transparent bidding process.

Marginal fields bidding rounds are kick-started with a call for expression of interest from indigenous companies and the issuance of specific guidelines for the bidding process. The expression of interest from the public then forms a basis for the pre-qualification stage where shortlisted companies are invited to submit their technical and commercial bids. Upon evaluation of these bids, an announcement is then made for the winning bids.

So far, DPR has conducted two Marginal Field bidding rounds.

Payment of Signature Bonuses

After a company has been selected for award of a marginal field, it must proceed to pay a one-time, non-recoverable lump fee to the Government as a prerequisite to the award. The signature bonuses often range from $5million to $20 million and it is not uncommon that bidders are sometimes unable to raise the required sum and have to forfeit the fields.

Farm-out agreements

The successful company (farmee) enters into a farm-out agreement with the holder of the license (farmor) for the assignment of all or part of the working interest in the lease to the farmee, who will, in turn carry out exploratory, appraisal and development activities on the farm-out area.

Farm-out agreements are unique in each case as they are a reflection of the negotiations and terms agreed to between the parties covering issues such as indemnity, field data, basis of operation, community development and reservoirs. Where the licensee and successful bidder are unable to reach an agreement on any term, the Minister would then step in.

Where the successful bidder is made up of more than one company, the companies would first enter into a Joint Operating Agreement before executing a farm-out agreement which would be between the joint bidders and the leaseholder.

Historical Overview of Marginal Fields in Nigeria

The first bid round for marginal fields in Nigeria was in 2003, with a total of 24 fields awarded to 31 companies (sole operators and joint venture operators). The next bid round was envisaged in 2013 with the issuance of the Guidelines for Award and Operations of Marginal Fields 2013, however the bid rounds were never held.
The second and most recent bid round was opened by the DPR in June 2020 for 57 marginal fields located on land, swamps and offshore terrains. The 2020 bid rounds were regulated by the Petroleum Act, the Guidelines issued by the DPR, as well as the Local Content Act which states the requirement for local participation in bids.
Despite the awards of the marginal fields, many farmed-out areas have remained undeveloped due to constraints such as lack of funding, internal conflicts between co-operators, inadequate technical expertise and incessant fiscal policies. It is estimated that only 30% of the oil fields awarded between 2001 and 2003 were able to achieve full production.

Changes introduced by the Petroleum Industry Act

The Petroleum Industry Act (PIA) introduces conceptual, institutional and regulatory changes to oil and gas activities in Nigeria. Undoubtedly, some of these changes have a direct impact on marginal fields and the Act provides specific guidance for the transitional operations of existing marginal fields as discussed below.

Establishment of the National Upstream Petroleum Regulatory Commission

With the enactment of the PIA, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) is the newly established supervisory authority over the upstream petroleum sector. As a result, the administration of marginal fields has shifted from the DPR to the NUPRC.[1]

The PIA specifically requires that the consent of the NUPRC should be sought before any marginal field is voluntarily farmed-out. The power to conduct bid rounds for marginal fields also rests with the NUPRC.[2]

1. Section 4, PIA
2. Section 94(4)(b), PIA

Interestingly, the Commission has begun to take steps in that line. Particularly, the NUPRC has taken the initiative to conclude and close out the 2020 Marginal Fields Bid round as it recently revoked the offer made to 33 potential awardees for failing to pay the signature bonus within the stipulated time.

Definition of Marginal Field (under the PIA)

The scope of marginal fields has changed largely under the PIA, a marginal field is now defined as a field or discovery which has been declared a marginal field prior to 1st January 2021 or which has been lying fallow without activity for seven years after its discovery prior the commencement of the PIA.

It is important to note that no new marginal field is to be declared going forward under the PIA.[3]

Producing Marginal Field

The PIA allows a producing marginal field to continue to operate under the original royalty rates and farm out agreements on the condition that the existing Oil Mining Lease (OML) shall be converted to a Petroleum Mining License (PML) within 18 months from the commencement of the PIA.

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Non-producing Marginal Field

On the other hand, any discovery declared as a marginal field prior to 1st January 2021 which is non-producing is to be converted to a Petroleum Prospecting License (PPL).

Transfer of Marginal Fields to the Government

The PIA makes provisions for the surrender of licenses or leases to the Federal Government. For any discovery surrendered to the Government, the NUPRC has the right to offer a petroleum prospecting license through a transparent and non-discriminatory bidding process.[4]

Where a marginal field has remained with the license holder and not transferred to the Government, the OML holder must within 3 years from the commencement of the PIA present a field development plan to the NUPRC, or in the alternative farm out the discovery with the consent of the NUPRC. Where the license holder fails to fulfill these conditions, the field will be relinquished.[5]

The effect of relinquishment is that the field becomes vested in the Federal Government and administered by the NUPRC, until a PPL is granted on such field.

Bid Rounds under the PIA[6]

The Nigerian Upstream Petroleum Regulatory Commission is empowered to make guidelines for each licensing round to specify the minimum pre-qualification criteria for prospective bidders.

It should be noted that where there is a bilateral or multilateral agreement between Nigeria and another country, the Government is at liberty to direct the NUPRC to award a license to a qualified investor under the Agreement or treaty.

Conclusions

The enactment of the PIA and the establishment of a sector focused regulator for upstream players in Nigeria is a positive step towards improving upstream activities and therefore encouraging the much needed investment in this sector of the Nigerian economy.

It is also commendable that a separate form of license will be granted to marginal field license holders as this change may as well put to rest, the longstanding legal arguments about the legal status of a marginal field award and the effects of a termination or expiry of the parent Oil Mining License. Clearly, by virtue of the PIA, the rights of a mining license holder will cease to exist upon relinquishment to the Government who would then be entitled to put the asset up for a bidding round. The successful bidder is then able to take up a separate and distinct legal right under a petroleum prospecting license.

However, there is still a need to put in place a better framework for screening prospective bidders for the petroleum prospective license on marginal fields in order to ensure that only companies with financial and technical capacity are granted the license. This will better help to achieve the objective of bringing these fields to commercial levels of production.

There is also a need for the Commission to swiftly conclude the activities around the 2020 Marginal bid round - as this signals to the world that Nigeria is open for business and may trigger the inflow of investment into the Petroleum sector of the economy. What better time than when the price of crude oil is above $100 per barrel?

3. Section 94(9), PIA
4. Section 94(3), PIA
5. Section 94(4), PIA
6. Section 74, PIA

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