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COMPARATIVE ANALYSIS OF PETROLEUM LICENCING UNDER THE NIGERIAN PETROLEUM INDUSTRY ACT 2021 AND THE UK

Kpea-ue Bariyira Simple*
Abbiba Pedro Lilly-Tariah**
&
Amiesimaka B. Tamuno***

Abstract

The need to harness a country's natural resources has given birth to the adoption of several ownership, control and managerial approaches. Granting of traditional Concessions to IOCs, establishment of National Oil Companies and granting of licences to work, extract, explore, win and produce petroleum are some of those approaches. Nigeria, as an oil-rich nation has a chequered history spanning through these three approaches. Again, Nigeria, like most nations blessed with natural resource is bereft of the financial, human and technical known-how required for such exploration, extraction and production of petroleum resources. This ugly situation leaves such nations with an option of granting licensing regimes to Multinational Companies, contractors and in few instances, National Oil Companies with requisite economic viability, human expertise and technical know-how to explore and produce such natural resources subject to terms and conditions. Consequently, the Government of Nigeria has the exclusive right and power of legislation, regulation, licensing, taxation, and management of revenue from petroleum resources. The current Petroleum Industry Act has copious provisions on licensing regimes in the oil and gas industry in Nigeria. Adopting a doctrinal research methodology, this paper therefore, aims at conducting a comparative analysis of the petroleum licencing regimes under the new PIA 2021 in Nigeria and the UK. From the analysis, it is revealed that the PIA, like the UK regime, presents a fairly attractive licensing regime which is tailored towards achieving the objectives of the Act notwithstanding the fact that the new PIA is perceived as a work in progress. It is recommended that a clear-cut role should be assigned to both the Minister and the Commission to forestall granting conflicts and overlap. Government through the granting authorities should introduce a system that guarantees online data security, access to regular power supply, diminishes cyber-crime and encourages independence of the regulatory institutions for a successful electronic licencing bidding process in Nigeria.

Keywords: Petroleum, Licences, Bidding Rounds, Bid Parameters.

1. Introduction

The presence of natural resources or petroleum products in any nation of the world is perceived as a signal of economic growth and prosperity for such nation. However, for such petroleum products to translate into wealth, there must be a process of extraction or exploration of such petroleum deposit. Since all property in, and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the EEZ of Nigeria is vests in the Government of the Federation,[1] such natural resources are to be managed in such a manner prescribed by the National Assembly.[2] The use of the word 'manage' in the above Constitutional provision implies a sense of control and superintendence, which includes exploration and production by the government of the Federation.

However, most nations blessed with natural resource are bereft of the financial, human and technical known-how required for such exploration, extraction and production of petroleum resources. This ugly situation leaves such nations with an option of granting licensing regimes to Multinational Companies, contractors and in few instances, National Oil Companies with requisite economic viability, human expertise and technical know-how to explore and produce such natural resources subject to terms and conditions. Consequently, the government of Nigeria has the exclusive right and power of legislation, regulation, licensing, taxation, and management of revenue from petroleum resources.[3] The current Petroleum Industry Act[4] has copious provisions on licensing regimes in the oil and gas industry in Nigeria. This paper therefore examines licensing regime under the new Petroleum Industry Act in Nigeria and the UK which focus on licencing rounds, guidelines, and modules and licensing processes.

Conceptual Review

This section of this paper makes copious attempts to demystify certain mysteries associated with certain words as used in this paper. Consequently, words like petroleum, licenses and bidding process will be explained and clarified.

Petroleum

Petroleum means a compound mainly composed of hydrogen and carbons and is commonly called hydrocarbon and that such can exist in gaseous coal, shale, tar sands or bitumen.[5] Petroleum, also called crude oil is a fossil fuel.[6] Like coal and natural gas, petroleum was formed from the remaining of ancient marine organisms such as plants, algae and bacteria.[7] Petroleum reservoirs can be found beneath land or the ocean floor. Their crude oil is extracted with giant drilling machines.[8] However, petroleum, like coal and natural gas is a non-renewable source of energy. It took millions of years for it to form, and when it is extracted and consumed, it cannot be replaced.[9] Corroborating the above,

* OND, B.SC(Hons), LL.B(First Class), BL(Abuja), LL.M(RSU), PhD Candidate, Lecturer, Department of Private and Property Law, Rivers State University, Port Harcourt. Tel: +2348068753214 Email: bariyira.kpea-ue@ust.edu,ng

** LL.B(RSU), BL(Abuja), LL.M (RGU Aberdeen), PhD Candidate, Lecturer, Department of Public Law, Rivers State University, Port-Harcourt. Tel:08035083652, Email: abbiba.lilly-tariah @ust.edu.ng

***LL.B(Hons), BL(Abuja), LL.M(Swansea), PhD Candidate, Lecturer, Department of Business Law, Rivers State University, Port-Harcourt, +234-8184417278, Email: amiesimakatammy@gmail.com

1. ..Constitution of the Federal Republic of Nigeria, 1999 (as amended) (Hereafter CFRN 1999), s. 44(3); Nigerian Minerals and Mining Act, 2007 No. 20, s. I(1)(2): Petroleum Industry Act (Hereinafter PIA) 2021, s. 16.
2. . CFRN 1999 (n.1), s. 44(3).
3. ..J. Okoro, Petroleum Exploration and Production Licensing in Nigeria: Issues of Status, Grant and Alienation' in M.C. Ogwezzy (ed), *Laws on Oil and Gas Exploration and Production in Nigeria: A Text in Honour of Austin Avuru* (Princeton and Associates Publishing Co. Limited. 2020) 332-364.
4. PIA (n1).
5. Y. Omorogbe, *Oil and Gas law in Nigeria* (Lagos: Mathouse Press Ltd, 2003).
6. 'Meaning of Petroleum–National Geography'<https://www.natioal geographic.org> accessed 4/01/2022.
7. *Ibid.*
8. *Ibid.*
9. *Ibid.*

Helmenstine defined petroleum as crude oil, but sometimes, it is applied to describe any solid, liquid or gaseous hydrocarbons.[10]

The meaning of petroleum has equally attracted statutory flavor. Accordingly, the Petroleum Industry Act[11] defines petroleum to mean hydrocarbons, and associated substances as exist in its natural state in *strata*, and includes crude oil, natural gas, condensate and mixtures of them but does not include bitumen and coal.[12] From the above, it appears that the words 'petroleum' and 'oil and gas' are used interchangeably to refer to hydrocarbons or crude oil or natural gas existing in its natural states but exclude oil and gas.

Licences

The word licence means an official permission to own, do or have something.[13] In commercial law, it means to get permission to make, produce, or use something that has been created by or belongs to another person or company usually by paying for it.[14] It is a formal permission from a governmental or other institutional authority to do something, as to carry on some business or profession. Licence means permission to act, a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful.[15] A licence is an official permission for someone to do or produce something. Etikerense corroborated the above meanings when he opined that a licence in common parlance connotes permission given by a competent authority to do an act, which without such grant, would be illegal, or would amount to a trespass.[16]

The Petroleum Industry Act defines a license to mean a licence issued by the Commission or Authority in respect of any applicable upstream, midstream or downstream petroleum operations.[17] Therefore, petroleum licence means a permission or grant granted by the Minister of Petroleum Resources on the recommendation of the Nigerian Upstream Petroleum Regulation Commission or the Nigerian Midstream and Downstream regulatory petroleum Regulatory Authority over a geographical area, or land or sea to a registered company or through joint venture consenting to them to explore, prospect and to mine and extract petroleum products is large and commercial quantities upon payment of consideration. Under the current petroleum industry legal regime,[18] there are three kinds of licences; the Petroleum Exploration Licence which may be granted to qualified applicants to carry out petroleum exploration operation on a non-exclusive basis;[19] Petroleum Prospecting Licence which may be grant to qualified applicants[20] to drill exploration and appraisal wells and do corresponding test production on an exclusive basis,[21] to carry out petroleum exploration operations on a non exclusive basis[22] and finally, Petroleum Mining Lease, which may be granted to qualified applicants[23] to win, work, carry away and dispose of crude oil, condensates and natural gas,[24] drill exploration and appraisal wells and carryout the related test production on an exclusive basis[25] and to carryout petroleum exploration operations on a non-exclusive basis.[26] Finally, a licence or lease may be granted under the current law to a company incorporated and validly existing in Nigeria under the Companies and Allied Matters Act.[27]

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[10]. A.M. Hehmenstine, 'Petorleum Definition Thought Co'<https://www.thoughtco.com> accessed 4/01/2022.
[11]. PIA 2021 (n1).
[12]. *Ibid*., s. 318.
[13]. 'Meaning of Licence, Cambridge Dictionary' <https://dictionary.cambridge.org>accessed 04/01/2022.
[14]. *Ibid.*
[15]. 'Licence Definition and Meaning'<https://www.meriam-webster.com> accessed 04/01/2022.
[16]. G. Etikerentse, *Nigerian Petorleum Law* (2nd edn, Lagos: Dredew Publishers, 2004)63.
[17]. PIA 2021 (n1), s. 318. Same interpretation section of the Act defines Commission to mean the Nigerian Upstream Petroleum Regulatory Commission established under the Act, while Authority means the Nigerian Midstream and DownStream Petroleum Regulatory Authority as provided under the Act
[18]. PIA 2021 (n.1), s. 70.
[19]. *Ibid.*, s. 70(1)(a).
[20]. *Ibid.*, s. 70(1)(b).
[21].PIA (n.1), s. 70(1)(b)(i).
[22]. *Ibid*., s. 70(1)(ii).
[23]. *Ibid*., s. 70(1)(c).
[24]. *Ibid*., s. 70(1)(c)(i).
[25]. *Ibid*., s. 70(1)(c)(ii).
[26]. *Ibid*., s. 70(1)(c)(iii)
[27]. *Ibid*., s. 70(2).

Petroleum Licensing Under the Petroleum Industry Act 2021

Effecting 16th day of August 2021, the Petroleum Industry Act[28] became the principal legal regime regulating the oil and gas industry in Nigeria. The Act aims at providing legal governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities and related matters.[29] Structurally, the Act contains five (5) chapters arranged into several parts, 319 sections and eight (8) schedules. It therefore becomes the primary source from where the regulatory bodies[30] derive their power of petroleum licensing. Other laws that regulate oil and gas licensing in Nigerians are the Constitution of the Federal Republic of Nigeria,[31] the Petroleum (Drilling and Production) Regulations,[32] the Land Use Act[33] amongst others.

Under the Petroleum Industry Act,[34] there are tripartile form of licensing and/or leases. They are the Petroleum Exploration Licence,[35] the Petroleum Prospecting Licence;[36] and the Petroleum Mining Lease.[37] Each of these grants are discussed below.

Petroleum Exploration Licence

It is the exclusive right of the Commission to grant the petroleum exploration licences.[38] Under the old legal regime, this licence was called oil exploration licence.[39] This is a licence granted by the Commission to holders who shall have non-exclusive right to carry out petroleum exploration operation within the area provided under the licence.[40] Under the old regime, specific area covered under the Oil Expolration was a compact unit not exceeding 5,000 square metres[41] using surface geological and geophysical methodology including aerial surveys, with a right to drill upto the depth limit of 91.44 metres. However, under the PIA, the specific area covered under the Petroleum Exploration Licence is as provided under each licence.

The Petroleum Exploration Licence shall be for a duration of three years and subject to renewal for an additional period of three years upon fulfillment of certain conditions to be prescribed by the Commission.[42] The grant of this licence shall not include any right to win, extract, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the licence-area.[43] The reason for this exclusion appears to ensure that the grant of Petroleum Exploration Licence allows the licensee to make only a preliminary search by surface geological and physical techniques and focuses on obtaining information on the possibility of discovering petroleum in commercial quantity before other steps are taken.[44]

The Petroleum Exploration Licence may be granted in respect of an area covered by the petroleum prospecting licence or the petroleum mining lease provided that such license or lease shall not have the

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[28]. PIA (n1).
[29]. *Ibid.*, Preamable thereto.
[30]. For instance, the Minister, the Nigerian Upstream Petroleum Regulatory Commission (referred to as 'the Commission') and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (referred to as 'the Authority')
[31]. CFRN, 1999 (n1).
[32]. PDPR 1969.
[33]. LUA 1978.
[34]. PIA (n1) s. 70.
[35]..Petroleum Exploration Licence, Formally called Oil Exploration Licence under Section 2(1)(a) of the old Petroleum Act 1969.
[36]..Petroleum Prospecting Licence, Fornally called Oil Prospecting Licence under Section 2(1)(b) of the old .Petroleum Act 1969.
[37]..Petroleum Mining Lease, formally called Oil Mining Lease under the Section 2(1)(c) Petroleum Act 1969.
[38]..PIA (n1), s. 71(1); Under section 2(1)(a)-(c) of the Petroleum Act, 1969, it was the exclusive right of the Minister of Petroleum Resources to grant the Oil Exploration Licence.
[39]. (n35).
[40]. PIA (n1), s.71(2).
[41]. Petroleum (Drilling & Production) Regulations, 1969, reg 2(2)(a).
[42]. PIA (n1), s.71(3).
[43]. *Ibid*
[44]. J. Okoro (n3), 340.

obligation to purchase the result of any survey conducted under the Petroleum Exploration Licence.[45] While this provision agrees with the non-exclusivity of the Petroleum Exploration Licence, it is however capable of causing a licensing conflict as the current holders of petroleum prospecting licence and petroleum mining Lease had earlier gained or acquired Petroleum Exploration Licence over same area. The main intention of non-exclusivity of the Petroleum Exploration Licence appears to suggest that the grant of a Petroleum Exploration Licence over an area does not prevent subsequent grant of same over same area. And as under the old legal regime, a Petroleum Exploration Licence should not have been granted over an area where there is prior existence of either a Petroleum Prospecting Licence or an Oil Mining Lease.[46] A Petroleum Exploration License granted in respect of frontier acreages may include a provision permitting the licensee to select, based on the result of his exploration work and be granted one or more petroleum prospecting licenses prior to the termination of the license containing the fiscal provisions stipulated in chapter 4.[47]

The Commission shall have sole right and title over any acquired raw and interpreted data obtained by a holder of Petroleum Exploration Licence and such holder or licensee shall have the right to grant a data use license to a third party subject to a written authorization by the Commission whose authorization shall not be unreasonably withheld.[48] And such grant shall be subjected to payment of a fee to the Commission from the fee earned by the licensee from such third party.[49]Finally, the carrying out of geological, geographical or geochemical surveys for scientific and educational purposes in relation to petroleum and where the results of such survey are not for commercial gain shall not be subject to acquiring a petroleum exploration license.[50] This provision is commendable for the advancement of research and education.

Petroleum Prospecting License

It is the power of the Minister of Petroleum Resources to grant a Petroleum Prospecting License subject to the recommendation of the Commission.[51] The Petroleum Prospecting License *hitherto* called, the Oil Prospecting License[52] gives the holder or licensee power or authority to exclusively drill exploration and appraisal wells and non-exclusive right to carry out petroleum exploration operations within the area provided for in the licensed.[53] Licensee equally has the right to carry away and dispose of crude oil or natural gas won or extracted during the drilling of exploration or appraisal wells as a result of production tests, subject to the fulfillment of conditions and obligations imposed by their Act.[54]

The granting of both exclusive and non-exclusive right under same licence above[55] is capable of causing more confusion for licensees. However, a cursory look at the provision appears to suggest that when it relates to testing, licensee's right is exclusive but when it relates to carrying out petroleum exploration operations within the areas, such right is non-exclusive.It is equally observed that the *hitherto* power of the Minister to grant this license under the old Petroleum Act[56] has been pluralized to include the Commission. This again is capable of giving rise to regulatory conflicts or overlap notwithstanding the intention of ensuring checks and balances.

The duration of a Petroleum Prospecting License for onshore and shallow water acreages shall be a period not more than six years comprising of an initial exploration period of three years and an

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45. PIA(n1), s. 71(4).
46. Compare PA (n35), 1st shed, para 1.
47..PIA(n1), s. 71(5); chapter 4 is titled Petroleum Industry Fiscal Framework and contains several taxes and charges and fees applicable in the Industry.

48. *Ibid.*, s. 71(6).
49. *Ibid.*, s. 71(7).
50. *Ibid.*, s. 71(10).
51. PIA(n1), s. 3(1) (g), s. 72(5).
52. PA(n35), s. 2(1)(b).
53. PIA (n.1), s. 72(1)(a).
54. *Ibid*., s.72(1) (b).
55. *Ibid*., Referring to s. 72(1)(a).
56. PA(n35), s.2.

optional extension period of another three years.[57] The duration for deep offshore and frontier acreages shall be a period not more than 10 years, comprising of an initial exploration period of five years and anoptional extension period of five years.[58]

The area provided for in a Petroleum Prospecting License shall not exceed 350 square kilometers for any onshore or shallow water acreages,[59] 1000 square kilometers for any deep offshore acreages[60] and 1500 square kilometers for any frontier acreages.[61]It is observed that the area delineation above is opposite for the purpose of fiscal region.

Where holder of a Petroleum Prospect License fails to fulfill any term or condition of the license, it shall not except as provided in the license, give the Minister a right of claim against the licensee or be deemed a breach of the license, if the failure arises from force majeure.[62] And where the delay is caused by force Majeure, the period of such force majeure shall be added to the period fixed for the fulfillment of the applicable term or condition whose period shall not exceed three years in total and after which, the license may be terminated by the Commission or the licensee.[63]

While applauding the provisions of force majeure above, the same Act defines force majeure elaborately to includes;

> Delay or inability to perform any obligations under this Act (other than a payment obligation) due to any event beyond the reasonable control of a person, and the event may be, but is not limited to any act, event, happening, or occurrence due to natural causes and acts or period of navigation, fire, hostilities, war (declared or undeclared) blockage, labour disturbances, strike, riots, insecurity, civil commotion, quarantine, restrictions, epedemic storms, floods, earthquakes, accident, blowouts, or lightening and an event of force majeure shall not include changes in the Laws of Nigeria or any political subdivision thereof or any acts or orders of Government, any minister, ministry, department, subdivision agency, authority, council, committee or other constituents element thereof, or any corporation owned or controlled by any of the foregoing where operation are delayed, curtailed or prevented by force majeure.[64]

Therefore, the exclusion of acts of governments and its agencies, delay caused by the Laws of Nigeria as well as the exclusion of the act of Negligence of International Oil Companies or operators appear to be discriminatory against the Niger Delta people who host oil and gas facilities.

The granting of Petroleum Prospecting License and Petroleum Mining Lease shall only be granted inline with the bidding process provided by the Act[65] which shall from part of the discussion of the paper hereinafter.

Petroleum Mining Lease

A Petroleum Mining Lease ,*hitherto* called Oil Mining Lease,[66] shall be granted for each commercial discovery of crude oil or natural gas or both to the licensee of petroleum prospecting license who has[67] satisfied the conditions imposed on the license or the licensee by the Act[68] and received approval for the applicable Field Development Plan from the Commission.[69]

Therefore three salient conditions that must be satisfied for the grant of a Petroleum Mining Lease are;

i. A commercial discovery of crude oil or natural gas or both by a holder of petroleum prospector license. Commercial discovery means a discovery of crude oil, natural gas or condensates within a

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[57]. PIA (n.1), s. 77(1). Extension is granted subject to s. 78(4)(9), 79(6). See s. 72(2).
[58]. *Ibid.*, s. 77(2).
[59]. *Ibid.*, s. 77(3)(a).
[60]. PIA(n1), s. 77(3 (b)
[61].*Ibid.*, s. 77(3)(c)
[62]. *Ibid.*, s. 72(3).
[63]. *Ibid.*, s. 72(4).
[64]. *Ibid.*, s. 318.
[65]. PIA(n1), s. 73(1).
[66]. PA (n35), s. 2.
[67]. PIA(n1), s. 81(1).
[68]. *Ibid.*, s. 81(1) (a).
[69]. *Ibid*., s. 81(1) (b).

petroleum prospecting license or petroleum mining lease which can be economically developed in the opinion of the licensee or leasee after consideration of all relevant economic factors normally applied for the evaluation and development of crude oil, natural gas or condensate.[70] Under the old Petroleum Act,[71] discovery in commercial quantities was deemed if the minister upon the evidence adduced by the licensee, is satisfied that the licensee is capable of producing at least 10,000 barrels per day of crude oil from the licensed area.[72] It is observed that leaving what constitute commercial discovery "in the opinion of the licensee or leasee" under the current legal regime will give rise to speculations and corrupt practices;

ii. Must have satisfied the condition imposed on the license or the holder under the Act; and

iii. Must have received approval for the applicable Field Development Plan from the Commission.

A Petroleum Mining Lease is granted only to a company registered under the Nigeria Law[73] who has perfected all awarding processes under the Law[74] and where a prospective leases area contains petroleum field with suspended wells or continuing commercial production, where the corresponding petroleum mining lease has been revoked or has expired.[75] Where this is the case, such lease so granted may include an appraisal phase and the development and production of the field may include a work program's requirement to enhance ongoing production.[76]

A Petroleum Mining Lease granted empowers the leasee to win, work, carry away and dispose of crude oil, condensates and natural gas,[77] drill exploration and appraisal wells and carry out the related test production all on an exclusive basis[78] over the area with non exclusive right to carry out petroleum exploration operations.

The duration of a Petroleum Mining Lease granted under Section 81 of the Act shall be for a maximum period of 20 years, which term shall include the development period.[79] The development period shall be the period establishment under the Field Development Plan and where not stated,[80] shall be five years for an onshore lease,[81] and seven years for a lease in shallow water or deep offshore or a lease in a frontier acreage.[82] The area to which a Petroleum Mining Lease relates and derived from a Petroleum Prospecting License shall be proposed by the licensee based on one independent engineering report which shall not be binding on the Commission.[83] It is the Commission that approves the area[84] with powers to modify.[85] However, a Petroleum Mining Lease shall not consist of an area that is less than one parcel or where a parcel has been subdivided under section 69(5), less than one subdivision of such parcel.

A Petroleum Mining Lease for conducting upstream petroleum operation shall only be granted on the basis of a commitment from the applicable lease;[86] to develop and produce the commercial discovery of crude oil or natural gas in the area to which the lease relates in accordance with the Field Development Plan[87] or restart or continue petroleum production in the area to which such lease relates.[88] It is the duty of the Commission to verify the implementation of the work commitment by

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[70]. *Ibid.*, s. 3(8).
[71]. PA (n35).
[72]. *Ibid.*, 1st sched, Para 9.
[73]. PIA (n1), Ss.70(2), 81(2).
[74]. *Ibid.*, Ss. 81(2), 74.
[75]. *Ibid*., s. 81(2).
[76]. *Ibid*., s. 81(3).
[77]. *Ibid*., s. 70(1)(C)(i).
[78]. *Ibid*., s. 70(1)(C)(ii), s. 82(1)(2).
[79]. *Ibid*., s. 86(1).
[80]. *Ibid*., Ss. 86(4); 81 (2)(n).
[81]. *Ibid*., s. 86(4) (a).
[82]. *Ibid*., s. 86(4)(b).
[83]. *Ibid*., s. 81(6).
[84]. *Ibid*., s. 81(7).
[85]. *Ibid*., s. 81(8).
[86]. PIA(n1), s. 82(3).
[87].*Ibid*., s. 82(3)(a).
[88].*Ibid*., s. 82(3)(b).

lease, compliance with Field Development Plan,[89] monitor capital and operator costs[90] as well as ensure that upstream operations at all times are carried out to conform with the standards required by the Act and by any regulation made thereunder.[91]

Bidding Rounds under the Nigerian Petroleum Industry Act 2021

The Petroleum Industry Act[92] appears to present a bidding process hinged on an open, fair, transparent and competitive basis. Specifically, the Act provides that Petroleum Prospecting License or Petroleum Mining Lease shall only be granted based on a fair, transparent and competitive bidding process[93] and in compliance with the provisions of the Act, Regulation and licencing round guidelines issued by the Commission.

In the spirit of fairness and transparency, the Commission is required to periodically publish a licensing round plan.[94]However, the use of the word, 'may' in section 73(2) of the Act[95] tends to negates the idea of transparency as such duty to so publish is only discretionary and not compulsory. The above is subject to the option that individuals can compel the Commission to so act under the Freedom of Information Act.[96]The Minister has the power to grant a Petroleum Prospecting License and Petroleum Mining Lease to a winning bidder subject to the award procedures provided in section 74 of the Act provided that the winner has complied with the requirements of the bid invitation.[97]

Given that the Minister and the Commission are the two authorities involved in the granting or issuing of Petroleum Prospecting License and the Petroleum Mining Lease, upon recommendation by the Commission of a winning bidder, the Minister has 90 days to inform the Commission of his decision and where he fails to so inform within the stipulated 90 days of the application, the license or lease shall be deemed granted.[98]

Award Process and Bid Parameters

The grant of a Petroleum Prospecting License or a Petroleum Mining Lease in, under or upon the territory of Nigeria is by an open, transparent competitive and non-discriminatory bidding process to be conducted by the Commission.[99] The Commission calls for bids in accordance with the procedure published on its website and in at least two international financial newspapers and two national newspapers with wide coverage and circulation.[100] The Commission shall thereafter prescribe in a regulation or guideline, the minimum pre-qualification criteria of prospective bidders in terms of technical and financial requirement and previous experience.[101]The Act is applauded for placing importance on the technical and financial competence of bidders. This giant step will to a great extent reduce abandonment and increases reserves. Bidders' Work Plan Programs serves as a signpost to declare or showcase applicant's technical and financial viability to carry-out operations.

In order to further promote a fair, open, transparent, competitive and non-discriminatory bidding process, the Act recognizes an electronic bidding process which shall be open to the public and conducted in the presence of representatives of the Nigerian Extractive Industry Transparency Initiative, the Federal Ministry of Finances and the Federal Ministry of Petroleum Resources.[102]

The winning bidder is determined on the basis of certain bid parameters namely; a single bid parameter and a combination of bid parameters.[103] A single bid parameter consists of one of the

[89].*Ibid*., s. 82(4)(a).
[90].*Ibid*., s. 82(4)(b).
[91].*Ibid*., s. 82(4)(c)
[92]. *Ibid*.
[93]. *Ibid*., s. 73.
[94].*Ibid*., s. 73(2).
[95].*Ibid.*
[96]. FIA 2000.
[97]. PIA (n1), s. 73(3).
[98] . PIA (n1), s. 73(4).
[99]. *Ibid*., s. 74(1).
[100]. *Ibid*., s. 74(5).
[101]. *Ibid*., s. 74(6).
[102]. *Ibid*., s. 74(7).
[103]. *Ibid*., s. 74(2).

following parameters,[104] that is, a signature bonus to be paid in full prior to the granting of the license or lease by or on behalf of the winning bidder,[105]and a royalty interest.[106]Others are a profit split or profit oil split,[107] a work programme commitment during the initial exploration period,[108] or any other parameter as may be defined specific to a bid round.[109] A combination bid parameter consists of a combination of various bid parameters identified above and it is based on a points system assessable by the bidder so that the bidder with the highest aggregate number of points becomes the winning bidder.[110]

An exception to the above may arise where there exists a bilateral or multilateral agreement between Nigeria and another country. In such a situation, instead of following through the process, the Government may, for strategic purpose and for other benefits, direct the Commission to negotiate and award a Petroleum Prospecting Licence or Petroleum Mining Lease to a qualified investor identified in the agreement or treaty.[111]Such investor was not part of the bidding process. This exception appears to negate the principle of a fair, transparent and open bidding process anticipated under the Act.

The inclusion of a signature bonus as a parameter in the award process appears to be capable of operating as a breeding ground for corruption amongst the issuing authorities and personnel involved in the bidding/licensing process. To be sure, the Act defines signature bonus to mean a payment made to government with respect to the Petroleum Prospecting License or Petroleum Mining Lease. Therefore, since it is a payment whose sum is at the discretion of the issuing authorities, it is capable of breeding corruption.

Equally, while this paper applauds the Act for introducing an electronic bidding system, it is observed that the success of such electronic process is dependent on a system that promotes online data security, diminishes cyber-crime and promotes the independence and transparency of the regulatory authorities. This way, there will be complete confidence in the online bidding system.

Licensing Round Guidelines and Models

Licensing round guidelines means guidelines that are established by the Commission to govern the process of issuing licenses and leases during a licensing round.[112] A typical licensing round guidelines shall be accompanied with the model license for the Petroleum Prospecting License or model lease for the Petroleum Mining Lease for a bid round.[113] Each licensing round guidelines shall include the license or lease acreages, the term and minimum work obligations,[114] requirements to be fulfilled by the holders and the pre-qualification criteria, as the case maybe,[115] and a bid parameter.[116]Others are a list of documents required and criteria for the evaluation of technical capacity, financial competence and legal status of the interested parties,[117] and details and cost for the inquisition of relevant data and studies.[118]The PIA is commended for the comprehensive outline and guidelines of a typical licensing round. It is the duty of the Commission therefore to establish same as none none has been put in place.

Model license is a Standard Petroleum Prospecting License with terms and conditions adopted for a specific licensing round and may contain contractual provisions in a model contract attached to or incorporated in the model license.[119] A model lease carries same meaning as model license but it is

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[104]. *Ibid*., s. 74(2)(a).
[105]. PIA (n1), s. 74(2)(a)(i).
[106]. *Ibid*., s. 74(2) (a) (ii).
[107]. *Ibid*., s. 74(2) (a) (iii).
[108]. *Ibid*., s. 74(2) (a) (iv).
[109]. *Ibid*., s. 74(2) (a) (v).
[110].*Ibid*., s. 74(2) (b).
[111]. *Ibid*., s. 74(3).
[112]. PIA (n1), s. 318.
[113].*Ibid*., s. 75.
[114].*Ibid*., s. 75(a).
[115].*Ibid*., s. 75 (b).
[116].*Ibid*., s. 75(c).
[117].*Ibid*., s. 75(d).
[118].*Ibid*., s. 75(e).
[119].*Ibid*., s. 318.

typical to a Petroleum Mining Lease.[120] Such model contract to be developed by the Commission shall contain an obligation to comply with fiscal obligations and other provisions related to fees, rates, royalties for such contract attached to or incorporated in the model license or model lease[121]A typical model license or lease may contain a Production Sharing Contract for the exploration, development or production of petroleum,[122] or a Profit Sharing Contract which is a production sharing contract for sharing of profit oil by government.[123] Others may include a Risk Service Contract for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall cover costs by a payment in cash or in oil,[124] a Concession Agreement for exploration based on all incorporated or unincorporated joint venture with Nigerian National Petroleum Company Limited[125] and any other contract outside the above or an internationally recognized form of contract for the exploration and production of petroleum.[126]

A model license or model lease for each bid round shall reflect the conditions of the licensing round guidelines for the bid round and shall in all circumstances include a description of the acreage,[127] term of the license or lease,[128]and a minimum work programme. Others are minimum level of investment,[129] details of guarantees,[130] and details of obligations regarding relinquishment, decommissioning and abandonment.[131] Finally, it shall state the rules for the resolution of disputes including arbitration mediation, conciliation or expert determination,[132] applicable sanctions for failure by licensee or leasee to comply with the terms and condition of the grant[133] and such other relevant clauses.[134]

This provision is a laudable innovation under the new Act as it evidenced a contractual document between the Commission and the licensee or leasee.

Oil and Gas Licensing in the UK

The principal legislation governing exploration and production of crude oil, gas and shale gas in the UK is the Petroleum Act.[135] The Act governs all oil and gas production in the UK.[136] It underpins a regime whereby licences are granted by the Oil and Gas Authority[137] (and by the Welch Ministers, for onshore oil and gas in Wales, and the Scottish Ministers for onshore oil and gas in Scotland) to persons to search, and bore for and get petroleum.[138]

The UK Petroleum Act vestsall rights to petroleum in the Crown[139] but permits the OGA to grant licences to search and bore for and get petroleum to persons deemed fit.[140] Under the UK Act, exploration for and production of petroleum in the UK can only be undertaken under the terms of these licenses.[141] Therefore, a company wishing to participate in the UK upstream oil and gas sector must bid for a license or acquire an interest in existing assets with any acquisition being subject to regulatory consents.[142] OGA is the licensing/issuing authority subject to competitive licensing rounds

[120].*Ibid*.
[121]. *Ibid*., s. 85(1).
[122]. *Ibid*., s. 85(2)(a).
[123].*Ibid*., s. 85(2)(b).
[124]. PIA (n1), s. 85(2)(c).
[125].*Ibid*., s. 85(2)(d).
[126].*Ibid*., s. 85(2)(e).
[127].*Ibid*., s. 76(a).
[128].*Ibid*., s. 76(b).
[129].*Ibid*., s. 76(c).
[130].*Ibid*., s. 76(d).
[131].*Ibid*., s. 76(e).
[132].*Ibid*., s. 76(f).
[133].*Ibid*., s. 76(g).
[134].*Ibid*., s. 76(h).
[135]..UK Petroleum Act 1988 (as amended) (The Petroleum Act) ;The Petroleum Licensing (Application) Regulation 2015; The Petroleum Act is supplemented by the Energy Act 2016, the Infrastructure Act 2015, and other Regulations.
[136]. Other than onshore in Northern Ireland.
[137]. OGA.
[138]. 'The Law Reviews' <https://thelawreviews.co.uk> accessed 12/01/2022.
[139].*Ibid*; UK PA(n135), s. 3(1).
[140]. UK PA (n135), s. 2 states that the Majesty has the exclusive right of searching and looking for and getting petroleum.
[141]. (n135).
[142].*Ibid*.

that are carried out annually. Separate rounds are held for each license. However, in exceptional cases, where there are compelling reasons provided by a company, the OGA may issue a license outside of a licensing round. This position is akin to the Nigerian position wherein the Government can direct a licence can be issued outside the bidding round where Nigeria has a bilateral or multilateral agreement with any other country.

Licenses take the form of a deed, pursuant to which the terms and conditions of the licence are prescribed is a series of model clauses which are set out in the Regulations[143] made pursuant to the Petroleum Act.

The various types of licenses currently being issued under the UK regime are;

a. Seaward Production Licence: this is a license to search and bore for and set petroleum seaward area.[144] It is the principal offshore production license and has a duration of three successive periods or terms. The first period concerns with exploration, the second concerns with development and the third with production.[145] As a contractual deed, the applicant must have satisfied this relevant work programe with OGA before transiting from one term to the other. Each production license requires payment of an annual fee called rental charged on escalating basis for each square kilometer covered by the license. The appropriate fee for a license application is 2,100pounds.[146]

b. Landward Production License: This is a licene to search for petroleum in a landward area.[147] Landward area means an area which lies on the landward side of the lines drawn in accordance with schedule and no part of which shall include Northern Ireland.[148] It is the onshore equivalent of Seaward Production Licenses.[149]

c. Offshore Innovate: This license offers greater flexibility during the first and second term as applicant has the discretion to propose durations.[150] However, its inflexibility is seen as applicant do not have to demonstrate specialized skill and financial viability as condition precedent for issuance but are required to so prove with the first two years of grant. This license replaced the traditional, promote and frontier versions of the Seaward Production License.[151]

d. Exploration licence: This is a non-exclusive license and covers the UK's entire offshore area subject to areas covered by effective production licenses. The application is lower since applicants are either seismic contractors or organizations who only gather data to sell and not interested in exploration of oil and gas or initial holders of a production license who wish to extend operations beyond their exclusive right area. Under the Regulations, the consideration for an application for a Landward Petroleum Exploration License and Seaward Petroleum Exploration License is E500 each.[152] The OGA is the granting authority for both seaward and landward exploration licenses.

Holders of exploration license may explore for petroleum but cannot extract it. It carries out siesmic surveys and drills wells for core-sampling to a maximum depth of 350 meters below the seabed.[153]

Model Clauses and Bidding Rounds under the UK Legal Regime

Under the UK legal regime, a model clauses set out detailed terms and conditions binding the license in a deed form as prescribed or set out in secondary legislation under the Petroleum Act. Each model clause applies to a particular license provided they are in force at the time the licence was granted and are not affected by subsequent sets of model clauses, except they are subject to any specified retrospective modalities. The Petroleum Licensing (Applications) Regulations[154] provides that a model clauses in relation to a license means the model clauses prescribed under section 4(1)(e) of the

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143. Referring to the Petroleum Licensing (Applications) Regulations(n135).
144. *Ibid.*, reg. 2.
145. UK PA (n135).
146. Petroleum Licensing (Applications) Regulations (n135), reg. 7(e).
147. *Ibid.*, reg. 2.
148. *Ibid.*
149. (n138).
150. *Ibid.*
151. *Ibid.*
152. Petroleum Licensing (Applications) Regulations(n135), reg. 7(a) and (b).
153. (n138).
154. Petroleum Licensing (Applications) Regulations(n135).

Petroleum Act to be incorporated in licences of that type.[155] The said section 4(1)(e) provides that the appropriate authority shall make regulation prescribing model clauses which shall, unless the appropriate authority thinks fit to modify or exclude them in any particular case, be incorporated in any such license.It is therefore compulsory for every licence to incorporate the model clauses prescribed for that type of license at the time the licence is issued, unless the Secretary of State thinks fit to modify or exclude them in any form.[156]

Finally, UK licensing regime wears both contractual and regulatory status. As a contact, the UK licence is executed as a deed and provides for the contractual transfer of rights from the Crown to the licencee.[157] As per regulatory, the model clause are encompassed in statutory-regulations and Parliament may unilaterally amend the terms upon which a licence is granted. Legally, only one license exists, although a license may be granted to one or more licencees who will be held jointly and severally liable in respect of obligations arising under the licence.[158]

Also, it is germane to state that legal characteristic of such licences has been an open question. If petroleum licences are a statutory instrument, they would be subject to principles of public and administrative law. Whereas, if deemed to be a creation of private law, petroleum licences would be governed by the law of contract. In *R (Benjamin Dean) v the Secretary of State for Business, Energy and Industrial Strategy,*[159] a petroleum license had been granted for the exploitation for and production of coal bed methane. Subsequently, it was realized that greater potential laid in the exploitation of shale gas. The claimant sought to use argumentsrelating to the legal characteristics of a petroleum license. The claimant argued that by entering into a deed of variation to alter the length of the initial term, the Secretary of State had acted *ultravires*. It was submitted that the 1998 Act is a complete statutory code governing licenses and contains no powers to vary an executed licence. In response, the Secretary of State submitted that the licence was contractual in nature and, therefore, capable of being varied by further agreement between the parties. The Court held the following;

i. Petroleum licences need the English Law requirements of a contract namely, an offer (by the Secretary of State as grantor), an acceptance (by the licencee), good consideration and the intention to create legal relations. The licence therefore is a contract, and capable of being varied. Variation must be by mutual agreement.
ii. Petroleum licences lack certain traditional public law features. For example, there is no right of appeal regarding their terms. Compare this to a planning license: once granted, the only recourse is if the licencee is dissatisfied in an administrative or court appeal. Planning licence amendments do not need to be by agreement but can be made unilaterally.
iii. A petroleum licence gives the licencee a right to own production, and then sell it to third parties. These are private law rights and, accordingly, should be governed by private law.

Gordon have opined that the flexibility of the UK licencing regime presents an easy way for amendment of petroleum legislation, that is, preventing statutory amendment which may require years to complete.[160] This paper totally agrees with this submission adding that its contractual nature also gives room for discretion.

The Petroleum Licensing (Application) Regulations[161] contains the application process for licenses which bidding rounds are conducted annually. All applications must be made in the prescribed form and for specific area. The Secretary of State who heads the OGA will only grant a licence to an applicant that has the appropriate technical and financial capacity to contribute to OGA strategy.[162] The OGA considers all applications on an individual basis, and companies must meet certain criteria

[155].*Ibid*., reg. 2.
[156].*Ibid*., reg. 8.
[157]. (n138).
[158].*Ibid.*
[159]. (2017) EWCH 1998.
[160]. G.W. 'Gordon, Petroleum Licencing' in G. Gordon and J. Paterson (eds), *Oil and Gas Law: Current Practice and Emerging Trends* (Duudee University Press, 2007) 27-68.
[161]. (n138).
[162]. (n138).

including stating their incorporation details, technical competence, financial viability and tax considerations.[163]

The UK licensing regime therefore presents a flexible regime where terms and condition can be varied without going through the vigorous processes of statutory amendment. The statutory nature of this regime equally gives room for flexibility and made it tailored-made and not categorized as the Minister can device any clause and making it not a straight ticketed process.

Revocation of Licence or Lease under the PIA

TheAct[164] provides that upon the recommendation of the Commission for revocation, the Minister may revoke a Petroleum Exploration Licence, Petroleum Prospecting Licence, and Petroleum Mining Lease on the following grounds;[165] that is, where a licencee or lease fails to comply with good international petroleum industry practices, the Act or any other law;[166] interrupts production for a period of over 180 consecutive days without justification or as or as provided for in the applicable licence, lease or approved development plan, provided that an event of *forcemajeure* shall be an acceptable justification for interruption;[167] fails to fulfil the terms and conditions of the applicable licence or lease or development plan;[168] fails to pay to Government, as they become due, rents, royalties, taxes, or other payments or production shares under the Act.[169]

Other grounds are failure to furnish any reports or data on operations as required by law;[170] assigns novates or otherwise transfers any interest in the applicable licence or lease other than in accordance with section 95 of this Act;[171] has obtained an interest in the applicable licence or lease by false representation or contrary to corrupt practices and money laundering laws;[172] is declared by a court of competent jurisdiction to be insolvent, bankrupt or is liquidated in each case, except as part of a solvent plan or scheme of re-organisation, amalgamation or arrangement.[173]

Finally, where he fails to comply with environmental obligations under the law, licence or lease;[174] is owned wholly or in part, directly or indirectly or is controlled by a former or serving public official or member of the Government, who obtained his interest in the applicable licence or lease other than as permitted by applicable law;[175] where the applicable licence or lease does not submit and advance a field development plan and work commitment;[176] fails to abide by any expert determination, arbitration award or judgment arising from the dispute resolution provisions set forth in a licence, lease or this Act;[177] fails to comply with domestic crude oil supply or domestic gas delivery obligations[178] or fails to comply with the host communities obligations under this Act.[179]

For the revocation of a PPL or PML under Section 96(1), the Commission is under obligation to serve a notice of default on the affected licensee or lease stating the grounds for such recommendation to the Minister. The Commission shall equally provide the licensee or leasee with a remediation period of not less than 60 days within which to remedy such default. Where the licence or lease to be revoked is shared by two or more persons, a defaulting holder and a non-defaulting holder, and the revocation

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163. *Ibid.*
164. PIA(n1).
165. *Ibid*., s. 96(1).
166. *Ibid*., s. 96(1)(a).
167. *Ibid*., s. 96(1)(b).
168. *Ibid*., s. 96(1)(c).
169. *Ibid*., s. 96(1)(d).
170. *Ibid*., s. 96(1)(e).
171. Ibid., s. 96(1)(f).
172. *Ibid*., s. 96(1)(g).
173. *Ibid*., s. 96(1)(h).
174. *Ibid.*, s. 96(1)(i).
175. *Ibid*., s. 96(1)(j). By section 96(2), this is only applicable when such public official or member of Government obtained such interest while in office or was a member of Government.
176. *Ibid*., s. 96(1)(k).
177. *Ibid*., s. 96(1)(l).
178. *Ibid*., s. 96(1)(m).
179. *Ibid*., s. 96(1)(n).

affects a defaulting holder, only the interest of a defaulting holder shall be revoked and shall not revoke the interests of the non-defaulting holder(s).

Finally, from the above provisions, it is clear that grounds for revocation of licence or lease are statutory in nature. Therefore, the Minister cannot exercise his right of revocation outside the letters of the Act.[180] In *Federal Government of Nigeria v Zebra Energy Limited,*[181]the Supreme Court held that when a matter is clearly spelt out in a statute and procedure for carrying out such duty is laid down, a party has no choice but to comply with the provisions of the statute.

Conclusion

So far, this paper examined the Nigerian and UK licensing regimes. In Nigeria, the plurality of granting authorities between the Minister and the Commission is bound to cause regulatory overlap notwithstanding the checks and balances intended. Leaving the meaning of what constitute commercial discovery at the opinion of the licencee or leasee is bound to breed corruption and speculation. The above nonetheless, the PIA has recorded huge improvements in the area of licensing; there is checks and balances between granting authorities, introduction of model clause helps to reflect current reality to be incorporated into the licence without amending the Act, the submission of Field Development Programme as a prerequisite for granting diminishes the environmental issues associated with decommissioning and abandonment under the old regime. This again shows the technical and financial viability of the applicant. The PIA equally demarcates the upstream, midstream and downstream activities and gives adequate attention to gas. It thus appears that the PIA, like the UK regime, presents a fairly attractive licensing regime which is tailored towards achieving the objectives of the Act even though the new PIA is perceived as a work in progress.

Recommendations

Based on the above findings, this paper proffers the following recommendations:

1. Thepluralityin the granting powers between the Minister of Petroleum Resources and the Nigerian Upstream Petroleum Regulatory Commission is capable of giving rise to administrative conflict or overlap. Therefore, it is recommended that a clear-cut role should be assigned to both the Minister and the Commission to forestall granting conflict.
2. Section 318 of the Petroleum Industry Act should be amended to specifically state what *quantum* of barrel constitutes commercial discovery for the purpose of granting the Petroleum Mining Lease as it were under the old Petroleum Act. This is so as leaving what constitute commercial discovery in the opinion of the licencee or leasee under the current Act is capable of breeding speculations and corrupt practices.
3. Government through the granting authorities should introduce a system that guarantees online data security, access to regular power supply, diminishes cyber-crime and encourages independence of the regulatory institutions for a successful electronic licencing bidding process in Nigeria.
4. The Nigerian Upstream Petroleum Regulatory Commission is empowered to make regulations publishing the rates of fees payable in respect application for Petroleum Prospecting Licence and application for a renewal of Petroleum Mining Lease. It is therefore recommended that the Commission should make haste to make such regulation as the continued absence of such regulation may hamper a successful licencing process in the industry.
5. The Petroleum Industry Act should be amended to expunge the provisions granting exceptions for gas flaring by marginal field operators. This amendment is apposite as such exception is capable of opening the floodgates for gas flaring which is hazardous to man and the entire ecosystem.
6. The Petroleum Industry Act should be amended to provide for stricter penalties in place of payment of fines for those who flare gas.

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[180]. *Oil and Gas Nigeria Limited v Ministry of Petroleum Resources,* Suit No. FHC/CS/481/2000 Unreported.

[181]. (2002) 18 NWLR (Pt 798) 162.