

LEGAL, REGULATORY & COMMERCIAL FRAMEWORK OF THE NIGERIAN OIL & GAS INDUSTRY



by:

Tolulope Aderemi



Outline

- The Evolution of the Nigerian Petroleum Industry
- Legal and Regulatory framework of the Petroleum Industry
- The legal framework for ownership and control in the industry
- The Industry's Operations Arrangements
 - ✓ Joint Venture
 - ✓ Production Sharing Contracts (PSCs)
 - ✓ Concessions
- Negotiating a PSC
- Questions and Answers

The Evolution of the Nigerian Petroleum Industry

- 1937 - The entry of the Royal Dutch Shell consortium; known as Shell D'Arcy
- 1946 - full operations commenced with the emergence of Shell BP (a merger of Shell D'Arcy and British Petroleum)
- 1956 - crude oil was first struck at Oloibiri village in Bayelsa State Nigeria
- 1958 - Nigeria became an 'oil producing State' (when it produced her first 5,100bpd).

The Evolution of the Nigerian Petroleum Industry (contd.)

- 1970 - Nigeria reaped the reward of rise in oil prices
- 1971 - Nigeria joined the Organization of Petroleum Exporting Companies (OPEC)
- 1977 - Nigeria established the Nigerian National Petroleum Corporation (NNPC)
- Today, Nigeria's reserve base is estimated at 25 billion barrels and is ranked the 6th largest crude oil producer in the world.

From 1973 – 2002, the following agreements were signed:

- First Participation Agreement (Federal Government acquires 35% shares in the Oil Companies; Ashland started PSC with then NNOC (NNPC))
- Second Participation Agreement (Federal Government increases equity to 55%)
- Third Participation Agreement (through NNPC, Federal Government increases equity to 60%)
- Fourth Participation Agreement

From 1973 – 2002, the following agreements were signed:

- Fifth Participation Agreement (NNPC: 60%, Shell: 30%, Elf : 5%, Agip: 5%)
- Sixth Participation Agreement (NNPC: 55%, Shell: 30%, Elf: 10%, Agip: 5%)
- Agreement consolidating NNPC/Shell Joint Venture
- Signing of Memorandum of Understanding & Joint Venture Operating Agreement (JOA)

From 1973 – 2002, the following agreements were signed:

- NPDC/NAOC Service Contract
- Production Sharing Contracts signed –SNEPCO
 - ✓ 2002 Liberalisation of the downstream oil sector and NNPC commenced retail outlet scheme

Legal and Regulatory Framework of the Petroleum Industry -

Upstream Sector (Deepwater)

- The Nigerian Petroleum Act 1969 (repealed Minerals Oils Act 1914)
- The Deep Offshore & Inland Basin Production Sharing Contract
- Petroleum Profit Tax Act
- Production Sharing Contracts
- National Oil Spill Detection And Response Agency Act, 2011

Legal and Regulatory Framework of the Petroleum Industry (contd.)

Downstream Sector

- Petroleum Act 1969
- Petroleum Production and Distribution (Anti Sabotage) Act. Cap P.12 LFN 2004
- Companies Income Tax Act Cap C 21, LFN 2004;
- Associated Gas Re-Injection ACT, CAP 20, LFN 2004
- Nigerian Oil And Gas Industry Content Development Act, 2010

Legal and Regulatory Framework of the Petroleum Industry (contd.) – Major Agencies

- Ministry of Petroleum Resources (MPR)
- Department of Petroleum Resources (DPR)
- Nigerian Content Development and Monitoring Board (NCDMB)
- National Oil Spill Detection And Response Agency (NOSDRA)
- National Petroleum Investment Management Services (NAPIMS)
- Petroleum Products Pricing Regulatory Agency (PPPRA)
- Nigerian Content Division (NCD)
- Federal Inland Revenue Service

The legal framework for ownership and control in the industry

- Section 44 (3) of 1999 Constitution (vests ownership in government).
- Section 2 of Petroleum Act 1969 (Minister's powers to grant licenses & leases).
- Article 14 of the 1st Schedule to the Petroleum Act (assignment of interest/Ministerial consent).
- Sec 7 (FHC Act), Sec 251(1)(n) of the Constitution (vests jurisdiction in the FHC);

The Industry's Operations Arrangements

➤ Joint Venture (Proprietary Interest)

- ✓ *Co ownership of license*
- ✓ *Shared capital*
- ✓ *Shared reward*
- ✓ *Joint funding obligations*
- ✓ *Split risk and liability*
- ✓ *Separate tax liabilities*

The Industry's Operations Arrangements

➤ Production Sharing Contracts (Economic Interest):

- ✓ *Sole risk*
- ✓ *Production split*
- ✓ *Asset finance*
- ✓ *Joint tax liabilities*

Comparison between a JV and a PSC

S/N	Traditional Joint Venture	Production Sharing Contract (“PSC”)
1.	IOCs were initially 100% concessionaire and NNPC ‘farmed’ into the JVs as co-venturers.	Both NNPC and IOCs started off as ‘co-venturers with no pre-existing interest held by the IOC.
2.	Both parties to the JV structure have undivided interests in the concession, assets and liabilities of the venture ‘only to the extent of their respective participatory interests’ pursuant to the JOA or any participation agreement. (Note: Undivided interest means one party’s interest in a property is not separable from the other party’s interest)	The title under a PSC is 100% owned by the NNPC. What the IOCs enjoy under this arrangement is a participatory right in the crude oil won and saved. Proprietary interest resides at all times in the NNPC.
3.	Cash-call obligations are borne in the ratio of the parties’ respective equitable interests as contained in the JOA.	The IOCs bear all the risks and expenses at the initial stage but get reimbursed through the allocation of ‘cost oil’.
4.	Both parties share the assets and liabilities in the proportion of their holding interests.	The IOC gets reimbursed 100% and enjoys profit oil. If there is however a ‘nil-production’ situation, the IOC gets nothing and the NNPC does not incur any financial loss.



The Industry's Operations Arrangements

➤ Concessions

- ✓ *Licensee has exclusive right to explore (concession areas)*
- ✓ *Right over produced petroleum*
- ✓ *Term usually a lease or license of 20 years*
- ✓ *State ownership of petroleum in situ*
- ✓ *Higher taxes and rates*

Licences, Leases and Terms

➤ Oil Exploration Licenses (OELs)

- ✓ *Licensee has no exclusive right over the area.*
- ✓ *Carries out aerial and surface geological surveys excluding drilling below 300 feet.*
- ✓ *Duration of OEL is 1 (one) year with an option to renew for another 1 (one) year.*

Licences, Leases and Terms

➤ Oil Prospecting License (OPLs)

- ✓ *Licensee has exclusive right to conduct all operations*
- ✓ *No restriction on the depth of drilling*
- ✓ *License is for a term not exceeding 5 (five) years inclusive of renewal period for land and territorial waters, and 7 (seven) years for continental shelf areas*
- ✓ *An OPL is converted to an OML upon satisfactory evidence that the holder can produce 10,000 barrels per day (commercial quantity). Application for conversion is made by NNPC/Concessionaire*

Licences, Leases and Terms

➤ Oil Mining License (OPLs)

- ✓ *Typically granted to the holder of Oil Prospecting license.*
- ✓ *Holder of OML carries out same operations under the OPL.*
- ✓ *Duration is 20 (twenty) years renewable for another term but in accordance with the Act.*

Features of a Production Sharing Arrangement

- Contractor is not a co owner of the license or lease
- Contractor finances all stages of exploration & production
- Contractor bears all the risk of exploration
- Contractor finances all capital assets to be used for exploration
- Contractor prepares the Books of Account
- NNPC pays tax on behalf of both parties

Features of a Production Sharing Arrangement

- Contractor prepares the Work Programme/Budget for approval by **MaCom**
- Contractor recovers all its cost (100%) via Cost Oil
- Contractor takes Profit Oil of 80% and NNPC takes 20%
- Today, the Contractor enjoys the benefit of ITC/CA
- NNPC is the license holder

Features of a Production Sharing Arrangement

- NNPC repays 'cost of asset' through Cost Oil
- NNPC splits all incentives on the agreed profit ratio
- NNPC pays tax on behalf of both parties

Provisions of a Production Sharing Contract

CLAUSES	CONTENT
Clause 1	Definitions
Clause 2	Scope
Clause 3	Term
Clause 4	Exclusion of Areas
Clause 5	Work Program and Expenditures
Clause 6	Management Committee
Clause 7	Rights and Obligations of the Parties
Clause 8	Recovery of Operating Costs and Crude Oil Allocation
Clause 9	Valuation of Available Crude Oil
Clause 10	Payments
Clause 11	Title to Equipment
Clause 12	Employment and Training of Nigerian Personnel
Clause 13	Books and Accounts, Audits and-Overhead Charges
Clause 14	Bonuses
Clause 15	Royalty and Taxes,
Clause 16	Insurance
Clause 17	Confidentiality and Public Announcements
Clause 18	Force Majeure
Clause 19	Laws and Regulations
Clause 20	Utilization of Natural Gas
Clause 21	Consultation and Arbitration
Clause 22	Effectiveness
Clause 23	Notices
	Annexures



Negotiating a Production Sharing Contract

- Scope
- Term
- MaCom (Clause Six)
- Rights & Obligations of Parties (Clause 7)
- Recovery of operating Clause (Clause 8)
- Valuation of Available Crude Oil (Clause 9)
- Title to equipment (Clause 11)
- Books & Accounts (Clause 13)
- Royalties & Taxes
- Employment & Training of Nigerian Personnel
- Utilization of Natural Gas
- Laws & Regulation (Clause 19: Stabilization)
- Consultation & Arbitration

Brief Profile



Tolulope Aderemi

graduated from University of Ibadan (LL.B), the Nigerian Law School (B.L) and the prestigious University of Aberdeen, Scotland (Post Graduate Degree in Oil & Gas Law (Masters).

He was elevated to Partner in July 2014 and now heads the Firm's Energy & Infrastructure Group. With an enviable depth of experience in the Energy & Infrastructure Sector, Tolulope recently led an investment team to a north-African country for the acquisition of oil blocs.

He is also currently advising the Ministry of Power and key stakeholders in the Nigerian Power Sector on the recent privatisation of power Assets.

Tolulope likes to play lawn tennis and golf and is happily married with children.



