



OIL MINING LEASE (OML): AN EXAMINATION OF THE RIGHTS OF HOLDERS IN NIGERIA'S OIL AND GAS INDUSTRY

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ABSTRACT

Petroleum and petroleum resources play a significant role in the Nigerian economy. Hence the saying that Nigerian economy is oil based economy. Nigeria is one of the largest oil endowed and exporter of petroleum in Africa. For any person to have the right to explore or prospect or carry on any petroleum exploration activity, he has to acquire one of the instruments of authorisation, otherwise the activity is an offence and punishable by law. One of such instrument is the oil mining lease which confers on the lessee the exclusive right within the leased area to conduct exploration and prospecting operations and to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the leased area. This paper has considered in detail, mining lease, procedure of obtaining a mining licence and the rights that flow with the acquisition of an oil mining lease.

INTRODUCTION

The oil and gas industry has been the major source of foreign exchange for Nigeria. In fact, it is widely held belief that Nigerian economy is oil based.

There is no doubt then, that the oil and gas industry is one of the most highly regulated sectors of the Nigerian economy. Part of the regulations of the activities of investors especially in the upstream sector of the oil and gas industry is the grant of leases under the Petroleum Act, 2004.

In this paper, matters like meaning of lease, requirements for the grant of mining lease, the rights that flows with the grant of mining lease in Nigeria among others, are x-rayed and analysed.

DEFINATION OF TERMS

PETROLEUM

The term "Petroleum" has been variously defined in descriptive ways and in terms of components. The Petroleum Act has defined as

Means mineral oil (or any related hydrocarbon) or natural gas as it exists in the natural state in strata and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.¹

The approach of the draftsmen in defining petroleum is to briefly state what it includes and what it does not include. The definition is more or less a description of what falls under the Petroleum based on the contemplation of the Act, rather than giving a lucid definition as to what petroleum means.

Many authors attempted to offer a definition of what petroleum is. However, there is no universally accepted definition of petroleum. An author defines petroleum "as mineral oil that forms beneath the ground or the sea."² The statutory definition of petroleum under the Act, appears to harbour the contemplation that crude oil and natural gas share jointly and severally in the concept of petroleum in so far as they remained in their natural state in strata. By this, it means that it is seemingly the case, that the extraction of any of the two natural resources from its natural state in strata, affects the character thereof as petroleum.³

MINING

The Act did not provide a definition of the term mining as it relates to petroleum. However, mining has been defined by the English Advanced Learners' Dictionary to mean 'the activity of removing solid valuables from the earth or any extractive activity'.

LEASE

Lease has also been defined by the Advanced Learners Dictionary of English as to operate or live in a property or land through purchasing a long-term contract (or leasehold) from the owner. For the purpose of Petroleum activity, it is inferred from the Act that, a lease is the right which the government of the Federation through the Minister grants to a lessee to carry out exploration and prospecting activities on an area stipulated (leased area) or any part thereof and to win, get, work, store, transport, export etc petroleum products pursuant to the activity while paying rent and royalties to the government.

¹ See S. 15 of the Petroleum Act

² Hornbe, A. S., *Oxford Advanced Learners, Dictionary of Current English* (5th Edn.), Crowther J., et. al. (ed.), (Oxford: University Press 1995) p.865

³ Patrick Nubisi Oche, *Petroleum Law In Nigeria, Arrangement For Upstream Operations*, (Jimmy Litho Press, Jos 2004)12

OIL MINING LEASE

An oil mining lease is one of the three instruments of authorisation for oil exploration, prospecting and other oil related activities in Nigeria. It is an offence attracting sanctions for any person or body to carry out oil exploration activity on the Nigerian soil or within the continental shelf of Nigeria, except with the grant of the instruments of authorisation.⁴

An oil mining lease vests in the lessee the exclusive right within the leased area to conduct exploration and prospecting operations and to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the leased area.⁵

By the provision of the Petroleum Act, an oil mining lease is only granted to a holder of an oil prospecting license who must have among other things discovered oil in a commercial quantity. The minimum quantity that may be regarded as commercial quantity is 10,000 barrel per day. The Minister is base his satisfaction base on the evidence adduced by the holder of the oil prospecting license. An oil mining lease is granted for the period of 20 years which renewal for another period. A holder of oil mining lease that wish to have his lease renewed has to make an application to that effect at least 12 months before the expiration of the early lease granted. The renewal may be for the whole area leased or for any area thereof.⁶

FORMAL REQUIREMENT FOR ACQUISITION OF A MINING LEASE IN NIGERIA

The formal requirement for the acquisition of any of the instruments of authorisation prescribed under S2(1) of the Petroleum Act, Amended, are specified in Regulation 1 of the Petroleum (Drilling and Production) Regulations.⁷The first requirement is that of a written application made to the Minister. The application is required to be made on the appropriate form as set out in the schedule to the Drilling and Production Regulations. There is also the requirement that every application shall be accompanied by:

1. The prescribed, non-refundable, pay as set out under Part VI of the Drilling and Production Regulations.
2. The copies of map on a scale specified by the Director of Petroleum Resources upon which is delineated in red the boundaries of the are in respect of which the application is made.

⁴ See S. 2 of the Petroleum Act

⁵ Ibid

⁶ See 8-13 of the First Schedule to the Petroleum Act.

⁷ Made pursuant to S. 9 of the Petroleum Act, As Amended

3. An adequate survey description of the boundaries of that area (at least one boundary corner being tied to official survey beacon, or existing survey mark which is itself previously tied to an official survey grid), or where the area has been blocked out or delineated and described by or on behalf of the Minister, a reference to the identification used by him or on his behalf.
4. Evidence of the financial status and technical competence of the applicant
5. Details of the work which the applicant is prepared to undertake or a programme for carrying out any minimum working obligation imposed.
6. Details of the annual expenditure which the applicant is prepared to make on each area applied for
7. The data on which he is prepared to begin operation after the grant of the oil exploration license, oil prospecting license or oil mining lease to which the application relates.
8. Details of a specific scheme for the recruitment and training of Nigerians
9. Evidence of the applicant's ability to market any petroleum produced
10. Annual report in respect of the applicant's oil exploration activities and production activities in the preceding three years; and
11. Any other information which the Minister may call for by notice in the Federal Gazette or otherwise.

The above items have the impression of being the minimum qualification an applicant must possess and same attached with his application. Another require apart from the above items, is the Director of Petroleum Resources may require further evidence.⁸

RIGHTS THAT FLOW WITH THE GRANT OF AN OIL MINING LEASE

An applicant for an oil mining lease holding oil prospecting license at the time after satisfying the requirements imposed by law for the grant of an oil mining lease, may have his application granted by the Minister. As soon as an oil mining lease is granted, the lessee has some rights or powers which flow from the grant or acquisition of the an oil mining license. It is worthy of note, that most of the rights are not absolute as the Minister still has stake in the activities of the lessee. Some of these rights are contained in Paragraph 11 First Schedule of the Petroleum Act as follows:

1. RIGHT TO CONDUCT EXPLORATION OPERATION

Holder of an oil mining lease has all the rights and powers accruable to a holder of an oil exploration license. He has all the rights to enter on and

⁸ Patrick Ndubisi Oche, Loc. Cit at 69

into the leased area and to conduct all exploration activities in and on the leased area. To “explore” in relation to petroleum means to make a preliminary search by way of geological or geophysical methods, including aerial surveys but excluding drilling below 91.44 metres⁹.

2. RIGHT TO CONDUCT PROSPECTING OPERATION

A holder of an oil prospecting licence has the right to prospect for oil. By the provision of S. 15 (1) of the Petroleum Act, “prospect” in relation to petroleum means the search for petroleum by all geological and geophysics methods, including drilling and seismic operations.

Petroleum prospecting is the search for commercially valuable accumulations of petroleum. The search at one extreme may be carried out in a completely haphazard manner with entire dependence on luck for success, or at other extreme, it may involve a highly organized procedure involving the use of complex precision instruments, skills and experienced personnel and advanced scientific reasoning and in either case, the final step is the drilling of an exploratory hole¹⁰.

3. RIGHT TO WIN, WORK, STORE, CARRY AWAY, TRANSPORT AND EXPORT

Subject to this Act any special terms or conditions imposed under Paragraph 34 of this Schedule, the lessee of an oil mining lease shall have the exclusive right within the leased area to conduct exploration and prospecting operations and to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the leased area.¹¹ These bundle of rights are exclusively granted to only a valid lessee, though the rights are assignable subject to the fulfilment of the requirements stipulated under the Act. Carrying on of these activities without a valid licence is an offence punishable with fine of **N2,000.00**. This writer submits that the amount of fine prescribed under the Act is ridiculously small bearing in mind the nature of the offence committed¹².

4. RIGHT TO ENTER AND REMAIN ON THE LEASED AREA

The holder of an oil mining lease shall have the right to enter and remain on the leased lands or any part thereof and to do such things as are authorised under the lease¹³.

⁹ S. 15 (1) Petroleum Act

¹⁰ Oche P. N Loc. Cit at 65-66

¹¹ See Paragraph 12 of First Schedule to the Petroleum Act

¹² Section 13 (2-4) of the Act

¹³ Section 35(a) of the Act.

5. RIGHT TO APPLY FOR RENEWAL

The lessee of an oil mining lease shall be entitled to apply in writing to the Minister, not later than 12 months before the expiration of the lease, for a renewal of the lease either in respect of the whole area leased area or any particular part thereof and the renewal shall be granted if the lessee has paid all rent and royalties due and otherwise perform all his obligations under the lease.¹⁴

6. RIGHT TO ASSIGN THE LEASE

The holder of an oil mining lease has the right under the Act to assign his lease provided the requisite consent of the Minister has been obtained. Without the prior consent of the Minister, the holder of oil prospecting license or oil mining lease shall not assign his license or lease or any right, power, interest therein or thereunder.¹⁵

7. THE RIGHT TO TERMINATE LEASE

A holder of an oil mining lease has the right to at any time, terminates the lease granted to him by giving a three month notice in writing to the Minister.

The holder of an oil prospecting license or oil mining lease may at any time, terminate his license or lease by giving to the Minister not less than 3 Month notice in writing to that effect.¹⁶

8. RIGHT TO SURRENDER LEASED AREA

Without prejudice to paragraph 12 of this Schedule, the holder of an oil prospecting license or oil mining lease shall be entitled at any time on giving three month notice in writing to the Minister to surrender the license or lease in respect of any particular part of the licensed or leased area¹⁷.

9. RIGHT TO WAY-LEAVES

Subject to the provision of all the relevant laws and on such terms and conditions as may be approved by the Minister, the licensee or lessee shall be entitled to way-leaves for the laying, operation and maintenance of pipelines, telephones and the like through or across the surrendered area or areas as he may reasonably require:

a. For the carrying on of operations under the licensed or leased area or

¹⁴ See Paragraph 13 (1)

¹⁵ See Paragraph 14.

¹⁶ Paragraph 17(1)

¹⁷ Paragraph 18

- b. For intercommunication and passage between retained areas (and in the case of licenses or leases in the continental shelf, between retained areas and onshore lands)¹⁸.

And any such way-leaves shall form part of or included in the calculation of the amount of the retained areas.

10. RIGHT TO BE INFORMED OF THE GROUNDS OF REVOCATION

Whenever it is intended to revoke an oil mining lease of a lessee, the Minister shall inform the lessee of the grounds of the intended revocation.

11. RIGHT TO BE HEARD BEFORE REVOCATION OF A LEASE

Before the Minister revoke an oil mining lease of a lessee, the lessee having been informed of the grounds of an intended revocation, an opportunity shall be made for the lessee to make representation before the revocation. This provision was made in order to ensure fair hearing on the part of the lessee before the revocation. However, it is not clear whether a lessee that had his revoked can appeal the revocation to a higher authority.

CONCLUSION

Based on the findings of this research, it is the position of the law in Nigeria, that, it is an offence for any person, group or persons or groups to carry on the activity of oil exploration, prospection or mining without dully armed with the prerequisite instrument of authorisation. Oil mining lease carries with it all the rights and privileges attached with oil exploration and oil prospecting licence. The Petroleum Act and the Regulations thereof provided for some rights that flow with the grant of oil mining lease, however most of the provisions of the Regulations provided for the 'don'ts' rather than the do's' of an oil lessee. The draftsmen of the Act were very careful and economical with inclusion of many explicit and express rights of the holders of the instruments of authorisation and made many provisions tightening the holders to duties rather than rights.

RECOMMENDATIONS

1. Having been mindful of the role oil money play in the Nigerian economy, the Petroleum Act or any Regulation thereof, should be made to contain express and clear provisions regarding the rights of an oil mining lessee in order to make oil activities in Nigerian more clear, predictable and to conform with best global practices in the World oil industry.

¹⁸ Paragraph 21

2. The Petroleum Act failed to provide a working definition of some certain words used, such as win, get, carry away, store, transport, in relation with petroleum. It is recommended that a working definition or interpretation should be provided under the Act for such words, to avoid ambiguity or misrepresentation.
3. The rights provided are mostly not provided for the procedure of enforcing or implementing them under the Act. Procedures should be made expressly stating how these rights may be enforced or implemented.
4. Powers on the part of the government through the Minister is too much which make the IOC's and local operators not to be an equal partner/ match to the government. These powers should be concession to enhance productivity and maximization of higher profit at lower cost.