

## ASSIGNMENT OF OIL PROSPECTING LICENSES (“OPLS”)

Oil Prospecting Licenses (“OPLS”) were awarded last year by the Ministry of Petroleum and Mineral Resources to (both foreign and indigenous) Oil Exploration and Production companies which successfully participated in the last bidding rounds to cover exploration operations on specific blocks. Upon discovery of oil in commercial quantity, Nigerian law requires an OPL holder to apply to the Minister for grant of an Oil Mining lease (“OML”) or leases to cover the production phase on its acreage.

Over time, the Minister of Petroleum has readily granted OPLS to both Nigerian and foreign corporations, despite the wording of Nigeria’s Petroleum Act which, prima-facie, seems to restrict the grant of OPLs and OMLs to Nigerian citizens and corporations only. Foreign OPL holders are however required to incorporate locally as soon as practicable thereafter, or at any rate, prior to the stage where the OPL holder surrenders the OPL applies for an OML or OMLs.

The relatively high capital commitment required to develop the new prospects has compelled a number of OPL holders to enter into contractual arrangements, of course, the third party or “farminee” expects to acquire a recognized and enforceable legal interest in the OPL and any subsequent OML derived there from.

Nigerian law permits the OPL holder, with the consent of the Minister of Petroleum, to assign part of its interest in the OPL to a third party. Traditionally, the OPL holder remains the

“operator” of the OPL, as far as the Ministry is concerned. The assignee therefore only gains a non-operating interest.

It should also be noted that the (Nigerian) Companies and Allied Matters Decree, 1990, prevents foreigners from “doing business in Nigeria” except in the guise of a locally registered limited company. Since E & P operators are also construed as “doing business”, foreigners are advised to incorporate locally before engaging in such activities locally. A fortiori, a (foreign) assignee of interest in a Nigerian OPL is equally advised to incorporate locally and procure that the assignment is theoretically made to the local corporation. Although assignments to foreign corporations seem to have been accepted by the Petroleum Act does raise doubts as to the legal efficacy of such assignments. Caution therefore demands that the Assignee be a Nigerian corporation to forestall challenges at a later date. It should be noted that applicants for OMLs must be Nigerian corporations.

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