

## **RECENT DEVELOPMENTS IN THE OIL AND GAS INDUSTRY.**

In August 1996, Nigeria's Minister of Petroleum Resources, Chief Dan Etete, publicly addressed Chief Executives of major Oil Exploration and Production ("E&P") companies and Oil Service companies, expressing government's dissatisfaction over various aspects of their joint-venture operations.

The Minister's address touched on the following matters:

- Lack of accountability and transparency in operation of joint-venture accounts;
- Lack of consultation and consensus in joint-venture operations;
- Widespread tax evasion through award of local service contracts to offshore (i.e. non-Nigerian) Oil Service companies;
- Ineffective technology transfer and negligible Nigerian participation in upstream activities, essentially attributable to expatriate technical staff dominance in Nigerian companies and denial of job opportunities to Nigerians;

- Continued flaring of natural gas (despite attractive gas utilization incentives by government) and insufficient attention to mitigation of the harsh effects of oil production activities on host communities and their environment;
- Non-development of marginal fields which, by virtue of their proven reserves of at least 800 million barrels, are now of strategic importance.

The Minister announced the following measures to be implemented by the Government to remedy these anomalies:

Opening of separate Escrow accounts in foreign and local currency by each joint venture, into which cash call contributions will henceforth be lodged;

- Establishment of a Monitoring Unit to vet all claims and invoices to be debited to the Escrow Accounts and implementation of a specific application procedure for disbursement from joint-venture (Escrow) accounts;
- Award of service industry contracts to Nigerian registered companies, to the exclusion of offshore service companies;

- Payment of withholding tax in the currency of (contract) award;
- Full implementation of the National Interest Content of the (National) Engineering Policy, making local content a key element in contract awards in Engineering, Procurement and Construction jobs in the oil industry;
- Introduction of fresh restrictions on employment of expatriates by firstly, making approval of the National Petroleum Investment Management Services (“NAPIMS”) a condition precedent to employment of expatriates by Joint-venture operators; and secondly, making the approval of the Minister of Petroleum Resources a condition precedent to disengagement of the services of Nigerian employees of the joint-venture;
- Review of the oil service permits of all service industry companies. All companies are required to re-apply for permits within a stipulated time-limit, failing which their permits are to be revoked;

Re-activation of the Clean Nigeria Associates (a co-operative organization formed by the E & P companies to act as the 2<sup>nd</sup> level of response to oil spills) and launching of a National Oil Spill Contingency Plan to combat oil spills and environmental degradation; E & P

- companies are also henceforth required to address environmental issues in their annual budgets;
- Promulgation of a decree (and Ministerial Regulations) to enable recovery and allocation of marginal fields.

### **Current Developments**

In the 1<sup>st</sup> week of October, the Ministry of Petroleum Resources directed E & P companies to state the total number of expatriates employed by each company. This development is widely seen as being in furtherance of government's stated aim to increase local employment in the sector and achieve meaningful technology transfer.

Since current oil service permits will expire by year's end (31<sup>st</sup> December), it is assumed that the new guidelines will affect applications for renewal of permits against 1997.

Taxation and (indigenous) employment issues are expected to be fully addressed in the forthcoming guidelines.

A number of Oil Prospecting Licenses ("OPLs") granted to indigenous E & P companies under the Nigerian Indigenous Programme will expire over the next few months, having exhausted their maximum (5 year) statutory life-span. Inability to secure adequate project finance and technical assistance

has prevented most indigenous OPL holders from completing their work programme obligations. A fortiori, they have failed to satisfy minimum statutory requirements to enable conversion of their OPLs into Oil Mining Leases (OMLs) under the Petroleum Act.

Since the Petroleum Act specifically precludes extension of (OPL) duration beyond the 5-year period, questions are currently being asked as to the fate of (defaulting) OPL holders, some of whom are already committed to finance and/or technical management arrangements with non-Nigerian E & P companies. It would seem that the predicament of such OPL holders does not constitute sufficient reason to amend the Petroleum Act by extending the life span of OPLs.

The (2) practical options left to the indigenous OPL holder are therefore **either** to relinquish their OPLs (and apply for fresh OPLs over the same concession areas) **or** apply for conversion stating reasons why they have failed to complete their respective work programmes. In the latter case, the Honourable Minister may choose to waive specific

requirements under the Petroleum Act and approve conversion of such OPLs into OMLs.

### **MARGINAL FIELDS**

The Ministry of Petroleum Resources released the long-awaited guidelines on procurement and operation of Marginal fields in Nigerian concession areas in September 1996.

Listed below are salient features of the new guidelines

- Amongst current OPL/OML holders, only the indigenous E & P companies may apply for Marginal Fields, provided that each (Indigenous) E & P company wishing to participate in the (Marginal Field) scheme must relinquish any OPL/OML it currently holds before application.
- Marginal Fields are to be operated on a Farm-out basis. The Farm-out Agreement has a fixed statutory life-span of 5 years (in the first instance). Farminees under the scheme must be E & P companies wholly owned by Nigerian nationals.

The Farminee may however enter into a technical service arrangement with Non-Nigerian Corporation. The

- technical service contractor may hold up to 40% of equity through the Farm-out Agreement.
- Farminees are required to develop and produce their fields within the 5-year agreement life and must show verifiable efforts towards meeting minimum work programme obligations within 12 months of grant of the Field.
- To successfully renew the Farm-out agreement, the Farminee must show completion of (at least) 70% of the work programme on the Field.
- The Farminee is expected to demonstrate readiness to refund the present day development cost of the Field to the Farmor (i.e. the underlying OPL/OML holder) within the 5-year period.

#### **LEGAL REQUIREMENTS**

- i) Both of the Head of State and the Minister of Petroleum Resources must approve grant of the Marginal Field and the terms of the Farm-in Agreement.
- ii) Marginal Fields are to be operated strictly on the basis of the applicable Farm-out Agreement.
- iii) Application is to be made to the Minister of Petroleum, with technical compliance certification

- The statutory life span of the Farm-out Agreement is 5 years, renewable for further 5-year periods, subject to both satisfactory performance of the field work programme (i.e. at least 70% completion) and continued validity/subsistence of the underlying OPL/OML.
- Marginal Fields are to be operated on a sole-risk basis, with government reserving the right to invoke equity participation (no particular level specified) at any time.
- Approvals granted in respect of a Marginal Field are liable to withdrawal/termination where the Farmee fails to show “veritable evidence of effort made to meet minimum work programme obligations”.
- Optionally, the Farminee may terminate its agreement by 3 months notice to the Minister of Petroleum Resources and on payment of the prescribed fee.

## **FISCAL REGIME**

The guidelines specify the following fees, premium, rent and royalties for Marginal Field operations:

- i) FEES =N=: 00k

- Application for Farm out of a Marginal Field  
100,000
- Application for renewal of the Farm-out agreement  
100,000
- On an application to withdraw or terminate  
25,000
- PREMIUM – Successful applicants shall be required to pay the following premia:
  - Minimum of US\$10,000 per field to the farmor.
  - N250, 000 to the FGN (PTDF/A/C).

(iii) RENTS – The royalty rates are graduated as follows:

Area	Rate
(1) For land and swamp concessions	20%
(2) For land territorial waters and continental shelf up to 100 metres water depth	18.5%
(3) For territorial waters and continental shelf and beyond 100metres water depth and up to 200m	16.65%

- |     |   |     |
|-----|---|-----|
| (4) | In areas from 201 to 500 metres water depth   | 12% |
| (5) | In areas from 501 to 800 metres water depth   | 8%  |
| (6) | In areas from 801 to 100 metres water depth   | 4%  |
| (7) | In areas in excess of 1001 metres water depth | 0%  |

**ADAMU USMAN. [DECEMBER 1996]**