



MARGINAL FIELD BID AWARD 2020: POINTERS TO STAKEHOLDERS

The Oil and Gas Sector remains the mainstay of the Nigerian economy, accounting for a majority of its revenue and its total export earnings. Consequent to this, a plethora of laws and regulations are in place to regulate this all important sector. These laws and regulations are currently undergoing review.

The exploration and production of Oil and Gas in Nigeria largely involves the Federal Government as a majority stakeholder and International Oil Companies (IOCs) as major participants in the industry but over the last decade, indigenous participation has grown, encouraged by governments policies like the Marginal Fields Programme which was introduced in 2001.

This programme forced the IOCs to relinquish small discoveries that were left un-appraised and undeveloped over long periods of time into a basket of ‘Marginal Fields’. These Marginal Filed are then made available for bidding by only Nigerian Companies, to encourage local involvement of Nigerian investors in the petroleum sector.

The Guidelines for the Award and Operation of Marginal Field in Nigeria issued by the Department of Petroleum Resources in 2020, (“The Guidelines”) define Marginal Fields as “... any field that has been discovered and has been left unattended for a period of not less than ten (10) years, from the date of first discovery or such field as the President may, from time to time, identify as a marginal field”.² In essence, they are non-producing fields within the Oil and Gas domain covered by a Petroleum Licence which has been dubbed unprofitable for production and left abandoned for at least 10 years from

the date of first discovery or such fields as the President very well pronounces as a marginal field.

Some of these fields have been successfully appraised, developed, and in some cases, producing over 5000 bopd, while some Marginal Field operators have also gone into gas production, and the refining of crude oil, using Modular refineries.

The first Marginal Field bid round resulted in the award of 24 licenses to 31 indigenous companies; seventeen (17) licences to sole operators and seven (7) to joint venture operators. Of the 31 indigenous companies that were awarded the Fields, only seven (7) are currently operational³ and successfully producing.

The Federal Government of Nigeria on the 1st of June 2020, through the Department of Petroleum Resources (DPR), announced the launch of a new Marginal Field Bid Round for Fifty-Seven (57) available Marginal Fields. If successful, this bid round will be the third bid round to have been conducted by the Federal Government but, the second successful bid round in Nigeria’s history⁴. The bid round was carried out electronically and in virtual mode throughout the process, due to the Covid-19 restrictions. The bid process however remains clouded in uncertainty in this period of awaiting the bid outcome, owing to speculations that companies that had tendered, could be merged on the same fields, implying that the Government may want to increase the number of Companies awarded the assets by assigning more than one company to an asset. This has the potential to create challenges in the successful working of the companies to

meet the Government's objectives, as was experienced in the first Marginal Field bid round.

THE AWARD OF A MARGINAL FIELD

At the end of a bidding round, every company or consortia typically expects that the blocks for which they have submitted bids, are allocated to them, in the form in which their bid was tendered, either as Sole Operators or as Consortia under a Joint Venture or other operating arrangements.

However, the government reserves the right to allocate a field to several companies; thereby, occasioning instances of 'forced marriages' between companies of which there can be only 2 (Two) outcomes, to wit: the merging of companies in a well-structured manner where the consortia created will include; technical partners with the experience/requisite technical know-how and finance partners or; an improperly constituted consortium with totally unaligned interests and perspectives, with either a strong finance or technically competent partner absent.

On the face of it, a forced merger of bidders is without question a harbinger of doom, with potentials for complex issues which if not properly managed and resolved, can lead to the failure of the Consortia in making any progress towards developing the asset.

THE GIANT IN THE ROOM-THE MODEL THAT WILL WORK (POINTERS TO STAKEHOLDERS)

In the event that the ongoing speculations of "forced marriages" of companies with respect to the award of the 2020 Marginal Field becomes a reality, there are various models for operating a consortium birthed by such forced unifications.

One of such models typically allows parties in a forced marriage, through an understanding, to form an independent company to operate the Field awarded to them, by funding in line with shareholding, and resourcing the operating entity through an agreeable position sharing. In this model, parties are allowed to deploy their individual expertise towards creating a company that can deliver and ultimately achieve common shared goals.

Another option amongst a plethora of models available, is a model that sees to the appointment of an independent contractor to carry out the day-to-day operations and activities on the field on behalf of the asset owners. In the alternative, the consortia now merged, can appoint a Party to the Consortium as the Operator of the field, working under a Joint Operating Agreement (JOA).

An improperly constituted "forced marriage" on an awarded Marginal Field is typically the first challenge that parties would have to navigate. The inherent lack of technical capacity or a financier of the operations or both under a forced union, can occasion delays, outright failures in the operations and a complete abandonment of the field, leading eventually to a revocation by the Government.

It is therefore germane to note that the suitability of a model is heavily dependent on the peculiarity of each circumstance (forced marriage), the commitment to the interest of the group as opposed to selfish interests and coupled with an effective contractual and governance framework, which each party is willing to adopt, to achieve the individual and collective goals of the asset owners.

PRACTICABILITY IN IMPOSSIBILITY

Needless to say, whatever the outcome may be, the idea of a "forced marriage" need not be the end of the award of a Marginal Field under this type of arrangement, more so, where there are a number of remedies which have proven overtime to be effective, in ensuring that an improperly constituted merger for awarded Marginal Fields have a chance at success.

WHAT TECHNICAL AND FINANCIAL PARTNERS WOULD BE LOOKING OUT FOR BEFORE INVESTING

Given all the issues that may arise following from the possibility of forced mergers, any company willing to invest in a Marginal Field, either as a technical or financial partner will be looking out for "forced marriages" that can work as a team, to ensure that the ultimate goal of the Field is achieved.

In the circumstance, it is advisable to engage legal experts in the Oil and Gas industry with the capacity to help the group navigate the problems that a forced marriage may birth.

CONCLUSION

Opportunities clearly exists in Nigeria's 2020 Marginal Field bid rounds and regardless of the outcome, no matter how complex and unpleasant it may appear, success is still attainable.

REFERENCES

1. By virtue of the provision of section 44 (3) of the 1999 constitution as amended, the ownership of all natural resources is vested in the Federal Government of Nigeria.
2. Article 4 of The Guidelines for the Award and Operation of Marginal Field in Nigeria 2020
3. Brittainia-U-Group, Platform Petroleum and New Cross Petroleum Limited, Watersmith Petroleum Oil Limited and Morris Petroleum, Midwestern Oil, Pillar Oil, Frontier Oil and Energia.
4. It should be noted that the second bid round held in 2013 failed owing to the lack of capacity of a number of licensees.
5. See Section 2 of the Petroleum Act, 1969.

Author



O. M. Atoyebi, SAN

Managing Partner, Omaplex Law Firm

atoyebi@omaplex.com.ng

OYETOLA MUYIWA ATOYEBI, SAN is the Managing Partner at OMAPLEX Law Firm, a full serviced Law Firm with outstanding track records from both local and international corporations, he is one of the foremost Senior Advocates of Nigeria with Local Content expertise, specializing in the acquisition and disposal of Petroleum Assets, Oil and Gas Financing, farm-ins, farm-outs as well as Legal, Regulatory and Policy issues impacting the natural resources sector with a special fiscal expertise on Oil and Gas, and Renewable Energy and Technology. He holds the record of the youngest legal practitioner in history to be conferred with the prestigious rank of Senior Advocate of Nigeria.

Contributors



ONYINYE CHIKWENDU-IKECHEBELU

onyinye.chikwendu@omaplex.com.ng

Onyinye Chikwendu-IkechebelU heads the OMAPLEX Law Firm Energy, Infrastructure, Project and Asset Finance Group. Her practice focuses on International Corporate and Commercial transactions, including asset-based structured financings, company restructuring, project financing and related capital markets transactions in the Oil and Gas, Petrochemical and Power sectors.



Festus Ibude

festus.ibude@omaplex.com.ng

Festus Ibude focuses on complex international arbitration cases involving investment and commercial claims. He handles international arbitration and litigation matters involving Africa and North America, and a variety of sectors, including Oil and Gas, Power, Construction and Infrastructure. His vast knowledge enables him to offer clients comprehensive legal advice on a broad spectrum of complex issues.



Moyosore Mustapha

soore@omaplex.com.ng

Moyosore Mustapha

is the head of the global Mergers & Acquisition and Corporate Practice Group of the Firm. Moyosore's practice focusses on commercial and corporate finance transactions with a particular emphasis on corporate due diligence, cross border mergers & acquisitions, joint ventures, transaction negotiation, contract management, expert restructurings and leverage buyouts.