

## **ABSTRACT ON LICENSE/LEASE RENEWAL UNDER NIGERIAN LAW**

### **A. INTRODUCTION**

1. The nature of the right of a leaseholder to lease renewal upon the expiration of the current terms of its OML(s) under Nigerian Law. Whether paragraph 13 of Schedule 1 to the (Petroleum Act) Laws of Nigeria CAP 350, VOL.XVII creates an enforceable right in favour of the leaseholder to lease renewal upon application and having satisfied the conditions precedent.
2. Whether the Minister, provided the leaseholder has satisfied the lease renewal conditions, has a duty rather than a mere discretion to grant lease renewal.
3. One of the conditions precedent to the grant of a lease renewal is, the "Performance of all obligations under the lease". Is the interpretation and application of that condition a cover for the Minister to assume wide and discretionary powers with regard to the grant of an application to the lease renewal?

### **B. ABSTRACT**

Our considered opinion is that the relevant provisions of the law in Nigeria relating to Lease renewal creates an enforceable right in favour of the Lessee to the renewal of a lease and a corresponding duty (not a discretion) on the Minister to grant an application for the renewal of the OML subject (only) to the fulfillment of the conditions of the renewal.

## **Status of renewal under current legislation (i.e. the Petroleum Act)**

The applicable provision of the law with regard to lease renewal is paragraph 13 of Schedule 1 to the Petroleum Act. It is rendered thus: -

"(1) The lessee of an oil mining lease **shall** be entitled to apply in writing to the Minister, not less than twelve months before the expiration of the lease, for a renewal of the lease either in respect of the whole of the leased area or any particular part thereof; and the renewal **shall** be granted if the lessee has paid all rent and royalties due and has otherwise performed all his obligations under the lease.

The sum total of the foregoing provision of the law is the creation of an enforceable right in favour of the Lessee to the renewal of a lease and a corresponding duty (not discretion) on the Minister to grant an application for the renewal of the OML subject (only) to the fulfilment of the conditions of the renewal. The conditions are: -

- An application in writing for renewal not less than twelve months before the expiry of the lease;
- Payment of all rent and royalties due; and
- Performance of all obligations under the lease.

Specific obligations under the lease are provided in "Part IV - Obligations of Lessees and Licensees" of the Petroleum (Drilling and Production) Regulations 1969, comprising paragraphs 26 through 47 therein. Apart from certain requirements regarding recruitment and training of Nigerians, these obligations stated under the law and adopted by the leases are generally technical regulations related to exploration and development activities.

While these regulations (obligations) are sometimes stringent, they are not broad and uncertain so as to provide such scope for arbitrariness by the Minister in determining the performance of all obligations under the lease while considering an application for lease renewal.

Having stated the above however, Section 25(1) of the Petroleum Act provides that the Minister also has the right to revoke an oil mining lease if in his opinion the licensee or lessee—

- (a) is not conducting operations—
  - (i) continuously;
  - (ii) in a vigorous and businesslike manner in accordance with the basic work programme approved for the licensee or lessee; and
  - (iii) in accordance with good oil field practice; or
- (b) has failed to comply with any provision of this Act or any regulation or direction given thereunder or is not fulfilling his obligations under the special conditions of his licence or lease; or
- (c) fails to pay his due rent or royalties, whether or not they have been demanded by the Minister, within the period specified by or in pursuance of this Act; or
- (d) has failed to furnish such reports on his operations as the Minister may lawfully require.

We have highlighted the provisions on revocation of license above only to draw attention to the fact that the law makes a distinction between lease renewal upon the satisfaction of certain conditions precedent and revocation of a license for infraction of the terms of the license. In other words, the law does not anticipate that the occasion of lease renewal shall be one for settling scores on account of actual or alleged infractions of the terms of a license. The expectation of the law is that if the terms of a license/lease have been breached, then the Minister may revoke the license having served notice for the alleged breach to be remedied, which was not remedied. It is therefore our considered view that the provisions of the law on license revocation strengthens our argument to the effect that the licensee has a right and the Minister a corresponding duty to grant a lease renewal was the conditions precedent have been fulfilled.

### **Status of renewal under the Petroleum Industry Bill (PIB)**

We may not be in a position to state a firm opinion on the legal position on renewal under the PIB. This is not because we consider the provisions of the proposed law as worse than those of existing law, rather it is because any opinion stated at this point would at best be speculative as the Bill is under discussion and a lot could change before it is passed. It suffices to state however that the proposed language on license renewal we have seen in the various drafts of the PIB are not dissimilar to the that of the Petroleum Act. However, we can highlight a few issues that are potentially dissimilar to the Petroleum Act in the various drafts PIB making the rounds that can shape the nature of the right of license renewal under the PIB going forward. These include: -

- The number of renewals the licensee is entitled to. The Petroleum Act does not impose any restrictions on the number of renewals the licensee is entitled to. In the absence of such restriction, it can safely be assumed that subject to the rules on license relinquishment and the powers of the Minister to revoke the license or lease for breach of the terms of the license, the licensee is entitled to the renewal of the license in perpetuity for the life of the fields within the lease area. However, some versions of the PIB have mooted the idea of allowing a limited number of renewals. This is a corollary of the new license administration proposed where the parcels of assets would be considerably smaller than the current sizes. It suffices to state that there is push back from the industry based on the potential inequity of being forced out of an asset that a licensee has spent time money and energy to de-risk and monetize.
- The conditions precedent to the grant of a license renewal. Generally, there is no indication that the conditions precedent to the grant of license renewal would become opaque and unascertainable. However, there is a likelihood that they become more onerous than under the Petroleum Act.

Other than the above, we can reasonably expect that the intrinsic nature of the rights of the licensee to lease renewal shall not be worse off under the PIB.