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OWNERSHIP OF RESOURCES: AN EXAMINATION OF FARM-OUTS AND MARGINAL FIELDS

IBRAHIM MUHAMMED
Associate

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ABSTRACT

Eminent jurist Sir Edward Coke famously stated *"For a man's house is his castle, et domus sua cuique est tutissimum refugium [and each man's home is his safest refuge]" (The Institutes of the Laws of England, 1628).* Thus, an Englishman's home is said to be his castle. In the average African society, same holds true as the head of the family or husband (in patrilineal societies) is the owner of the house. However, when it comes to ownership of natural resources the state is the owner and not the citizen whether it be an Englishman or an African. In this article, the focus shall be on the ownership structure of oil and gas especially with regards to the operation and functionality of farming out of marginal fields.

INTRODUCTION

In 2018, the global oil and gas sector was estimated to have a worldwide gross domestic product range between $75 trillion and $87.5 trillion, accounting for 2% to 3% of the global economy. Thus, the oil and gas sector is an essential aspect of global trade and economy. This holds true in Nigeria, where the oil and gas sector accounts for 75% of the Country's revenue and 90% of the total export earnings. Thus, oil is not only an important revenue source but also the mainstay of the country's economy. This is despite the recent moves at diversification of the economy by the Federal Government *(E. Yemi Osinbajo, Reviving Nigeria's economy through economic diversification.)*

For clarification of terms, *Farm-Out means an agreement between the holder of an oil mining lease and a third party that permits the third party to explore, prospect, win, work and carry away any petroleum encountered in a specified area during the validity of the leases (Section 16A (4) Petroleum Amendment Act 1996). In such an agreement there is a farmor (grantor) and a Farmee (grantee). While a Marginal field is any field that the President may, from time to time, identify to be classified as a marginal field.* Paragraph 16A of the amended Petroleum Act reads as follows:

16A. (1) The holder of an oil mining lease may, with the consent of and on such terms and conditions as may be approved by the President, farm-out any marginal field which lies within the leased area.

(2) The President may cause the farm-out of a marginal field if the marginal field has been left unattended for a period of not less than 10 years from the date of the first discovery of the marginal field.

However, the right to farm out a marginal field is not absolute and is subject to the grant of consent by the President. Such consent is subject to conditions such as public interest and a requirement that the marginal field has been left unattended for not less than 10 years. (Section 16A (3) Petroleum Amendment Act 1996).

The mischief and purpose of the creation of marginal fields were due to the underutilization and underdevelopment of Oil Mining Lease (OMLs) granted by the Federal Government. Marginal Fields were created to foster the development of oil fields for the purpose of increasing revenue in undeveloped acreages and to increase local participation in the oil and gas industry so as to facilitate the transfer of expertise. The first formal marginal field bid round was in 2003 when the Federal Government awarded Twenty-Four (24) marginal fields to Thirty-One (31) indigenous oil and gas companies *(Clara Nwachukwu and Sebastine Obasi, Marginal fields: 18 licences under revocation threats).* Thus, the creation of marginal fields was to reduce the rates of abandonment of depleting fields and assure the Government's take in acreages that would otherwise have become unproductive *(Dentons, Marginal fields in Nigeria: recent developments).*

Ibrahim Muhammed is an associate at Kenna Partners and he can be reached on imuhammed@kennapartners.com

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"...of the 178 marginal oil fields identifiable, statistics show that marginal fields contribute a minimal 2.1% to the total crude oil production..."

However, of the 178 marginal oil fields identifiable, statistics show that marginal fields contribute a minimal 2.1% to the total crude oil production and 67% of marginal fields allocated in the 2003 licensing round did not produce a single barrel of oil 10 years later *(BudgIT, What are Marginal Fields?).*

NATURE OF TITLE UNDER MARGINAL FIELDS

It has been asserted that the ownership status of a grantee of an interest in a marginal field can be likened to that of a sub-lessee under a lease agreement when the lessor itself derives title from elsewhere. In most farmout agreements, there exist clauses that maintain the ownership status of the farmor (owner of the OML). An example of such a clause may state as follows:

"As between the farmor and farmee, the farmor shall retain all ownership rights to the OML, and the rights, title and interest or estate of the Farmee shall be equivalent to those of a sub-lessee in accordance with the terms of this Agreement."

However, such a position is not factually and legally correct as the grantor is but a licensee under the OML by virtue of ministerial consent granted in his/her favour. Also, the "sublease" of the marginal field by the farmor to the farmee is not governed by the law of contract but also by the relevant Marginal Field Guidelines and the practice and directives of the Department of Petroleum Resources (DPR) connected with the guidelines. Furthermore, recourse should be made to the literal interpretation of the Petroleum (Amendment) Act 1996 which describes a farm out to be "an agreement between the holder of an oil mining lease and a third party ***during the validity of the leases."***

CHALLENGES FOR OPERATORS OF MARGINAL FIELDS.

While the operation of marginal fields can be a profitable venture, some intrinsic challenges must be addressed. The major challenge for small scale oil and gas companies remains obtaining all the requisite financial capabilities to pay the initial signature fee with the farmor the immense financial commitment necessary for the running cost of operations as well as the dilemma of securing reliable equipment that will sustain production. As marginal fields are onshore, there are also industry-related challenges such as conflict with local communities, insecurity and illegal bunkering. It is also worth noting that the discretionary nature of the grant of the marginal field hampers the transparency in obtaining a marginal field that can be farmed out.

CONCLUSION AND RECOMMENDATIONS

The farm-out of marginal fields by the DPR is a good policy that presents ample opportunities to small and indigenous oil and gas companies, who lack the requisite financial and technical capabilities for the grant of OMLs, to participate in the oil and gas sector. Through their participation, there can be a boost in production in neglected fields, transfer of skills, and equipment from International Oil Companies, as well as, an overall boost to the overall oil and gas production of the country. The following are recommended for the further effective utilisation of marginal fields and the concept of farm-outs:

- Increase in commercial and technical due diligence exercises prior to the submission of bids by potential farmors to enable ascertainment of the viability of the fields;
- Public participation and disclosure in the bidding process for marginal fields; and
- Increased scrutiny of farmout agreements by Federal Government agencies, most notably the DPR.

It is only through effective due diligence and increased transparency in the award of marginal fields and farmout agreements that there can be an achievement of the objective of increasing production and equally effective.

Author

Ibrahim Muhammed
Associate

imuhammed@kennapartners.com

KENNA PARTNERS

Lagos
8, Ogunyemi Road,
Palace Way, Oniru,
Victoria Island, Lagos, Nigeria

Abuja
Plot 1015, Gwandal Centre, Fria Close,
Ademola Adetokunbo Crescent, Wuse II,
Abuja, Nigeria

Enugu
23, Umuawulu Street,
Independence Layout,
Enugu, Nigeria

+234 811 395 1052, +234 811 395 1053

Kennapartners