



Energy & Natural Resources

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**THE POWERS OF THE MINISTER OF PETROLEUM RESOURCES
WHERE AN OIL AND GAS ASSET OR INTEREST HOLDER BECOMES INSOLVENT**
[PART 4]

Introduction

Where an interest holder becomes insolvent, the Minister of Petroleum Resources generally does not have the power to terminate the licence or lease except where the insolvency has led to a breach of any of the terms and conditions of the licence or lease or any of the provisions of the Petroleum Act. Where signs of insolvency are shown in respect of an asset, the Minister of Petroleum Resources, through the DPR can flag the distress and request the asset holder to remedy the identified issues in suggested way(s) or in line with the terms and conditions of the licence or lease.

The licensor or lessor of oil and gas assets in Nigeria (i.e. the Minister of Petroleum Resources on behalf of the Federal Republic of Nigeria) does not make absolute transfers of the government's interest in licences and leases, respectively. The Minister only grants a licence or lease to the holder for a period and on terms and can thus instruct the holder to comply with the terms of the licence or lease. The underlying principle is expressed in the maxim *cujus est dare ejus est disponere*, meaning he who gives anything, can also direct how the gift is to be used. In view of this, if a licensee or lessee becomes insolvent, the Minister has power to and can resort to several other powers he has in view of the lack of express authority) revoke interests in an OPL or OML as a result of insolvency simpliciter.

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The Minister's powers of revocation are spelled out in **paragraph 25 (1) of the First Schedule to the Petroleum Act**, set out earlier. The implication of these powers in relation to the insolvency of a licensee or lessee can be summarized/re-emphasized as follows:

1. The grounds for revocation under the Petroleum Act do not include the insolvency of a licensee or its parent company simpliciter. However, if the effect of insolvency of either the licensee/lessee or its parent company is to cause the licensee/lessee to be unable to fulfill its obligations under the licence or lease or the Petroleum Act, the Minister may revoke the licence on the particular ground of the breach of the terms of the license.
2. The Minister may withhold consent to an assignment of the interest of an insolvent licensee or lessee or deny an application for the grant of a lease or licence to a company whose promoters or directors or principal officers have been linked to a failed company in the past due to insolvency by virtue of his discretionary powers.
3. A receiver/administrator is not barred from dealing with the assets of an oil and gas company under Nigerian law. In dealing with an oil and gas asset however, the receiver/administrator must exercise its powers in accordance with the Petroleum Act and may not assign an asset prior to the consent of the Minister being granted.
4. Other powers or measures DPR can take are usually written into the licence or lease granted to the holder or the terms and conditions upon which a Joint Venture Agreement (JVA) and other agreements are approved by the DPR or the Minister before the asset holder commences operation.
5. The Minister or DPR can also choose not to approve any work programme or grant any support to an insolvent oil and gas asset holder.
6. The Minister may refuse to renew the licence or lease when it falls due for renewal.

The Minister's power to revoke a licence or lease is sparingly exercised but where there is a reason to exercise it, the Minister must follow the provisions of **paragraphs 26, 27 and 28 of the First Schedule to the Petroleum Act** which require the minister to communicate grounds of any proposed revocation to the asset holder and give it adequate opportunity to give explanations and rectify the default before ordering a revocation.

Where the non-compliance is not related to insolvency, government's right to terminate should not be fettered but where it is, circumspection is required on the part of the Minister and the DPR so as not to send wrong signals to investors in the industry.

Additional measures that ought to be considered are measures that will require that licensees and lessees give early notice of any events of financial default affecting them or any of their parent companies so as to give the DPR an early opportunity to assess their situation. Where there is a contentious insolvency resulting in the inability of the licensee or lessee to fulfill its obligations, there should be a fixed period of grace following which the

DPR will be entitled to appoint an emergency/interim operator in consultation with the creditor pending resolution of the insolvency proceedings.

In my view, given that the JOAs of existing companies do not adequately address insolvency, to facilitate commercial resolution of insolvency matters, the DPR may in the interim issue directives to existing licensees requiring them to address what happens in an insolvency situation with multiple parties in a licence in their JOA. Alternatively, the DPR may amend the directives or guidelines to include the provisions requiring the licence or lease holders to address what happens in an insolvency situation with multiple parties to a licence in a JOA. Such a directive may also be enforced by using other regulatory powers validly held by the DPR such as the powers to approve FDP, wells, etc.

The guidelines may also be amended to include clear requirements and processes mandating licensees to ensure that project finance agreements, where deployed to fund projects, should take cognizance of the consent requirement, should be disclosed, be subject to the consent of the Minister and be registered with the DPR. The DPR should retain the power to conduct due diligence on all lenders and third parties to whom the receiver/manager, will ultimately transfer or assign the asset at the point of insolvency. The powers of the Minister in insolvency situations requires a great deal of balancing for the benefit and health of the petroleum industry.

In the next part of this paper, which has the title, “**A comparative analysis of insolvency issues in respect of oil and gas assets in other jurisdictions similar to Nigeria**” we will take another look at the laws and regulations in comparative jurisdictions and the policies of how they address these or similar problems in those jurisdictions. These will be compared, in the next part, with Nigerian relevant laws, regulation and guidelines and propose solutions to those identified problems of insolvency by way of amendments which we believe will help the industry to begin to reposition itself to resolve them even as we await the eventual passage of the Petroleum Industry Bills still pending before the National Assembly.

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