



# Legal Framework for Asset Transfers in Nigeria's Upstream Sector: Insights into the 2024 Regulations

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# Introduction

In April 2024, the Nigerian Upstream Petroleum Regulatory Commission (“NUPRC or “the Commission”), pursuant to the provisions of the Petroleum Industry Act (PIA) 2021, introduced the Upstream Petroleum (Assignment of Interests) Regulations (“the Regulations”). These Regulations represent a significant development in Nigeria’s upstream petroleum sector, establishing a structured legal framework for the assignment, transfer, novation, and creation of interests in petroleum licenses and leases.

The Regulations provide a comprehensive mechanism for ensuring that any

assignment, novation, or transfer of interests in upstream petroleum assets, including the creation and enforcement of security interests, follows a clearly defined process. By setting out these detailed procedural requirements, the Commission seeks to promote transparency, consistency, and accountability in the management of upstream petroleum assets. As stakeholders navigate the new regulatory landscape, it is essential to fully understand the scope and application of these provisions to ensure compliance and mitigate legal risks.



# Key Highlights of the Regulations: What Companies in the Upstream Sector Need to Know

The 2024 Assignment of Interests Regulations covers all changes in upstream licence or lease ownership and control. This includes assignments and transfers of any ownership interest in a licence or lease, whether direct or indirect, as well as novations or changes in a petroleum contract and any change of control of a licence/lease holder. It also covers security transactions, that is, using licence or lease interests as collateral (e.g. pledges, mortgages, charges) and their enforcement.

Some specific examples clarified in the Regulations include:<sup>1</sup>

- Assigning an interest in a licence/lease (either whole or partial).
- Novating (transferring) petroleum contracts related to the licence/lease.
- Transferring any right, power or in the licence/lease.
- Changing control of a licence/lease holder (e.g. via share sales, mergers, or takeover).
- Creating or enforcing security interests (pledge, mortgage, charge, etc.) over a licence or lease.

# A. Ministerial vs. Commission's Consent

Under the PIA and the Regulations, two levels of consent apply:

## i. Ministerial Consent:

Ministerial consent is required in the following scenarios involving upstream petroleum licenses or leases:<sup>2</sup>

### a. Assignment of Interests:

- Any direct or indirect assignment of a license or lease interest.
- This includes transactions where the assignment is executed through the sale or transfer of shares in a company holding the license or lease.

### b. Change of Control:

- Any transaction resulting in a change of control of a company holding a license or lease. This applies whether the change occurs through a merger, acquisition, or any other means that alters the controlling interest.

## c. Enforcement of Security Interests:

- Any action to enforce a security interest over a license or lease, including foreclosure or similar measures. This covers situations where the license or lease is used as collateral, and the secured party takes steps to assume control or ownership.
- The license or lease holder must first obtain approval from the Commission, which will then make a recommendation to the Minister, who ultimately grants or refuses consent.

*Transactions not requiring prior Ministerial consent are limited. For example, simply renaming a licensee (without changing its ownership) needs no consent, though the change must be notified to the Commission within 30 days with proof of the new name. Also, routine internal reorganizations that do not alter ultimate control fall outside the consent regime.*

## ii. NUPRC (Commission) Consent:

The Regulations set out situations where consent from the Commission is required, either independently or alongside Ministerial consent. The key instances are as follows:

### a. Creation of Security Interests:

- Any creation of a security interest (such as a pledge, mortgage, or charge) over an upstream petroleum licence or lease requires the consent of the Commission. The licensee or lessee must submit a formal application to the Commission, providing detailed information on the parties involved, the amount, and the terms of the security.

### b. Enforcement of Security Interests:

- Enforcing a security interest, such as foreclosure or taking over a licence/lease interest, requires both Ministerial and the Commission's consent. The licensee must first obtain approval from the Commission, which will then make a recommendation to the Minister, who ultimately grants or refuses consent.

## c. Assignments of Petroleum Exploration Licences (PEL):

- A full or partial assignment of a Petroleum Exploration Licence (PEL) requires only the Commission's consent, not Ministerial consent. This also applies to any change of control within a company holding a PEL.

## d. Intra-Group Transfers:

- The Regulations also provide that where all parties involved in a transfer are affiliates within the same group, the Commission may waive the requirement for Ministerial consent. In such cases, only the processing fee is payable, and the usual premium fee may be exempted.

*Ministerial consent is generally required for any change in licence or lease ownership or control. However, the Commission's consent is specifically required for the creation and enforcement of security interests, as well as for assignments of PELs.*



## B. Procedure and Documentation for Ministerial and Commission's Consent

### i. Steps to Obtain Ministerial Consent:

#### 1. Step 1: Notification of Intent

- The license/lease holder must notify the Commission in writing before proceeding with the transaction.
- The notification should include:
  - a. Reasons for the assignment or transfer.
  - b. Method of the transaction (e.g., tender, bid).
  - c. Expected benefits (technical, economic, or strategic).
- The notification must follow the principle of transparency and align with Nigerian laws and best

practices.

- The Commission has 15 working days to respond; if it does not, the notification is deemed approved.

#### 2. Step 2: Submission of Qualified Buyers

- The holder must conduct technical and commercial evaluations to identify qualified assignees.
- After evaluation, the holder submits a shortlist of prospective assignees to the Commission.
- The Commission will review the shortlist and approve or reject candidates within 15 working days.
- If the Commission does not respond within the stipulated time, the shortlist is considered approved.

### 3. Step 3: Formal Application for Consent

- Once the shortlist is approved, the holder must submit a formal application to the Commission.
- Required Documents:
  - a. Completed application form.
  - b. Petroleum agreements (e.g., JOA, PSC).
  - c. Corporate approvals (board resolutions, shareholder consents).
  - d. Draft sale-and-purchase agreement.
  - e. Environmental permits and tax clearance.
  - f. Evidence of the assignee's technical and financial capacity.
- The application must be comprehensive and in the prescribed format.

### 4. Step 4: Due Diligence by the Commission

- The NUPRC conducts a detailed due diligence process to assess the technical and financial capacity of the assignee.
- Key areas of review include:
  - a. Technical Capacity: Ability to operate the asset effectively.
  - b. Financial Capacity: Availability of funds to meet obligations.
  - c. Legal Standing: Compliance with local content laws and competition

regulations.

- d. Environmental and Community Obligations: Plans for decommissioning and community trust contributions.

- Due diligence must be completed within 60 working days.
- The Commission may also visit operational sites for verification.

### 5. Step 5: Recommendation to the Minister

- After due diligence, the Commission makes a recommendation to the Minister within 60 days.
- The Minister has an additional 60 days to grant or refuse consent.
- If no decision is made within the timeline, consent is deemed granted.
- The decision (approval or refusal) must be communicated promptly to the applicant.

### 6. Step 6: Issuance and Publication of Consent

- If consent is granted, the holder must notify the Federal Inland Revenue Service (FIRS) within 60 days.
- The Commission will publish the consent details in the Federal Government Gazette.
- The holder must comply with any conditions attached to the consent (e.g., local content obligations).

## ii. Steps to Obtain the Commission's Consent:

### 1. Step 1: Application for Creation of Security Interest

- The licensee must submit a written application to the Commission, detailing:
  - a. Parties involved.
  - b. Total amount secured
  - c. Type of security (e.g., mortgage, pledge)
  - d. Terms and conditions of the security arrangement.
- The application must include authenticated statements from the secured party.
- The Commission has 60 days to approve or reject the application.
- If the Commission does not respond within the stipulated time, consent is deemed granted.
- Upon approval, the security interest is recorded in the Commission's register of charges.

### 2. Step 2: Application for Enforcement of Security Interest

- If the secured party wishes to enforce the security (e.g., foreclose), it must:
  - a. Apply for the Commission's consent

to enforce the interest.

- b. Submit documentation of the default and enforcement plan.

### ▪ Dual Consent Requirement:

- a. Both Ministerial and NUPRC consent are required for enforcing security interests.
- b. The Commission assesses the application and makes a recommendation to the Minister.
- c. Once approved, the Commission updates the register to reflect the change.

### 3. Step 3: Assignment of Petroleum Exploration Licences (PEL)

- A full or partial assignment of a PEL requires only the Commission's consent.
- The procedure mirrors that of obtaining Ministerial consent, but the Commission solely handles the review and approval.
- The Commission must decide within 60 working days from receiving a complete application.
- Failure to respond within the period results in deemed consent.



## C. Consent Fees and Financial Obligations

The Regulations set out explicit financial obligations for obtaining both Ministerial and the Commission's consent.<sup>3</sup>

### i. Minister's Consent Fee:<sup>4</sup>

The holder (assignor) must pay a 7% fee on the transaction value whenever Ministerial consent for an assignment is granted. This is broken into a 2% processing fee and a 5% premium. (If the assignment is an intra-group transfer, only the 2% processing fee is due.) The transaction value is based on the amount payable to the assignor in the deal (or, if not expressly stated, a value determined by NUPRC guidelines). These fees are not tax deductible. Critically, the consent document will not be issued until these fees are fully paid.

If the assignor delays payment, NUPRC gives 90 days plus a 30-day grace period; beyond that, it adds a penalty surcharge and can revoke the consent.

### ii. Commission's Consent Fee:<sup>5</sup>

For creating a security interest, the applicant must pay whatever application fee the Commission's fee schedule prescribes.<sup>5</sup>

### iii. Administrative Penalties:<sup>6</sup>

Failing to comply with the fee rules leads to fines. Notably, the Regulations impose an administrative fine of USD \$5,000 per day (or equivalent in Naira) for any assignment carried out without Ministerial consent. Similarly, failing to provide required information on ultimate beneficial owners (within 30 days of closing) incurs a USD \$2,000 per day fine until fixed.

### iv. Tax Considerations:

The Regulations clarify that all payment of processing fees, consent fees, or premiums "shall not be tax deductible". Thus, businesses cannot deduct these payments from corporate tax. On the other hand, it implies the government treats them as statutory charges for regulatory consent rather than ordinary business expenses.

## D. Penalties for Non-Compliance

The Regulations impose clear penalties for violating the assignment rules:

### i. Void Transactions:

Any assignment or transfer done without the required prior Ministerial consent is automatically void and of no legal effect. In other words, the buyer acquires no rights, and the deal is treated as if it never happened under the law. (Furthermore, a fraudulent assignment can trigger license revocation per the PIA.)

### ii. Fines:

As noted above, daily fines apply for unauthorized assignments and for failure to disclose beneficial ownership. For example, a licensee that proceeds with an assignment without consent faces \$5,000 per day until rectified. These fines accumulate daily at the Central Bank exchange rate, creating strong financial pressure to comply.

### iii. Revocation Risk:

Persistent refusal to follow the rules (especially failing to file required information or meet obligations) can lead the Commission to recommend revoking the license or lease. The Regulations explicitly warn that certain breaches “may be grounds for the revocation of the licence or lease”.

### iv. Loss of Rights:

Until the Commission enters the assignee’s name in its official register, the assignor technically remains listed as the licence holder. An assignee gains full legal rights only upon formal registration after consent.

Together, these measures ensure strict compliance: any deal done in secret is legally null, and the financial penalties are significant.

# Transitional Arrangements And Alignment With Previous Frameworks

The Nigerian Upstream Petroleum (Assignment of Interests) Regulations 2024 represent a comprehensive shift from prior guidelines, seamlessly integrating into the framework established by the PIA 2021. Upon commencement, these Regulations effectively repeal and replace any earlier directives on assignment of interests, thereby mandating that all assignments regardless of prior arrangements adhere strictly to the new regulatory standards.

## I. Transitional treatment of existing deals:

The Regulations do not expressly address the validity of assignments completed before their enactment. However, in line with the PIA, any assignment of an interest in a licence carried out under the old Petroleum Act that did not obtain the required Ministerial consent remains legally void. This means that past transactions executed without consent were already invalid under the law, and the new Regulations reinforce this stance by

mandating compliance going forward.

For assignments that were duly approved under the previous regime, the new Regulations do not affect their validity. However, any new or ongoing assignments that were not finalized before the Regulations took effect must now comply with the updated procedural requirements.

## ii. Comparison with previous regime (pre-PIA):

Under the old Petroleum Act and Department of Petroleum Resources (DPR) guidelines, only direct transfers of licence/lease titles were formally regulated, and there was no clear rule on share transfers or change of control. The 2024 Regulations (and the PIA itself) significantly broaden the scope: now any indirect transfer (including mergers, share sales, or changes of control) triggers consent requirements. Under the old regime, the Minister's consent fee

(premium) could be anywhere from 5% to 10% depending on circumstances; the new rules fix it at 5% premium plus a 2% processing fee for assignments, and only 2% for intra-group transfers. Also, whereas formerly only the Minister's approval mattered, the Commission now plays a formal gatekeeping role (e.g. approving security charges and exploration licence deals) that did not exist before. The introduction of an official public register and gazette notices is also new, previously there was no requirement to publish consent details publicly.

# Conclusion

The Nigerian Upstream Petroleum (Assignment of Interests) Regulations 2024 mark a significant step forward in ensuring transparency and regulatory compliance in the assignment, transfer, and creation of interests in upstream petroleum assets. By clearly defining the processes, setting stringent consent requirements, and mandating public disclosure, the regulations aim to safeguard Nigeria's upstream sector from opaque transactions and legal uncertainties.

For stakeholders, navigating these regulations requires a keen understanding of both procedural and compliance obligations. While the regulations may introduce more administrative steps, they ultimately foster a more accountable and structured environment for upstream petroleum transactions. As the industry adapts to this new regime, staying informed and proactive will be key to avoiding non-compliance and ensuring successful transactions.

# Endnote

1. Section 2 of the Regulations.
2. Section 3 of the Regulations.
3. Part VI of the Regulations.
4. Section 19 of the Regulations.
5. The Regulations leave this to the Commission to set in its own fee schedule.
6. Section 21 of the Regulations.



# About Stren & Blan Partners

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