



Commentary on the Assignment or Transfer of Licence and Permit Regulations, 2023



July 2023

Introduction

The Petroleum Industry Act (PIA) empowers the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the "Authority" / "NMDPRA") to issue licenses and permits for the transportation and storage of crude oil (midstream), and the conversion of crude oil into finished products (downstream)¹ to licence or permit holders (Regulated Entity(ies)) in the Nigerian oil and gas industry.

The NMDPRA, pursuant to its powers under the PIA² issued the Assignment or Transfer of Licence and Permit Regulations (the "Regulations") effective from 27 February 2023. The Regulations were issued pursuant to Section 117(1) of the PIA which provides that the holder of a midstream or downstream license or permit shall not transfer its license or permit or any rights or obligation arising therefrom without the prior written consent of the Authority.

Highlight of the Key Provisions of the Regulations

1. Regulated Transfers of Licenses and Permits

The following would require approval of the Authority under the Regulations: (i) a merger of two or more companies, one of which is a Regulated Entity; (ii) acquisition of a Regulated Entity or its assets; (iii) an assignment or transfer of the licence/permit to a company in a group of companies, in which the Regulated Entity is a member for the purpose of reorganisation of the group of companies; (iv) an assignment or transfer of a licence or permit to a new company, (v) testamentary disposition; (vi) or by reason of change in ownership of shares in the Regulated Entity.

The Authority may expand the classes of regulated transfers listed above from time to time.³ The Regulations empower the Authority to issue guidelines and directives for the effective implementation of its provisions.⁴

2. Approval for Change of name of a licensee or permit holder

A Regulated Entity must obtain the approval of the Authority before effecting a change of name whether by way of corporate restructure or rebranding or otherwise.⁵

3. Procedure for the assignment or transfer a licence or permit

The Regulations prohibit the assignment or transfer of a permit or licence or any right or obligation therein without the prior written consent of the Authority.⁶ The procedure for obtaining the required consent is as follows:

(a) Notification to the Authority:

The Regulated Entity must first notify the Authority in writing of its intention to assign/transfer its licence or permit or any obligation therein. This notification should include the details of the proposed transferee, the reason and method for the assignment/transfer, original or certified true copy of the licence/permit and other information as may be required by the Authority. The Authority is mandated, to, within 21 working days of receipt of the notification, communicate its decision on whether the Regulated Entity should proceed to the next stage of the transaction. Where the Authority

¹ Section 111 of the PIA

² Sections 33 and 117 of the Petroleum Industry Act

³ Regulation 3

⁴ Regulation 10

⁵ Regulation 4

⁶ Regulation 8, Section 117 PIA

fails to communicate its decision within the stipulated timeframe, the Regulated Entity may proceed to the next stage of the transaction.⁷

(b) Application to the Authority:

Following the receipt of the Authority’s decision or where it fails to communicate its decision within 21 days, the proposed Transferee⁸ shall apply to the Authority for an assignment or transfer of the licence or permit. The application for transfer shall be accompanied by court- certified title documents⁹ and evidence of payment of prescribed fees¹⁰ or 5% of the value of the transaction, whichever is higher. The Authority shall conduct a due diligence on the proposed Transferee and notify the Transferee of its decision to accept or refuse such application in writing within 90 days from the receipt of the application. Where the Authority refuses an application, it must give its reason for refusal in writing. However, where the Authority fails to make any decision within 90 days of the receipt of application, the application shall be deemed approved.¹¹

4. Processing fees for Assignment and Transfer of licenses and permits

The application fees payable is dependent on the nature of the facility/permit to be transferred. The applicable fees are as shown in the table below or 5% of the value of the transaction, whichever is greater.

S/N	Facility	Processing Fee
1.	Petrol Liquids and Retain Outlets	N500,000
2.	Depots	N10,000,000
3.	Blending Plants, Waste Recycling Plants, Bitumen Emulsion Plants, Refilling Plants or Thermal Desorption Units	N3,000,000
4.	Hydrocarbon Processing Plant (Refineries, Petrochemicals, and Gas Processing Facilities	US\$10,000 for capacity less than 1,000 BPSD or less than 6MMSCFD US\$50,000 for capacity between 1,000 BPSD and 30,000 BPSD or between 6MMSCFD and 180 MMSCFD US\$150,000 for capacity above 30,000 BPSD or above 180 MMSCFD
5.	Pipeline	USD 500 per kilometre
6.	Pipeline Distribution Network	USD 200 per kilometre
7.	Pipeline Transport Network	USD 250 per kilometre
8.	Terminals	USD 200,000
9.	CNG Compression Station/Small Scale LNG Installation	N500,000

5. Penalties and Sanctions for Contravention of the Regulations¹²

The Regulations impose the following penalties on defaulters.

- I. A fine of USD100,000 per licence or permit where a defaulter is involved in midstream processing facilities, installations, terminals, and pipelines.

⁷ Regulation 5

⁸ The Person to whom the licence/permit is being transferred.

⁹ Means deed of assignment, certificate of occupancy, deed of sublease, purchase agreement and any other document evidencing ownership.

¹⁰ A schedule of the prescribed fee is discussed in 4 below.

¹¹ Regulation 7

¹² Regulation 11

- II. A fine of USD50,000 per license or permits where a defaulter is involved in blending facilities and petroleum product storage facilities.
- III. A fine of N2,000,000 per license or permit where a defaulter is an oil and gas retail outlet.

In addition to the above, the Authority may suspend, cancel or revoke a defaulter's licence or permit.

Potential Regulatory Overlap between the Authority and the Nigeria Upstream Petroleum Regulatory Commission.

The PIA vests the Authority with the powers to regulate the midstream and downstream petroleum operations in Nigeria, including the transportation of crude oil, natural gas, petroleum products; the supply, distribution, marketing and retail of petroleum products; and issue certificates of quality and quantity to exporters of crude oil, LNG and petroleum products.¹³ The PIA also specify the activities in midstream and downstream operations which the Authority may license such as the operation of facilities for export and import of crude oil and bulk transportation of petroleum liquids, engaging in bulk transportation of petroleum liquids, etc.¹⁴

Although the Regulations apply to holders of NMDPRA issued licenses and permits, the fact that the Authority and the Nigeria Upstream Petroleum Regulatory Commission (the "NUPRC") both regulate the import and export of petroleum products and petroleum liquid terminals creates a potential regulatory overlap between the agencies.

We have seen examples of the potential regulatory overlap in the recent conflicting directives by both agencies which resulted in a Presidential Directive of 3 May 2023¹⁵ mandating the Authority to discontinue the exercise of any regulatory oversight on crude oil export terminals established prior to the effective date of the PIA (which NUPRC interpreted as giving it sole power to regulate the export terminals) and the subsequent circular¹⁶ by the Authority to midstream and downstream operators to disregard NUPRC's directives relating to midstream and downstream operations is indicative of the potential disruption to business activities that may be occasioned by conflicting regulations.

Conclusion

The Regulations provide clarity on the specific obligations of parties involved in negotiating a transfer of license or permits. Although the responsibility of applying for the consent of the Authority to a transfer is placed on the transferee, the penalties for non-compliance or default is borne by the Regulated Entity. It is therefore prudent for the Regulated Entity to ensure that the transferee complies with the Regulations before finalising the transfer of licenses or permits.

The incorporation of the "deemed approval" or "deemed waiver" provisions in the Regulations also ensures the certainty of timelines in regulatory approvals which is a common reason for delays in transfer transactions. We would however advice transaction parties to ensure they procure clear written approvals or waivers to avoid regulatory risks.

It is equally important to note the inclusion of corporate arrangements such as name changes, mergers/acquisitions and corporate restructures, as actions which trigger regulatory notification requirements in the Regulations. Any such arrangements involving a Regulated entity will trigger NMDPRA's regulatory oversight.

¹³ See Section 32 (c), (h), (w) and (ii); Sections 33, 113(6) and 175 of the PIA

¹⁴ See Section 174 (a) (c), (d) of the PIA.

¹⁵ Contained in a State House Memo signed by Ibrahim Gambari, the former Chief of Staff to the President titled Regulatory Oversight of Crude Oil Terminals with reference number SH/COS/24/A/78

¹⁶ "Deepening of Nigeria Midstream Petroleum Through the Creation of Separate Midstream Realities", Industry Circular on the Implementation of the PIA dated 1 June 2023.

We are available to provide clarity or advice on any of the issues discussed in this article. For more information on how we can assist you with advice on the Regulations, please contact businessadvisory@aluko-oyebode.com

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