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Unlocking Capital: Creating Security Interests in Nigeria's Upstream Petroleum Sector

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The enactment of the Petroleum Industry Act (PIA) 2021 and the subsequent Nigerian Upstream Petroleum (Assignment of Interests) Regulations, 2024 (the "2024 Regulation") has quietly revolutionised the way petroleum projects in Nigeria can be financed. For the first time, petroleum licences and leases are explicitly recognised as bankable collateral. This development fundamentally changes the conversation between operators, financiers, and investors—bringing Nigeria closer to global industry practice.

Yet, with opportunity comes complexity. How security interests are created, documented, and enforced under the PIA will determine whether this reform actually unlocks the billions of dollars of capital needed in Nigeria's upstream sector.

PETROLEUM ASSETS AS COLLATERAL: THE GAME CHANGER

Section 95(5) of the PIA provides the statutory foundation for creating security over petroleum titles:

> ***"Notwithstanding the provisions of subsection (1), a holder of a licence or lease may by way of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interests under the applicable licence, lease or grant a security interest in respect of the interest, provided that the consent of the Commission shall be obtained."***

In simple terms, this means that holders of petroleum licences and leases can now use those interests as collateral for financing, but only with the prior consent of the Nigerian Upstream Petroleum Regulatory Commission ("NUPRC"). While the Petroleum Act 1969 was silent on this point, the PIA expressly recognises that petroleum rights can serve as bankable assets.

The 2024 Regulations take this further by setting out a clear process: an application must be submitted with full transaction details, and the NUPRC has 60 days to decide—after which consent is deemed granted if no response is provided [1]. Approved securities are then registered in the NUPRC's official Register of Charges, giving lenders and investors confidence in the validity of their security [2].

Once consent is in place, lenders gain valuable statutory rights. These include access to borrower information, the ability to "step in" and cure defaults, and the right to assume the position of the licence holder for the purpose of transferring or selling the asset [3]. Priority rules ensure that the first-in-time security interest prevails, while also making it clear that government revenues such as royalties, taxes, and fees remain senior to any lender's claims[4]. For financiers, this means greater protection; for government, it preserves fiscal sovereignty.

The 2024 Regulations also provide clarity on discharge and enforcement. When debts are repaid, secured parties must file a memorandum of satisfaction, ensuring the register is updated and their rights terminated [5]. If enforcement becomes necessary, lenders must follow the same transparent procedures for assignments, including government oversight of new acquirers[6]. In effect, while the PIA opened the door, the 2024 Regulations provide the practical mechanics and safeguards that make Nigeria's

[1] Reg. 12(7) Nigerian Upstream Petroleum (Assignment of Interests) Regulations, 2024
[2] Reg. 12(9), ibid.
[3] Reg. 13(1), ibid.
[4] Regs. 13(3)–(4),ibid.
[5] Reg. 14, ibid.
[6] Reg. 15; Regs. 4–5, ibid.

petroleum assets genuinely bankable for commercial transactions.

FORMS OF SECURED CREDIT TRANSACTIONS UNDER SECTION 95(5) PIA

Section 95(5) of the PIA recognises multiple forms of security, each carrying different legal and commercial implications:

- **Assignment:** This involves the assignment by way of security of the borrower's rights and interests under a Petroleum Prospecting Licence (PPL) or Petroleum Mining Lease (PML) directly to the lender or security trustee.
- **Pledge:** A pledge is created by depositing the object of the security with the lender (or its nominee) as security for the debt. In the case of a PPL or PML, this could involve depositing the licensing document itself. Unlike an outright assignment, the borrower retains ownership, while the lender acquires possessory rights as security.
- **Mortgage:** A mortgage over an oil and gas interest transfers ownership of the rights under the licence or lease to the lender or security trustee, subject to an express or implied condition that the interest will be retransferred to the borrower upon repayment. This is often used in structured finance where lenders require strong security over high-value assets.
- **Charge:** A charge—whether fixed or floating—creates an encumbrance over the borrower's oil and gas rights without transferring ownership to the lender. The borrower retains title and operational control, but the lender gains a priority claim over the asset if the borrower defaults.

DEAL OR NO DEAL?

The ability to create security over petroleum licences and leases fundamentally changes the way upstream projects in Nigeria can be financed. For companies seeking capital and financiers considering exposure to the sector, the implications are far-reaching:

- **Bankability:** Petroleum titles are now recognised as collateral that can be pledged to lenders. This means operators can raise debt or structured finance on terms much closer to international Reserve-Based Lending (RBL) practice, where loans are secured directly against petroleum assets and future cash flows. For Nigerian operators, this translates into a more competitive ability to attract funding for development projects.
- **Risk Allocation:** Secured creditors now enjoy statutory rights under the 2024 Regulations, including access to borrower information and the ability to step in during defaults. However, these rights exist alongside the government's overriding claim to royalties, taxes, and fees. In practice, financiers must structure deals with an understanding that government revenues take priority, and borrowers must covenant to remain fully compliant to avoid eroding lender protections.
- **Timing:** The 2024 Regulations impose a 60-day timeline for the NUPRC to grant or refuse consent to the creation of security, with a "deemed consent" mechanism if no decision is communicated. Financing agreements therefore need to address this timeline explicitly allocating risk if consent is delayed and clarifying the effect of deemed consent on drawdowns and disbursements. Careful drafting here can mean the difference between hitch free closing and a stalled transaction.
- **Exit Strategies:** Enforcement of security is not automatic or unilateral. Lenders who step in must follow the same transparent procedures that apply to assignments, including demonstrating that any proposed buyer or transferee is

acceptable to the government. This means exit strategies need to be carefully planned, often supported by layered security packages (such as share pledges and receivables assignments) to ensure lenders retain flexibility in recovering value.

WHY LEGAL STRUCTURING MATTERS

The PIA 2021 and the 2024 Regulations provide a strong statutory framework, but turning those provisions into workable financing solutions is far from automatic. In practice, grey areas remain that can expose parties to serious risk if not carefully managed.

For instance, the 2024 Regulations provide that NUPRC consent is deemed granted if no decision is communicated within 60 days, but what happens if NUPRC later disputes whether an application was "complete" in the first place? Similarly, financiers may have statutory step-in rights, yet exercising those rights could trigger conflicts with joint venture partners, contractors, or even regulators. For operators, there is also the constant challenge of drafting financing agreements that reassures investors while still complying with regulatory obligations and preserving operational flexibility.

These are not abstract issues. They are key questions that determine whether a financing closes on time—or collapses due to regulatory challenges. This is why careful and well thought legal structuring is of paramount importance. Success in this new framework requires precise drafting, layered security arrangements, and proactive regulatory engagement to balance investor protection with compliance. The difference between opportunity and dispute often lies in the quality of the structuring.

THE STRATEGIC PATH FORWARD

The PIA and the 2024 Regulations have opened a pathway to make petroleum assets truly bankable, but unlocking their full potential requires deliberate strategy. For operators, financiers, and investors, the following steps are critical:

1. **Put consent at the core of transactions.** Regulatory approvals should not be treated as an afterthought; they must be hardwired into financing documents as conditions precedent or carefully drafted conditions subsequent, with clear long-stop dates.

2. **Adopt layered security packages.** Petroleum title security is powerful, but by itself may be slow to enforce. Combining it with share pledges, receivables assignments, and escrow arrangements ensures lenders retain flexibility and protection even if regulatory processes delay enforcement.

3. **Translate statutory rights into contracts.** The rights conferred under the 2024 Regulations—such as step-in, subrogation, and access to information—should be expressly mirrored in security documentation to avoid gaps between law and practice.

4. **Engage regulators early and often.** Proactive dialogue with the NUPRC helps to reduce uncertainty, avoid procedural delays, and clarify any grey areas around consent applications and enforcement pathways.

Taken together, these measures transform the legal framework into practical, bankable structures—ensuring that transactions not only comply with the law but also attract the capital needed to drive Nigeria's upstream sector forward.

CONCLUSION

Nigeria's upstream sector faces a critical need for fresh investment, and the reforms introduced by the PIA and the 2024 Regulations have created a viable pathway for unlocking that capital. These legal frameworks provide clarity by recognizing the ability of license and lease holders to assign, pledge, mortgage, and charge their interests, while also setting out detailed procedures for consent, enforcement, and discharge of security interests. By making petroleum titles bankable collateral, these laws align Nigeria more closely with international financing practice. Yet, the rules are delicate, the stakes are high, and any misstep in structuring can carry costly consequences.

For operators, this is a rare chance to raise capital more competitively and accelerate project development. For financiers and investors, it represents an opportunity to expand into a sector that now offers stronger legal protections and clearer enforcement pathways. But for all stakeholders, success ultimately depends on structuring transactions with precision, foresight, and full regulatory alignment.

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