



**MATTERS ARISING FROM DPR's 22
WORKING DAYS TIMELINE TO
OBTAIN MINISTERIAL CONSENT**

Introduction

Further to our regulatory and compliance update of 19 May 2017 on the Executive Order on the Ease of Doing Business in Nigeria, <http://ao2law.com/2017/05/19/executive-order-on-the-ease-of-doing-business-in-nigeria/>, the Department of Petroleum Resources (“DPR”) recently released timelines for service delivery (the “Timeline Document”). One of the services listed is the approval for assignment of interests in license/lease and marginal fields.

The Timeline Document:

The Timeline Document states that upon fulfillment of specific obligations by a customer, Ministerial approval on assignment of oil and gas interest shall be granted within twenty-two (22) working days of submission. The specific obligations listed in the Timeline Document include (i) submission of application in line with the Guidelines and Procedures for Obtaining Minister’s Consent to the Assignment of Interest in Oil and Gas Assets, which was released in 2014 and (ii) Payment of statutory application fee (Marginal Field – USD 2,500; Oil Prospecting License – USD5,000 and Oil Mining Lease – USD10,000).

The Executive Order on the Promotion of Transparency and Efficiency in the Business Environment:

It may be recalled that on 18 May 2017, the Nigerian Vice-President signed an Executive Order on the Promotion of Transparency and Efficiency in the Business Environment (the “Order”). One of the major highlights of the Order is the concept of default approval. The Order states that where a relevant agency or official fails to communicate approval or rejection of an application within the time stipulated, such application not concluded within the stipulated timeline shall be deemed approved and granted (“Default Approval”).

Matters Arising:

The Timeline Document released by the DPR is commendable as a step in the direction to ensure Ministerial Consent is obtained within the shortest possible time. This is in light of the fact that that the process hitherto spans between 3 – 6 months under normal circumstances and sometimes could take as long as 18 months under exceptional circumstances. Our commendation nonetheless, a few issues need be considered.

The first issue is what happens if Ministerial Consent is not granted within 22 working days of an eligible application? Will Default Approval as contemplated by the Order apply? One may be tempted to answer in the affirmative. On the point of Default Approval, the Order further states that *"An Applicant whose application is deemed granted under this Directive may apply to the Minister for the time being in charge of the application for the issuance of any document or certificate in evidence of the grant within 14 days of lapse of the MDA's stipulated timeline for the application."*

Going by the highlighted provisions of the Order, a pertinent question that comes to mind is: *Will the Minister who is obligated under the Petroleum Act to grant consent for the assignment of an oil and gas interest and has failed to do same issue the document of "Default Approval"?* Our thoughts are that a Default Approval may not be as straightforward as the Order seems to suggest.

Furthermore, so as to ensure that the Default Approval provisions of the Order is not triggered, it is not impossible that applications may be rejected by bureaucrats at the DPR for mundane reasons so as to "reset" the approval process.

Another issue to consider is the validity of a Default Approval as contemplated by the Order in the face of the express provision of the Petroleum Act. Paragraph 14 of the first schedule to the Petroleum Act provides that: *"Without the prior consent of the Minister, the holder of an oil prospecting license or an oil mining lease shall not assign his license or lease, or any right, power or interest therein or thereunder."*

Considering that the Petroleum Act does not provide for Default Approval, where a Default Approval is contested and litigated, there is the likelihood that the Default Approval provision of the Order may fail when considered vis-à-vis the express provisions of the Petroleum Act.

It is our hope that the DPR and the Ministry of Petroleum Resources will strictly adhere to the Timeline Document, as this will boost investor confidence in the sector. The efficacy of the both the Order and the Timeline Document are set to be tested in the coming months in view of further divestments by the IOCs and the imminent marginal field bid rounds.

*For further information on the foregoing, please contact Oyeyemi Oke (oyeyemi.oke@ao2law.com) with the subject: **"22 Working Days Timeline to Obtain Ministerial Consent for Assignment of Oil and Gas Interest and Default Approval under the Executive Order for Doing Business in Nigeria: Matters Arising."***