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# ACQUISITIONS IN OIL AND GAS TRANSACTIONS

Nigeria's oil and gas sector has been particularly active as major international oil companies (IOCs) continue divesting their onshore assets to focus on offshore operations. In 2024, this led to significant acquisitions and partnerships, with IOCs like Shell and TotalEnergies selling assets to local players such as Chappal Energies, Seplat Energy, and Oando PLC.

## Understanding Acquisitions

An acquisition occurs when one company purchases most or all of another company's shares or assets, gaining control of its operations. Unlike mergers, acquisitions do not necessarily create a new entity; the acquired company may continue operating as a subsidiary or be fully integrated into the acquiring firm.

In the upstream sector, investments are structured as either share acquisitions or asset acquisitions, with the choice depending on the needs of the parties involved.

## Types of Oil and Gas Acquisitions

- **Share Acquisition:** In this acquisition, the purchaser acquires a controlling interest (typically 51% or more) of another company's shares. The company retains ownership of its assets and continues operations.

- **Asset Acquisition:** The purchaser acquires specific assets such as Petroleum Mining Leases (PMLs), Petroleum Prospecting Licences (PPLs), and associated infrastructure (e.g., gas plants and pipelines), without taking over the entire company. This allows buyers to select assets while avoiding unwanted liabilities.

**Key Distinctions between an Asset Acquisition and a Share Acquisition**

The primary distinction is that asset acquisitions involve a direct transfer of specific assets, while share acquisitions transfer ownership of the entire company without affecting its identity or obligations.

- **Share acquisitions** require extensive due diligence as all assets and liabilities are transferred. However, they offer business continuity with minimal disruption to contracts and operations.

- **Asset acquisitions** allow buyers to cherry-pick assets while avoiding liabilities, but they often require renegotiating contracts due to non-assignment clauses.

Each structure has tax implications and must be carefully considered.

**Key Steps in an Oil and Gas Acquisition**

- Preliminary Assessment
- Engagement of Advisors
- Due Diligence
- Valuation
- Negotiation Documentation
- Regulatory Approval

**Regulatory Approval: Ministerial Consent**

While the entering into an Agreement between the buyer and the purchaser constitutes an agreement to sell Under Nigerian law, acquisitions involving oil and gas assets require Ministerial Consent before they can be finalized.

The Petroleum Industry Act (PIA) 2021 and the Guidelines and Procedures for Obtaining Minister's Consent to the Assignment of Interest in Oil and Gas Assets, 2021 (the "Guidelines") outline the conditions under which Ministerial Consent is required. According to Clause 3 of these Guidelines, Ministerial approval is required for the following assignments:

- Assignment by way of exchange or transfer of shares.
- Assignment by way of private placement or public listing, in any Stock Exchange, of a part or of the whole of the shares of a company which holds an Oil Prospecting Licence (OPL), Oil Mining Lease (OML), Marginal Field (MF), or Oil and Gas Pipeline Licence (OGPL).

- Mergers involving a company holding an OPL, OML, MF, or OGPL.
- Acquisitions where an entity takes over an OPL, OML, MF, or OGPL, including indirect acquisitions via parent companies.
- Assignment to a company in a group of which the Assignor is a member and is to be made for the purpose of restructuring.
- Assignment arising from devolution of ownership of shares by operation of law or testamentary device.

**Assignment Procedure**

- The Assignor (seller) shall notify the regulator in writing of its intention to carry out an Assignment. The regulator shall respond within 10 working days from date of receipt of the notification, failing which the Assignor may proceed to the next stage of the Assignment process. Under the PIA, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) have replaced the DPR as the primary regulator.

- The Assignor shall not make any public announcements, advertisements, or press releases regarding the assignment may be made without prior regulatory approval.

- Upon the successful completion of the notification stages, an Assignor shall submit a written application to the regulator requesting the Minister's consent along with the required documents.

Application and Fees

- The assignor (seller) must apply for consent through the DPR.
- The Minister's consent may only be granted if the Minister is satisfied that the proposed Assignee is reputable, technically and financially competent, and acceptable to the Federal Government.
- Upon approval, the Minister imposes a consent fee of 5% to 10% of the transaction value, which is not tax-deductible.
- Consent is granted only after payment of the required fees.

Nigeria's evolving oil and gas market presents opportunities for strategic acquisitions and partnerships, with regulatory approvals playing a crucial role in ensuring smooth transactions.



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