

# CORPORATE RESTRUCTURING OPTIONS FOR MARGINAL FIELD OPERATION IN NIGERIA

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## *Abstract*

Since the commencement of the marginal field development programme in Nigeria with the amendment of the Petroleum Act in 1996 and award of 24 of the fields to indigenous companies in 2001, only few of the operating companies have brought their marginal fields on-stream. The majority of the companies have made little or no headway with their own fields. This trend underscores the significance of corporate strength as a determining factor in the success of a company with its marginal field. Corporate restructuring therefore comes to mind as a turnaround mechanism for marginal field companies in Nigeria. This paper examines the nature, procedure, and statutory requirements of corporate restructuring schemes in the context of marginal field development. The study finds that with the successful outing of mergers and acquisitions, the most popular corporate restructuring schemes, to the Nigerian marginal field industry, corporate restructuring can produce mega firms with greater capacity for field development.

**Key words:** corporate restructuring, marginal field, development, Mergers and acquisitions.

## **1.0 Introduction**

The term, oil and gas marginal field, is defined based on different criteria, which include: economic consideration, technological requirement, oil and gas reserves and length of time over which the field was left undeveloped. However, the uniting factor in all perspectives of the definition by various scholars is the economic implication of marginal field development. Thus Omorogbe pointed out<sup>3</sup> that economic reasons, more than any other, are the most important in classifying a field as marginal. Based on economic reasons as she noted, Omorogbe defined a marginal field as one that is comparatively more expensive to produce from under the prevailing economic environment. Chijioke Nwaozuzu<sup>4</sup> also expressed his conviction that the term “marginality of a field” is subjective, but that whether a field is untapped, abandoned or with partially depleted reserves, the most important factor is always the degree of profitable production. From the economic stand-point, Nwaozuzu viewed a marginal field as "one that can be developed with marginal profits regardless of the actual size of the oil field." Egbogah equally considered a marginal field as, "any oil discovery whose production would for whatever reasons, fail to match the desired or established rates-of-return of the leaseholder."<sup>5</sup>

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<sup>3</sup> Omorogbe. Y. 1999. Fundamental Issues Relating to the Development of Marginal Fields in Nigeria. *Modern Practice Journal of Finance & Investment Law*, 3.4: 737-757.

<sup>4</sup> Nwaozuzu. C. 2013. Marginal Fields: Status, Constraints, Prospects. *Vanguard*. Dec. 10:13.

<sup>5</sup> Op. cit.

Relevant laws and policies in Nigeria have proffered some meanings to a marginal field. For example, The Petroleum Act<sup>7</sup> defines a marginal field to mean "such field as the President may, from time to time, identify as a marginal field."<sup>8</sup> The Guidelines for Farm Out and Operations of Marginal Fields, 2013<sup>9</sup> expounded the meaning of marginal fields beyond what the Act provides, as follows: "marginal field is any field that has (oil and gas) reserves booked and reported annually to the Department of Petroleum Resources and has remained un-produced for a period of over 10 years." The Guidelines further states a number of features of a marginal field, thereby adding some clarity to the uncertainties on the meaning and status of a marginal field created by multiplicity of definitions.

The Nigerian Petroleum Act, by its amendment of 1996 created a legal regime for the acquisition and development of the marginal fields. In the development programme, Government retrieves the fields from the major oil companies, mostly the International Oil Companies (IOCs) whose oil concession areas encase the fields, and who are perceived to have neglected or abandoned the fields, and then hands them over to smaller companies who wish to invest in them. By means of policy, a system of indigenization is pursued in the programme whereby the fields are granted primarily to Nigerian companies with limited rooms for participation by foreign investors.

Data from the Department of Petroleum Resources (DPR) reveals that there are currently 30 awarded marginal fields on the whole. Out of these 30, it is only in 12 fields that petroleum production has commenced. The remaining 18 have not witnessed any production of oil or gas.<sup>10</sup> The report of an assessment study conducted on the progress of the companies with the producing marginal fields<sup>11</sup> links the secret of success of those marginal field operators *inter alia* to collaboration through the use of common crude oil export facilities. The case of FUN Group (Frontier, Universal Energy Resources Limited and Network Exploration and Production Nigeria Limited) represents a perfect example of such collaboration. This collaborative arrangements which made some of the companies better off than others can be a precursor to corporate restructuring schemes like mergers and acquisition between some pairs of the companies that can mutually benefit each other to set their fields on the petroleum production course.

But the majority of the marginal field companies have not fared so well with their fields which remain unattended, as marginal field operations in Nigeria remains at low ebb. More than a decade since the marginal field program came into being, the contribution of marginal fields to Nigeria's crude oil production is placed, by estimate, at 2.1 per cent of the country's total crude output, with the fields yielding about 60,000 barrels of oil per day and 100 million standard cubic feet of gas per day.<sup>12</sup> This slow pace of the marginal fields, among other reasons led to government's proposal to undertake a second marginal field bid round in 2013, placing 31 marginal fields on offer. DPR released a set of guidelines that provide details on the process, stages and application requirements for companies

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<sup>7</sup> Cap P10, Laws of the Federation of Nigeria, 2004.

<sup>8</sup> Op. cit. First Schedule, Para. 17(4).

<sup>9</sup> Guidelines for Farm Out and Operations of Marginal Fields - 2013. Paragraph 5.0.

<sup>10</sup> Source: Department of Petroleum Resources. <https://dpr.gov.ng/index/list-of-marginal-fields>, accessed on 6<sup>th</sup> March, 2017.

<sup>11</sup> Kanshio, S. 2016. How are Nigerian Marginal Field Operators doing? <https://www.linkedin.com/pulse/how-nigerian-marginal-field-operator>, accessed on 6<sup>th</sup> March, 2017.

<sup>12</sup> Adugbo, D. 2015 Nigeria: One Year After, Marginal Field Bid Round Fails to Take Off. *Daily Trust*, March 10, 2015.

interested in taking part in the 2013 Marginal Fields Licensing Round. The bid-round is however suspended indefinitely

With the poor progress rate recorded so far in the marginal field development programme, the corporate structures and capacities of the marginal field companies call for review. Some observations on the problems of marginal field development in Nigeria have identified factors external to the companies, such as, political issues;<sup>13</sup> environmental issues like communities' agitations and security;<sup>14</sup> and lack of government assistance.<sup>15</sup>

Pertinent internal affairs of the marginal field companies such as their structure, assets, management and experience in petroleum exploration and production as key determinants of their performance, have also received some attention. In an article that focused on the problems of marginal field operations in Nigeria, Duru called on the marginal field companies to thoroughly examine themselves with a view to identifying and treating those internal problems, mainly structural and managerial, that must have greatly contributed to their poor progress with their fields.<sup>16</sup> Such self-appraisal would focus on the corporate structure of the company which could be a strong factor on its financial strength, credit-worthiness, and fitness for partnership.

Stig Svalheim of the Norwegian Petroleum Directorate also noted the role of corporate strength and structure in marginal field development.<sup>17</sup> In naming the common challenges confronting marginal field development and production in Norway, he expressed his observation that the marginal status of a field is often related to the size of an individual company portfolio which, due to the internal competition for budget funds leaves profitable opportunities on the shelf.<sup>18</sup> A call has also been made on marginal field companies to restructure their equity and ownership to attract offshore funds, in the face of stiff funding challenges and overwhelming credit demands which have weakened the lending power of the Nigerian banks.<sup>19</sup>

Considering this acknowledged need for synergy among the marginal field companies for greater corporate strength, corporate restructuring offers a means of better management, joinder of assets and reserve base, and meeting bankability requirements for easy access to funds by the companies. To this end, the various schemes of corporate restructuring are herein examined in terms of their legal frameworks, procedures, and availability and suitability to the marginal field companies in Nigeria.

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<sup>13</sup> Egbogah, E.O. 2011. Onshore/Marginal Field Developments: Challenges, Opportunities and Prospects for the Future. Presented at the Annual Oloribi Lecture and Energy Forum, Lagos, Nigeria. June 30.

<sup>14</sup> Olorunsola, O. 2015. *Marginal Fields Development in Nigeria: A Review of Policy, Regulation, Activities and Future Outlook* <http://www.nigeriaoilandgasintelligence.com/marginal-fields-development-in-nigeria/> Retrieved on 17<sup>th</sup> March, 2016.

<sup>15</sup> Mama, C. 2014. Nigeria's marginal oil fields – Open fields, closed gates. Dec. 22.

<sup>16</sup> Duru, J. 2015. Marginal Field Operations - the real problem, and where the solution. <https://www.linkedin.com/pulse/marginal-field-operations-real-problem-where-solution-duru>. Retrieved on June 22, 2017.

<sup>17</sup> Svalheim, S. 2004. Marginal Field Development - a Norwegian Perspective. Presentation at the 3 PPM Seminar, Chiang Mai, Thailand Sept. 22. [http://www.ccop.or.th/projects/PPM/Seminars\\_files/3rdSeminar ChiangMai/Presentation10 Marginal%20Field%20-%20NPD.pdf](http://www.ccop.or.th/projects/PPM/Seminars_files/3rdSeminar%20ChiangMai/Presentation10%20Marginal%20Field%20-%20NPD.pdf), accessed on 16<sup>th</sup> February, 2016.

<sup>18</sup> Op. cit.

<sup>19</sup> Anthony, N. Marginal oil field operators asked to restructure to attract offshore financing. Business. July 22, 2014. <http://www.businessdavonline.com/marginal-oil-field-operators-asked-to-restructure-to-attract-offshore-financing>, accessed on 19<sup>th</sup> June, 2017.

## 2.0 Modes of Corporate Restructuring for the Nigerian Marginal Field Companies

Corporate restructuring has been defined as the changes in ownership, business mix, assets mix, and alliance, with a view to maximizing shareholders' wealth and improving firm value.<sup>20</sup>

The schemes of corporate restructuring are: mergers and acquisition, takeover, arrangement and compromise. The other forms of corporate restructuring, in their obscurity, share some similarities if not with mergers, at least with acquisition. The corporate restructuring option to be adopted for marginal field firms would depend on the legal and regulatory conditions, the cost and convenience.

### 2.1 Mergers and Acquisition

A merger is an amalgamation of the undertakings or any part of the undertakings or interest of two or more companies and one or more bodies corporate.<sup>21</sup> Section 119(1) of the Investment and Securities Act, 2007 defines the term in near-similar words as, "... any amalgamation of the undertakings or any part of the undertaking or interest of two or more companies or the undertakings or part of the undertakings of one or more companies and one or more bodies corporate."

Acquisition is a transaction or a series of transactions where an entity acquires control over assets, either directly or indirectly.<sup>22</sup> Acquisition slightly differs from merger in the sense that the companies which are parties to an acquisition may not necessarily combine their respective businesses and operations, depending on the transaction structure adopted, and they may remain interdependent separate legal entities, but there may be a change in the control of the subject entity.<sup>23</sup> Merger on the other hand involves a complete mix of the merging entities.

It has been noted that the commonest form of corporate restructuring is ownership restructuring which is basically effected through mergers and acquisitions.<sup>24</sup> It has also been observed that one of the main elements of contemporary corporate restructuring is the boom in mergers and acquisitions.<sup>25</sup> The frequency of mergers in the oil and gas sector, just like other business sectors, compared to the other forms of corporate restructuring has indeed limited the majority perception of corporate restructuring to mergers and acquisitions. Some instances of mergers in the oil and gas industry are: Exxon and Mobile, Bp and Amoco (and later BP Amoco with Arco), Chevron and Texaco. A typical example is the consummation of Elf Oil Nigeria Limited, Total Nigeria Plc and Nicheptese Industries Plc, in

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<sup>20</sup> Sulaiman, L.A. 2012. Does Restructuring Improve Performance? An Industry Analysis of Nigerian Oil & Gas Sector. *Research Journal of Finance and Accounting*. Vol. 3, No 6.

<sup>21</sup> Rule 227(1), SEC Rules

<sup>22</sup> Tom Speechley, 'Acquisition Finance' (2nd edition, Tottel Publishing Ltd), 2008. Referred to in Dimgba. N. 2015. Law and Practice of Mergers and Acquisition in Nigeria. <http://ssrn.com/abstract=2652362>

<sup>23</sup> Dimgba. Op. Cit.

<sup>24</sup> Op. cit.

<sup>25</sup> Pazarskis, M., Vogiatzogloy, M., Christodoulou, P. & Drogalas, G. (2006). Exploring the Improvement of Corporate Performance after Mergers - the Case of Greece, *International Research Journal of Finance and Economics*, Issue 6, 184 - 192; cited in Sulaiman (supra).

2001 to form a single entity called 'Total finale – Elf of Nigeria Plc'. The story of the marginal field companies is not any different, as corporate restructuring is also tied to mergers and acquisition. The merger between Platform Petroleum Limited, and Shebah Petroleum Development Company Limited in 2009 which gave birth to Seplat Petroleum Development Company comes to mind.<sup>26</sup>

Mergers enjoy ample popularity over other corporate restructuring schemes, with its availability to all types of companies, and the statutory relaxation of some of the procedural requirements for low-threshold mergers. For instance, mergers are categorized into small, intermediate and large mergers.<sup>27</sup> Section 120 of the Investments and Securities Act (ISA) empowers Securities and Exchange Commission (SEC) to determine the threshold for each of these categories from time to time. The threshold for a small merger is a merger, whose value is below N1 billion or any amount or value that SEC may prescribe from time to time. For an intermediate merger, the threshold is between N1 billion and N5 billion or any amount or value SEC may prescribe from time to time, whilst the threshold for a large merger is from 5 billion or any amount or value that SEC may prescribe from time to time.

Considering the requirement of SEC notification for some mergers, parties to a small merger need not notify SEC of the merger unless specifically required by SEC to do so.<sup>28</sup> On the other hand, parties to an intermediate or large merger are mandated by law to notify SEC of, and obtain its formal approval to, such merger.<sup>29</sup>

In the case of the marginal field companies, the financial value of a merger especially among the financially challenged marginal field companies would surely be of low threshold, but determining the exact threshold for the purpose of applicability of the SEC requirement would demand specific case-based enquiries. Considering the huge financial requirement of marginal field development however, a merger falling below the intermediate category may not yield the financial enablement that would launch the field into production. It can at best position the entity resulting from the merger to access credit facilities.

Whatever category the merger of marginal field companies falls into, the prior consent of the Minister of Petroleum Resources is compulsory for the merger. This is in line with the provision of Paragraph 14, First Schedule of the Petroleum Act which is reinforced by the judicial decision in *Moni Pulo Limited v. Brass Exploration Unlimited & 7 Others*<sup>30</sup> and the Guidelines and Procedures for Obtaining Minister's Consent to the Assignment of Interest in Oil and Gas.

## 2.2 Takeover

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<sup>26</sup> Kanshio, S. 2016. How are Nigerian Marginal Field Operators doing? <https://www.linkedin.com/pulse/how-Nigerian-marginal-field-operator>. Retrieved on 6<sup>th</sup> March, 2017.

<sup>27</sup> Section 120, I SA.

<sup>28</sup> Section 122 of the I SA

<sup>29</sup> Section 123(1) ISA 2007.

<sup>30</sup> (2012) 6 CLRN 153 - 235.

The Investments and Securities Act (“ISA”) 2007 defines a takeover as the acquisition by one company (“Bidder”) of sufficient shares in another company (“Target”) to give the Bidder control over the Target.<sup>31</sup> From this definition, the essence of a takeover is to obtain, through share acquisition, the management or control of the targeted company without necessarily acquiring the company *in toto*. This marks the difference between a takeover and an acquisition. The former does not entail outright purchase of the entire entity.

A takeover takes off with a takeover bid under the Investment and Securities Act (ISA) 2007. The ISA states in details the requirements for a takeover which includes, but is not limited to: authority to proceed with the takeover bid, which must be sought and obtained from the Corporate Affairs Commission (CAC);<sup>32</sup> registration of the proposed takeover bid;<sup>33</sup> resolution of the board of directors of the bidding company which consents to the bid;<sup>34</sup> If the takeover goes through, the acquiring company becomes responsible for all of the target company's operations, holdings and debt. When the target is a publicly traded company, the acquiring company will make an offer for all of the target's outstanding shares. The procedure for takeover is provided in sections 131 to 151 of the ISA.

An obstacle that may confront marginal field companies with takeover is that the motive of a takeover which is to gain control or management would perhaps conflict with some conditions of the award of the marginal field to the company being taken over. The Guidelines for Farmout of Marginal Fields makes strict provisions on the criteria for the granting of the marginal fields to the farmee companies, chief among them being that the company must be an indigenous company which must be substantially Nigerian, and shall be registered solely for exploration and production business.<sup>35</sup> If control and management changes hands through a takeover, the resulting entity may be of a nature different from what the DPR scrutinized and approved prior to the award of the marginal field. Much as a strong case is made here for the basing of marginal field licensing criteria on overall competence of the bidders rather than closing the bidding door against some companies based on their origin or ownership, it is still not ideal that the DPR policy on marginal fields enabled by statutorily derived powers be circumvented vide the instrumentality of takeover. This controversy which in fact extends to other forms of corporate restructuring, must have been contemplated and sought to be resolved in the *Moni Pulo* decision. The court, in the *Moni Pulo* Case, mandated that ministerial consent be sought and obtained for any form of assignment of right or interest in a petroleum concession. The Guidelines for Obtaining of Ministerial Consent which closely followed that judicial decision also reiterated this prerequisite. The

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<sup>31</sup> Section 117 ISA 2007.

<sup>32</sup> See Section 134 of the ISA

<sup>33</sup> Section 135

<sup>34</sup> Section 137. A default in this particular requirement is an offence by each director in default which attracts a fine of not less than 100, 000 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment. See section 137(2).

<sup>35</sup> Paragraph 6.5 of the Guidelines.

above-stated decision and the Guidelines might have resolved the issue of the Petroleum Minister's prior approval for all forms of corporate restructuring of a marginal field company, but another obstacle, peculiar to takeover of a marginal field firm is the statutory barrier to takeover of private companies. Section 133(4) of the ISA provides that: "*a take-over bid shall not be made in any case where the shares to be acquired under a bid are shares in a private company.*" A takeover is essentially a share transaction and virtually all the marginal field farmee companies are private companies. This therefore means that takeover is not readily available to the marginal field companies. A marginal field company would have to go public for take-over bids to apply to it.

### **2.3 Arrangement and Compromise**

The companies and Allied Matters Act from its Section 537 to 540 provides for compromise and arrangement. The two terms, in the context of corporate restructuring are used interchangeably. However, it was been judicially acknowledged in the case of *Yinka Folawiyo & Sons Ltd. v. T. A. Hammond Projects Ltd.*<sup>36</sup> that the terms are not synonymous, and that an agreement which enables the majority of the creditors to accept less than is due to them may be a compromise on the part of the creditors as a whole, but where the shareholders do not give up anything, no compromise as such is involved, but only an arrangement results.

Section 537 of the Companies and Allied Matters Act (CAMA) defines an arrangement as "*any change in the rights or liabilities of members, debenture holders or creditors of a company or any class of them or in the regulation of a company, other than a change effected under any other provision of this Act or by the unanimous agreement of all parties affected thereby.*" CAMA empowers the members of a company to resolve by special resolution, in order to achieve an arrangement that the company be wound up and that the liquidator be appointed to sell the whole or part of the company's undertaking or assets to another company. The consideration for such sale may be cash, shares or debentures which the liquidator will distribute proportionately to the members in accordance with their rights in liquidation.<sup>37</sup>

Any member of the company can, by writing addressed to the liquidator and left at the registered office or head office of the company, within 30 days after the passing of the resolution, dissent from the arrangement in respect of any of the shares held by him. In this circumstance, the liquidator shall either abstain from carrying the special resolution for the winding up into effect or shall purchase such shares at a price to be determined in the manner provided by section 538(4). Any member who fails to signify his dissent as provided above shall be deemed to have accepted the resolution.<sup>38</sup>

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<sup>36</sup> (1977) FRCR 143.

<sup>37</sup> Section 538(1) of CAMA.

<sup>38</sup> Section 538(3).

A compromise is essentially an arrangement by a Company with the creditors and/or the shareholders or a class of them to accept less than what they are ordinarily entitled to as full satisfaction of their obligation. It may require the company to negotiate with the creditors and request that they relinquish their security or to permit the creation of a prior charge in favour of other creditors. It is also possible under a compromise, for a company to persuade its creditors to accept shares or part shares and part cash, in satisfaction of their debt.

Section 539(1) of CAMA provides that where a compromise or arrangement is proposed between a company and its creditors or any class of them, the court may, on the application, in a summary way, of the company or any of its creditors or members or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company, or class of members, as the case may be, to be summoned in such a manner as the court directs.

Arrangement and compromise are share transactions which are generally allowed for oil and gas companies including marginal field operators subject to ministerial consent by virtue of the *Rule in Moni Pulo v Brass*. But the issue arising here is the circumstance of the share transaction in the instances of arrangement and compromise, namely winding up. This is an extreme circumstance wherein the consent of the Petroleum Minister as required in the Petroleum Act is not guaranteed because of the far-reaching implications of the scheme on the corporate existence of the company. It is noteworthy however that there is nothing in the law foreclosing further assignment of a marginal field after the initial farm-out. Indeed all the relevant statutory and policy provisions on this issue create the common impression of easy entry and exit on a farmed out marginal field.<sup>39</sup> Neither is there any barrier to ownership or structure of a marginal field farmee after the farmout even if it would result in winding up of the original marginal field farmee. The statutory guides to the Minister in his discretion to give or refuse the consent is the Minister's satisfaction that:<sup>40</sup> the proposed assignee is of good reputation, or is a member of a group of companies of good reputation, or is owned by a company or companies of good reputation; there is likely to be available to the proposed assignee (from his own resources or through other companies in the group of which he is a member, or otherwise) sufficient technical knowledge and experience and sufficient financial resources to enable him to effectually carry out a programme satisfactory to the Minister in respect of operations under the licence or lease which is to be a signed; and the proposed assignee is in all other respects acceptable to the Federal Government.

The presence of the above conditions constitute ground for exercise of the Ministers discretion in favour of or against the assignment. Their presence does not mandate the Minister to grant the consent, but they are mandatory before the consent would be granted. It can be seen clearly from the prerequisites that the law focuses more on the assignee of the rights or interest (which in the case of corporate restructuring would mean the entity resulting from the restructuring) than on the assignor. Thus it would not matter to the Minister what

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<sup>39</sup> Para. 14, First Schedule to the Petroleum Act.

<sup>40</sup> Para. 16, First Schedule to the Petroleum Act.

becomes of the corporate structure or existence of the farmor company after the assignment. It is therefore safe to conclude that the law leaves an open door to compromise or scheme of arrangement of marginal field companies just like every other company, subject to the provision on Ministerial consent for all oil and gas companies.

## **Conclusion and Recommendations**

The proposal for corporate restructuring of marginal field companies is a proposal for the marginal field companies to consider necessary changes in their corporate structure for better financial and technical strength required to develop their fields instead of an endless wait for government lifelines. This proposal applies to prospective bidders in future marginal field licensing rounds who, through corporate restructuring, can attain better corporate status and qualification for the award of the fields. The transparency of corporate restructuring as an option for the marginal field operators for their better management, profitability and creditworthiness cannot be over-emphasized. It may be argued that the corporate restructuring of a company would create a corporate entity different from what the DPR sanctioned for the field *ab initio*, however, corporate restructuring aim at creating entities better and more viable than what the DPR sanctioned, and so should be encouraged. Moreover, in the clear absence of any law or policy foreclosing corporate restructuring for marginal field companies, it remains an ideal option for rapid development of the marginal fields. In a takeover where Section 133(4) of the ISA creates an obstacle for private companies, a marginal field private company can go public to fall within the ambit of the law.

The legislative provisions on corporate restructuring under the ISA and CAMA did not contemplate any specialized sector, and is thus considered to be of general application, though the governing laws of some sectors contemplated changes in the corporate structures of the companies that would operate in those sectors. This fluidity of requirements resulted in dual or multiple legal regime for companies like marginal field companies seeking corporate restructuring, and consequently, multiple sets of requirements. Hence, the prerequisites of SEC, CAC, FIRS and Ministerial approvals combine to aggravate the rigours of the procedures.

It is therefore recommended that regulatory bodies should improve the pace in processing applications for approvals and ensure that the option of corporate restructuring is not frustrated by undue procedural burdens. The law provides a remedy when a regulatory authority delays in granting a necessary approval, or refuses a merited approval. Every executive action, decision or inaction, including approvals, is subject to judicial review. The courts reaffirmed this position in *Amadi v. Acho*<sup>41</sup> and *A-G Federation v. Abule*<sup>42</sup> among a plethora of other cases. Accordingly, an aggrieved applicant for a regulatory approval or consent can approach the court for an order of Mandamus compelling the relevant public authority to do its duty under the law.

Oftentimes however, seeking judicial review through litigation may be protracted and laborious. In preemptive mitigation of judicial obstacles, the Federal Government of Nigeria released an Executive

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<sup>41</sup> (2005) 12 WLR (Pt. 939) 386 at 402.

<sup>42</sup> (2005) 11 NWLR (Pt. 936) 369 at 387

Order on the Promotion of Transparency and Efficiency in the Business Environment.<sup>43</sup> The Order, in its Article 1, mandates every Ministry, Department and Agency (MDA) of the FGN to publish a complete list of all requirements or conditions for obtaining products and services within the MDA's scope of responsibility, including permits, licenses, waivers, tax related processes, filings and approvals. The list shall include timelines required for the processing of applications for the products and services; and where the relevant agency or official fails to communicate approval or rejection of an application within the time stipulated in the published list, all applications for business registrations, certification, waivers, licenses or permits not concluded within the stipulated timeline shall be deemed approved and granted. This Executive Order avails corporate entities, including marginal field companies, seeking to restructure, and should be well-exploited by them.

It is also recommended that compliance with the requirements of the afore-mentioned regulatory authorities should not be made to follow a strict order. In other words, obtaining a particular consent or approval must not be a condition for the granting of another. A strict order of compliance with the various regulatory requirements may jeopardize ease of compliance. Thus in *Registrar of Companies v. Kehinde*<sup>44</sup> the court viewed the two laws requiring compliance as distinct and independent of each other, and held accordingly that the Registrar could not refuse an application to register a title on the basis that the applicant had not complied with another law *to wit* the Stamp Duties Act. However, it is advisable to first seek and obtain the consent of the Petroleum Minister prior to any other step in any of the corporate restructuring schemes to avoid the risk of his refusal on other grounds after the pains and monetary costs of compliance with other regulatory rules. After the Minister's approval, all the other approvals can be sought simultaneously, and should be granted in any order.

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<sup>43</sup> See "Highlights of Executive Orders on Budget, Local Content and *Ease of Doing Business in Nigeria*," <http://www.pwcnigeria.tvpepad.com/...nigeria/.../highlights-of-executive-orders-on-budget-local>, accessed on June 13, 2017.  
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