



# THE NIGERIA 2025 PETROLEUM BID ROUND: KEY CONSIDERATIONS FOR BIDDING THROUGH A CONSORTIUM

## Introduction

*"The coming together of people of like minds is a beginning, keeping together is progress, working together is success."<sup>1</sup>*

The Nigeria 2025 Upstream Petroleum Licensing Round is underway and is gaining significant traction as the registration deadline approaches. The bid round offers 50 petroleum prospecting licenses (**PPLs**) across frontier, onshore, shallow water, and deepwater terrains. Entities seeking to participate in the bid round may bid either as a single registered company or through a consortium comprising two or more entities. While the formation of a consortium provides certain advantages to its members, it must be implemented with legal and commercial precision to ensure it does not create obstacles, delay and inefficiency at the bid stage and in the long term.

Against this backdrop, this article provides practical guidance on constituting a consortium, highlights key provisions that should be incorporated into a consortium agreement, and outlines strategic considerations to avoid potential pitfalls.

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<sup>1</sup> Quote attributed to Henry Ford

## Understanding the Consortium Framework

A consortium refers to an unincorporated joint venture formed by entities seeking to collaborate in the submission of a bid. The consortium structure enables participants to pool financial resources, leverage complementary technical expertise, and combine local presence with global partnerships. Parties seeking to collaborate may form the consortium for the pre-qualification stage, or after the prequalification stage with other pre-qualified entities for the purpose of submitting a commercial bid.<sup>2</sup>

## Choosing Consortium Members

The first step towards forming a consortium for the bid round is the careful selection of collaborating entities that not only meet the legal requirements, but also satisfy practical considerations such as commitment, collaboration, and diligence. This decision is pivotal because collaborating with the wrong entities may jeopardize the entire bid due to the failure of certain members to meet the required qualifications or as a result of internal conflicts. Below, we highlight the essential considerations for selecting consortium members.

### *a. Legal Qualifications*

A careful evaluation of the legal status of an intending consortium member is essential. Every individual member of a consortium is required to independently satisfy the legal pre-qualification evaluation which includes:<sup>3</sup>

- **Incorporation:** Members must provide a Certificate of Incorporation (or equivalent for foreign firms) and the Memorandum and Articles of Association.
- **Good Standing:** A "Letter of Good Standing" from the Corporate Affairs Commission is required for Nigerian companies to prove they are fit and proper.
- **Beneficial Ownership:** The consortium members must fully disclose their beneficial owners and persons with significant control using the prescribed forms.
- **Foreign Participation:** An entity is permitted to form a consortium with a foreign company, however, the foreign company is required to incorporate a Nigerian subsidiary before it can be awarded any interest in a PPL.<sup>4</sup>

### *b. Financial Qualifications*

Ordinarily, an individual applicant is required to independently satisfy the prescribed financial thresholds through its financial capacity or parent's company's financial information.<sup>5</sup> However, the consortium model offers a significant edge over individual applicants as the assessment of financial criteria of consortiums is based on the aggregate financial capacity

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<sup>2</sup> Paragraph 6.4(g), the Nigeria 2025 Licensing Round Guidelines ("Guidelines")

<sup>3</sup> Paragraph 12.4(b), Guidelines

<sup>4</sup> Paragraph 6.2, Guidelines

<sup>5</sup> Paragraph 12.2(a) and (b), Guidelines

of the consortium members. In this case, the consortium is required to demonstrate a verifiable source of funding, such as annual turnover, cash in bank, or bank guarantees, sufficient to meet the required financial threshold for the asset applied for.<sup>6</sup>

### *c. Technical Qualifications*

Technical evaluation is terrain-specific and is primarily in respect of the designated operator. The consortium member designated as an operator is required to provide evidence of at least three years of operational experience in activities such as geology, drilling, reservoir management, and production engineering in the relevant terrain.<sup>7</sup> If the proposed operator is a newly incorporated company, it may qualify based on the experience of its management team or its technical partner.<sup>8</sup>

### *d. Health, Safety, and Environment (HSE) Qualifications*

Similar to the technical criteria, the prescribed HSE and environmental performance standards are required to be satisfied by the member designated as the operator.<sup>9</sup> The operator is required to provide summaries of its HSE policies and management systems. These criteria also include decarbonization objectives, methane emission abatement plans, and host community development initiatives.

### *e. Trust and Teamwork*

Success depends on formidable relationships, trust and shared goals. Bidders should measure team trust and ensure all members are committed to sharing resources and risks equitably. This is crucial given the resources and time pressure involved in putting a bid together and delivering as a consortium.

Based on the foregoing, there is no gainsaying that legal, financial and technical due diligence on a member is critical before signing a consortium agreement. Partnerships are often described as a marriage where merits are seen during courtship, but shortcomings are exposed after the wedding. The disqualification of a single member due to factors such as insolvency, debt to AMCON<sup>10</sup>, tax default, or criminal conviction may lead to the rejection of the entire consortium. Hence, choosing consortium members with clean regulatory and financial records is essential.

## **Essential Provisions of a Consortium Agreement**

The consortium agreement, which the consortium members are required to submit to the Nigerian Upstream Petroleum Regulatory Commission (the “**Commission**”) as part of the bid, stipulates the terms by which consortium members will collaborate in the bid round, and it typically acts as a precursor to an eventual joint operating agreement. Hence, it is important

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<sup>6</sup> Paragraph 12.2(d), Guidelines

<sup>7</sup> Paragraph 12.3(a), Guidelines

<sup>8</sup> Paragraph 12.3(c) and (d), Guidelines

<sup>9</sup> Paragraph 12.1(d), Guidelines

<sup>10</sup> Asset Management Corporation of Nigeria

that the consortium agreement meets the Commission's requirements and create a framework for effective collaboration, clear governance and operational accountability by consortium members. The key provisions include:

#### *a. Core Structural Requirements*

The Guidelines require the consortium agreement to:

- **Identify the Lead Member:** The agreement must identify one member of the Consortium as the Lead Member of the consortium.<sup>11</sup> The Lead Member will provide the authorized representative who will be responsible for signing the bid proposal and all other documents on behalf of the consortium and serve as the primary point of contact for the Commission.<sup>12</sup>
- **Specify Roles and Responsibilities:** The agreement should outline the specific technical, financial, and operational roles assigned to each individual member. This ensures performance by consortium members.<sup>13</sup>
- **Designate the Operator:** The consortium must nominate at least one member to serve as the Operator.<sup>14</sup> This member is required to hold a minimum participating interest of 30% in the consortium and satisfy the technical and HSE pre-qualification criteria.

#### *b. Governance and Representation*

For smooth administration and decision making in the consortium, the following provisions are crucial:

- **Authorized Representative and Power of Attorney:** A power of attorney is required to be granted to the authorised representative of the Lead Member mentioned above to act on behalf of the consortium members for the purposes of the bid.
- **Decision-Making and Deadlocks:** The agreement should stipulate procedures for internal voting, thresholds for approving expenditures, and mechanisms to resolve deadlocks or operational impasses.
- **Consortium Committee:** The agreement may include the establishment of a consortium committee to provide orderly direction for the Lead Member or the Operator on certain matters.

#### *c. Commercial and Financial Terms*

The management of finance and commercial terms is important to prevent conflicts. Hence, clear terms regarding this must be documented.

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<sup>11</sup> Paragraph 6.4(c), Guidelines

<sup>12</sup> Paragraph 6.4(d), Guidelines

<sup>13</sup> Paragraph 12.2(e), Guidelines

<sup>14</sup> Paragraph 6.4(e), Guidelines

- **Participating Interests:** It is imperative for the agreement to state the specific percentage interest held by each member in the consortium. This is not just a commercial requirement but also a statutory prerequisite for the bid round. Pursuant to the Guidelines, a consortium's bid must include a written letter notifying the Commission the participating interest of every member in the consortium.<sup>15</sup>

Further, the eventual PPL awarded to the consortium will indicate the licensees and the percentage interest they hold.<sup>16</sup> Any subsequent change to these interests after the grant of a PPL would be considered an assignment, requiring prior written consent from the Minister. Therefore, the participating interests of each consortium member must be meticulously negotiated to ensure consistency in the event the bid is successful.

- **Funding and Carry Arrangements:** It should define how the consortium will meet financial thresholds and how members with limited capacity may be carried or funded by others.
- **Cost and Profit Sharing:** Details on the allocation of costs and profit sharing during the bid and after the award of the licenses must be established.

#### *d. Risk Management and Exit Mechanisms*

Working together as a team may become a burden when a member becomes belligerent. The following measures mitigate the risks of a roadblock in consortium activities:

- **Non-Circumvention and Non-Compete Provisions:** Given that the Guidelines limit participation in the bid round to a maximum of two blocks, the inclusion of non-circumvention and non-compete clauses in a consortium agreement is imperative to avoid the disqualification of a consortium and protect commercial interests of the consortium.

A non-circumvention clause prevents a member from bypassing the consortium to engage directly with key contacts, technical partners, or financiers introduced through the consortium. The non-circumvention clause should clearly define what constitutes "circumvention," specify the applicable duration (ideally aligned with the bid process and, if successful, the lifecycle of the licence), and provide remedies for breach. On the other hand, a non-compete clause ensures exclusivity during the bid period by prohibiting members from participating in competing bids for the same block.

- **Confidentiality and Data Handling:** Similar to the above, the consortium agreement must ensure that sensitive data made accessible to consortium members during the bid round is protected and only shared among consortium members and authorized advisors.

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<sup>15</sup> Paragraph 6.4(e), Guidelines

<sup>16</sup> Paragraph 26.2, Guidelines

- **Exit mechanism:** To prevent a situation where one member's disqualification threatens the entire bid consortium, the consortium agreement should facilitate a structured, non-confrontational exit where the affected member can be voted out or leave the consortium.
- **Liability Framework:** The agreement should clarify if liability is joint and several (common for unincorporated ventures) or several to manage exposure to member's defaults.
- **Dispute Resolution:** Clear internal processes for resolving conflicts should be outlined to avoid frustration.
- **Intellectual Property (IP):** The agreement should distinguish between Background IP (pre-existing) and Consortium IP (created during the consortium operations) and define ownership and licensing rights for each.

## Avoiding Pitfalls: Managing Risks to Consortium Success

Participating in the bid round as a consortium has its benefits, but it also introduces specific risks that can lead to immediate disqualification or long-term project failure. To ensure a successful bid and sustainable operations, applicants must proactively avoid the following common pitfalls:

### *a. Exceeding Participation Limit*

The Guidelines stipulate that each Applicant, whether acting individually or as a member of a consortium, is permitted to submit bids for no more than two blocks.<sup>17</sup> If an entity participates in more than two bids, the Commission will evaluate only the first two submissions in chronological order; all subsequent bids will be deemed invalid and disqualified ab initio.<sup>18</sup> Hence, **Lead Members must ensure all members have not already committed their two-block quota to other bidding groups.** The inclusion of non-circumvention and non-compete clauses ensures this risk is managed.

### *b. Disqualification Risks*

One of the perilous pitfalls is a situation where the legal or financial defaults of a single member result in the disqualification of the entire consortium. The Guidelines include a safeguard that enables a consortium to avoid disqualification by permitting the removal of an erring member.<sup>19</sup> Accordingly, the exit mechanism outlined above should incorporate measures to implement this safeguard.

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<sup>17</sup> Paragraph 17.5(a), Guidelines

<sup>18</sup> Paragraph 17.5(c), Guidelines

<sup>19</sup> Paragraph 14.2, Guidelines

### *c. Collaboration Failures and Post-Bid Conflict*

Many consortiums fail because they sign poorly drafted agreement templates under tight time constraints without reaching a consensus on core issues discussed above. The consortium agreement should therefore clearly define deadlock provisions, thresholds for expenditure approvals, and dispute resolution mechanisms (such as arbitration).

### *d. Execution Risk: The 90-Day Award Window*

A significant hurdle for winning bidders is the 90-day window to fulfil conditions precedent after receiving an Offer Letter for the award of a block. Consortiums with complex structures or members requiring board approvals across multiple jurisdictions may struggle to pay the full Signature Bonus within 60 days or furnish the Work Commitment Guarantee within 90 days of the Offer Letter. Failure to meet these deadlines causes the offer to lapse without recourse, and the Reserve Bidder is invited to take the award. Therefore, the ability of parties to meet their obligations after being selected as a winning bidder must be considered in preparing the consortium agreement.

### *e. Technical and HSE Inadequacies*

While financial capacity for the prequalification phase can be aggregated by a consortium, technical and HSE competence is specific to the designated Operator. Choosing an Operator who cannot prove at least three years of experience in the relevant terrain (e.g., deepwater) will lead to disqualification.

Also relevant for the Operator's HSE is sustainability standards. Failure to provide credible decarbonization objectives or methane abatement plans may result in a low technical score, preventing the consortium from reaching the commercial bid stage.

## **Conclusion**

While the collaborative nature of a consortium model represents an opportunity for entities to acquire a stake in the Nigerian petroleum industry, the importance of conducting professional and legal due diligence on prospective consortium members cannot be overemphasized. This article has provided a roadmap for forming a resilient consortium, explored essential provisions of a consortium agreement and highlighted measures to mitigate risks relevant to consortiums in the bid round.

There is no doubt that the strongest bids are not just those with capital and technical strength, but those backed by coherent, well-documented, and commercially feasible collaboration frameworks.

**Disclaimer: This publication does not purport to be comprehensive, nor to provide legal advice. Should you have any questions on the issues reported here or other issues in the Nigerian energy and natural resources sector, please reach out to one of the contacts provided below.**

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