



The Role of Due Diligence in Upstream Transactions

A Practical Transactional Perspective for Nigerian Upstream Oil and Gas Deals

Few stages of an upstream oil and gas transaction add as much value, and are as often compressed, as the due diligence phase. In a sector in which a defective historical assignment, an expired permit, an unsettled host community claim, or an undisclosed cash call arrear can erode the economics of a multi-hundred-million-dollar acquisition, due diligence is not a procedural formality interposed between bid and signing. It is the discipline through which the buyer converts a polished information memorandum into something it can actually invest in, prices what risk remains, and confirms that the deal it has been negotiating is the deal it is about to close. This article sets out, in practical terms, how due diligence functions in Nigerian upstream transactions, why the regulatory environment makes the exercise particularly demanding, and how an experienced deal team should plan and run the process to extract the protection that diligence is uniquely placed to deliver.

Upstream transactions in Nigeria typically take one of four forms: participation in a government bid round; the farm-out or assignment of an interest in a Petroleum Prospecting Licence (PPL) or Petroleum Mining Lease (PML)—or, in the case of assets still held under the legacy regime, an Oil Prospecting Licence (OPL) or Oil Mining Lease (OML) pending conversion under the Petroleum Industry Act 2021 (PIA); the share or asset acquisition of a holder of such interests; or participation through a joint venture, production sharing contract, or service contract. Each structure carries its own diligence emphasis, but all share the same underlying purpose: to verify, before money moves, that the rights being acquired exist, are valid, are transferable on the terms contemplated, and are worth what the buyer has agreed to pay for them.

Why Due Diligence Matters More in Upstream

The upstream sector concentrates risk in ways that few other industries do. Title to a barrel of crude rests on a chain of governmental grants, ministerial and regulatory consents, joint operating arrangements, and (under the PIA) the new conversion mechanics from OML to PML. Any link of which can be defective. Production carries with it environmental, host community, and decommissioning liabilities that very often outlive the productive life of the asset itself. Tax positions taken at the operator level can be reopened years after the relevant year of assessment. Counterparty creditworthiness, particularly that of joint venture partners and offtakers, is rarely uniform across the portfolio. And the regulatory canvas, with the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) now exercising the consent-recommendation function under section 95 of the PIA, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) holding parallel jurisdiction over midstream and downstream interfaces, and the Nigeria Revenue Service (NRS) maintaining an increasingly assertive audit posture has rendered the regulatory dimension of any deal materially more complex than it was five years ago.

Against that backdrop, the buyer's due diligence is the only systematic exercise that brings these strands together in a form that can be priced, conditioned, and contractually allocated. It is the moment at which commercial assumptions made during bidding are tested against the legal, regulatory, technical, and financial reality of the asset. It is also where deal terms are made: warranties are scoped, indemnities sized, conditions precedent identified, and price adjusted.



A diligence exercise that uncovers nothing is rare; an exercise that uncovers something but fails to translate the finding into contractual protection is, in the practical experience of practitioners, no diligence at all.

The Principal Workstreams

Although the workstreams overlap in practice, it is useful to think of upstream due diligence as comprising five interlocking strands.

Title and contractual diligence. The first strand verifies the chain of title to the licence or lease, confirms that all required ministerial and regulatory consents to past assignments were properly obtained, examines the joint operating agreement and any unitisation, redetermination or area-of-mutual-interest arrangements, and traces the entitlement to production through the production sharing contract or service contract architecture. In Nigerian practice, particular care is required where assets have moved through successive divestments by the international oil companies: the consent chain is, more often than not, more complex than the data room suggests, and the distinction between the legal interest, the participating interest, and the economic interest can have significant consequences at completion. The Seplat / ExxonMobil episode of 2022 demonstrated, in unmistakable terms, what is at stake when the assignment consent architecture is not properly worked through before a transaction is announced.

Regulatory and authorisation diligence. The second strand examines the regulatory ecosystem within which the asset operates. The PIA has introduced new licence categories, conversion mechanics, host community obligations, and a recalibrated allocation of consent functions between the NUPRC and the Minister of Petroleum Resources. A buyer must verify not only that the seller holds the relevant authorisations but that those authorisations are current, in good standing, and transferable on the terms the transaction contemplates. This includes the upstream licences themselves, environmental impact assessment approvals, field development plan approvals, gas flaring permits, and the increasingly material Host Communities Development Trust arrangements. A licence in good standing on its face may nonetheless be subject to outstanding regulatory directives, fines, or remediation orders that surface only on focused regulatory enquiry—and that, once disclosed, materially affect both pricing and conditions to closing.

Financial, fiscal, and tax diligence. The third strand examines the seller's tax position and the financial fabric of the asset. The interaction between the PIA's new fiscal regime—hydrocarbon tax, companies income tax, the royalty framework, and the residual application of the Petroleum Profits Tax Act to unconverted licences—can materially shift post-completion economics in ways that bidders sometimes fail to model accurately.

Historic positions taken on tax-deductible expenses, cost recovery treatment under production sharing arrangements, and decommissioning provisions are routinely revisited by the NRS, and a buyer that does not understand the seller's exposure inherits it. Cash call arrears in joint ventures, undisputed but unpaid invoices to service contractors, currency-mismatch exposures on dollar-denominated offtake or financing agreements, and the treatment of accrued but unpaid royalties all belong within this strand.

Technical and reserves diligence. The fourth strand is ordinarily led by reservoir engineers and an independent reserves auditor, with input from facilities and HSE specialists. The legal team's role is not to second-guess the engineering work but to understand its assumptions, follow its conclusions through into the warranty and disclosure architecture, and identify the regulatory and contractual contingencies on which the technical case implicitly depends. Where reserves uplift cases assume regulatory approvals not yet obtained, unitisation discussions not yet concluded, or partner consents not yet given, the buyer must decide whether to price the upside, condition completion on its delivery, or take the risk on an open-eyed basis.

Environmental, host community, and social diligence. The fifth strand and, in the author's experience over the last several years, the one most likely to derail an otherwise well-priced transaction, is environmental, host community, and social diligence. Decommissioning liabilities under the PIA's financial security regime can be substantial, and many legacy assets carry historical environmental impairment that has never been properly quantified on the seller's balance sheet. Host community grievances, even where not yet litigated, can paralyse operations after completion if they are not properly understood and addressed before signing. Sanctions, anti-bribery, beneficial ownership, and modern slavery diligence on counterparties, contractors, and ultimate beneficial owners is no longer optional, particularly where international financing or co-investment is involved—and the bar for what international lenders will accept in this area has risen materially in the last two years.

From Findings to Deal Terms

Diligence findings only matter to the extent that they reshape the deal. The discipline of moving from finding to protection is what separates effective transactional diligence from a paper exercise, and it is the step at which weaker mandates most often fall short.

A finding that the seller is in arrears on cash calls translates into a completion-date settlement obligation, with the calculation methodology agreed and the residual amount placed in escrow. A finding that a particular ministerial consent to a historical assignment is missing translates into a condition precedent or, where the gap cannot realistically be closed before signing, into a specific indemnity sized against the worst credible regulatory outcome.



A finding that a host community settlement is in negotiation translates into a price reduction, a holdback, or a post-completion conduct covenant under which the seller continues to underwrite the resolution of the matter for an agreed period. A finding that a tax position is contestable translates into a tax indemnity with a defined claim period, control-of-defence provisions, an agreed treatment of refunds, and clear allocation of any settlement discretion.

Materiality thresholds, de minimis carve-outs, caps on warranty and indemnity exposure, survival periods, and the distinction between disclosed and undisclosed matters are all properly calibrated by reference to what diligence has, and has not, found. The negotiating leverage that diligence creates is, at its highest, in the brief window between the principal findings being delivered to the buyer's deal team and their being formally tabled with the seller. A buyer that defers this conversion step until the eve of signing will, in the author's experience, almost invariably find that the seller's appetite for additional protection has evaporated and that the carefully assembled diligence findings have effectively become sunk cost rather than negotiating capital.

Practical Pointers for the Deal Team

Several practical points recur across upstream mandates and are worth setting out in terms general enough to be useful to any deal team about to commence the exercise.

First, scope the diligence around the deal's actual risk drivers rather than producing an undifferentiated full-scope review. Where the consideration is heavily back-ended or contingent, fiscal and tax diligence carries more weight; where the asset is mature, decommissioning and environmental work necessarily dominate; where the asset is pre-Final Investment Decision, regulatory and consent diligence is paramount. A diligence plan that does not begin with an honest articulation of where the buyer's real exposure lies will, almost by definition, allocate effort inefficiently.

Second, integrate the workstreams in real time. The most expensive diligence failures, in the author's experience, have not come from any single strand missing a discrete point. They have come from legal, technical, and financial teams discovering inconsistent answers to the same question only when the consolidated report is being finalised, by which point the seller has typically moved on and the buyer's ability to revisit the issue is materially constrained.

Third, give early and serious attention to the disclosure schedule. In a Nigerian upstream deal, the disclosure schedule is very often the document in which commercial risk is allocated more decisively than in the warranties themselves. A buyer that engages with disclosure only at the final draft stage cedes that allocation to the seller by default, and a thoughtful counterpart will not hesitate to use general disclosures to neutralise warranty protection on which the buyer believed it was relying.

Fourth, take regulatory engagement seriously and plan for it. Most upstream transactions of any consequence require NUPRC recommendation and ministerial consent under section 95 of the PIA, and the consent process operates against statutory timelines that buyers and sellers can either treat as binding or allow to drift. The diligence exercise should anticipate the likely regulator-level questions, ensure that the answers and the supporting documentation are ready to be tabled in the form the regulator expects, and identify in advance any aspects of the transaction structure that may attract additional regulatory scrutiny—whether on the basis of the technical and financial capacity of the acquirer, decommissioning and abandonment commitments, or environmental, social and governance considerations on which the NUPRC has placed increasing emphasis.

Fifth, treat anti-bribery, sanctions, and beneficial ownership diligence as a gating matter rather than a residual one. The cost of unwinding a closed transaction in which a counterparty is later found to be sanctioned, or in which an undisclosed beneficial owner is a politically exposed person, is incomparably higher than the cost of doing the work properly before signing; and the buyer's financiers, increasingly, will not allow the question to be deferred.

Sixth, document the diligence trail with care. The diligence exercise is, among other things, a contemporaneous record of what the buyer knew and did not know at the time of closing. That record can be decisive in any later dispute over warranty claims, indemnity claims, or representations made to financiers and equity co-investors. A well-organised, properly version-controlled diligence file is, in this sense, an asset of the transaction in its own right.

Conclusion

Done well, due diligence is the engine that drives an upstream transaction from indicative offer to bankable closing. It identifies the risks that need to be priced into the consideration, the risks that need to be conditioned out before completion, the risks which can be mitigated or completely avoided through structuring differently from what was initially planned, and the risks that can be absorbed and managed post-completion within an agreed contractual perimeter. Done poorly, it provides the buyer with the false comfort of a thick report and the seller with the unimpeded ability to negotiate from the strongest available position.

In a Nigerian upstream market that has become technically and regulatorily more demanding under the PIA, and commercially more competitive as the international oil companies continue to recalibrate their portfolios in favour of domestic and regional acquirers, the buyer that invests in disciplined, focused, and contractually-anchored due diligence is the buyer that closes the right deal at the right price. It is also and this is at least as important- the buyer with the analytical discipline to walk away from the wrong one.



A key lesson is that never move from your LOI to a signed SPA until you have completed your due diligence exercise as it provides a road map to your transaction and lets you know what representation, warranties and indemnities you should specifically be asking for in your SPA and or other definitive agreements.

For additional information on the above article, please contact



Dr. Ayodele Oni
Partner

ayodele.oni@bloomfield-law.com

or your usual contact at Bloomfield LP.



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