



Oil & Gas
Authority

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To: All Licensees

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Dear Licensee,

Changes of control of licensees

You will be aware that in recent years there has been a marked increase in UKCS M&A activity concluded by way of share sales, often referred to as ‘changes of control’. In general, the OGA supports this and other M&A activity, as a way of securing that valuable investment opportunities are held by companies with the will and the means to invest in them. However, the OGA is also concerned that some such transactions may put at risk the delivery of a licensee’s licence commitments, liabilities and obligations, including commitments under the OGA Strategy (hereinafter “**Commitments**”), and that they therefore require close scrutiny.

Bearing this in mind, I am writing to all licensees today to restate how the OGA takes decisions on the exercise of its change of control powers. It is my expectation that this letter will be shared with the companies and individuals that currently exercise control over them, and with anyone intending to acquire control of a licensee. The letter will also be published on the OGA’s website. I strongly encourage all companies contemplating a change of control, either as seller or buyer, to fully acquaint themselves with the OGA’s approach in this regard before they commit to a transaction. Should you be in any doubt about how the OGA will exercise these powers, you should contact approvals@ogauthority.co.uk.

For general background, in **Annex 1**, I summarise how the licence model clauses define a ‘change of control’ and, in **Annex 2**, I summarise the OGA’s powers, where appropriate, to require a further change of control once the transaction has completed, and failing that, a power of revocation of the licence (the OGA’s “**Change of Control Powers**”).

Why the OGA may use the Change of Control Powers

The model clauses contain no prescription as to what the OGA should take into consideration when deciding whether to exercise the Change of Control Powers. Therefore, in deciding whether to exercise the Change of Control Powers, the OGA considers how this will impact on its statutory functions and duties.

The UK petroleum licensing regime is commitment-based. This means that investors win the right to hold an exclusive licence to “*search for, bore for and get petroleum*” (among other things) by bidding what the OGA considers to be the work programme that best meets the OGA’s objectives. Therefore, the licence, the Commitments under it and other obligations, are the key vehicle through which the OGA delivers its statutory duties and objectives.

The OGA considers that financial and technical capability of licensees are critical to the delivery by a licensee of its Commitments and that changes of control can present risks to this. The OGA’s decision whether to use the Change of Control Powers will, therefore, be informed by the OGA’s assessment of the impact of the change of control on the ability of the licensee to deliver the Commitments.

Additionally, in the OGA’s view, reliable, long-term investors are attracted by other demonstrably reliable, long-term investors, and by stable and predictable regulatory systems. The OGA, therefore, sees risks to the broader confidence of investors, and consequently the OGA’s statutory duties and objectives, from changes of control that increase risks to the delivery of the Commitments.

How the OGA decides whether to use the Change of Control Powers

To address the risks outlined above, preserve the integrity of the OGA’s commitments-based licensing regime, and to discourage transactions that increase risks to the delivery by a licensee of its Commitments, the OGA will normally exercise the Change of Control Powers unless a Licensee demonstrates that the change of control has not prejudiced its ability to meet its Commitments.

In assessing whether a transaction has prejudiced a licensee’s ability to meet its Commitments, the OGA will normally consider, among other things:

- a. Any change to the technical resources available to the licensee that may prejudice the licensee’s ability to meet its licence Commitments.
- b. Any change to the financial resources available to the licensee that may prejudice the licensee’s ability to meet its Commitments. The OGA’s [Financial Guidance](#) sets out how the OGA will make its assessment of the financial resources available to the licensee and the information it requires to make that assessment.
- c. The potential impact of a change of control on any other licensees that were in the same corporate group as the licensee, prior to the change of control. This is set out in the OGA’s Financial Guidance, which makes clear that “*The OGA’s assessment processes will thereby seek to ensure the transaction is not detrimental to either the new and existing licensee’s capacity to meet their Commitments in their post-completion portfolios.*”

Additionally, where appropriate to do so, the OGA will assess the fitness of any incoming controlling company and its directors and will normally exercise the Change of Control Powers if it considers that, following a change of control, a person

exercising control over a licensee is not fit. The OGA has published its fitness criteria on its website [here](#).

As part of this process, the OGA will consider any other relevant representations made by the licensee and/or a new controlling person. However, **the completion of a transaction without a letter of comfort is at the licensee's and/or new controlling person's risk**. Licensees and/or new controlling persons that are not confident of being able to provide evidence to demonstrate that the change of control has not prejudiced that licensee's ability to meet its Commitments are strongly recommended to seek a letter of comfort from the OGA before completing.

The OGA will normally apply a similar test when deciding whether to issue a letter of comfort, prior to completion of a transaction.

The OGA will keep the above under review as it deals at a working level with such change of control matters. Please feel free to provide the OGA with any comments on the above via the email address: approvals@ogauthority.co.uk.

Yours sincerely,



Tom Wheeler
Director of Regulation

The following summaries are intended only as background to the letter and should not be relied on in any way by any licensees or controlling persons. It should not be taken as legal advice. It is the responsibility of licensees to understand and comply with the terms of their licences. As set out above, should you have any questions regarding changes of control, you should make contact with the OGA as soon as possible.

ANNEX 1 WHAT IS A CHANGE OF CONTROL

1. A “*change of control*” of a licensee is defined in the OGA’s production and development licences as any event by which a person who did not have control of a licensee when that licence was granted, or last assigned, comes to control that licensee.
2. Control is defined in the licences, and references *sections 450 and 451 of the Corporation Tax Act 2010*, and in summary is where a person can exercise control over the licensee’s affairs. This is stated in that section as including, amongst other things, possessing or being entitled to acquire one third or more of the shares in the licensee.
3. **If you are in any doubt as to whether a transaction will result in a change of control of a licensee, you are advised to contact the OGA’s Licensing Team substantially in advance of the transaction completing on approvals@ogauthority.co.uk.**

4. The OGA's indicative timelines for considering change of control matters are set out [here](#).

ANNEX 2 THE OGA'S POWERS IN RESPECT OF A CHANGE OF CONTROL

5. While the OGA's licences do not currently impose any requirement for OGA approval of a change of control of a licensee *before* that change of control takes place, they do grant the OGA the power to require a further change of control once the transaction has completed, and failing that, a power of revocation of the licence.
6. This may mean the complete revocation of the licence, or partial revocation in respect of the licensee concerned, which in practical terms amounts to the removal of that licensee from the licence, while the licence continues in the hands of the other participants.
7. The existence of the Change of Control Powers means licensees and/or the entities proposing to acquire control of a licensee usually request a comfort letter from the OGA, asking that the OGA set out that it is not minded to exercise the Change of Control Powers, before the proposed acquisition completes.
8. The OGA is generally willing to consider such requests. However, the OGA will not fetter its own discretion and any comfort given will be based on the information available to the OGA at the time and limited accordingly.
9. Given the potential impact of a change of control on joint venturers and other relevant persons (as that term is defined in the OGA Strategy), the OGA will normally seek representations from those joint venturers and other relevant persons at the start of its considerations when considering the exercise of the Change of Control Powers or the issuance of a comfort letter.

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