

# UKCS Industry Collaboration

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## LOGIC ([www.logic-oil.com](http://www.logic-oil.com))

- Created in 1999
- Designed to enhance competitiveness within the UKCS and stimulate supply chain efficiency
- Not for Profit organisation – manages key “cross-industry projects”
- These are:
  - Industry Mutual Hold Harmless (IMHH)
  - Master Deed
  - Vantage POB (provide a personnel-tracking system supporting UK 'best practice' in offshore personnel logistics)
  - UK Flightshare (A flight sharing agreement and Aviation Mutual Hold Harmless)
  - Standard Contracts (formerly CRINE contracts)

## IMHH

- ▶ The Industry Mutual Hold Harmless is standard form deed specifically dealing with the allocation of liabilities when two or more entities enter into a scope of work.
- ▶ Only applies in UKCS
- ▶ Only applies to Contractors
- ▶ Precedence:
  - The IMHH Deed will not take precedence over existing contractual arrangements, nor over later contractual arrangements between participants. It operates between contractors where there is no other contractual arrangement in place between them. Contractors are also free to expressly apply the IMHH Deed, if they wish.
- ▶ Risks that are specifically excluded are as follows:
  - Heavy Lift Vessels
  - Carriage of Goods by Sea
  - Emergency Rescue Vessels
  - Carriage by Air

# IMHH

- ▶ Designed to provide clarity in allocation of liabilities
- ▶ Consequently, allows for the avoidance of overlapping insurance of identical risks
  - Clarity in allocation of the key areas of risk.
  - Financial benefits from reduced legal fees and reduction on resource needs.
  - More effective management of key areas of risk.
  - Reduced time and confrontation negotiating contractual responsibility and indemnity matters.
  - Enabler to greater industry collaboration.
  - Potential for reduced insurance premiums.
  - Cost effective and efficient means of improved risk management for small and medium sized enterprises (SMEs).
- ▶ Risks Being Managed
  - The principal liabilities addressed within the IMHH Deed are as follows:
    - Personal injury, sickness, disease or death.
    - Loss or damage to property.
    - Consequential loss (as defined in the IMHH Deed).

## What is the Master Deed?

- ▶ Applies to transfers of oil and gas assets on the UKCS
- ▶ Industry document developed by the Progressing Partnership Working Group, DECC and industry representatives
- ▶ Came into force on 28<sup>th</sup> April 2003
- ▶ Puts in place “New Pre-emption Arrangements” and “New Transfer Arrangements”
- ▶ New Transfer Arrangements create a process allowing an “Administrator” to execute a standard form “Execution Deed” on behalf of various parties
- ▶ Administrator given a power of attorney
- ▶ Does not change the legal effect of “completion” documents

## Purpose of the Master Deed?

- ▶ *“The Secretary of State has established the Pilot Taskforce and among the duties of the Pilot Taskforce has been the identification of commercial and behavioural barriers to development that exist in respect of the UKCS and the identification and implementation of measures for removing or limiting such barriers.”*
- ▶ *“Among such barriers identified are the operation or effect of contractual provisions existing in relation to rights of pre-emption and other like rights under Operating Agreements and the burdensome administration required for the transfer of rights and obligations under existing contractual arrangements in respect of Licences.”*

## What were these barriers?

- Pre-emption: lengthy and varying pre-emption periods created uncertainty and risk - could add months to the completion schedule
- Transfer documents: various forms of transfer documents required to transfer interests in licences, JOAs, field agreements etc.:
  - DECC approved form of licence assignment
  - Oil & Gas UK standard form JOA novation
  - Wording of novation agreements not standard
- Therefore time spent negotiating wording of transfer agreements
- Protracted execution process: no certainty about when completion would take place - could be considerable delays

## The completion process – the “old way”

Sale and purchase agreement signed – *agreement to sell assets including contracts*



Pre-emption notices sent out – *co-venturers may have right of first refusal to match terms of deal*



Pre-emption period ends – *now know identity of purchaser*



Any other conditions precedent met or waived – *will include DECC consent and consent of third parties (including other parties to contracts)*



Novation and assignment forms agreed with third parties



Novations and assignments sent out for signature by third parties



Completion

## Aims of the Master Deed

- ▶ The Master Deed was designed to simplify this completion process by:
  - Standardising existing pre-emption provisions
  - Creating a pro-forma transfer agreement
  - Reducing complexities around signature – as the Administrator executes on behalf of “Remaining Participants”
  - Allowing greater certainty around the timing of completions

# The New Pre-emption Arrangements

- ▶ Introduces a maximum 30 day pre-emption period
- ▶ Exceptions:
  - share sales
  - consideration not in money e.g. swaps
- ▶ Optional initial 7 day notice: the recipients choose whether to waive or reserve their rights to pre-empt
  - If any Co-venturer (“CV”) reserves rights – Disposing Participant may decide not to transfer
  - If CV does not respond it is deemed to have reserved its rights

# The New Pre-emption Arrangements

- If transfer proceeds: transferor must serve notice on all CVs who reserved rights, setting out agreed terms of proposed disposal
- If no 7 day notice was served, then this notice must be served on all CVs with pre-emption rights
- CVs then have 30 days to exercise or waive rights of pre-emption over interest being sold
- If one CV exercises its rights – gets whole of sale package
- If more than one CV exercises its rights – interest transferred to them in proportion to their percentage interests
- If no CV exercise rights – sale to purchaser may proceed

## New Transfer Arrangements

- ▶ Apply to “transfer documents” (post execution of SPA)
- ▶ Voluntary scheme – up to seller
- ▶ Uses the pro forma execution deed (any changes to pro-forma must be shown in a statement of variations) therefore minimal scope for negotiating wording (N.B. “short form” Execution Deed)
- ▶ Sent out to Remaining Participants for approval with standard notice and consent form
- ▶ Once consents are given, the UKCS Administrator is authorised to execute on behalf of the Remaining Participants (who are Contracting Parties)
- ▶ UKCS Administrator represented by LOGIC
- ▶ Therefore, when all consent forms have been returned, completion is within control of Seller and Purchaser

## Benefits.....

- Minimises negotiation over wording
- Reduces time period for consents in some cases – may be signed by any authorised person and does not require directors
- Increased certainty over timing of completion once consents received

## .....and challenges

- ▶ Non-contracting parties – must still approve and execute in old manner – sometimes have issue with wording of execution deed
- ▶ Paperwork – previously consent to form of transfer document often obtained by e-mail – now large volumes of documentation sent out
- ▶ How many Affected Petroleum Agreements do you include on each Execution Deed? – issues of future due diligence and confidentiality
- ▶ Timing – need to allow time for LOGIC to check and execute documents – service agreement allows 2 days but in large transactions this may be unrealistic
- ▶ Avoid changing the Execution Deed unless necessary, but consider including a recital if needed to explain the transaction

## Online Scheme....

- An online system is being piloted
- Execution Deed (in agreed form) sent to LOGIC
- LOGIC assigns it a reference and place it online
- Remaining Participants given a password to access and check it
- Remaining Participants then review the Execution Deed online, sign and date a Consent to Transfer and send it in hard copy to the Administrator
- Cuts down on paper use and saves Administrator time – LOGIC does not have to check a different Execution Deed for each Consent received
- Next step will be to move to electronic signature of online Consents

## Master Deed - LOGIC

- LOGIC acts on behalf of the Administrator
- [www.masterdeed.com](http://www.masterdeed.com) - LOGIC's Master Deed website:
  - lists current Contracting Parties
  - background information on the Master Deed
  - the Master Deed itself
  - sample Deed of Adherence
  - LOGIC's Service Level Agreement
- Contact Pia Mandler. Helpful to give her advance notice on timing etc. of upcoming completions
- Important to inform LOGIC of any changes in company details