

Navigating the North Sea: NSTA Releases New Guidance to Streamline M&A Transactions

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On 8 October 2024, the North Sea Transition Authority (**NSTA**) released updated guidance for the assignment of offshore petroleum production licences in the UK Continental Shelf (**UKCS**) (the **Guidance**). Publication of the Guidance followed a consultation launched on 28 March 2023 inviting industry feedback from licensees, infrastructure owners and potential future investors. The aim of the Guidance is to streamline the period between signing and completion of M&A transactions in the UKCS, reducing potentially costly delays and improving deal certainty, while assisting in the development of a stable regulatory system which encourages investment in both oil and gas and energy transition projects in the UKCS. As background to the Guidance, the NSTA recognises the role M&A plays in the UKCS, which includes the need for “new capital, new ideas and new vigour” to support the central obligation of the “OGA Strategy”, to maximise economic recovery of petroleum while assisting the Secretary of State in meeting the net zero target.

The Guidance covers direct assignments of petroleum licence interests in the UKCS (that is, asset level deals) (**Assignments**). Assignments require NSTA consent under the terms of the model clauses that apply to each licence. A separate process (with separate [guidance](#)) applies for transfers of licence interests that take place by way of a change of control in the licence holder (that is, share deals) and such transactions are not the subject of the Guidance. While the Guidance is not legislative in nature, parties deviating from the Guidance must write to the NSTA with supporting evidence to justify the derogation. The Guidance will also be used in assessing investigatory breaches of the OGA Strategy and compliance with the Petroleum Act 1998 where completion of an Assignment is delayed or prevented from occurring, noting that the NSTA has powers to enforce sanctions where any breaches have been identified.

Related People

Darren Spalding

Partner

LONDON

+44.(0).207.448.4209

darren.spalding@bracewell.com

Adam Quigley

Senior Associate

LONDON

+44.(0).207.448.4214

adam.quigley@bracewell.com

Rachel Strickland

Associate

LONDON

+44.(0).20.7448.4210

rachel.strickland@bracewell.com

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Expectations of the Buyer and Seller

Unsurprisingly, cooperation between all relevant parties to an Assignment is a central theme of the Guidance. Acknowledging the complexities often present in UKCS M&A transactions, the Guidance proposes two practical suggestions to assist buyers and sellers.

Firstly, the Guidance encourages the development of a **Project Plan** by the buyer and seller, setting out clear timelines and resources and identifying:

- relevant co-licensees and operator of relevant petroleum licences, owners of, or persons planning and carrying out commissioning of relevant upstream petroleum infrastructure, and owners of relevant offshore installations (referred to as **Co-Venturers**); and (ii) other relevant parties whose consent may be required for an Assignment or parties to any agreements which require novation as part of the Assignment (referred to as **Consenting Parties**);
- the roles and responsibilities of the buyer under the relevant licence;
- potential obstacles that may hinder completion of the Assignment, and a strategy for overcoming such obstacles; and
- resources to “efficiently and effectively” implement the Project Plan.

The Guidance indicates that the buyer and the seller should provide the NSTA with the Project Plan seven days after an initial planning meeting with the Consenting Parties (assuming the Consenting Parties have agreed to the Project Plan). The buyer and seller also have a statutory requirement to inform the NSTA of this initial planning meeting and are expected to consult with the NSTA on reaching significant milestones. The Project Plan should include a detailed timeline in respect of delivery of the Capability Pack (discussed below) to the Consenting Parties, receipt of their feedback and for responses from the buyer and seller, as well as for engaging with relevant regulatory bodies.

The second item of practical guidance is the creation of a **Capability Pack** by the buyer and seller. The aim of the Capability Pack is to set out the financial and technical capability of the buyer for the purposes of the NSTA and the Consenting Parties’ assessment of whether to consent to the Assignment.

The Capability Pack should include:

- the buyer’s corporate details, including a corporate structure chart and the identity of all significant shareholders;
- the buyer’s financial information, including evidence of the buyer’s ability to meet its obligations under the relevant joint operating agreement (**JOA**) and the licence, such as a forecast balance sheet for the buyer and buyer’s group at the planned completion date, summary of its funding sources (whether

raised directly or intra-group) and the past three year's statutory accounts for the buyer and consolidated accounts for the buyer's ultimate parent; and

- the buyer's technical capabilities, including its ability to act as a competent member of the joint venture and to participate in technical committee meetings.

The NSTA expects that an Assignment should complete within three to six months of the issue of the Capability Pack to the Consenting Parties and that the Project Plan should reflect this. The Guidance indicates that the NSTA may request an explanation if the Project Plan includes longer timescales. The parties are also required to inform the NSTA if there are delays in the Assignment process.

Decommissioning

The NSTA acknowledges that one of the key concerns that a Consenting Party may have in considering whether to consent to an Assignment is whether the buyer has the financial capability necessary to fund decommissioning liabilities. The Guidance sets out certain key principles that the NSTA considers will apply in relation to a Consenting Party's decision to consent to the Assignment in this context.

The NSTA expects that, for most cases, a field-wide decommissioning security agreement (**FWDSA**) will be in place. Where a FWDSA is not in place, the NSTA expects that that relevant licensees and the parties should make a concerted effort to put a FWDSA in place as soon as possible, and where not possible, to provide an explanation. A FWDSA will impose (relatively standard) terms on current owners and historic owners who have been served with Section 29 notices under the Petroleum Act 1998 as either first, second or third tier participants. This mechanism allows for security that has been posted to be drawn by other participants if one of the current owners fails to pay its share of decommissioning liabilities. The structure of a FWDSA is preferable to a "bilateral" decommissioning security agreement that deals only with allocation of liability as between the buyer and seller.

The Guidance notes that it may be appropriate in some circumstances for Co-Venturers to request that the buyer provide additional security. However, the Guidance suggests that Co-Venturers should provide reasons for such requests. Legitimate reasons identified in the Guidance include concerns that a buyer will not be able to meet JOA billing obligations, that the buyer may not be capable of meeting third party liability claims, or where significant capital expenditure is anticipated. Co-Venturers may be expected to demonstrate reciprocal financial capabilities if such demands are made of the buyer.

Consenting Parties

While the primary obligations under the Guidance are on the buyer and seller, the Guidance also sets out the NSTA's expectations in relation to the conduct of the Consenting Parties. These include notifying the NSTA of any decision not to agree a Project Plan, agreeing a date for an initial planning meeting with the buyer and seller (and reviewing the Capability Pack ahead of this), engaging at an early stage with the buyer and seller on potential issues, and agreeing reasonable conditions to consent (discussed below). Further, Consenting Parties should designate an individual as a primary contact who is responsible and authorised to meaningfully progress negotiations with the buyer and seller.

Conditions imposed on the buyer and seller and any information requested should be proportionate and should not be imposed for an "unconnected commercial interest" or go beyond risk mitigation measures on Co-Venturers. Where agreement cannot be reached, the Guidance suggests agreeing a process for resolution of the issue (such as by way of mediation). The Guidance expressly encourages "responsible commercial behaviour which instils confidence in the basin" and where a Consenting Party seeks to either withhold consent or impose a condition on a buyer to obtain consent, Consenting Parties are encouraged to consider whether such action is fair and reasonable in the circumstances.

The Guidance notes that the NSTA intends to use the Guidance in assessing compliance by relevant persons with the OGA Strategy and obligations under the Petroleum Act 1998, noting that failure to comply may result in enforcement notices, financial penalty notices, revocation notices and operator removal notices from the NSTA.

Commentary

The Guidance comes at a particularly tumultuous time for investment and transactions in the UKCS. The recent announcement of changes to the energy profits levy and the investment allowances regime in the Autumn Budget on 30 October 2024 cast a shadow on the United Kingdom's ability to attract investment into the UKCS, and there have been reports of some companies considering portfolio realignment away from the UK North Sea. It is unclear whether such additional tax measures from the UK government will drive M&A activity (possibly through some companies deciding to exit) or result in a stagnant deal environment. Nonetheless, the Guidance and NSTA's recognition of the need for cooperation of all participants in M&A transactions, particularly those with consent rights, is welcome. M&A transactions in the UKCS have long been challenging, largely due to the lengthy and complex ownership history of the basin, and the Guidance that has the aim of expediting deals by

requiring enhanced deal planning and co-operation would likely be warmly received by industry, were it not for the other more significant fiscal and regulatory challenges that lie in wait.

The expectation of a FWDSA is unsurprising. The UKCS is a mature hydrocarbons basin and with the exit of many of the majors from the region, many participants are comparatively smaller companies with non-traditional funding structures. From the NSTA's perspective, there is a clear focus on ensuring that there is sufficient recourse to participants and former participants and adequate security to ensure that forthcoming decommissioning liabilities are appropriately met.