

## **2022 IMHH Deed - Deeds of Adherence**

### **Guidance on requirements of Counsel's Opinion re: execution by overseas companies**

To maintain the integrity of the Industry Mutual Hold Harmless ("IMHH") Scheme, it is critical that each party is bound by the terms of the 2022 IMHH Deed (the "Deed").

As the Deed is governed by English law, LOGIC is able to reach a view on whether the Deed has been correctly entered into, and is valid and enforceable for parties incorporated in England, Scotland, Wales, and Northern Ireland.

For other jurisdictions, however, LOGIC is not able to reach such a view, and so the Deed requires that New Parties provide a legal opinion (the "Opinion") at their own expense. The requirement set out in the Deed is for:

*"an opinion from an independent law firm or an independent legal practitioner of high repute and standing, qualified in the law and practising in the jurisdiction of the New Party's incorporation confirming that the execution of the Deed of Adherence by the New Party is valid and enforceable."*

Here we provide guidance on the content that is generally expected in an Opinion, so as to minimise the time and expense associated with its creation by the New Party, and its review by LOGIC.

#### **About the Counsel**

If the issuer of the Opinion does not have a current listing in a common legal directory (i.e. Legal 500/Chambers & Partners), we request that confirmation of the current practising certificate (or equivalent) of the relevant issuer is provided along with evidence of appropriate Professional Indemnity insurance cover.

#### **Addressee**

Counsel's Opinion shall be addressed to LOGIC and shall expressly permit disclosure to **and** reliance on the Opinion by any current or future signatories by way of Deed of Adherence to the Deed.

The Opinion should be addressed to:

LEADING OIL & GAS INDUSTRY COMPETITIVENESS (LOGIC)

Annan House 33-35 Palmerston Road, 4th Floor, Aberdeen, Scotland, AB11 5QP

#### **Documents to be examined by Counsel**

The following documents (or equivalent) should be listed as having been examined by Counsel:

1. The Deed.
2. Copy of Deed of Adherence signed by [Company] (preferably also name the relevant signatories/witness names) and is currently undated, a copy of which is attached to the Opinion [**Note: the opinion should not refer to an executed/dated deed of adherence, as the Deed of Adherence will not be signed until the Opinion is**

***approved by LOGIC – see further at final paragraph under “Content of the Opinion” below.***

3. Constitutional documents of the [Company] – i.e. certificate of incorporation, articles of association and anything else which may be applicable in the relevant jurisdiction.
4. If a signatory is signing under a power of attorney – a copy of the relevant power of attorney.

### **Content of the Opinion**

The Opinion should contain opinions to the effect listed in Paragraphs 1-7 below. It is recognised that Counsel may need to make certain assumptions, qualifications, limitations and exceptions in providing the opinions which shall not exceed those customarily inserted by legal firms of high repute and standing in relation to opinions of this kind and shall not undermine the overall intent of the Deed of Adherence/Deed:

1. [Company] is duly incorporated and is a validly existing company under the laws of its place of incorporation.
2. [Company] has full power and authority to execute, deliver and perform its obligations under the Deed of Adherence and the Deed.
3. The execution, delivery and performance by [Company] of the Deed of Adherence and the performance of its obligations under the Deed have been duly authorised by all necessary corporate action and do not contravene or conflict with [Company] 's constitutional documents.
4. The choice of English law to govern the Deed of Adherence and the Deed would be given effect by a court in the jurisdiction in which [Company] is incorporated in proceedings relating to the Deed of Adherence and the Deed except to the extent that matters of procedure in any action commenced in the courts in the jurisdiction in which [Company] is incorporated may be governed by the law of such jurisdiction.
5. Assuming a judgement is obtained against [Company] under the Deed from a competent court located in England or Wales, that judgement would be recognised and enforced in a legal proceeding properly commenced within the applicable statute of limitations in a court in the jurisdiction in which [Company] is incorporated subject to [other applicable statutory qualifications that do not undermine the overall principles can be listed].
6. No authorisation, consent, approval, exemption, permit or licence of or filing with any governmental or public authority in the [Company] 's country of incorporation is required in connection with the execution, delivery or performance of the Deed of Adherence and the Deed.
7. The signatories are duly authorised to execute the Deed of Adherence on behalf of the [Company] [if executed by such signatories in the manner stipulated therein, including where appropriate by Docusign,] (assuming valid execution by LOGIC) the Deed of Adherence will have been duly executed and will bind [Company].

Note: The Opinion must not reference “dated” or “executed” Deeds of Adherence, as the Deed of Adherence will not be entered into until after the Opinion has been approved by and issued to LOGIC. LOGIC will be the final signatory to the Deed of Adherence, and the Deed of Adherence will be dated accordingly following such signature.

### **Review of the Opinion**

To reduce the time and cost associated with the review of Opinions and the performance of any amendments that may be required, LOGIC requests that a draft opinion is provided by email to [logic@oeuk.org.uk](mailto:logic@oeuk.org.uk). LOGIC recommends that Opinions remain as draft and are not finalised, issued and dated until LOGIC has confirmed it can accept the Opinion in the form provided and is .

This also enables LOGIC to confirm it is in a position to proceed to signature of the Deed of Adherence (subject to receipt of the signed Deed of Adherence from Company and signed/dated Opinion) as it is important that the signed/dated of Opinion is issued as close as possible to signature by LOGIC to ensure the content of the opinion does not become outdated.

Once approved, the Opinion should be signed, dated, and then issued to LOGIC via post (or by email, if electronic signatures are effective), along with the signed (but not dated) Deed of Adherence from Company. Subject to final review, LOGIC will then proceed to sign the Deeds of Adherence.