



Oil & Gas  
Authority

# Consultation on OGA Financial Guidance

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# 1. General information

## Purpose of this consultation

To set out, and seek industry views on, the Oil and Gas Authority's (OGA) revised financial guidance, entitled "Guidance on the Assessment of Licensee Financial Capability" attached at Annex 1 (the Financial Guidance). It is intended that the Financial Guidance will always apply where the OGA is required to undertake the following decisions:

- Licence award;
- Licence assignment;
- Change of control of licensee;
- Innovate licence progression;
- Well consent;
- Field development (including extended well tests); and
- Pipeline Works Authorisation.

The OGA may also apply this Financial Guidance in any other circumstances where an application is made to the OGA in respect of the terms of a license or for an authorisation or consent required under the terms of a licence or by statute.

Issued: **1 June 2018**

Respond by: **29 June 2018**

Territorial extent: UK Continental Shelf and onshore England. Wales will fall within the scope of this guidance until onshore petroleum licensing powers are devolved to the Welsh Assembly. Devolution of these powers is currently planned for Monday 1 October 2018.

## Responding to this consultation

The OGA invites written views and comments on the proposed guidance, to be made by **29 June 2018**. Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Please submit your response by email or post (email preferred).

The OGA has produced a coversheet for responses (see Annex 2) and asks that you complete and include it with your response, which should speed up the processing of responses, and help to maintain confidentiality, where appropriate.

Written response to the consultation should be sent to:

Financial Guidance Consultation  
Oil and Gas Authority  
21 Bloomsbury Street  
London  
WC1B 3HF

Email: [investor.relations@ogauthority.co.uk](mailto:investor.relations@ogauthority.co.uk)

Representative groups are asked to give a summary of the persons or organisations they represent when they respond.

### **Additional copies:**

Other versions of the document in Braille, large print, audio or Welsh can be made available on request. Please contact us using the 'enquiries' details to request alternative versions.

### **Confidentiality and data protection**

The OGA will aim to publish a summary of the responses to this consultation and its response by 10 August 2018.

If you think any part of your response should be kept confidential, please place such part(s) in a separate annex to your response and include your reasons why this part of your response should not be published. For example, this may include information such as your personal background and experience. Therefore, if you want your personal details to remain confidential, please provide them in the coversheet only so that the OGA does not have to edit your response.

If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to the OGA to use for its regulatory remit.

### **Quality assurance**

This consultation has been carried out in principle with the government's consultation principles.

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

OGA Consultation Coordinator  
21 Bloomsbury Street  
London  
WC1B 3HF

Email: [ogaconsultationcoordinator@ogauthority.co.uk](mailto:ogaconsultationcoordinator@ogauthority.co.uk)

## 2. Introduction

1. The OGA takes decisions in respect of various activities pertaining to the extraction and storage of petroleum on the United Kingdom Continental Shelf and onshore in England and Wales (Wales until its planned devolution of such matters on 1 October 2018). Many of those decisions are based on commitments made by a legal or natural person (an Applicant) to undertake certain activities in the future. The OGA considers that it is important to understand the Applicant's financial capability, to be able to make a judgement as to the likelihood of that Applicant having the funds needed to meet the commitment on which the OGA's decision is based (the Commitment).
2. The OGA has identified the following activities as potentially including the making of a Commitment to the OGA, or the transfer of a Commitment from one legal or natural person to another:
  - (a) Licence award;
  - (b) Licence assignment;
  - (c) Change of control of licensee;
  - (d) Innovate licence progression;
  - (e) Well consent;
  - (f) Field Development (including extended well tests); and
  - (g) Pipeline Works Authorisation.

The OGA may also apply this Financial Guidance in any other circumstances where an application is made to the OGA in respect of the terms of a license or for an authorisation or consent required under the terms of a license or by statute.

3. The existing financial guidance for the above activities has been amended several times since originally published by the Department of Energy and Climate Change (now Business,

Energy and Industrial Strategy), however it has not been updated since the OGA took over responsibility for such activities in the October 2016. The OGA considers that the existing financial guidance should be updated as it is fragmented, and in parts, repetitive and does not reflect the new and innovative sources of finance that licensees are now using. Therefore, the financial guidance has been revised to specify the OGA's requirements for assessing an existing or prospective licensee's financial capability, and to take into account the various funding models that licensees are using today.

4. The Financial Guidance sets out the factors that the OGA will usually take into consideration when reviewing the financial capability of an Applicant. Where an application is submitted on behalf of the legal or natural person who would assume the Commitment to the OGA, it is the person assuming the Commitment that shall be regarded as the Applicant. The Financial Guidance also sets out the steps that legal or natural persons seeking a decision from the OGA should take to facilitate those considerations.
5. In assessing an Applicant's financial capability, the OGA will assess two broad financial criteria. These are financial viability and financial capacity. Financial viability refers to an entity's current and historic solvency and provides assurance that the Applicant is currently solvent and is expected to remain so for the foreseeable future. Financial capacity refers to the Applicant's ability to meet all known and anticipated future commitments, including the Commitment, and will normally focus on the Applicant's financial forecasts.

### 3. Differences between the existing and updated financial guidance

The key differences between the existing financial guidance and the OGA’s updated Financial Guidance are set out in the table below:

Existing Financial Guidance	Updated Financial Guidance
<ul style="list-style-type: none"> <li>Assesses financial viability and capacity.</li> </ul>	<ul style="list-style-type: none"> <li>Assesses financial viability and capacity.</li> </ul>
<ul style="list-style-type: none"> <li>Unclear information provision requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Updated to enable the OGA to perform a more detailed analysis.</li> <li>A matrix now enables quick identification of information requirements.</li> <li>Flexibility for the OGA to request additional information only as required.</li> </ul>
<ul style="list-style-type: none"> <li>Lighter burden on industry.</li> </ul>	<ul style="list-style-type: none"> <li>For some Applicants, the revised guidance may require the provision of more information (although intended to be largely information already available to the Applicant).</li> </ul>
<ul style="list-style-type: none"> <li>Assessment criteria fragmented and difficult to follow.</li> </ul>	<ul style="list-style-type: none"> <li>Clearly outlines considerations under each of the viability and capacity criteria.</li> <li>Existing criteria remain and additional criteria have been included.</li> </ul>
<ul style="list-style-type: none"> <li>Pass / fail tests.</li> </ul>	<ul style="list-style-type: none"> <li>Risk based assessment of financial capability will be provided to the decision maker, to be taken into consideration alongside other relevant factors.</li> </ul>

## 4. Consultation questions

### OGA Analysis

1. When assessing the likelihood of an Applicant having the funds needed to meet the Commitment on which a decision is based, should the OGA analyse other financial factors in addition to financial viability and capacity of an Applicant as set out in the Financial Guidance? If yes, what else should the OGA analyse?

### OGA Approach

2. In accordance with the Financial Guidance, the OGA will take a risk based approach to its recommendation; is this appropriate or should the OGA take an absolute, “pass/fail”, approach?

### Financial Viability

3. Are the tests set out in section 6 of the Financial Guidance the most suitable? If not, what tests should the OGA use?
4. Are the thresholds referred to in section 6 of the Financial Guidance set at an appropriate level? If not, what level would be appropriate?

### Financial Capacity

5. Are the tests set out in section 7 of the Financial Guidance the most appropriate? If not, what tests should the OGA use?
6. Are the thresholds referred to in section 7 of the Financial Guidance set at an appropriate level? If not, what level would be appropriate?

### Specific financing arrangements

7. Section 8 of the Financial Guidance is intended to better reflect the different funding models now available to Applicants. It is not intended to be exhaustive, the OGA recognises the need for and is supportive of financial innovation. If there are other sources of finance being actively considered, the OGA will consider adding them to Section 8. Does the Financial Guidance include all key sources of finance available to Applicants? If not, what else should the OGA consider?

### Information requirements

8. Is the information required by the OGA as set out in the information requirement matrix in section 10 of the Financial Guidance the right information to perform the financial viability and financial capacity tests set out in sections 6 and 7 of the Financial Guidance? If not, what information should this include?

## 5. Impact Assessment and Equality Impact Assessment

The OGA has a general duty under the Equality Act 2010 in carrying out its functions to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and,
- foster good relations between different groups.

Further details can be found at <https://www.equalityhumanrights.com/en/equality-act/equality-act-2010>.

# Annex 1: Financial Guidance

## 1. Status and Purpose of this Guidance

- 1.1 The Oil and Gas Authority's (the 'OGA') powers, and this guidance, apply to:
- (a) the entire upstream UK offshore petroleum industry; and
  - (b) given phased devolution of regulation of the upstream industry onshore, currently onshore England and Wales, but from 1 October 2018 exclusively to England.
- 1.2 This guidance sets out when the OGA will consider the financial capability of a legal or natural person and the factors that the OGA will usually take into consideration when doing so. These factors may vary according to the circumstances and will be assessed on a case-by-case basis. This guidance also sets out the steps that legal or natural persons seeking a decision from the OGA should take to facilitate those considerations.
- 1.3 This guidance sets out details of the process that the OGA will apply to assess financial capability in respect of certain licence events. It is not a substitute for any other financial assessments that may be carried out by other regulators including onshore, mineral planning authorities, and offshore the Department for Business, Energy and Industrial Strategy's Offshore Petroleum Regulator for Environment and Decommissioning ('OPRED') who may separately seek to satisfy themselves that a licensee or infrastructure owner will be able to meet their obligations to decommission offshore installations.
- 1.4 From time to time the OGA may review the financial health of an offshore or onshore licensee or infrastructure owner between licence events and may, in certain circumstances, make further information requirements of that licensee and infrastructure owner unconnected to a specific licence event. In respect of offshore licensees, the OGA will, wherever possible, coordinate these activities with OPRED to minimise the burden on licensees and infrastructure owners.
- 1.5 This guidance is not a substitute for any regulation or law and is not legal advice. It does not have binding legal effect. Where the OGA departs from the approach set out in this guidance, the OGA will endeavour to explain this in writing to the person seeking a decision from the OGA.
- 1.6 Any assessment of financial capability made by the OGA is made specifically and exclusively for the purposes set out in this guidance. Third parties should not rely on any decision of the OGA concerning a person's financial capability or otherwise.
- 1.7 This guidance will be kept under review and be amended as appropriate in the light of further experience and developing law and practice, and any change to the OGA's powers and responsibilities.

## 2. Background

- 2.1 The Energy Act 2016 created the legislative framework to formally establish the OGA as a government company and transferred to the OGA certain powers concerning the regulation of upstream petroleum activity in the UK. As a result, the OGA has the power to grant licences that confer exclusive rights on the licensee to ‘search and bore for and get’ petroleum and the power to enforce, against the licensee, the terms of those licences and certain other obligations of licensees and others that are set out in statute.
- 2.2 At various points during the lifecycle of a licence the OGA will be asked by licensees to make decisions on commitments and activities proposed, and the OGA believes that the financial capability of the licensee is an important consideration in making those decisions. To inform those decisions the OGA will usually undertake financial due diligence on the licensee.
- 2.3 The output of this financial due diligence will normally be a risk based assessment of the licensee’s financial capability accompanied by a recommendation to the OGA decision-maker as to how to proceed. In most cases the recommendation as to the licensee’s financial capability will not be determinative as the OGA decision-maker will also take into account certain other factors.
- 2.4 The factors that the OGA will consider when taking a decision on a licence event and how those factors are weighed is informed by statute and varies between the offshore and onshore industries. Offshore, the OGA will consider both the MER UK Strategy (outlined in paragraph 2.5 below) and the matters set out in the Energy Act 2016, to which it must have regard. Onshore, only the matters set out in the Energy Act 2016 apply.
- 2.5 The Petroleum Act 1998, as amended by the Infrastructure Act 2015, established the principal objective of maximising the economic recovery of the UK’s offshore petroleum resources (the ‘principal objective’). The amended Petroleum Act 1998 also provides the legislative basis for the strategy for enabling the principal objective to be met (the ‘Maximising Economic Recovery Strategy for the UK’ or the ‘MER UK Strategy’<sup>1</sup>) and the requirement for the OGA and certain others in the offshore industry to “take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters”.

1.The MER UK Strategy can be found at: <https://www.ogauthority.co.uk/news-publications/reports-publications/2016/maximising-economic-recovery-of-uk-petroleum-the-mer-ukstrategy/>

2.6 In addition to observing the MER UK Strategy, the Energy Act 2016 requires that the OGA, amongst other things, should have regard to the following:

- (a) Minimising future public expenditure
- (b) Security of supply of energy for the UK
- (c) The development and use of facilities for the storage of carbon dioxide
- (d) Collaboration with HM Government and key industry stakeholders
- (e) Innovation in technology and working practices
- (f) Maintaining a stable and consistent system of regulation.

These matters are listed in the order set out in the Energy Act 2016 and no significance should be given to the order in which they appear.

2.7 Other regulators are responsible for regulating various other aspects of the upstream petroleum industry offshore and onshore, including, in particular, OPRED (as set out in paragraph 1.3 above), the Health and Safety Executive, the Environment Agency and Mineral Planning Authorities.

### 3. The OGA's Approach to Assessing Financial Capability

3.1 The OGA takes decisions in respect of various activities pertaining to the extraction and storage of petroleum in the United Kingdom petroleum industry. Many of those decisions are based on commitments made by the counterparty to undertake certain activities in the future. The OGA considers that it is important to understand the

counterparty's financial capability, to be able to make a judgement as to the likelihood of that counterparty having the funds needed to meet the commitment on which the OGA's decision is based (the "Commitment").

3.2 The OGA has identified the following activities as possibly including the making of a Commitment to the OGA, or the transfer of that Commitment from one legal or natural person to another:

- (a) Licence award;
- (b) Licence assignment;
- (c) Innovate licence progression;
- (d) Well consent;
- (e) Field development (including extended well tests);
- (f) Change of control of Licensee; and
- (g) Pipeline Works Authorisation.

The OGA may also apply the Financial Guidance in any other circumstances where a Commitment is made that will or may require material financial resources to discharge. This guidance applies to a legal or natural person seeking a decision from the OGA in respect of any of these activities (an "Applicant").

3.3 Where an application is submitted on behalf of the legal or natural person who would assume the Commitment to the OGA, it is the person assuming the Commitment that shall be regarded as the Applicant.

- 3.4 In assessing an Applicant's financial capability the OGA will assess two broad financial criteria. These are financial viability and financial capacity.
- (a) Financial viability refers to an Applicant's historic, current and future solvency and provides assurance that the Applicant is currently solvent and is expected to remain so for the foreseeable future.
  - (b) Financial capacity refers to the Applicant's ability to meet all known and anticipated future commitments, including the Commitment, and will normally focus on the Applicant's financial forecasts.
- 3.5 Further details of the assessments made against these criteria can be found in sections 6 and 7 respectively.
- 3.6 As part of its assessments, the OGA may share the information provided by the Applicant with OPRED who may use it to assess the ability of the Applicant and other relevant Licensees to meet decommissioning obligations covered by Part IV of the Petroleum Act 1998. The OGA will take OPRED's response into consideration in making its decision and OPRED may seek additional assurances from the Applicant in respect of its proposed decommissioning obligations. Where such assurances are sought and provided, the OGA will take these into consideration in making its decision. OPRED's Guidance Notes on the Decommissioning of Offshore Oil and Gas Installations and Pipelines set out how they will review the Applicant's financial capability.<sup>2</sup>
- 3.7 Rather than an Applicant demonstrating that it has the financial capability to meet a Commitment on a standalone basis, the Applicant may wish to rely on a guarantee from a natural person or corporate body. The OGA will consider applications relying on guarantees, but these must be created by way of a deed that is acceptable to the OGA and the guarantor must demonstrate to the OGA that it has the requisite financial capability. The process by which the OGA will consider an application relying on a guarantor is set out in section 4.
- 3.8 The OGA also recognises that, increasingly, existing and proposed new licensees are exploring new sources of finance and innovative financing structures to meet their commitments. While the OGA will always need to be satisfied that these new sources of finance and financing structures will meet an Applicant's commitments, the OGA does not want to discourage this innovation by setting rigid requirements of how financial capability can be demonstrated. Therefore section 8 sets out how the OGA will consider certain of these funding proposals, and Applicants and potential Applicants considering using new or innovative funding models are encouraged to make early contact with the OGA's Investor Finance team at [investor.relations@ogauthority.co.uk](mailto:investor.relations@ogauthority.co.uk).
- 3.9 In the case of a proposed licence assignment or licensee change of control, where an existing licensee intends to retain a Commitment or Commitments after the completion of the transaction, the OGA will consider the financial capability of both parties to the transaction. As such, both

2. OPRED's Guidance Notes on the Decommissioning of Offshore Oil and Gas Installations and Pipelines can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/670388/guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/670388/guidance.pdf)

parties should consider themselves an 'Applicant' for the purposes of this guidance. The OGA's due diligence processes will thereby seek to ensure that both the new and existing licensee can meet their Commitments in their post-completion portfolios.

- 3.10** To assess the financial capability of an Applicant the OGA will require certain information from that Applicant. The information required by the OGA will vary by application type and section 10 sets out the information that will normally be required for different application types, along with some further details relating to the OGA's information requirements.
- 3.11** The OGA expects the information requirements set out in section 10 to be included with any application. On occasion, the OGA may accept an application without all the information required by section 10, but reserves the right not to do so. Given the volume of applications typically received during a licence round, the OGA will normally only take into consideration financial information provided with the application. However, the OGA always reserves the right to request further information, in addition to that outlined in section 10, should it be required by the OGA to fully evaluate the Applicant's financial capability.
- 3.12** The OGA's assessment of an Applicant's financial capability forms one part of the decision making process in respect of the activities listed in paragraph 3.2 above. In taking these decisions the OGA will also take into consideration other relevant factors

alongside financial capability, including the technical capabilities of the Applicant and the Applicant's operational and commercial plans, these factors are not covered by this guidance.

- 3.13** The output of this financial due diligence will normally be a risk based assessment of the Applicant's financial capability and a recommendation to the OGA decision-maker as to how to proceed. In most cases the recommendation as to the Applicant's financial capability will not be determinative as the OGA decision-maker will also take into account the factors referred to in paragraph 3.12 above. The OGA will notify the Applicant in writing of the outcome of the application but will not always be able to provide feedback on the rationale for the decision.
- 3.14** Any queries regarding which circumstances apply, should be directed to the OGA's Investor Finance team at [investor.relations@ogauthority.co.uk](mailto:investor.relations@ogauthority.co.uk).

## **4. Guarantors**

- 4.1** In this guidance, the term 'Guarantor' means an entity that guarantees to fund the obligations of an Applicant. A Guarantor may be a legal or natural person.
- 4.2** Where an Applicant proposes to rely on a legal or natural person as a Guarantor, the Applicant will need to provide the OGA with a deed of guarantee, as set out in paragraph 4.3 below. This is a legally binding document requiring the Guarantor to meet the Commitments of the Applicant

should the Applicant be unable to meet those Commitments itself (and if required to do so by the OGA). Before accepting any guarantee from a proposed Guarantor, the OGA will need to satisfy itself that the Guarantor has the financial capability to meet the Commitments of the Applicant. To that end, the OGA will apply the same financial due diligence to the Guarantor as it would to an Applicant and this guidance will apply to the Guarantor as it does to the Applicant and, where the context allows, references in this guidance to the term 'Applicant' should also be read as referring to a Guarantor.

4.3 The OGA has prepared deed of guarantee templates for the following types of applications:

- (a) Licence award;
- (b) Licence assignment; and
- (b) Licensee change of control.

Templates can be found on the OGA website at:

<https://www.ogauthority.co.uk/licensing-consents/licensing-system/licensee-criteria/>

These templates should not be varied or modified without the prior written agreement of the OGA. If the Applicant proposes to rely on a Guarantor for another application type, then the Applicant should contact the OGA's Investor Finance team at investor.relations@ogauthority.co.uk who will provide an adapted template.

4.4 Therefore, where an Applicant intends to rely on a Guarantor, the Applicant and/or Guarantor should provide the financial information, as outlined in section 5, for both the Applicant and/or the Guarantor. The assessment of financial capability, as outlined in sections 6 and 7, will then be performed on both the Guarantor and the Applicant.

4.5 In making an application where the Applicant intends to rely on a Guarantor, or if the Applicant is uncertain whether the OGA will require a Guarantor, the Applicant should provide a draft deed of guarantee, together with a letter of undertaking from the Guarantor confirming that they will execute such deed of guarantee if the application is successful and, in respect of both the Applicant and the proposed Guarantor, the financial information set out in this guidance.

4.6 In some cases the OGA may give an Applicant the opportunity to offer a Guarantor following an initial assessment of the Applicant's financial capability. However, the OGA cannot undertake to do this in every case and, by not providing the necessary documentation in the first instance, the Applicant risks causing delay to their application or the application being refused outright because it has failed to demonstrate adequate financial capability.

4.7 Due to the large volume of applications received by the OGA during a licensing round, a proposed guarantee will only be considered where all the necessary Guarantor documentation and financial information is provided with the application.

4.8 Where the Guarantor is a natural person, the OGA expects to undertake additional due diligence regarding the ability of such Guarantor to meet the guaranteed obligations and apply such additional processes as may be required to ensure the deed of guarantee is enforceable.

4.9 Where the Guarantor is a non-UK incorporated and/or domiciled legal or natural person, the guarantee must be accompanied by a legal opinion from a reputable law firm authorised to act in the jurisdiction in which the Guarantor is incorporated and/or domiciled confirming, among other things, the enforceability of the guarantee against the guarantor in such jurisdiction. If an Applicant believes that this requirement may apply they should contact the OGA's Investor Finance team at the earliest opportunity at [investor.relations@ogauthority.co.uk](mailto:investor.relations@ogauthority.co.uk).

## 5. Financial Capability Criteria

5.1 As set out in paragraph 3.4, in determining financial capability, the OGA will assess Applicants against two distinct financial criteria: financial viability and financial capacity.

5.2 The OGA will consider three assessment areas within financial viability and four assessment areas within financial capacity. The purpose of these assessment areas is to highlight any risks to and vulnerabilities of the Applicant that may impact its ability to carry out the Commitment.

5.3 In assessing an application, the OGA will give each relevant assessment area an appropriate risk-rating and commentary as to key risks that the assessment area presents. A final recommendation will consider all risks highlighted across the relevant assessment areas.

## 6. Financial Viability

6.1 The OGA will begin with an assessment of the Applicant's historic and current solvency. This is intended to assure the OGA that the Applicant is currently solvent and is likely to remain so for the foreseeable future. The Applicant's financial history will be reviewed, and this may be used as an indication of the Applicant's likely future performance.

6.2 In making its assessment of the Applicant's financial viability, the OGA will perform a risk based financial assessment across three areas as follows:

### 6.3 Demonstrable Track Record

- (a) While past performance is not the best indicator of an Applicant's ongoing financial viability, it is the OGA's view that an established company with an extended track record of solvent trading is more likely to meet future commitments than a company without such a track record. This is in part because it has demonstrated a capability of doing so and in part because it will have earned a valuable reputation that it will not want to give up cheaply. However, the OGA does

not wish to exclude new entrants to the industry and paragraph 6.6 below sets out how the OGA will assess applications from newly incorporated companies.

- (b) The OGA will assess an Applicant's Demonstrable Track Record through a review of historic financial information of up to five years submitted by the Applicant and through a review of other information available about the Applicant from public sources, including but not limited to details of any breaches of law or regulation leading to enforcement action. The OGA will pay particular attention to the historic solvency and profit and cash generation of the Applicant and any qualifications or 'emphasis of matter' set out in audited accounts. If the Applicant cannot submit the information requested, the Applicant should contact the OGA's Investor Finance team at the earliest opportunity at [investor.relations@ogauthority.co.uk](mailto:investor.relations@ogauthority.co.uk).
- (c) Evidence of sustained solvent trading with strong and consistent profit and cash generation will have a positive bearing on the OGA's assessment of the Applicant's Demonstrable Track Record. Indications of significant losses, difficulties generating positive cash flow and/or breaches of lending covenants may negatively impact the OGA's assessment. Recent insolvency proceedings and frequent or lender imposed financial restructurings may also have a significant bearing on the OGA's assessment of the Applicant's Demonstrable Track Record.
- (d) In assessing the Applicant's Demonstrable Track Record, the OGA will also consider the scale of previous profits and positive cash flows set against the scale of the Commitments that the Applicant is seeking to take on through the application.

#### 6.4 Current Financial Analysis

- (a) The OGA will assess the Applicant's solvency, as at the date of the application.
- (b) To do this the OGA will calculate the Applicant's Current Ratio, Interest Cover Ratio and Net Assets on each of the audited and filed statutory accounts submitted, and the Applicant's most recent management accounts. The OGA's expectation is that these accounts will have been prepared under GAAP. If not, the Applicant should contact the OGA's Investor Finance team at the earliest opportunity at [investor.relations@ogauthority.co.uk](mailto:investor.relations@ogauthority.co.uk).
- (c) The Applicant's Current Ratio, Interest Cover Ratio and Net Assets will be calculated as follows:
- $$\text{Current Ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$
- $$\text{Interest Cover} = \frac{\text{Net Operating Profit}}{\text{Interest Expenses}}$$
- $$\text{Net Assets} = \text{Total Assets} - \text{Total Liabilities}$$
- (d) The OGA believes that together these calculations provide an insight of the current solvency and liquidity of the Applicant with the audited accounts

providing a robust, albeit historic, view and the management accounts providing a more up to date view of the Applicant's status.

this is not the case the Applicant should state that and provide a separate, audited, estimate of those liabilities.

- (e) The Current Ratio is an indication of the Applicant's ability to meet its obligations in the short term. The OGA will interpret a low Current Ratio, particularly a Current Ratio of less than 1 (one), as an indication of financial weakness of the Applicant.
- (f) The Interest Cover ratio indicates how easily an Applicant will be able to pay their interest expenses on outstanding debt. A lower ratio may also imply that the Applicant already has a substantial debt burden which it may find difficult to service. The OGA will therefore consider an Interest Cover Ratio of less than 2 (two) as a sign that the Applicant may struggle to meet the Commitments.
- (g) Net Assets as calculated is a simple measure of the Applicant's balance sheet solvency. Net Assets of less than 0 (zero) would be a clear sign of financial weakness. A positive Net Asset value indicates that the Applicant is balance sheet solvent but a positive Net Asset value that is significant relative to the scale of the Commitments that the Applicant is proposing to take on would be a clear positive indication of the Applicant's current financial viability.
- (h) Note that the OGA expects that any pensions liabilities of the Applicant will be fully reflected in both the Applicant's audited and management accounts. If

## 6.5 Capital Structure

- (a) In assessing the Applicant's financial viability it is also important to understand its capital structure and the OGA will calculate the Applicant's gearing ratio to aid that understanding. The OGA will calculate a gearing ratio based on both the latest audited and filed statutory accounts and on the Applicant's most recent management accounts.

- (b) The OGA will calculate the Applicant's gearing ratio as follows:

$$\text{Gearing} = \frac{(\text{Total Debt})}{(\text{Total Debt} + \text{Equity})}$$

- (c) The Gearing Ratio is a measure of how the Applicant is funded, with a higher Gearing Ratio indicating that debt makes up a larger part of the Applicant's capital structure. More debt in an Applicant's capital structure carries greater risks, as debt must eventually be repaid and generally requires the borrower to make regular interest payments to the lender. A higher Gearing Ratio also implies that the Applicant will find it harder to borrow more funds, should the need arise.
- (d) The Gearing Ratio calculation will be made including all debt owed by the Applicant, without reference to the identity of the lender or to any security held by the lender. Where some or all the debt on an Applicant's balance sheet is intra-group and the Applicant believes that the

simple Gearing Ratio calculation outlined above would misrepresent its true capital structure, the Applicant may provide details of the intra-group debt and an explanation of why the OGA should modify its view of the Applicant's solvency risk profile. In taking that additional information into consideration, the OGA may also need to see relevant financial information for the intra-group lender.

## 6.6 Newly Incorporated Applicants

- (a) The OGA recognises that natural or legal persons may choose to incorporate a new company to make an application to the OGA. In that case much of the analysis of financial viability of the Applicant set out in this section 6 will not be meaningful. Primarily, the OGA will overcome this by placing more importance on the financial capacity analysis set out in section 7 below, but will also consider in detail the identity and track record of the shareholders, directors and officers of the Applicant.
- (b) An Applicant that has provided evidence of shareholders, directors and officers with a demonstrable track record of running successful, solvent businesses particularly oil and gas businesses, will be considered lower risk than those that can't provide that evidence.

## 7. Financial Capacity

- 7.1 The financial capacity assessments inform the OGA's judgement of the likelihood that the Applicant will, in future, have the financial resources necessary to meet the Commitment. In making this assessment the OGA will consider all the Applicant's current commitments, including the new Commitment, and its known and committed sources of funding.
- 7.2 The OGA expects that Commitments will be met. Therefore, the OGA will want to see evidence that the Applicant expects to have the financial capacity to meet the expected costs of the Commitment and all other commitments and obligations, but also that it will be able to withstand reasonable shocks to the costs of meeting its commitments and obligations, and to its sources of funding.<sup>3</sup>
- 7.3 The OGA considers that there are two ways that an Applicant can demonstrate that it has the financial capacity to meet the Commitment, alongside all existing commitments. In most cases, the OGA will want to see evidence that the Applicant will have funds available as and when they are required to satisfy the Commitment. Evidence of the availability of funds should be presented by the Applicant as a cash flow forecast, starting from the date that the application is made to the point in time when the Commitment will have been discharged. Further guidance on the presentation of cash flow forecasts is set out in paragraph 7.7 below.

3. In assessing an Applicant's ability to undertake a Commitment, the OGA will consider contingent commitments and drill-or-drop wells in addition to the firm commitments. Whilst not all drill-or-drop work programmes result in the drilling of a well, the OGA will require an Applicant to demonstrate a minimum of 100% funding capacity for the single most expensive net well cost exposure, plus 50% of the cost of the other wells, including existing drill-or-drop work programme commitments as well as those being applied for in the application.

7.4 Where the Applicant has demonstrated a strong track record and the scale of an Applicant's Net Worth relative to costs of meeting the Commitment are such that the OGA can be satisfied that the Applicant will be able to meet the Commitment without the need for the Applicant to prepare and the OGA to review cash flow forecasts, the OGA may not require the Applicant to provide the cash flow forecast requested. Further guidance on how an Applicant's Net Worth will be assessed and when the Net Worth test may be substituted for the full cash flow analysis is set out in paragraph 7.6 below. If the Applicant is unsure whether the full cash flow analysis will be required, the Applicant should either submit the cash flow information set out in paragraph 7.7 or contact the OGA's Investor Finance team prior to submission at [investor.relations@ogauthority.co.uk](mailto:investor.relations@ogauthority.co.uk).

7.5 The OGA notes that, under the terms of its licences, each licensee agrees to be jointly and severally liable to fully discharge all commitments made in that licence. Without prejudice to the joint and several nature of licence obligations, in making its assessment of the Applicant's financial capacity, the OGA will normally only consider the Applicant's capacity to fund its proposed share of the Commitment. However, the OGA may make exceptions to this approach where, for example, another licensee or proposed licensee is known to be in financial difficulties. If the Applicant is uncertain how the OGA will apply joint and several liability in the context of a particular application it should contact the OGA's Investor Finance team at the earliest opportunity at [investor.relations@ogauthority.co.uk](mailto:investor.relations@ogauthority.co.uk).

## 7.6 Net Worth

(a) By their nature, Commitments need to be discharged in the future, therefore, to satisfy itself that the Applicant will have the financial capacity to meet that Commitment it will normally be necessary for the OGA to assess the Applicant's capacity to access the cash necessary to do so in the future; i.e. at the time the Commitment is expected to be discharged. However, some Applicant's will have a Net Worth that is sufficiently high relative to the cost of discharging the Commitment that no further assessment of financial capacity is necessary.

(b) The OGA will calculate the Applicant's Net Worth as follows:

$$\text{Net Worth} = \text{Net Assets} - \text{Intangible Assets}$$

(c) If, on this basis, an Applicant has demonstrated that it has a Net Worth substantially greater than the estimated cost of the Commitment, then the OGA will normally deem that the Applicant has demonstrated sufficient financial capacity. Other Applicants, particularly those with a Net Worth that is less than 5 (five) times the estimated cost of all commitments, will be expected to prove their financial capacity by an analysis of their cash flow forecasts.

## 7.7 Cash Flow Forecasts

(a) In other circumstances the Applicant's cash flow forecasts from the date of the application to the date in the future when that Commitment is fully discharged will be fundamental to the OGA's assessment of the Applicant's financial capacity.

- (b) These cash flow forecasts should include details of all sources of free cash flow expected to be available to the Applicant for the period of the cash flow forecast (including full details of debt facilities), the costs of all committed projects (including but not limited to the Commitment)<sup>4</sup>, the costs of any uncommitted projects where cash flows from those projects are subsequently included in the cash flow forecast, and any other expenses or repayments that the Applicant will need to satisfy, in particular, repayment of debt and interest expenses.
- (c) To aid the OGA's understanding of the cash flow forecasts, the Applicant should provide its integrated financial model and should detail all key assumptions and methodologies underlying the cash flow forecasts, in particular, oil and gas prices, interest and inflation rates, how project costs have been estimated, any contingencies that have been applied to those costs and expectations as to timing of completion and rate of production from development activities.
- (d) At a minimum, the cash flow forecast should be provided on a quarterly basis for the first three years and on an annual basis thereafter up to the point that the commitment is discharged. The OGA reserves the right to ask for more detailed cash flow forecasts and for re-worked forecasts based on its own, stated assumptions and methodologies, if it believes that that would give a clearer view of the likelihood of the Applicant meeting the Commitment than the original cash flow forecasts provided. See paragraph 7.8 below for further details.
- (e) Where the information provided indicates that the Applicant is reliant on, or intends to rely on, large amounts of debt to fund its activities, the OGA will consider if and to what extent the Applicant's reliance on debt increases the risk that the Applicant will not be able to meet its Commitments.
- (f) To assess the Applicant's ability to service its existing and proposed debt, the OGA will perform an analysis of the Applicant's Debt Service Cover Ratio in respect of each period set out in the Applicant's cash flow forecasts. The purpose of this assessment is to ensure that the level of free cash generated by the Applicant's business once all other commitments have been met (including the new Commitment) will be sufficient in each period to meet the agreed repayment schedule of its existing and any new debt, along with any regular servicing costs, such as interest.
- (g) The OGA will use the following calculation to calculate the Debt Service Cover Ratio (DSCR) of an Applicant in each period:
 
$$DSCR = \frac{\textit{(Net Operating Profit)}}{\textit{(Debt Repayments+Debt Service Cost)}}$$
- (h) A Debt Service Cover Ratio in any period of less than 2 (two) will highlight periods where there is a risk that the Applicant may find it difficult to meet all its Commitments. However, the OGA will take into account the particular

4. Applicants seeking to take on, or who already hold, exploration or appraisal well commitments are encouraged to refer to section 9 for details of how these will be treated as part of the financial capacity assessment.

circumstances of that period, for example, a period in which the principal of a loan must be repaid to lenders.

- (i) Where the OGA's analysis of the Applicant's Debt Service Cover Ratio indicates periods of weakness, the OGA may seek clarification from the Applicant as to how it will mitigate these risks.

## 7.8 Sensitivity Analysis

- (j) A cash flow forecast based on reasonable assumptions and robust methodologies that suggest that the Applicant will always have the cash available to meet its Commitments, in addition to its other commitments, with a reasonable amount of headroom is a strong indication that the Applicant has adequate financial capacity. In this case it is unlikely that the OGA would seek further clarification.
- (k) If the cash flow forecast presented by the Applicant indicates that there will be periods where there is little or no headroom and/or a low Debt Service Cover ratio and/or is based on assumptions and methodologies that appear to the OGA to be optimistic, the OGA may conclude that the Applicant has a high risk of not being able to meet its new licence commitments.
- (l) If the OGA believes that to do so would give a clearer view of the likelihood of the Applicant meeting licence commitments than the original cash flow forecasts provided by the Applicant, the OGA may

ask for more detailed cash flow forecasts and/or for re-worked forecasts based on the OGA's own stated assumptions and methodologies.

- (m) In particular (but without limitation) the OGA may ask for cash flow forecasts to be re-worked based on one or more of the following sensitivities:

- i. lower oil and gas prices;
- ii. higher interest rates;
- iii. higher inflation rates;
- iv. capex overruns;
- v. delays to field start-up; and
- vi. lower than expected production rates.

## 8. Evidential Requirements for Specific Financing Arrangements

- 8.1 In assessing the Applicant's financial capability, the OGA will need to satisfy itself that the financing arrangements underlying the cash flow forecasts presented by Applicants are reliable. At the same time, the OGA recognises the important role played by a variety of different financing arrangements in developing the UK petroleum resources and open to considering any credible financing arrangements proposed by Applicants.
- 8.2 To assist Applicants in submitting the best possible applications, the following paragraphs set out the OGA's expectations as to the evidence needed to demonstrate that a type of financing arrangement is, or will be, in place for as long as it is needed to ensure that the Applicant can meet the Commitment.

8.3 If an Applicant intends to use a type of funding arrangement that is not listed below, or intends to provide a different form of evidence of that funding arrangement than the form recommended, then the Applicant should contact the OGA's Investor Finance team prior to making the application at [investor.relations@ogauthority.co.uk](mailto:investor.relations@ogauthority.co.uk).

(a) **Loans from banks or other financial institutions:**

Such loans should be evidenced by the provision of a copy of the executed loan agreement and an executive summary of key terms. Loan agreements that have been made conditional upon the award of a licence are acceptable but letters of intent from a bank or other financial institution are not. If an Applicant will be relying on commercial debt to meet its existing and/or proposed Commitments, the OGA will need assurances that the funding arrangements will remain in place long enough to fund the work programme and that the Applicant can meet the interest payments and agreed capital repayment obligations. A debt repayment schedule for the Applicant should therefore be provided along with cash flow projections clearly showing interest charges and capital repayments. If the debt repayment schedule shows any significant redemption of debt before the Commitment has been met and which cannot be met from operational cash flow, details of how the redemption will be funded should also be provided.

(b) **Parent company guarantee:** see section 4 above.

(c) **Parent company loan:** A copy of the executed loan agreement should be provided along with an executive summary of key terms. The OGA may undertake additional due diligence to ensure that such an arrangement can be satisfied.

(d) **Directors' loans:** Details of the loan arrangement between the Applicant and a director should be provided. The OGA may undertake additional due diligence to ensure that such an arrangement can be satisfied. A proposal relying on a loan from a director that has previously been declared bankrupt will come under particular scrutiny.

(e) **Commodity-based loan:** Where funding is expressly linked to a commodity (for example, reserve based lending), the Applicant must disclose the assumptions that have been made for the provision of this funding, including anticipated commodity value and remaining reserves. Whilst the OGA will consider the financial impact of specific sensitivities in its initial assessment, the overall risk assessment will also consider the operational assessment of the project. The Applicant is encouraged to share any due diligence or other third-party reports commissioned in securing this type of funding instrument.

(f) **Bonds:** Any existing or anticipated bond funding should be detailed in full, including the borrowed amount, quantum and timing of capital repayments and interest payments. Applicants should submit any

agreements governing the bond issue, disclose details of potential penalties and any additional rights accruing to the bond holders. Applicants will also be required to detail how the bond repayment is anticipated to be financed during the term of the Commitment that is the subject of the application.

- (g) **Deferred payments:** The scenarios below highlight two of the most commonly anticipated forms of deferred payment structure that may underpin an Applicant's financial model. Any funding source that is deferred or contingent upon performance, the passing of time or other future events should be detailed by the Applicant, disclosing the key terms that govern the payment of deferred sums and anticipated impact on the project if that such funding is not provided.
- i. **Contingent payments:** Details of cash inflow or outflow that is contingent upon future events should be detailed, including the quantum of cash flow, conditions upon which the payment is contingent and the Applicant's existing rationale for including or excluding such payments from its forecasts.
  - ii. **Vendor assistance:** Applicants should detail any form of assistance to be provided by a vendor to the Applicant or acquirer of a licence interest. Whilst vendor assistance may take the form of cash payment, it extends to wider forms of assistance such as the provision of services at discount to market rates, commitment to pay or contribute to future liabilities (for example, decommissioning) and provision of equipment or staff. Details of any arrangement that allows a vendor to absorb costs or liabilities that would otherwise be met by the Applicant in the normal course of business, should be disclosed and detailed alongside other funding arrangements.
- (h) **Contractor financing:** Any discount to or deferral of payment for services to an Applicant by a contractor in exchange for equity or other financial benefit is considered to be a form of financing and should be detailed alongside other financing arrangements.
- (i) **Issue of additional share capital:** Details of the proposed (private) share issues should be provided, together with documentary evidence that (a) the funds are available and have been irrevocably committed to the share issue by the investor(s), or (b) the share issue has been guaranteed/underwritten by a recognised financial institution or stock brokerage (future share issues will not be acceptable without such evidence). Arrangements with financial institutions or stock brokerage firms in which they undertake to raise equity on a 'best efforts' basis will not be considered as adequate evidence of funding.
- (j) **Equity Capital Markets:** Whilst not practical to consider the full range of public market instruments that may be considered during a licence's life in this

guidance, the Applicant should disclose any anticipated funding to be provided via IPO, rights issue or similar offering along with anticipated timing of such a fundraising. Where securing funding of this nature is critical to the future development, the level of requested information and scrutiny by the OGA will be higher. Where such funding is anticipated as a future option rather than a critical source of funding, detailed disclosure of such funding is not anticipated.

- (k) **Prepayment Facility:** Where an Applicant has agreed to transfer entitlement to revenues from the future sale of petroleum to a third party in exchange for an upfront payment, the OGA will expect to see this reflected in cash flow forecast. In addition, the Applicant should provide the OGA with a copy of the prepayment facility agreement along with a summary of the agreement's terms for approval in advance of its execution.

## 9. Exploration and Appraisal Well Commitments

- 9.1 In applications relating to the drilling of an exploration or appraisal well, the OGA will want to see evidence that an Applicant has sufficient funds to meet its share of the drilling costs, the plugging and abandonment of the well if it is proven to be "dry" or otherwise non-viable and a minimum contingency of fifty per cent. for both the drilling costs and plugging and abandonment costs.

9.2 Additionally, pursuant to section 45A of the Petroleum Act 1998 the OGA can require financial information and documents from a person that has drilled, or commenced drilling, a well, provided that well was spudded after 28 January 2009.

9.3 If, following a review of the financial information provided by a licensee, the OGA is not satisfied with the licensee's financial capability, the OGA is empowered to require the licensee to take further action to ensure that the licensee will be able to plug and abandon the well. This action may include, amongst other things, the creation of financial security to ensure that the requisite funds would be available for the plugging and abandonment operation.

9.4 This guidance does not apply to the OGA's exercise of these powers, although licensees may expect the OGA to take a similar approach to assessing financial capability when using the section 45A powers.

## 10. Information Requirement Matrix

- 10.1 Applicants should submit the information indicated in the table below relevant to the type of application being submitted; a “tick” denotes information that must be provided and a “cross” is information ordinarily not required to be provided, however, it may be requested by the OGA. Where the OGA has not received sufficient information to enable completion of its financial assessment, further information may be sought from the Applicant which may also include items indicated with an “cross” in the table below.
- 10.2 All information submitted to support the basis of financial assessment should be accompanied by a letter from the Applicant (or the Guarantor, as appropriate) stating that, to the best of the Applicant’s (or Guarantor’s) knowledge and belief, the submitted information is a fair and accurate reflection of the Applicant’s (or Guarantor’s) business and plans. This letter should be signed by a Director or by another individual authorised by the Applicant’s (or Guarantor’s) Board.
- 10.3 With the exception of any information shared with OPRED as set out in paragraph 3.6 above, the OGA intends to hold confidential the information received from an Applicant in support of its application. However, such information may require to be disclosed by the OGA in accordance with relevant legislation, including the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

Information Requirement	Application type								
	Licence award		Licence assignment		Innovate licence progression	Well consent		Field development	Change of control of licensee
	No work programme: Offshore Innovate licences at Phase A or Phase B of the initial term of the licence	Work programme: Onshore licences or any Offshore Innovate Licence that will open with a 'Phase C' work programme	No work programme, no OGA expectation of capital expenditure	Work programme, OGA expectation of capital expenditure	From Phase A/B (no work programme) to Phase C (proposed work programme)	Drilling of an exploration or appraisal well	Drilling of a development well	Field Development Plan	Direct or indirect change of ownership of any licensee, as set out in such licence
<b>Company ownership/directors</b>									
Details of all company directors	✓	✓	✓	✓	✓	✓	✓	✓	✓
Details of any shareholders owning >10%	✓	✓	✓	✓	✓	✓	✓	✓	✓
Details of any planned issue of additional share capital	✗	✗	✗	✗	✗	✗	✗	✗	✓
<b>Historic financial performance</b>									
Copies of three most recently filed audited statutory accounts	✓	✓	✓	✓	✓	✓	✓	✓	✓
Copy of most recent management accounts back to last audited accounts,] including balance sheet	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Financing</b>									
Commentary of funding plans specific to the future cash flow profile	✗	✓	✗	✓	✓	✓	✓	✓	✓
Breakdown of debt by funding type and lender, specifically identifying lending from shareholders and other connected parties, separately from third party lenders.	✗	✓	✗	✓	✓	✓	✓	✓	✓
Provide executed loan agreements, including repayments schedules for all 3rd party,parent guarantor or director loans	✓/✗	✓	✗	✓	✓	✓	✓	✓	✓
Provide details where future provision of financing is contingent upon award of licence, approved FDP or other key milestones	✓	✓	✓	✓	✓	✓	✓	✗	✗
Provide copy of deed of guarantee on Guarantor's corporate headed stationery	✓/✗	✓	✗	✓	✓	✓	✓	✓	✓
<b>Cash flow projections</b>									
An estimate of the Applicant's share of committed work programme costs	✗	✓	✗	✓	✓	✓	✓	✓	✓
The Applicant's integrated financial model including all key underlying assumptions	✗	✓	✗	✓	✓	✓	✓	✓	✓
Cash flow projections in relation to existing operations and the committed work programme costs	✗	✓	✗	✓	✓	✓	✓	✓	✓
Basis of estimate for decommissioning and funding plans	✗	✗	✓	✓	✗	✓	✓	✓	✓

**Notes:**

- If published accounts are not available, pro-forma financial statements which have been certified by a director and are sufficiently detailed to enable the Financial Viability Assessment to be undertaken should be provided.
- Where an Applicant is seeking to rely on a Guarantor, the information outlined in this table should be provided on behalf of the Guarantor in addition to the Applicant. The Applicant should also provide a group structure chart detailing the relationship between the Applicant and the Guarantor.
- The OGA considers the cost of development wells during its review of a Field Development Plan (FDP). If the wells referred to in the FDP are drilled within eighteen months of the OGA consenting to such FDP, the OGA will normally not reassess the Applicant's financial capability when that well is consented.

## Annex 2: Response coversheet

 <b>Oil &amp; Gas Authority</b>	<b>Financial Guidance consultation</b>
To: Financial Guidance consultation	
<b>YOUR DETAILS</b> Name: Company/Organisation: Position: E-mail address: Address: Representing:	
<b>CONFIDENTIALITY</b> Please tick below if you consider any part of your response is confidential, giving your reasons why:	
Nothing	Name/contact details/position
Whole response	Company/organisation
Part of the response	
Reasons why response is confidential:	
If there is no separate annex, which parts of your response are considered confidential?	
If you want any part of your response, your name or your organisation to be kept confidential, can the OGA still publish a reference to the contents of your response including (for any confidential parts) a general summary that does not disclose the specific information or enable you to be identified? YES / NO	
<b>DECLARATION</b> I confirm that the correspondence supplied with this coversheet is a formal consultation response that the OGA can publish, except as indicated above. However, in supplying this response, I understand that the OGA may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the OGA can disregard any standard e-mail text about not disclosing email contents and attachments.	
Name: Signed (if hard copy):	



Oil & Gas Authority

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