

Annex 1: Response coversheet

 Oil & Gas Authority	CONSULTATION ON OGA FEES
To: OGA Strategy Consultation	
<p>YOUR DETAILS</p> <p>Name: Munir Hassan</p> <p>Company/Organisation: City of London Law Society Energy Law Committee</p> <p>Position: Chair</p> <p>E-mail address: Munir.Hassan@cms-cmno.com</p> <p>Address: 4 College Hill, London EC4R 2RB</p> <p>Representing: City of London Law Society Energy Law Committee</p>	
<p>CONFIDENTIALITY</p> <p>Please tick below if you consider any part of your response is confidential, giving your reasons why:</p> <p>Nothing <input checked="" type="checkbox"/> Name/contact details/position <input type="checkbox"/></p> <p>Whole response <input type="checkbox"/> Company/Organisation <input type="checkbox"/></p> <p>Part of the response <input type="checkbox"/></p> <p>If no separate annex is included, please indicate which parts?</p>	
<p>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?</p> <p style="text-align: center;">YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
<p>DECLARATION</p> <p>I confirm that the correspondence supplied with this coversheet is a formal consultation response that the OGA can publish, except as indicated above.</p> <p>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.</p> <p>If I have sent my response by email, the OGA can disregard any standard e-mail text about not disclosing email contents and attachments.</p> <p>Name: Munir Hassan</p> <p style="text-align: center;"></p> <p>Signed (if hard copy): _____</p>	

**City of London Law Society Energy Law Committee
Response to the Oil & Gas Authority ("OGA") Consultation on 2020 OGA Strategy Review**

The City of London Law Society ("**CLLS**") represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

This letter has been prepared by the CLLS Energy Law Committee (the "**Energy Committee**"). The Energy Committee is comprised of lawyers from both private practice and in-house legal departments dealing with all aspects of the energy industry and considers City practitioners' views on developments on energy law. Current work includes considering the areas likely to be addressed in the forthcoming Energy White Paper. These comments have been collated by a sub-committee of the Energy Committee with a particular interest in oil and gas matters but have been endorsed by the Energy Committee as a whole. The Energy Committee's members are herewith:-
<http://www.citysolicitors.org.uk/clls/committees/energy-law/energy-law-committee-members/>

The Energy Committee understands that detailed responses on the proposed revisions to the MER UK Strategy (to be renamed the OGA Strategy) are likely to be received by the OGA from a number of trade associations including Oil & Gas UK and Brindex, as well as from individual oil and gas companies and law firms. The Energy Committee has therefore chosen not to comment on the detail of the proposed revisions to the Strategy but instead to focus on two issues of principle:

- i. The powers of the OGA to include in the proposed OGA Strategy as part of the Central Obligation a requirement for relevant persons to take steps to assist the Secretary of State in meeting the net zero target;
- ii. Whether it is appropriate for the OGA to include in the proposed OGA Strategy provisions requiring licensees and joint ventures to comply with such principles and practices of corporate governance as the OGA may from time to time direct.

1. Acting Intra Vires

- a. The Energy Committee recognises that under the Climate Change Act 2008 the Secretary of State has an obligation to achieve the net zero target (as therein defined) by 2050 and to put in place policies to do so. The Energy Committee wishes to make clear that it is not commenting on that

obligation or the policies which the Government might choose to introduce to meet it. Indeed, the Energy Committee looks forward with interest to the publication of the forthcoming Energy White Paper which is expected to set out such policies in a number of areas. The question is simply whether on the basis of current legislation the OGA is empowered to impose legal obligations on others to assist in achieving the net zero target.

- b. It is a fundamental principle of administrative law that public bodies should act within their powers. The OGA's powers are obtained from statute. It has taken over various functions previously performed by the Secretary of State in relation to oil and gas licensing and licensing of carbon dioxide storage. It has also been given specific functions in relation to the achievement of the Principal Objective (that of maximising the economic recovery of UK petroleum) as inserted into section 9A(1) of the Petroleum Act 1998 by the Infrastructure Act 2015. It appears to us that, except in one respect, none of these powers gives the OGA the authority to require of oil and gas licensees and other "relevant persons" (as defined in the Petroleum Act 1998) that they assist the Secretary of State in meeting the net zero target.
- c. The OGA is required under section 9A(2) of the Petroleum Act to produce a strategy to enable the Principal Objective to be met. Although section 9A(3) permits the OGA to take into account matters other than those set out in sections 9A (1) (a) and (b) we take this to mean only that there may be other ways of meeting the Principal Objective than those set out in sub-sections (a) and (b) and not that the strategy can also address other objectives than the Principal Objective. If that had been the draftsman's intent, in our view he would have referred simply to section 9A(1).
- d. It seems to us that by adding to the Central Obligation under the existing MER UK Strategy a second limb relating to achievement of the net zero target, which is not relevant to the achievement of the Principal Objective and may in some cases even conflict with it, the OGA risks creating confusion and setting a dangerous precedent.
- e. The Energy Act 2016 sets out matters to which the OGA must have regard when exercising its functions. These include, inter alia, the development and use of facilities for the storage of carbon dioxide, and of anything else (including, in particular, pipelines) needed in connection with the development and use of such facilities, and how that may assist the Secretary of State to meet the target in section 1 of the Climate Change Act 2008. There is thus a clear requirement for the OGA to have regard to the capture and storage of carbon dioxide (CCS), in the specific context of the net zero target. The fact that this is specifically included underlines to us that the other matters which the OGA wishes licensees and others to address in order to achieve that target, such as power generation, the reduction of greenhouse gas emissions and the support of plans for hydrogen production, are not currently within its powers. Of course, Parliament could, should it so wish, extend those powers to permit this but it has not yet done so. In our view, until this is done, there is a strong argument that it may be ultra vires for the OGA to amend the MER UK Strategy in the manner currently envisaged. That is so whether the provisions relating to the net zero target are included in the Central Obligation or as a Supporting Obligation. To proceed in this manner runs the risk of a potential judicial review action which would be distracting for the OGA and create uncertainty for the industry.
- f. If the Government wishes the OGA to assist the Secretary of State in achieving the net zero target by imposing on relevant persons obligations relating to offshore power generation, flaring and venting, greenhouse gas emissions, hydrogen production or otherwise, we would suggest that this is best done by amending the matters to which the OGA is required to have regard under the Energy Act 2016 and/or by amending the Principal Objective under the Petroleum Act 1998.
- g. Under section 9 (b) of the Energy Act 2016, the Secretary of State may give directions to the OGA as to the exercise by it of any of its functions if the Secretary of State considers that the directions are in the public interest. We are not aware (and certainly the consultation paper does not mention) that the Secretary of State has given any such directions to the OGA. However, such a direction might give the OGA some authority for introducing obligations in relation to the Net Zero Target into the Strategy. In our view, such obligations would still need to be secondary to the Principal Objective unless it is amended.

2. Good Governance

- a. It is clearly desirable that companies granted licences to exploit the UK's natural resources should be well governed. Energy companies have increasingly recognised that governance extends not only to careful shepherding of shareholders assets but also to wider social and environmental goals affecting other stakeholders.
- b. Against that, we note that companies listed on the London Stock Exchange or other public markets and large unlisted companies are already required to report on their corporate governance by reference to detailed corporate governance codes and most are subject to extensive reporting requirements in respect of specific issues such as modern slavery, remuneration policy, gender pay gap, tax strategy, prompt payment policy, Streamlined Energy and Carbon Reporting and others.
- c. It is unclear whether the OGA is concerned that (i) companies are not complying with existing corporate governance standards to which they are subject, (ii) that such codes are inadequate in some respect or (iii) that there are among licensees or could in future be some companies which are not subject to such standards by virtue of their size and/ or status.
- d. If (iii), the Energy Committee would welcome provisions which encouraged or even required such licensees, as a condition of being considered a fit and proper person to hold a UK licence, to agree to adopt and report publicly against one of the available corporate governance codes now in existence.
- e. If (i) or (ii), however, the Energy Committee would suggest that more information is needed as to the nature of the concern, noting in particular that:
 - i. Given the wide range of existing reporting and compliance requirements for listed and large private companies, creating further obligations may risk putting an unreasonable burden on such companies where the need for this has not been demonstrated by evidence at a time of unprecedented challenge to the industry as a result of energy transition, climate change and fall in oil & gas prices;
 - ii. Existing codes recognise that they are sets of principles and that compliance may not be appropriate in every case – in some cases companies are required to “comply or explain” and there is no sanction for non-compliance other than the potential impact on investment and other shareholder action. By contrast, compliance with a governance practice or procedure imposed by the OGA would be a legal obligation and failure could give rise to significant sanctions. This would put burdens on oil and gas licensees which are not faced by companies in other sectors of the economy or oil and gas companies investing in other regions, and could in our view potentially deter investment into the UK continental shelf. In this context, we note the requirement in section 8(1) Energy Act 2016 for the OGA to have regard to the need to maintain a stable and predictable system of regulation which encourages investment;
 - iii. Whilst there is always more that can be done, there has been a step change in the approach that a number of companies operating on the UKCS have been taking to ESG issues. For example, a number of E&P groups have been confirming their support for the EU and UK net zero targets; setting their own (in some cases, more ambitious) net zero targets and committing to ensure that new projects will be carbon neutral; demonstrating greater transparency; supporting and implementing voluntary codes and recommendations (e.g. the recommendations of the Task Force on Climate Related Financial Disclosures); reinforcing the accountability of the Board and executives for ESG issues; extending the use of ESG targets to set executive and wider employee remuneration; and adopting “Green Finance” under which a company's borrowing costs will be higher if it fails to meet ESG targets;
 - iv. The OGA is a relatively small organisation with limited resources and a large range of existing functions to perform – it is not clear to the Energy Committee that it has sufficient staff with the requisite experience also to develop an expertise in corporate governance.

If you would find it helpful to discuss any of these comments then we would be happy to do so. Please contact Munir Hassan by email at Munir.Hassan@cms-cmno.com in the first instance.

A handwritten signature in black ink, appearing to read 'Munir Hassan', with a long horizontal flourish extending to the right.

Yours sincerely

Munir Hassan

Chair, CLLS Energy Law Committee