

ATTORNEY-GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE

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23rd December, 2014

His Excellency,
Dr. Goodluck Ebele Jonathan, GCFR
President, Federal Republic of Nigeria,
Presidential Villa,
Abuja.

Your Excellency,

RE: LEGAL OPINION TO AZURA WITH RESPECT TO THE PUT-CALL OPTION AGREEMENT

May I respectfully draw Your Excellency's attention to the attached letter dated 1st December, 2014, from the Coordinating Minister of the Economy and Minister of Finance (CME) in respect of the above subject matter.

2. The Coordinating Minister of the Economy and Minister of Finance (CME) has requested a legal opinion in support of the Put-Call Option Agreement (PCOA) executed with Azura.

3. I have written to inform her that I am unable to write the legal opinion sought because of the following reasons:

(a) The PCOA was executed without due regards to my Legal Opinion of 24th July, 2014 (A copy of the letter is attached for your kind attention, sir), wherein I highlighted significant issues that needed to be incorporated and changes that were required to be made to the Draft PCOA. A close examination of the executed PCOA reveals substantial non-compliance with my

A handwritten signature in black ink, appearing to be the initials 'BA' followed by a horizontal line.

recommendations. The highlights of the recommendations that were not complied with are reproduced below:

- (i) No significant change was made in my recommendations on Clauses 2.12 and 2.2.2 of the PCOA. Although in the PCOA, radioactive contamination is not treated as a 'local political force majeure event', it still attracts Buyer Default Purchase Price;
- (ii) Recommendations to the effect that the buyer default purchase price in the PCOA should not apply to an early termination of the Power Purchase Agreement (PPA) as a result of "**an election, pursuant to clause 21.9 (option to terminate following a local political force majeure Event or Change in Law).....**" and in respect of "**archaeological or paleontological remains discovered on or under the Site.**" were not reflected in the PCOA.
- (iii) The PCOA contain a new purchase price titled "the Gas Transportation Force Majeure Purchase Price" for the **NGC Gas Transportation Constraint**. This price is not different from Buyer Default Purchase Price. Basically, nothing has changed except for the nomenclature. I observed that the Buyer Default Purchase Price and Gas Transportation Force Majeure Purchase Price attract an additional cost which is called **Post Termination Return on Shareholder Contributions Outstanding (PTRSCO)**, which is not applicable to other types of purchase price. This cost appears to me to be a compensation for an early termination of the PPA.
- (iv) **Clause 16.8** of the PCOA provides that the seat of arbitration shall be London, England contrary to my recommendation that the seat of arbitration should be Nigeria.
- (v) **Clause 13.1.2** of the PCOA is precisely the same provision in the Draft PCOA, which I recommended should be deleted. This Clause provides that the FGN irrevocably waives its immunity


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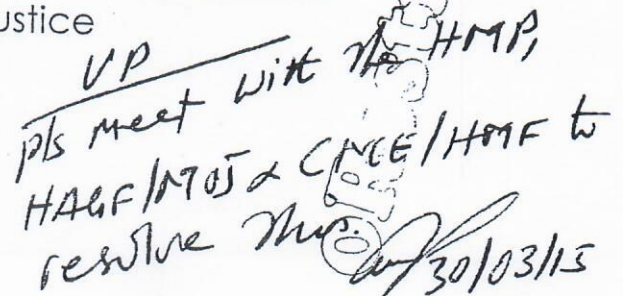
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over its assets or revenues from suit, execution, attachment or other legal process.

(b) The PCOA failed to incorporate the Indemnity Clause as directed by Government Circular reference No. SGF/OP/1/S3/X/737 dated 11th August, 2014. The Circular directed all MDAs to insert a **Specimen Indemnity Clause** in all contracts and agreements entered into, especially with foreign entities so as to provide additional protection to the Federal Government Nigeria and some of its separate legal entities such as the CBN, NNPC and NSIA whose assets may be liable to attachment in enforcement proceedings in foreign jurisdictions.

4. In view of the foregoing, I wish to respectfully inform Your Excellency that I am unable to write the legal opinion to the effect that the Azura PCOA conforms to the extant laws and policies of government. This is because of the liability issues that may attend the execution and implementation of the PCOA if necessary precautions are not taken to safeguard the interests of Government
5. May I humbly request Your Excellency to direct the Coordinating Minister of the Economy and Minister of Finance to ensure that the recommendations made to her in my Legal Opinion of 24th July, 2014 are duly incorporated in the Azura PCOA to bring it in conformity with extant laws, policies and Circulars of Government.
6. Please accept, Your Excellency, the assurances of my highest regards and esteem.


MR. MOHAMMED BELLO ADOKE, SAN, CFR
Honourable Attorney General of the Federation
and Minister of Justice


VP
pls meet with the HMP,
HAGF/ATOS & C/CE/HMF to
resolve this. 30/03/15