



Ref. No: FMP/1855/I

Mr. President, our beloved Leader,

NEED FOR CONCLUSION OF AZURA TRANSACTIONS: REQUEST FOR GRANT OF WAIVER TO AGF TO GIVE LEGAL OPINION ON PCOA

I respectfully write to seek Mr. President's kind support with respect to the urgent need to reach financial closure on the Azura-Edo transaction and ensure that the project can start construction, as promised, before the end of this month. This is particularly with respect to the need to give the AGF a waiver to enable him Grant a Legal Opinion on the Final Put-Call Option Agreement (PCOA) document.

2. Mr. President may recall that, on October 10 2014, when you laid the foundation stone for the Azura-Edo IPP, the promoters of the Project were at pains to emphasize that a number of hurdles still needed to be cleared prior to full financial close. I am pleased to report that all is on track to meet the end of January deadline for the start of construction, subject to clearing the last major hurdle which relates to the receipt of a Legal Opinion. This will need to be issued by the Honourable Attorney General of the Federation and Minister of Justice.



3. I should explain that the purpose of this Legal Opinion is two-fold: firstly to provide an attestation as to the capacity and authority of the FGN signatories to the PCOA and the PCOA Direct Agreement (entered into between Azura and the Federal Government of Nigeria). Second is to provide assurance that the said documents are valid, binding and enforceable.

4. In view of the critical importance of this Legal Opinion, I wrote to the Honourable Attorney on 22 December 2014 to ask for his assistance in ensuring the timely issuance thereof. The Honourable Attorney General responded to this request in a letter dated 24 December 2014. The AGF's principal concern relates to the view that the PCOA failed to incorporate the Specimen Indemnity Clause as directed by a Government Circular reference No. SGF/OP/1/S3/X/737 dated 11th August 2014, more specifically, to "*limit the waiver of immunity from foreign proceedings against the Federal Government of Nigeria*" (copy attached).

5. It is important to state, first and foremost, that both the PCOA and the PCOA Direct Agreement were executed, respectively, on the 22 October 2014 and 18 December 2014 between the Federal Government of Nigeria and the promoters of the Azura project. Furthermore, in the context of the Azura transaction, the application of this Specimen Indemnity Clause would prevent Azura from drawing down on any of the loan



agreements that it has signed with its lender group (comprising 15 banks from 9 different countries) because these banks all require an unconditional waiver of the Government's sovereign immunity.

6. Accordingly, I wish to request that, Mr. President grant a **special exemption** - from the requirements of the aforementioned Circular in support of this request. I believe there are compelling grounds for such a Presidential exemption, as briefly elucidated below:

- i) The heavy involvement of the World Bank in all aspects of this transaction provides protection not just to Azura's finance parties but also to the FGN itself.
- ii) The World Bank itself requires that the Government waive its sovereign immunity under the PCOA; and this is true in all countries in which the World Bank enters into such transactions.
- iii) The commercial terms of the Azura Put Call Option Agreement and the Put Call Option Direct Agreement were negotiated and finalised before the Circular was issued. As already noted, restrictions on the waiver of sovereign immunity will entirely preclude the drawn down of debt from the 15 banks involved in the transaction.



iv) The Azura transaction is critical to investors' confidence in Nigeria; and delay in completing this transaction will exert a damaging knock-on effect on this Administration's Power Sector Reform Programme.

7. With respect to the latter point, it is also important to note that the founders of the project have now invested over \$20 million to date on development and have received investment approvals of \$900 million in capital. However, when Azura signed the loan agreements on 25 November 2014, it also incurred more than \$28m of bank financing fees, \$25m of which are now overdue and cannot be paid until receipt of the Attorney General's Legal Opinion.

8. I am informed, that the banks are now preparing to commence enforcement action, the ramifications of which would be extremely damaging for overall sector and national confidence. This will be a very disturbing fate to befall a project that has done so much to raise investor confidence in Nigeria's national economy and is on the cusp of becoming the flagship project-financed transaction for the entire continent.



CONTINUATION

9. Arising from the above, I would like Mr. President to graciously approve:

- i) A waiver for both the Put Call Option Agreement and Put Call Option Direct Agreement dated respectively, 22 October 2014 and 18 December 2014 be granted;
- ii) That the Honourable Attorney General of the Federation proceed to issue the Legal Opinions required by the finance parties to the Azura-Edo IPP.

10. Please accept the assurances of my highest regards and esteem,

Professor Chinedu O. Nebo, *CON, FNSE*
Honourable Minister

12th January, 2015