



GLOBAL OIL & GAS INSTITUTE

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Cross-Border O&G Deals and Alternative Financing Structures



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Managing Cross Border Oil and Gas Deals

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Planning for the Transaction

- What *sparked* the transaction?
- What are the *key strategic goals*?
- *Where* is the transaction?
 - Does it involve one or more countries? What is the materiality of each? Any language issues?
- What is the *scope* of the proposed transaction?
 - Entire entity? Business operation? Specific oil and gas assets or properties only?
- How is the *sale conducted*?
 - Privately negotiated? Auction?
- Any *merger control* requirements or *red flag compliance issues*?



Planning for the Transaction (cont.)

- How will the purchase price be *funded*?
 - Internal funds?
 - Stock?
 - Borrowing from third parties (any timing constraints?)
 - Mix thereof?
- Will the *source of funding impact the structure*?
- Any *timing* issues?
- Will local laws require *registration or disclosure of source of funds*?



Planning for the Transaction (cont.)

- Who will be the *transaction team*?
 - **Internal**
 - Who will lead from the *business* and *legal* sides?
 - Are there sufficient *resources*, *coverage*, *skill sets*, etc.?
 - **External**
 - Accountants (including forensic)
 - Attorneys – one law firm or many
 - Investment bankers
 - Third party investigators or similar resources
- Schedule an *organizational meeting* of the team and establish roles and responsibilities for the team members



Planning for the Transaction (cont.)

- Consider the *costs* of doing the deal
- *Learn* about the seller/buyer
- Consider how the acquired company will be *integrated*
- Agree on *due diligence approach*
- Consider *time zone challenges* in terms of due diligence, meetings, disclosures and information exchange
- *Structuring / tax issues*
- Consider *confidentiality considerations*
 - Internal
 - External



Timing of Transaction

- *How long* will it take to:
 - Plan and agree upon the team members, the scope of their work and the responsibility timelines for the team?
 - Conduct due diligence of target?
 - Respond to due diligence requests by financing source, if any?
 - Satisfy regulatory requirements/filings, e.g., HSR, etc.?
 - Obtain required third party consents?
 - Other closing conditions, e.g., board/shareholder approval, etc.?
 - Negotiate the transaction documents?
 - Close the deal?

Letter of Intent/Term Sheet

- *Why* use a preliminary agreement?
 - How will a preliminary agreement *impact timing*?
 - Should the preliminary agreement be *binding or non-binding*?
 - What is the *effect of local law* on non-binding provisions?
 - Consider *express and implied duties*
 - Consider *non-competition / non-solicitation* obligations and restrictions
- Deal protection
 - Should you ask for and obtain *exclusivity / no-shop protection*?
 - Why you should ask for *breakup fees*?
 - How do you respond to requests for *reverse breakup fees*?
 - What are the *public disclosure obligations*?
 - Will any *regulatory filings* be required?
 - Remember to address *confidentiality* provisions if there is not a separate confidentiality agreement



Structure of the Transaction

- How will the acquisition be *structured*?
 - Equity interests
 - Asset acquisition
 - Merger, if available under applicable law
- What is the appropriate *acquisition vehicle*?
 - US or local?
 - Holding or intermediate company for liability, tax or other reasons?
 - Consider limitations on liability of equity owners in the possible jurisdictions
 - What is the appropriate capitalization?
 - How does this impact post-acquisition integration?
- Consider the *tax and accounting issues* regarding

Structure of the Transaction (cont.)

- How will the documents address:
 - *Risk allocation?*
 - Representations and warranties
 - Purchase price installment payments and holdbacks
 - Working capital / debt adjustments
 - Indemnification
 - Escrows
 - *Funding* of purchase price?
 - *Covenants* pending and *conditions to close*?
 - How do I hold target to the deal but give myself a way out?
 - *Governing law*?
 - *Dispute resolution* (litigation vs arbitration)?



Due Diligence

- Discuss and establish the *scope* with target
 - Legal vs Business
 - Financial
 - Regulatory
 - Real Estate/Property
 - Compliance
 - Benefits
 - Litigation
 - Environmental
 - IP
 - Other
- Consider *materiality* thresholds
- *How will the information be provided?* Agree upon place for, or mode of, production or delivery, e.g., virtual data room, etc.



Due Diligence (cont.)

- Be prepared to *negotiate*
 - Scope of target responses
 - Timing of responses
 - Distribution of responses
- Consider inevitable *objections* from target
 - Privilege
 - Burden
 - Cost



Due Diligence (cont.)

- Continue to refine the *budget* for costs as you go
- Continue to *refine scope* of the requests and consider need for supplemental requests
- Who is the *manager* and will keep track?
- Managing *local teams*
- Define the *final product* to be generated by the results of the diligence
 - Responsibilities for preparation
 - Interim reports
 - Form of final report
 - Use by third parties
- Consider *public sources*



Dispute Resolution

- Choice of Law
 - Consider *impact* on documents
 - Risk allocation
 - Good faith
 - Enforceability
 - Will the choice be *enforceable*?
- Forum Selection
 - Are the *local courts fair and efficient*? What can you do to find out?
 - What *arbitration forums* are available? How do you conduct diligence on the available forums?
 - Is *mediation* an alternative?
 - For any options, will your choice of dispute resolution mechanism, forum and procedure be *enforceable*?

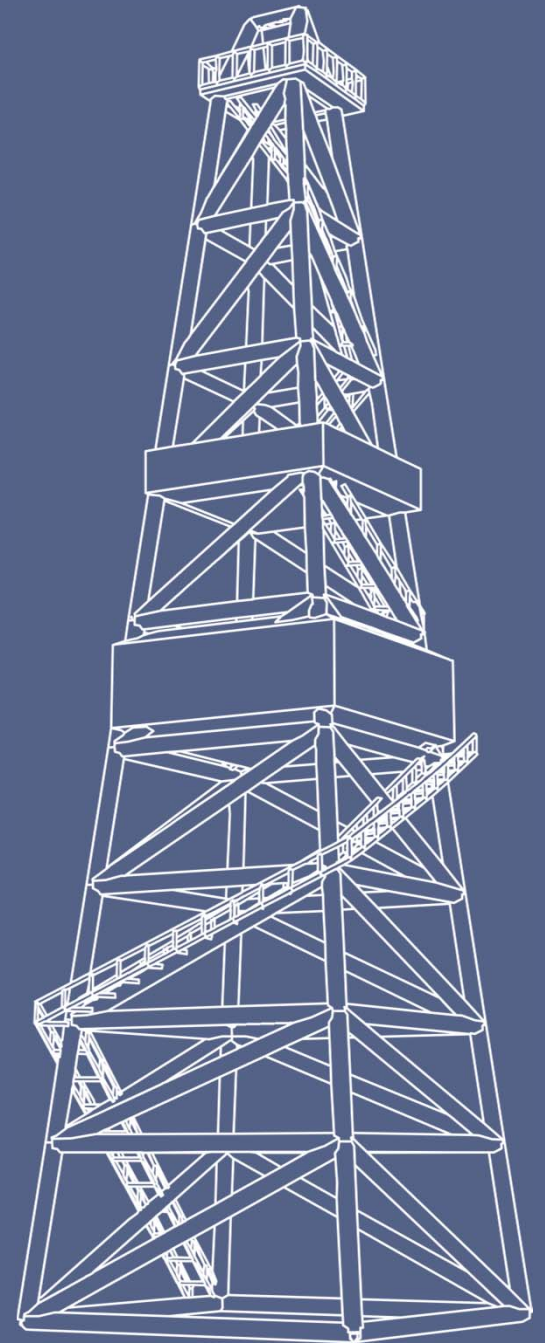


Other

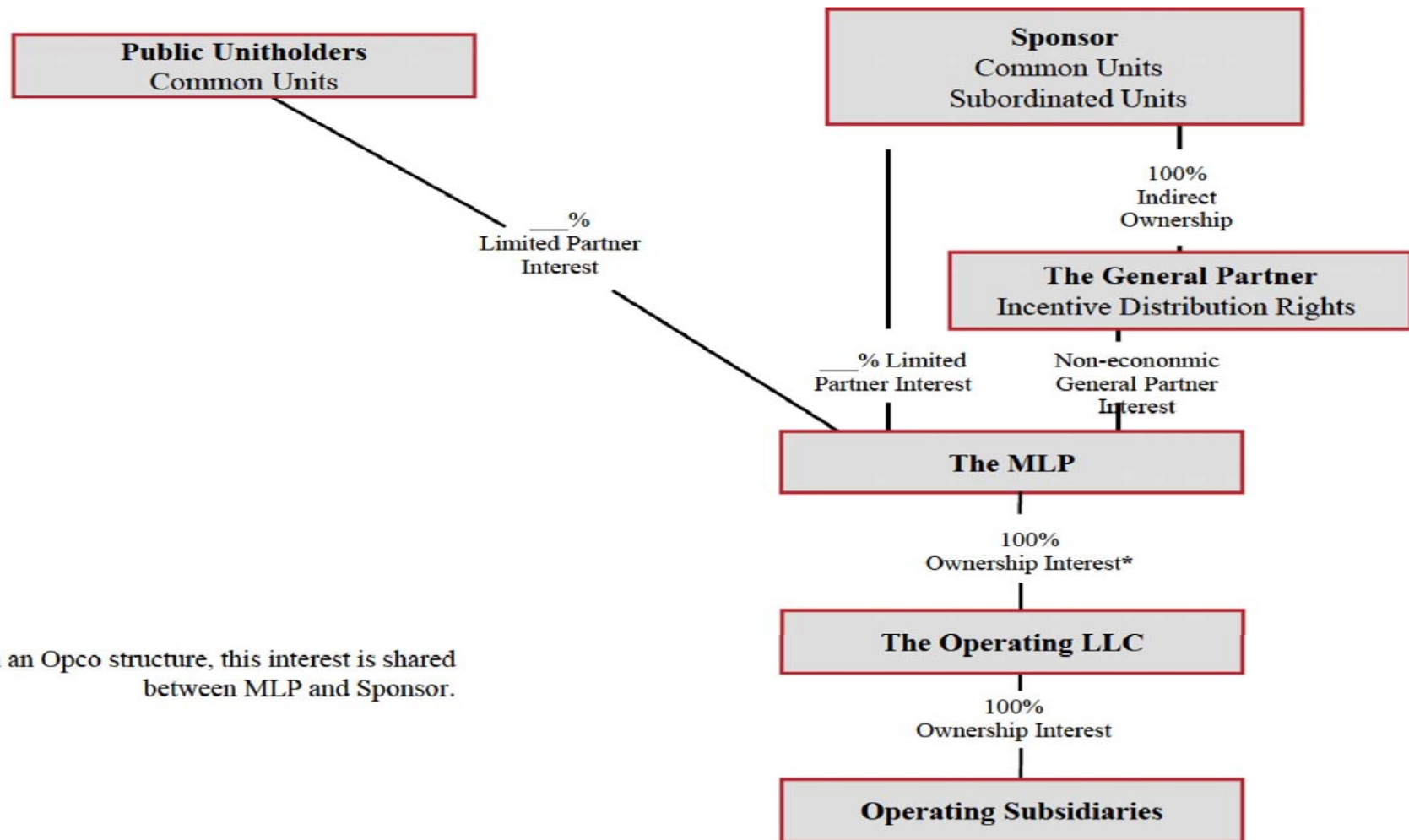
- FCPA and Related Considerations
- Global Equity Issues

Alternative Financing Structures: MLPs and Yieldcos

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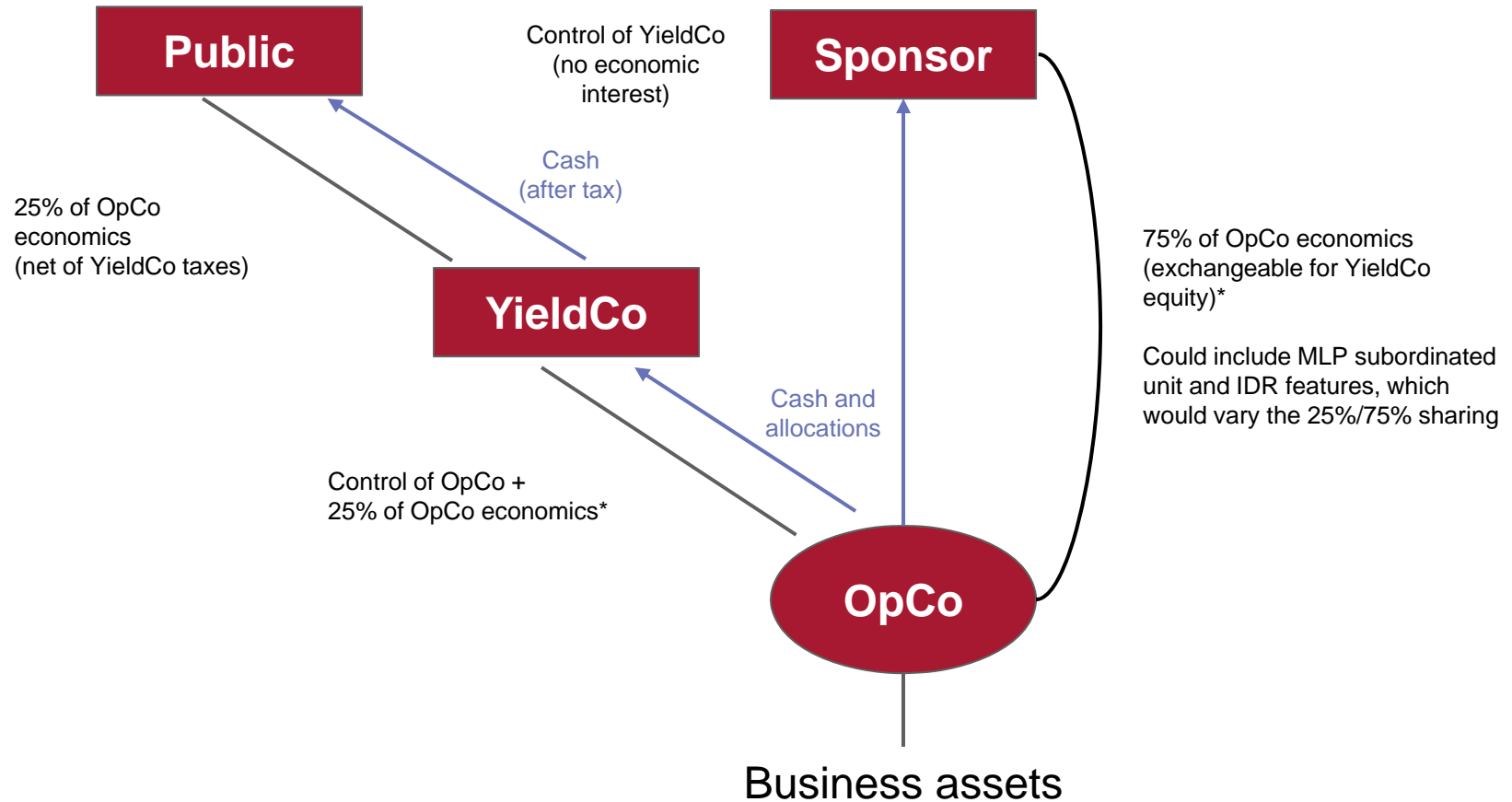


Typical MLP Structure



* In an Opco structure, this interest is shared between MLP and Sponsor.

Simplified Yieldco Structure



* Assumes YieldCo acquires a 25% economic interest in OpCo and Sponsor retains a 75% economic interest in OpCo

High Level Comparison – MLP vs. YieldCo vs. C Corp.

	MLP	YieldCo	Traditional C Corp
Distribution policy	<ul style="list-style-type: none"> Makes quarterly cash distribution 	<ul style="list-style-type: none"> Makes quarterly cash distribution 	<ul style="list-style-type: none"> Amount of dividends paid is typically far more limited
Sponsor control	<ul style="list-style-type: none"> Sponsor owns MLP's general partner, giving sponsor control of MLP regardless of percentage of MLP equity owned. No public election of directors if an LP 	<ul style="list-style-type: none"> If YieldCo is a corporation or an LLC, there is public election of directors, but majority ownership of stock will ensure control of board. If YieldCo is an LP, control is the same as an MLP 	<ul style="list-style-type: none"> Public election of directors, but majority ownership of stock will ensure control of board
Basic structure	<ul style="list-style-type: none"> Public entity (the MLP) is a state law partnership (or sometimes an LLC) 	<ul style="list-style-type: none"> Public entity (YieldCo) is a state law corporation, partnership or LLC 	<ul style="list-style-type: none"> Public entity is a state law corporation
	<ul style="list-style-type: none"> Public owns MLP common units 	<ul style="list-style-type: none"> Public owns economic interests in YieldCo 	<ul style="list-style-type: none"> Public owns stock
	<ul style="list-style-type: none"> Sponsor owns the MLP's general partner, MLP common and subordinated units and MLP incentive distribution rights 	<ul style="list-style-type: none"> Sponsor owns noneconomic voting interests in YieldCo and possibly a general partner or managing member interest 	<ul style="list-style-type: none"> Sponsor owns stock
	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> YieldCo and Sponsor co-own OpCo 	<ul style="list-style-type: none">

High Level Comparison – MLP vs. YieldCo vs. C Corp.

	MLP	YieldCo	Traditional C Corp
Fiduciary Duties	<ul style="list-style-type: none"> Significantly modified by contract 	<ul style="list-style-type: none"> Corporation -- Default corporate law duties, though the charter renounces expectations of corporate opportunities LLC or LP -- Significantly modified by contract 	<ul style="list-style-type: none"> Default corporate law duties
<ul style="list-style-type: none"> Requirement for Majority Independent Board 	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> No if a partnership or if a corporation or LLC and YieldCo is a controlled company 	<ul style="list-style-type: none"> No if YieldCo is a controlled company
<ul style="list-style-type: none"> Shareholder Approval Required (Under Stock Exchange Rules) to Issue More Than 20% of Outstanding Equity 	<ul style="list-style-type: none"> No if an LP. Yes if an LLC 	<ul style="list-style-type: none"> No if an LP. Yes if an LLC a corporation 	<ul style="list-style-type: none"> Yes.