APPLEBY

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Memorandum

To: **McGuire Woods London LLP – Attention Daniel J Burns**

Date: **13 December 2011**

From: **Appleby (Cayman) Ltd.**

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EO Group Limited ("EO") - Distribution of Assets

1. Corporate Structure and Background

EO is wholly owned by EO Holdings Limited ("**Holdings**" and together with EO the "**EO Companies**"). Holdings is wholly owned by Dr. Kwame Bawuah-Edusei ("**Kwame**") and George Yaw Owusu ("**George**"). Kwame and George are the sole directors of each of EO and Holdings.

On 26 May 2011, EO entered into an English law governed sale and purchase agreement with Tullow Oil PLC ("**Tullow**") (the "**SPA**") pursuant to which EO agreed to transfer and sell certain Interests (as defined in the SPA) to Tullow. Under the terms of the SPA, the total consideration paid by Tullow to EO in respect of the transfer and sale of the Interests was circa USD 305,000,000 of which (1) circa USD 95,000,000 was paid to EO upon signing of the SPA of which circa USD 80,000,000 was immediately used to pay certain creditors of EO and (2) certain shares in Tullow, representing circa USD 210,000,000, were placed into an escrow account (the "**Tullow Share Consideration**"). The Tullow Share Consideration will be released to EO after 31 January 2013.

We understand that the contractual limitation period for a claim for breach of the general warranties under the SPA expires on 26 July 2012. We understand further that the contractual limitation period for claims under the tax covenant and the tax warranties contained in the SPA expires on 26 July 2018. We understand further that the SPA contains a broad indemnity in favour of Tullow (the "**Indemnity**"). The Indemnity is not subject to any contractual limitations in respect of time beyond the statutory limitations which we understand will expire in May 2017. The limitation period for bringing claims under the Indemnity will therefore not have expired when the Tullow Share Consideration is released to EO.

We understand that there are currently no claims outstanding, threatened or pending under the SPA and neither Tullow nor EO is aware of any circumstances that might give rise to a claim against EO under the SPA.

George and Kwame are presently contemplating implementing a corporate restructuring of the EO Companies (the "**Restructuring**"). The result of the Restructuring would be that EO would remain wholly owned by Holdings but Holdings would ultimately be wholly owned by a Cyprus entity which in turn would be wholly owned by a Luxembourg S.a.r.l. which in turn would be wholly owned by George and Kwame.

2. Questions considered

We have been asked to consider, in the context of the laws of the Cayman Islands, the three questions detailed below. We have, in this memorandum, left aside any consideration of express contractual prohibitions in the SPA against the distribution of the assets of EO and Holdings and we understand that McGuire Woods London LLP is advising the client on this point.

A. How does a Cayman Islands company return assets to shareholders?

In determining how assets held in a Cayman Islands company can be returned to its shareholders, a distinction needs to be made between the company's share capital, share premium, distributable profits and contributed surplus. This determination can be made by reference to the register of members, the corporate records and the accounts of the company.

Part III of the Companies Law (2011 Revision) (the "**Law**") embodies the general principle that the issued share capital of a company constitutes, at least in principle, a permanent fund available for the payment of creditors of the company if necessary. Any payment which is not for the advancement of the company's business or not made out of distributable profits is said to be *ultra vires* to the company and void, with the exception of a reduction of capital approved by the Cayman courts.

Payment of Dividends

Subject to any provisions of the Memorandum and Articles of Association of a Cayman Islands company (the "**Articles**"), rights attaching to share ownership usually entitle the holders thereof to receive dividends paid by the company in respect of their shares. This is the case in respect of the Articles of the EO Companies. Generally, a company has no obligation to pay a dividend to its shareholders unless and until the company, in accordance with its Articles and the Law, has declared a dividend. The payment of such a dividend is subject to the company having funds available in accordance with the Law, which provides that dividends may only be paid out of profits or, subject to the Articles of the company and subject to a cash flow solvency test, out of share premium.

Profits Available for Distribution

The general legal principle is that no dividend must be paid otherwise than out of profits legally available for distribution to the shareholders. When deciding on what constitutes this amount, the courts have not generally accepted the figure for profit as recorded in the accounts of a company, but have developed instead the concept of "profits available for distribution". In the Cayman Islands there is no statutory definition of this term and the Law does not specify how profits of a company are to be calculated. It is accepted that in general terms, "profits available for distribution" means the profits that the directors and/or shareholders (as required by the terms of the Articles of the company) consider should be distributed after making good past losses and setting aside money as reserves or for other purposes including contingent liabilities.

Share Premium

In addition, the Law permits a company, subject to certain limitations, to apply its share premium account (which should be separate from share capital and contributed surplus) to the payment of distributions or dividends to its shareholders. This is subject to the proviso that no distribution or dividend may be paid to shareholders out of the share premium account unless, immediately following the date on which the distribution or dividend is proposed to be made, the company shall be able to pay its debts as they fall due in the ordinary course of business (that is, satisfy a cash flow solvency test).

If any dividend payment is made out of the share premium account in breach of this solvency test, then the company and any director or manager thereof who knowingly and willingly authorises or permits any such payment is guilty of an offence.

Contributed Surplus

A contribution to the working capital (the "**Contributed Surplus**") of a Cayman Islands company (as opposed to a payment in consideration for share capital) will also be available to the company for the payment of dividends or other distribution to the shareholders (such as a repurchase or redemption) provided it is clearly intended by the contributor that it remain available for such purposes.

In those circumstances, such a contribution can be credited to a distributable capital reserve and, as such a contribution is not a subscription for shares, it would be inappropriate to credit such a contribution to share capital or a share premium account. This is supported by the view of local accountants who take the US GAAP view that Contributed Surplus represents additional paid in capital which is not revenue and for which no consideration has been paid (i.e. has been gifted to the company).

To avoid uncertainty, since the Privy Council in *Kellar v Williams* [2000] 2 BCLC 390 placed much emphasis on the intention of the company and its contributing shareholder, the best approach seems to be to expressly document the Contributed Surplus as distributable or not in directors' resolutions accepting the contribution. If this issue is not addressed by directors' resolutions at the time of receipt of the funds, we believe it can be ratified afterwards. It would also be prudent to pass a shareholder resolution confirming the validity and the nature of the distribution.

Please note that in providing an answer to this question A., this memorandum has not considered a redemption of issued shares or a reduction of share capital.

B. Following a lawfully made distribution of the assets of EO and then by Holdings to George and Kwame, and assuming that neither EO or Holdings are liquidated, to what extent might George and Kwame then be susceptible to a subsequent claim by Tullow against them or either of EO or Holdings under the SPA? What claim might Tullow or a third party have against the assets that had been distributed?

This scenario contemplates there being a dividend to George and Kwame of all or most of the assets of EO, after payment of creditors, but without any provision for the contingent liabilities of EO to Tullow under the terms of the SPA. A potential claim by Tullow under the SPA is a contingent liability which, although we understand that this is currently considered to be of low likelihood of eventuating, has the potential to be for a significant sum up to the total consideration received by EO pursuant to the terms of the SPA. The distribution of substantially the whole of the value of the EO Companies to George and Kwame would leave the EO Companies with no assets to satisfy any liability in the event of a claim by Tullow under the SPA.

There is a significant distinction between an interim distribution in the ordinary course of business where EO remains able to meet such contingent liabilities as may become actual and the emptying of the EO Companies of any means of satisfying liabilities, should those liabilities become current in the future. Such conduct could be considered asset stripping and an array of remedies may be available to Tullow if the Indemnity was called upon. In such a scenario, the kinds of remedies available to Tullow might include:

- petitioning to wind up the EO companies, irrespective of whether the tax liability has actually arisen or is still contingent. If the EO companies are stripped of assets and have no means of payment of the contingent or actual claim, the EO companies are thereby insolvent and a compulsory liquidation can be ordered. The liquidator will be able to claw back the transfer as a transaction intended to defraud creditors (with no time limit) or a transaction at undervalue (within 6 years of the dividend);

- an action under the Fraudulent Dispositions Law to void the dividend (within 6 years of the dividend);

- the tortuous claim of conspiracy to injure;

- restitutionary claims against George and Kwame;

- imposition of a constructive trust in respect of the property wrongfully obtained by George and Kwame.

C. Assuming the Restructuring is implemented, and assets are lawfully distributed to and left in the Cyprus entity or the Luxembourg S.a.r.l., to what extent might Tullow or a third party have a claim against the assets that had been distributed?

Subject to the specific requirements under the SPA (which we understand that McGuire Woods London LLP is advising the client on), the ultimate transfer of the shares in Holdings to the Cyprus entity will not, in itself, deprive EO of the capacity to satisfy an indemnity claim by Tullow. Provided a distribution has not been made (or any other action taken) that is intended to defraud Tullow's creditor rights, there would be no claim, against the assets or otherwise.

3. Disclosure

This memorandum is provided to McGuire Woods London LLP solely for its benefit and, without Appleby (Cayman) Ltd.'s prior written consent, is neither to be transmitted to, nor relied upon by, any other person, nor for any other purpose, nor quoted nor referred to in any public document, nor filed with any governmental agency or person, except as may be required by law or regulatory authority.

Further, this memorandum speaks as of its date and is strictly limited to the matters stated herein and we assume no obligation to review or update this memorandum if applicable law or the existing facts or circumstances should change.

This memorandum is governed by and is to be construed in accordance with Cayman Islands law.

Appleby (Cayman) Ltd.