

INTRODUCTION TO PROPERTY TRANSFER PROCEDURE (December 5, 2017)

This is the second version of the CAPL Property Transfer Procedure (“PTP”). The 2000 version did not become widely accepted, although it has often been used by smaller companies for low to modest value transactions.

The rationale for the creation of the document remains unchanged, though. There are many purchase and sale agreement precedents used in the oil and gas industry. While there is a good degree of conceptual consistency, the construction and sequence of those documents are very inconsistent. Some of the impacts associated with the current approach include: (i) delays in the completion of documentation, generally through multiple drafts; (ii) the degree to which project personnel must often focus negotiations on the wording of procedural terms; (iii) a high risk that material issues are not being addressed appropriately; (iv) biased documents; and (v) inefficient processes that lead to waste. In simple terms, an industry that challenges personnel to “do more with less” cannot afford to continue to address basically the same procedural terms in a multitude of different ways.

Standardization of the procedural aspects of the typical A&D agreement can address these problems and deliver ongoing returns to industry. It can: (i) reduce the cycle time, effort and cost required to complete suitable documentation; (ii) provide a procedural framework that focuses negotiations on key business terms; (iii) level the playing field for the procedural aspects of transactions; (iv) streamline administrative processes, while increasing document and data integrity; and (v) focus resources on additional value creation opportunities.

Given the probable reluctance of companies to use the PTP for large scale transactions or other complex transactions, the objective of the project is to “make simple transactions simple again”. The PTP is focused on: (i) the typical low to modest value producing property transaction with limited complexity; and (ii) the potential use of the PTP as a platform for a simplified handling of transactions for undeveloped lands. This is shown in the sample transactions in Addendums III-VII. It is expected that the PTP will be of particular interest to smaller companies and their land personnel for their more typical transactions. The PTP is also likely to be used as a reference point when updating a precedent or reviewing a different form of agreement.

There are six major objectives associated with the 2017 PTP.

1. Make required modifications, while maintaining the integrity and substance of the 2000 PTP.
 - Changes resulting from industry’s experiences with the 2000 PTP.
 - Changes resulting from evolving business needs and changes in industry’s documents since 2000.
 - Reduce the number of elections and shift some content from the Head Agreement to the PTP.
 - Reasonable solutions to reasonably foreseeable problems.
 - Focus on addressing the needs for the typical low to modest value transaction (e.g., not addressing employee issues, details of *Investment Canada Act*, *Competition Act*, etc.).
 - Parties remain in control of significant business issues (i.e., the PTP not prescriptive about well licence transfer processes when the Regulations vary across jurisdictions and over time).
 - Provide a simple, viable platform for the typical sale or exchange of undeveloped lands.
 - Trend towards “plainer language” drafting style in industry agreements.
2. Create a document that will be widely used.
 - Representatives of major stakeholders (CAPL, CAPLA, EPAC, Legal, PASC and PJVA) involved directly in the project to increase alignment and to assist in marketing.
 - Address a range of typical industry deal types, with users expected to customize for exceptions and special needs in the Head Agreement and a Schedule of elections and modifications.
 - Extensive annotations to assist users on an ongoing basis for transactions and as a reference.
 - Emphasis on encouraging cross-functional industry comments over the evolution of the PTP.
3. Minimize the effort associated with the finalization of A&D agreements.
 - Companies currently saying basically the same thing in many different ways.
 - Focused on the procedural elements that typically do not vary materially in agreements.
 - Simplification of the Head Agreement, as shown in the Addendums.
 - Provide a platform to focus on the business issues associated with the particular transaction.
 - Not an attempt to pre-structure the business components of a transaction.
 - Users expected to amend the PTP to address special needs.
4. Provide a balanced starting point in negotiations.
5. Simplification.
 - Balance simplification with retention of required content and options.
 - Options where necessary, but few options to accommodate exceptions to general practices.
 - Structured to be used with both sale and asset exchange formats without a multitude of options.
6. Structure the PTP to exploit advances in systems technology.
 - Use of menu format to optimize accuracy of data and streamline data entry processes.