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Oil, Gas & Energy Law Intelligence

Who Owns [Will Own] British Petroleum? by E.S. Burger, Esq.

About OGEL

OGEL (Oil, Gas & Energy Law Intelligence): Focusing on recent developments in the area of oil-gas-energy law, regulation, treaties, judicial and arbitral cases, voluntary guidelines, tax and contracting, including the oil-gas-energy geopolitics.

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Open to all to read and to contribute

Our aim is for OGEL to become the hub of a global professional and academic network. Therefore we invite all those with an interest in oil-gas-energy law and regulation to contribute. We are looking mainly for short comments on recent developments of broad interest. We would like where possible for such comments to be backed-up by provision of in-depth notes and articles (which we will be published in our 'knowledge bank') and primary legal and regulatory materials.

Please contact **Editor-in-Chief** Thomas Wälde at twwalde@aol.com if you would like to participate in this global network: we are ready to publish relevant and quality contributions with name, photo, and brief biographical description - but we will also accept anonymous ones where there is a good reason. We do not expect contributors to produce long academic articles (though we publish a select number of academic studies either as an advance version or an OGEL-focused republication), but rather concise comments from the author's professional 'workshop'.

OGEL is linked to **ENATRES**, the electronic energy law, policy and economics information and discussion forum moderated by Thomas Wälde.

Who Owns [Will Own] British Petroleum?

by Ethan S. Burger (September 5, 2008)

Does Russian beneficial ownership explain why BP has caved to the Kremlin? Recent events in the dispute between British Petroleum and certain of its Russian shareholders illustrate that analysts must exercise great caution before issuing predictions about disputes where large sums of money are involved, especially during times of great political uncertainty.

In an unexpected development, The Financial Times reported that BP entered into a settlement agreement with its Russian partners in TNK-BP that would allow BP to maintain its 50% interest in the Russian oil venture. BP's Board of Directors approved the compromise after BP's Chief Executive Officer Tony Hayward and its Board Chairman Peter Sutherland convinced their colleagues that the company's investment in the highly profitable Russian entity TNK-BP was in jeopardy.

The media has been closely following BP's struggle for control of TNK-BP with the Russian consortium Alfa Access Renova (AAR). Allegedly, AAR is controlled by Russian oligarchs Mikhail Fridman, German Khan, Viktor Vekselberg and Len Blavatnik. Whether these individuals indeed are AAR's beneficial owners is not absolutely certain.

There was some uncertainty whether the dispute would be settled through international arbitration (in which case the issue of where the ruling could be enforced would arise). The Russian parties raised the possibility that they might seek to have the Russian court system assert jurisdiction.

The Russian government may not have been a neutral bystander with respect to the dispute. It ordered the Russian tax authorities to scrutinize TNK-BP's taxes, imposed relatively small fines for alleged labor law violations and refused to grant visas to certain BP employees seconded to the joint venture. While coincidence does not prove causation, the Russian political leadership seems to use governmental bodies to consolidate its control over the country's natural resource sector, either directly or indirectly through its "favorites".

According to its website, BP is "one of the largest integrated oil companies in the world, with an estimated global market share of around 3% of oil & gas production and 4% of refining capacity in the major global markets . . ." It has in excess of 1.2 million shareholders. In most cases, it is not possible to identify who are those shareholders.

If in the future, BP makes a public offering of additional shares, possibly as much as 20% of the company, query who will be willing to purchase such shares. Investment banks and other western purchasers would be understandably reluctant to take such a risk. In contrast, well-connected Russian institutions and

legal entities that were confident of favorable treatment by their government would not be similarly deterred.

Legally, a company (or corporation) is a “legal” person possessing certain characteristics. For example, it can acquire and own property, transfer property, enter into contracts, sue and be sued in its own name, and unless otherwise provided, can have a perpetual existence. As a legal person, a company is a legal entity that is distinct from shareholders, for whose benefit the directors are required to act.

With small legal entities, typically limited liability companies, it is possible to determine who owns the entity. This is less often the case with publicly-traded corporations. In fact, persons can act as the agents of others (both individuals and legal entities). Corporations can be established in jurisdictions where it is not clear who the entities’ ultimate beneficiaries are. This can be particularly vexing where governments own through intermediaries legal entities or are represented by individuals who seemingly are acting for their own benefit.

As Russian legal entities or individuals acquire the shares of foreign legal entities (openly or through intermediaries), although the “nationality” of a particular company might be English or German, it can indeed be owned by foreign persons – in this case, by Russians. In a world seemingly dominated by corporations and private capital, the possibility that a foreign state indeed owns a

large share (or majority share) of a company cannot be dismissed out of hand. When compromises result in the resolution of matters that seem incapable of settlement – it raises many questions. Most disputes about money can be resolved amicably. Nonetheless, one should not forget that political factors may play an important, albeit, sometimes overlooked role.

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