

## Contractual Regimes for Offshore Decommissioning

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**PRACTICES** Energy, Power and Natural Resources, Offshore Oil and Gas

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The decommissioning of offshore oil and gas infrastructure is a growing global market projected to reach close to US\$ 9 billion by the mid-2020s. Despite this, and until very recently, the market lacked an industry accepted contract drafted specifically for decommissioning.

Instead, parties have tended to adapt contracts intended for use in connection with other offshore construction work. In the context of projects subject to English law, this has seen parties turning to the standard LOGIC contract forms. LOGIC publishes a number of oil and gas industry standard contracts originally developed under the CRINE (Cost Reduction In the New Era) initiative of the 1990s, which was a collaborative effort to standardise contracts and reduce costs against the background of punishingly low oil prices. Use of LOGIC contracts is now especially prevalent in the offshore sector, particularly in connection with field development work, including subsea construction and the installation of offshore structures.

However, the LOGIC standard forms do not properly address the risks and discrete issues associated with decommissioning, including:

- Ownership and disposal of removed structures
- Disposal of hazardous waste
- Defining completion of the works
- The interaction of the knock-for-knock indemnity regime with insurance policies

It is therefore welcome that in December 2018 LOGIC published a contract designed for offshore decommissioning work. Many interested parties in the industry were consulted during the drafting process and as a result it addresses a number of industry specific concerns. However, there remain areas of concern:

First, the contract is not intended to address well plugging and abandonment work on the basis that the well will have already been isolated. However, if P&A work is required and the parties do not elect to use a separate contract (which is what LOGIC suggests), potentially significant amendments to the contract will be needed to address the risks inherent in this type of work.

Second, the contract deals with unforeseen site conditions on the basis that such conditions will trigger an automatic right to a variation. It is however unclear what is to happen if the nature of the project should change so fundamentally that it is beyond the expertise of the contractor. While that is unlikely to be sufficient to excuse the contractor from carrying out the work, this does not resolve how the project is to move forward on a practical level.

Third, the contract introduces the concept of “Assumptions.” Due to the degree of uncertainty in decommissioning that cannot easily be priced at the tendering stage, the contract provides for the contractor to set out the assumptions on which its tender is based. If any of those assumptions turn out to be factually incorrect the contractor has a right to a variation. There is however a danger that assumptions stated in vague language, or which involve subjective judgment, will lead to disputes

between the parties.