

With shrinking capacities to store over-supplied oil, collapsing prices and plummeting demand, oil and gas operators and companies in the supply chain are taking steps to reduce activity and investment to protect cash flows.

Capex is reported to be in the process of being reduced by tens of billions of dollars; contracted rigs are being suspended, cold-stacked or cancelled; development of offshore fields are being delayed; and decommissioning and abandonment is being pushed forward.

Coronavirus disease 2019 (COVID-19) has meanwhile spread across offshore facilities and vessels. Suspected or confirmed cases of COVID-19 were reported on the Clair Ridge, Brent Charlie, North Everest, Mariner, Brae Alpha, Martin Linge and Siem Marlin. In the North Sea, more than a dozen staff who presented with the virus had to be separated from their crew on the Cormorant Alpha. Medical evacuations have brought North Sea workers onshore after displaying symptoms. Under normal circumstances, 11,500 people would on average be working on North Sea projects at any one time. According to Oil & Gas UK, the UK industry trade body, by 20 March 2020, this figure was down by 4,500 (approximately 40%).

This raises difficult logistical decisions. Offshore platforms and rigs are not, intrinsically, safe environments. What happens when those with the necessary expertise are quarantined? What happens when contracted service companies cannot comply with their obligations as a result, or where operations on a rig or platform are no longer considered safe?

Similarly, the impact of COVID-19 is far reaching. Risk of civil disturbances in countries who cannot offer their population sufficient food, medical and financial aid in the current climate exist. Countries whose budgets depend on oil and mining receipts may be at particular risk. Civil disturbances can and do affect the safety of offshore personnel and supply chains. The same story exists in respect of industrial disturbances; a recent example arguably being the walkout staged by Global Energy's workforce. Such industrial disturbances will impact operations and supply chains for materials, equipment and services for the offshore industry. The ripple effect of COVID-19 may be a cause of *force majeure* or "frustrating" events.

In such circumstances, reliance on *force majeure* clauses or frustration may provide some protection.



## A. What Is Force Majeure?

*Force majeure* clauses generally exempt a party from performance following certain events, or suspend its obligation to perform for a period of time. Although *force majeure* is a recognised legal principle in civil law jurisdictions, it does not exist as an independent legal concept under the common law. To rely on *force majeure* where an offshore contract is governed by, for example, English or Singaporean law, a *force majeure* clause must be included in the offshore contract. This, in turn, has two key implications:

1. First, the definition and scope of *force majeure* will be determined by the specific wording of each individual offshore contract. A "one size fits all" analysis is not available.
2. Second, what happens when a *force majeure* clause is engaged will depend on pre-agreed contractual mechanisms.

As a general overview, events falling under *force majeure* clauses often share the following characteristics: they are events (a) beyond the control of the affected party; (b) which the party could not have reasonably foreseen at the time the contract was entered; (c) which, when occurred, could not have reasonably been avoided or overcome; (d) the effects of which caused performance to be impossible or hindered, and which must be communicated to the other party in reasonable time of becoming aware of them; and (e) the affected party must take reasonable steps to mitigate (limit) the effects of the event.

The party relying on *force majeure* must prove that the event and facts it relies on fall within the *force majeure* clause relied on.

## B. What Is Frustration?

Unlike *force majeure*, frustration applies by the automatic operation of law. Frustration generally terminates a contract where: (1) an extraneous event beyond the control of the affected party; (2) which could not reasonably have been foreseen when contracting; (3) renders performance impossible or radically different than what the parties contemplated. The specific requirements of the applicable law should be considered.

Frustration is a remedy of last resort. Termination is the sole remedy. All future rights and obligations under the offshore contract will be automatically discharged. Past rights, obligations and liabilities will not automatically be discharged and rights of recovery for past performance exist. For this reason, frustration is subject to a high threshold.

If an offshore contract incorporates a *force majeure* clause (as will likely be the case) and that clause provides for the frustrating event complained of, protection granted by the law of frustration will not be available.

## C. Practical Considerations: Offshore Drilling, Decommissioning and Service Contracts

### 1. Is it reasonable for me to expect to rely on *force majeure* or frustration?

**Depends.** Establishing frustration is difficult. Establishing *force majeure* can be difficult; the burden depending on the exact wording of the clause.

By way of example, the LOGIC Offshore Decommissioning Contract contains wording requiring evidence that performance has been "delayed or temporarily prevented" by a *force majeure* event. A different threshold exists under the *force majeure* clause of the DISMANTLECON Contract, which requires evidence that a *force majeure* event "hindered or prevented" a party from performing "any or all" of its obligations due to a *force majeure* event. In contrast, some offshore drilling contracts require the party relying on a *force majeure* event to prove that they were physically or legally "unable to perform, wholly or in part" their obligations. This is a higher threshold to meet.

Other relief under the offshore contract may be available. For example, it may be that delay caused by events related to COVID-19 could permit work variations or payment on standby rates while the delay is dealt with.

It may be possible to implement alternative arrangements with counterparties. In the North Sea, there is often a spirit of willingness to avoid drawn out conflict, and the costs that come with it. In many situations, preservation of business relationships are paramount.

This approach accords with recent guidance by the UK Cabinet Office in relation to public procurement policy in the face of COVID-19, which discourages reliance on *force majeure* and frustration before alternatives are explored. A quick reaction will, however, be needed, or there will be a risk of breaching any notice requirements under the applicable *force majeure* clause, leading to a potential loss of the ability to rely on any available rights.

### 2. Can I rely on any other remedies?

**Yes.** Your contract may contain separate provisions that provide relief. For example, under section 2(d) of the DISMANTLECON Contract, the contractor must perform according to company instructions, but only when it is "physically possible and does not create a danger to person, property or the environment". Arguably, under this wording, a contractor can refuse to comply with an instruction if the contractor reasonably concludes that the risk of, for example, COVID-19, would create a real danger to his personnel or property.

### 3. Should I provide notification?

**Yes.** Your contract may require you to provide notice from the time when you (a) should have been aware of the event and (b) realised an event may impact performance.

For example, in one offshore drilling contract, the party relying on the *force majeure* clause was required to give notice "without delay" when they were or "may" have been delayed by the event. This notice had to be in writing, in English, and with all particulars. It also had to be delivered in a particular manner. This wording is very similar to the notice required under LOGIC Marine Construction Contract, the LOGIC Offshore Decommissioning Contract and the DISMANTLECON Contract.

By contrast, in other drilling contracts, the notice provision was less strict requiring notice only "after the event".

Irrespective of the notice requirements, it is always safer to give notice in advance of events that could impact your performance, such as the changing government responses to COVID-19 and the impact on crew changes. Prompt notification will allow discussion and work on alternative arrangements to limit the impact of any potential disruption. It will also protect your ability to rely on the *force majeure* clause if it becomes necessary to do so. Any such notice should be given in accordance with the formality requirements of your contract.

### 4. Should I prepare contingency plans in the event of a possible *force majeure* event?

**Yes.** Your contract will routinely require you to take reasonable steps to avoid, limit and circumvent the *force majeure* event and its impact on your performance. This will be easier if alternative avenues for continuing performance are considered ahead of time for the most likely scenarios.

Offshore contracts which the authors have advised on, including the LOGIC Marine Construction Contract, the LOGIC Offshore Decommissioning Contract and the DISMANTLECON Contract, contain wording that requires reasonable efforts be made to avoid, minimise or prevent the effect of the event.

Drawing up possible plans and making enquiries for alternative avenues may reveal that none are practicable or effective. This will also be helpful evidence if a disagreement arises in relation to the possible *force majeure* event.

#### 5. Should I keep a record of any possible *force majeure* events?

**Yes.** *Force majeure* can fail due to inadequate documentary and other evidence in proving: (a) the *force majeure* event, (b) the effects of the *force majeure* event, (b) the steps taken in mitigating the event and (c) the costs of doing so.

#### 6. Can I rely on *force majeure* where the effect is caused jointly by a *force majeure* listed event and a non-listed event?

**Maybe.** Depending on the applicable contract language, the starting point may be that the impact on performance of a *force majeure* event must be caused solely by an event listed under a *force majeure* clause. When considering whether the spread of COVID-19 is capable of falling within the wording, sweep up language such as “any other cause beyond [the party’s] reasonable control” may be helpful. Such wording can extend the list of events that can be relied on. In some offshore drilling contracts, the *force majeure* wording includes “any other causes whatsoever, whether similar or dissimilar to the causes herein enumerated”. Such wording could be helpful to capture COVID-19 and events caused by its ripple effect.

#### 7. Can I rely on *force majeure* if a key technical employee contracts COVID-19 or I cannot obtain the necessary technical equipment because of supply chain disruptions?

**Depends.** The spread of COVID-19 may require key technical personnel to be quarantined or evacuated. Offshore drilling, construction and decommissioning can occur in very remote locations. They are also specialised activities requiring suitably trained personnel. Obtaining additional personnel may take time, even if preparations are made in advance. Specialist equipment may only be supplied from limited sources and dedicated disposal yards capable of accepting the largest vessels are limited. These may be closed as a result of the spread of COVID-19 or government lockdown.

Arguably, a lack of offshore personnel without whom performance cannot occur as a result of a spread of the pandemic may be a *force majeure* event. Some offshore contracts use terms such as “hindered”, “delayed” and “temporarily prevented” (e.g. the DISMANTLECON Contract, the LOGIC Offshore Decommissioning Contract and the LOGIC Marine Construction Contract). Others use “unable to perform”. Where words such as “hindered”, “delayed” and “temporarily prevented” are used, it is more likely that reliance on *force majeure* will be available than where words such as “unable to perform” are used.

Questions will be asked whether the quarantine of a key technical employee(s) or a disruption in the supply of equipment could have been avoided. In particular, have steps been taken to prepare COVID-19 quarantine zones for offshore employees? Are back-up personnel available? Have ongoing discussions been held with suppliers to ensure that key equipment or materials will be available? Documentary evidence to address these type of questions will be important in proving that alternatives were considered but were not available.

Where supply chains are disrupted, it will also be asked whether the cause of non-performance was beyond the reasonable control of any party to whom performance was delegated. For example, if a manufacturer voluntarily shuts its plant, it is unlikely that this independent “voluntary” event would qualify as a *force majeure* event for the supplier. If so, the supplier would have to source equipment from another manufacturer. Increase in difficulty of performance or cost will not typically fall under a *force majeure* clause.

#### 8. Should I initiate a dispute when I am entitled to rely on a *force majeure* clause and frustration, but my counterparty disagrees?

**No.** Initiating a dispute from the start is likely a premature step, and may entail avoidable costs. Instead, two things can be done at an early stage.

First, gather the necessary factual evidence to protect your position and establish your case. This includes reviewing and documenting alternative avenues for performance.

Second, aim to initiate dialogue with your counterparty, without waiving any of your rights. Seek to agree and coordinate remedial action. Always do this with your in-house or external legal counsel.

#### 9. Will I bear my own losses incurred due to the *force majeure* event?

**Yes.** Parties are generally responsible for their own losses. However offshore drilling contracts typically include a day rate for suspension under *force majeure*, which may provide relief. The ONGC Standard Drilling Contract, the DISMANTLECON Contract and the LOGIC Offshore Decommissioning Contract all provide for payment of a certain daily rate. The DISMANTLECON Contract also provides the ability to recover mobilisation and demobilisation costs in the event the contractor leaves the worksite, as well as additional documented costs.

You should also consider insurance. For example, the organisers of Wimbledon will receive a reported US\$141 million under its pandemic cover for Wimbledon’s cancellation – almost half of the expected loss – due to COVID-19. However, insurers had already begun excluding pandemics due to past viral outbreaks of the Swine Flu and SARS. They are doing so again due to COVID-19.

## 10. What happens if I rely on my *force majeure* clause?

**Depends.** The exact effect of successfully relying on a *force majeure* clause will depend on the terms of the offshore contract. It can be very simple. Under some offshore drilling contracts, the effect is suspension of performance, payment of a pre-agreed daily *force majeure* rate and termination after a number of consecutive days of the *force majeure* event.

Other contracts can be more expansive. For example, under the LOGIC Offshore Decommissioning Contract and the LOGIC Marine Construction Contract, relying on the *force majeure* clause will: (a) suspend performance, (b) require a meeting of the parties to agree a mutually acceptable course of action; (c) vary key dates for the work programme; and (d) initiate payment of the pre-agreed daily standby rate due to the contractor. The LOGIC Offshore Decommissioning Contract also potentially permits the contractor to leave the worksite to fulfil obligations under other contracts. Similar provisions exist under the DISMANTLECON Contract except that under that contract, the contract price can also be varied and demobilisation and mobilisation fees, as well as any additional costs attributable to a suspension, may need to be paid to the contractor. Termination after 180 consecutive days of the *force majeure* event persisting is also possible.

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## D. Analysis and Comparison of Offshore Drilling, Construction and Decommissioning Service Contracts

We set out below an analysis of standard offshore drilling, construction and decommissioning contracts used around the world to summarise and differentiate the core applicable terms.

### Force Majeure in Offshore Drilling and Construction Contracts

	ONGC Model Drilling Contract <sup>1</sup>	LOGIC Marine Construction Contract <sup>2</sup>
For the purposes of COVID-19, what is the scope of the applicable force majeure provision?	<p><b>Scope:</b> Narrowly worded and exhaustive grounds, including:</p> <ul style="list-style-type: none"> <li><b>a. Act of God</b> – Usually refers to natural phenomena. It is arguable that a pandemic falls within this meaning since it is a natural physical phenomenon but on a microscopic level.</li> <li><b>b. Civil Riot</b> – Arguably incorporates civil unrest or commotions, which generally refers to hostility towards government authority or fighting within a territory. Arguably also incorporates “riot,” the definition of which will depend on the law governing the contract. Under English law, a riot requires 12 or more people together to use or threaten unlawful violence. Risks exist where countries cannot provide the necessary food, financial and medical support to their population. Countries who depend on one particular source of revenue, such as those whose budgets depend on the oil receipts, will be at particular risk. Civil disturbances affecting the safety of offshore personnel and supply chains could potentially arise due to the current pandemic and financial climate.</li> <li><b>c. Rules and Regulations of the respective government of the two parties</b> – Government imposed rules in response to COVID-19 and the economic downturn are already limiting offshore operations. Production at the Fenja oil and gas field off Norway is reported to be delayed due to the restrictions imposed as a result of the COVID-19 outbreak. Interestingly, this wording is limited to rules and regulations imposed by the government of the two parties. As such, arguably government regulations other than those imposed by the specific government of the parties that effect performance, through its impact on a party’s suppliers, subcontractors or employees, cannot be relied on.</li> </ul>	<p><b>Scope:</b> Narrowly worded and exhaustive grounds, including:</p> <ul style="list-style-type: none"> <li><b>a. Riots</b> – The legal definition of riot will depend on the law governing the contract. Under English law, a riot requires 12 or more people together to use or threaten unlawful violence. Risks exist where countries cannot provide the necessary food, financial and medical support to their population.</li> <li><b>b. Earthquakes, floods, fires, explosions or other natural physical disasters</b> – The phrase “other natural physical disasters” follows a category of events that do not include pandemics, making successful reliance less likely.</li> <li><b>c. Strikes or industrial disputes other than by employees of the party relying on a force majeure event or the employees of that party’s suppliers and subcontractors, which affect a substantial or essential portion of work</b> – Strikes and industrial disputes resulting from COVID-19 have already been reported. These may eventually impact operations and supply chains for materials, equipment and services for the offshore industry. Medical personnel globally and distribution workers have carried out and planned strikes in protest of insufficient protection and measures to guard against contracting the virus. Global Energy’s workforce carried out a walkout for similar reasons. Under this wording, industrial disputes must actually affect a “substantial or essential part” of the work. Neither party can rely on events arising from industrial disputes with their own employees or the employees of their suppliers and subcontractors. Active communication with suppliers and contractors is necessary. Alternative preparations for performance will need to be made if a realistic possibility of such strikes or industrial disputes exist.</li> <li><b>d. Changes to or introduction of any general or local statute, ordinance, decree or other law, or regulation or byelaw</b> – More varied types of listed measures provides greater certainty than under the ONGC Model Drilling Contract. Government imposed decrees, laws and regulations in response to COVID-19 and the economic downturn are already limiting offshore operations. For instance, Nigeria’s Department of Petroleum Resources introduced offshore guidance to reduce workforce sizes and shift rotations from 28 to 14 days, which may limit the ability to carry out works.</li> </ul> <p>The LOGIC Marine Construction Contract does not list “Act of God” as a <i>force majeure</i> event.</p>
	<p><b>High Threshold:</b></p> <ul style="list-style-type: none"> <li><b>a.</b> Requires evidence proving that the party relying on a <i>force majeure</i> event is physically or legally “unable” to perform “any obligation”. Although a high threshold, its impact is reduced by permitting evidence to be limited to a specific obligation rather than performance generally.</li> </ul>	<p><b>Medium Threshold:</b></p> <ul style="list-style-type: none"> <li><b>a.</b> Requires evidence proving: <ul style="list-style-type: none"> <li><b>i.</b> Performance has been “delayed or temporarily prevented” by a <i>force majeure</i> occurrence</li> <li><b>ii.</b> The event was beyond the reasonable control and without the fault or negligence of the party affected</li> <li><b>iii.</b> The event could not have been provided against through reasonable diligence</li> <li><b>iv.</b> The party affected takes reasonable efforts to remedy the effect without delay</li> </ul> </li> </ul>
What is the effect of the force majeure?	<p><b>Effect:</b></p> <ul style="list-style-type: none"> <li><b>a.</b> Suspension of performance of the obligation effected by the <i>force majeure</i> event.</li> <li><b>b.</b> Payment of 2/3 of the non-operating rate for the first 15 days, 1/3 of the non-operating rate for the second 15 days and zero rate thereafter.</li> <li><b>c.</b> Termination of the contract after 30 days, but only by the operator.</li> </ul>	<p><b>Effect:</b></p> <ul style="list-style-type: none"> <li><b>a.</b> Suspension of performance</li> <li><b>b.</b> Required meeting of the parties to agree a mutually acceptable course of action</li> <li><b>c.</b> Variation of the schedule of key dates</li> <li><b>d.</b> Payment of the pre-agreed daily standby rate due to the contractor</li> <li><b>e.</b> Potential right for the Contractor to leave the worksite to fulfil obligations under other contracts or applicable law</li> <li><b>f.</b> Preparation of a revised programme by the contractor to minimise the effect of the delay</li> </ul>
What are the notice requirements?	<p><b>Notice Requirements:</b> Notice must be given:</p> <ul style="list-style-type: none"> <li><b>a.</b> Within 72 hours after the event and on the event’s conclusion. It is arguable a party must provide notice only when it actually becomes aware of the <i>force majeure</i> event impacting performance and not when it should have been aware. This is because: <ul style="list-style-type: none"> <li><b>i.</b> The notice requirement only applies where an event has already occurred</li> <li><b>ii.</b> A recent English decision held that a similarly worded phrase did not mean that a party needed to take proactive steps to identify a potential <i>force majeure</i> event and its effects [<i>Maccaferri v Zurich Insurance</i>]</li> </ul> </li> <li><b>b.</b> In writing with all particulars by way of: <b>(i)</b> personal delivery; <b>(ii)</b> pre-paid registered mail; or <b>(iii)</b> fax, telegram or cable.</li> <li><b>c.</b> With satisfactory evidence in support of its claim: What “satisfactory” evidence means will depend on the circumstances. It is likely to include (i) evidence of the event and its effect; (ii) evidence of why that particular obligation cannot be performed as a result of the event; and (ii) that other avenues for performance of that obligation are not possible.</li> </ul>	<p><b>Notice Requirements:</b> Notice must be given:</p> <ul style="list-style-type: none"> <li><b>a.</b> Without delay: <ul style="list-style-type: none"> <li><b>i.</b> “Without delay” is consistently viewed as a stringent requirement. The facts of a recent decision concerning a drilling contract with the same phrasing, however, indicates that several weeks are acceptable in practice between parties [<i>Seadrill v Tullow</i>]. Absent specific time frames, the deadline to send a <i>force majeure</i> notice will depend on the circumstances.</li> </ul> </li> <li><b>b.</b> When a party is or may be delayed by the event: <ul style="list-style-type: none"> <li><b>ii.</b> A recent English High Court decision concerning the same contractual phrasing clarified that notice should be given where a party anticipates delay or prevention of performance as a “realistic possibility” [<i>Seadrill v Tullow</i>].</li> </ul> </li> <li><b>c.</b> In writing with all particulars and delivered by: (i) hand, effective from delivery; (ii) first-class post, effective 48 hours after posting; or (iii) telefax, effective on the first working day at the recipient address following the date of sending. Unlike the ONGC Model Drilling Contract, satisfactory evidence is not required to be provided within the notice provision, although will be needed if reliance on <i>force majeure</i> is disputed.</li> </ul>

<sup>1</sup> Model Contract for Charter Hire of Rigs (Offshore) Drilling Agreement with General Terms and Conditions (ONGC Model Drilling Contract)

<sup>2</sup> LOGIC General Conditions of Contract for Marine Construction, Edition 2 (LOGIC Marine Construction Contract).

	LOGIC Offshore Decommissioning Contract <sup>3</sup>	DISMANTLECON Contract <sup>4</sup>
For the purposes of COVID-19, what is the scope of the applicable force majeure provision?	<p><b>Scope:</b> Narrowly worded and exhaustive grounds, including:</p> <ul style="list-style-type: none"> <li><b>a. Riots</b> – The legal definition of riot will depend on the law governing the contract. Under English law, a riot requires 12 or more people together to use or threaten unlawful violence. Risks exist where countries cannot provide the necessary food, financial and medical support to their population.</li> <li><b>b. Earthquakes, floods, fires, explosions or other natural physical disasters</b> – The phrase “other natural physical disasters” follows a category of events that do not include pandemics, making successful reliance less likely.</li> <li><b>c. Strikes or industrial disputes other than by employees of the party relying on a force majeure event or the employees of that party’s suppliers and subcontractors, which affect a substantial or essential portion of work</b> – This wording will be engaged in the same manner as under the LOGIC Marine Construction Contract. Like the DISMANTLECON Contract, the clause excludes reliance on industrial disputes caused by employees. Unlike the DISMANTLECON Contract, however, the wording also excludes reliance on industrial disputes caused by a party’s subcontractors and suppliers. Steps are needed to monitor the position of subcontractors and suppliers and ensure if a realistic risk of a strikes or industrial dispute arise, steps are taken to consider alternative avenues for performance.</li> <li><b>d. Changes to or introduction of any general or local statute, ordinance, decree or other law, or regulation or bylaw</b> – Applicable in the same manner as the LOGIC Marine Construction Contract. Government imposed laws and regulations in response to COVID-19 and the economic downturn are already limiting offshore operations.</li> </ul> <p>Unlike the DISMANTLECON Contract, the LOGIC Offshore Decommissioning Contract does not list “Act of God” as a <i>force majeure</i> event.</p>	<p><b>Scope:</b> Broadly worded and non-exhaustive grounds, including:</p> <ul style="list-style-type: none"> <li><b>a. Act of God</b> – Usually refers to natural phenomena. It is arguable that a pandemic falls within this meaning since it is a natural physical phenomenon but on a microscopic level.</li> <li><b>b. Riots and civil commotions</b> – Civil commotions generally refer to hostility towards government authority or fighting within a territory. Riots usually consist of civilians as opposed to armed groups of militias. The inclusion of both riots and civil commotions encompasses with more certainty a greater array of borderline events between the two.</li> <li><b>c. Industrial actions other than by employees of the party relying on force majeure</b> – Under this wording neither party can rely on their employees’ industrial actions when invoking the <i>force majeure</i> clause. Unlike the LOGIC Offshore Decommissioning Contract and Logic Marine Construction Contract, industrial action caused by a party’s subcontractors and suppliers are not excluded as potential <i>force majeure</i> events.</li> <li><b>d. Governmental requisition, control, intervention, requirement or interference</b> – Government “intervention, requirement or interference” encompassed a greater range of obstructive government actions than those listed under the LOGIC Offshore Decommissioning Contract since it is not limited by the passing or amendment of laws. Government instructions to “stay at home” may, for example, fall within this category. Another example is the government of Mexico’s Sonora’s region, which has threatened mines with forced closures. Although backed by government decrees, similar action absent formal rules are foreseeable across different supply chains to minimise the spread of COVID-19.</li> <li><b>e. Any other similar causes beyond the reasonable control of either party</b> – Sweeper language broadens the scope of the <i>force majeure</i> clause. The cause must however be “similar to” the listed circumstances. It is arguable, in the event “Act of God” does not implicitly include pandemics, this wording would permit reliance on pandemics. This sweeper wording is not included in the LOGIC Offshore Decommissioning Contract, Logic Marine Construction Contract or the ONGC Model Drilling Contract.</li> </ul>
	<p><b>Medium Threshold:</b></p> <ul style="list-style-type: none"> <li><b>a.</b> Requires evidence proving: <ul style="list-style-type: none"> <li><b>i.</b> Performance has been “delayed or temporarily prevented” by a <i>force majeure</i> event</li> <li><b>ii.</b> The event was beyond the reasonable control and without the fault or negligence of the party affected</li> <li><b>iii.</b> The event could not have been foreseen or overcome through reasonable diligence</li> <li><b>iv.</b> The party affected takes reasonable efforts to remedy the effect without delay</li> </ul> </li> </ul>	<p><b>Low Threshold:</b></p> <ul style="list-style-type: none"> <li><b>a.</b> Requires evidence proving that the party relying on the <i>force majeure</i> event: <ul style="list-style-type: none"> <li><b>i.</b> Has been “hindered or prevented” from performing “any or all” of its obligations due to a <i>force majeure</i> event</li> <li><b>ii.</b> Has made all reasonable efforts to avoid, minimise or prevent the effect of the event</li> </ul> </li> </ul>
What is the effect of the force majeure?	<p><b>Effect:</b></p> <ul style="list-style-type: none"> <li><b>a.</b> Suspension of performance</li> <li><b>b.</b> Required meeting of the parties to agree a mutually acceptable course of action</li> <li><b>c.</b> Variation of key dates for the work programme</li> <li><b>d.</b> Payment of the pre-agreed daily standby rate due to the contractor</li> <li><b>e.</b> Potential right for the Contractor to leave the worksite to fulfil obligations under other contracts or applicable law</li> </ul>	<p><b>Effect:</b></p> <ul style="list-style-type: none"> <li><b>a.</b> Suspension of performance</li> <li><b>b.</b> Required meeting of the parties to agree a mutually acceptable course of action</li> <li><b>c.</b> Potential variation of the works programme and contract price</li> <li><b>d.</b> Potential for the Contractor to leave the worksite to fulfil obligations under other contracts</li> <li><b>e.</b> Potential payment of a pre-agreed daily standby rate, demobilisation and mobilisation fees and additional costs attributable to any suspension</li> <li><b>f.</b> Termination of the contract after 180 consecutive days of the <i>force majeure</i> event persisting</li> </ul>
What are the notice requirements?	<p><b>Notice Requirements:</b> Notice must be given:</p> <ul style="list-style-type: none"> <li><b>a.</b> Without delay: <ul style="list-style-type: none"> <li><b>i.</b> “Without delay” is consistently viewed as a stringent requirement. The facts of a recent decision concerning a drilling contract with the same phrasing, however, indicates that several weeks are acceptable in practice between parties [<i>Seadrill v Tullow</i>]. Absent specific time frames, the deadline to send a <i>force majeure</i> notice will depend on the circumstances.</li> </ul> </li> <li><b>b.</b> When a party is or may be delayed by the event: <ul style="list-style-type: none"> <li><b>ii.</b> A recent decision concerning the same contractual phrasing clarified that notice should be given where a party anticipates delay or prevention of performance as a “realistic possibility” [<i>Seadrill v Tullow</i>].</li> </ul> </li> <li><b>c.</b> In writing, with all particulars and delivered by: (i) hand, effective from delivery; (ii) fax, effective from transmission; or (iii) first-class mail, effective from two days after posting.</li> </ul>	<p><b>Notice Requirements:</b> Notice must be given:</p> <ul style="list-style-type: none"> <li><b>a.</b> Without delay: <ul style="list-style-type: none"> <li><b>i.</b> “Without delay” is consistently viewed as a stringent requirement. A recent English High Court decision concerning a drilling contract with the same phrasing indicates that, depending on the circumstances, several weeks may be acceptable in practice [<i>Seadrill v Tullow</i>]. Absent agreed time frames, notice deadlines will depend on the circumstances.</li> </ul> </li> <li><b>b.</b> When a party is or may be delayed by the event after it actually becomes aware of the event: <ul style="list-style-type: none"> <li><b>ii.</b> A recent English High Court decision concerning the same contractual phrasing clarified that notice should be given if delay or prevention of performance is anticipated as a “realistic possibility” [<i>Seadrill v Tullow</i>].</li> </ul> </li> <li><b>c.</b> In writing, in English with all the particulars and delivered by: (i) registered or recorded mail, effective seven days after posting; (ii) facsimile or other electronic means, effective from transmission; or (iii) first-class mail, effective from two days after posting.</li> </ul>

3 LOGIC Standard Contract for the UK Offshore Oil and Gas Industry, General Conditions of Contract for Offshore Decommissioning, Edition 1, 2018 (LOGIC Offshore Decommissioning Contract).

4 BIMCO, DISMANTLECON, Dismantling Removal and Marine Services Agreement (DISMANTLECON Contract).