

# Decommissioning Security Disputes

Finding Petroleum Decommissioning Conference

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- 2016 is the first year in which the full impact of the oil price decrease will have to be accounted for in the annual decommissioning security process
- Is there and will there be sufficient security to cover escalating decommissioning liabilities?

# Parties to a Decommissioning Security Agreement

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- First-Tier Participants
- Second-Tier Participants
- Third-Tier Participants
- Secretary of State

- *DECC Guidance Notes - “the over-riding aim of a DSA is to ensure that guaranteed funds will be available to cover the decommissioning costs at all times.”*

- Decommissioning security, which could previously be spread over numerous years of ongoing production, can now only be spread over a much shorter timeframe
- More security has therefore to be put aside each year
- Operators are already under significant pressure from drastically reduced revenue streams

- Introduction: “*all stakeholders should be obliged to maximise the expected net value of economically recoverable petroleum from relevant UK waters... compliance with the Strategy may oblige individual companies to allocate value between them, matching risk to reward. However, while the net result should deliver greater value overall, it will not be the case that all companies will always be individually better off” (Our emphasis)*
- Central Obligation: “*Relevant persons must, in the exercise of their relevant functions, take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters” (Our emphasis)*

- The standard-form DSA requires that every year all of the First Tier Participants pay their respective share of:
  - (a) “net costs” (estimated cost of decommissioning multiplied by a risk factor); less
  - (b) “net value” (expected production receipts from the field) less security already provided

- Have optimistic assumptions as to future “net value” have historically been made?
- Second Tier Participants that sold their interest many years ago are still liable if First Tier Participants default
- Falling oil and gas prices are causing Second Tier Participants to seek higher levels of security
- Second Tier Participants are no longer comfortable with previous lower, optimistic, estimates



- Not all of the First Tier Participants will have the same funding profile - new entrants often have high debts
- Co-venturers may legitimately take differing positions on the assumptions made by the operator
- Increase in requests for data, closer scrutiny of projections of “net value” and “net costs”

- “**Net Costs**” represents the best estimated cost of performing all decommissioning activities at the time at which they can be best expected to need to be performed.

# Net Costs – So many variables...

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- When will decommissioning occur?
- What is the scope of decommissioning?
- What is the proper risk factor to apply?

- “**Net Value**” is defined as the aggregate of:
  - the sales value of petroleum forecast to be produced and delivered from the field; and
  - the anticipated proceeds of sale of any surplus field property to be sold prior to Decommissioning; and
  - the value of any tariffs which it is reasonably anticipated will be received prior to decommissioning from other fields under transportation, processing and other agreements

# Net Value – So many variables...

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- What oil and gas price to use?
- What reserves data should be used?
- How to account for tiebacks and other revenue?

- Disputes are to be referred to determination by an expert, if:
  - the decommissioning schedule and budget submitted and/or performed by the operator is challenged; or
  - for an independent review of the cost estimation.

# Expert Determination under Decommissioning Security Agreements

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- Identifying the right expert
- Appointment of the expert
- The scope of the expert's power
- Procedural matters

# Questions?

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