# THE KNOCK FOR KNOCK REGIME IN OFFSHORE DECOMMISSIONING CONTRACTS

Pat Saraceni*

## 1. Introduction

Decommissioning is gaining prominence across the globe. It has been a particular focus of the shipping and offshore oil and gas sectors since at least the Deepwater Horizon casualty.[1] At the end of 2022, globally there were in excess of 10,000 fixed and floating offshore installations,[2] all of which will inevitably be decommissioned at the end of productive field life. In the same period some 443 commercial vessels and offshore units are reported to have been sold for scrapping,[3] with the global average annual rate of ship decommissions standing at between 600 to 700 per annum.[4]

Decommissioning operations are complex, costly, inherently dangerous, and generally high profile. The challenges are multifarious and include financial, operational and legal challenges that permeate each stage of the decommissioning process.[5] Decommissioning risks therefore should be assessed and managed throughout the entire life cycle of offshore oil and gas projects; at the start, to structure the project to best manage liability for the inevitable future decommissioning obligations, and the potential for long term liabilities; during decommissioning activities to ensure safe, sustainable and responsible implementation of the chosen decommissioning solution; and post decommissioning to monitor, manage and mitigate future risk.

Key risks affecting ship decommissioning include environmental pollution and personal injury or death. While those risks are equally prominent in offshore decommissioning, the risk profile of offshore decommissioning operations is vastly different. The remote, hostile, ecologically sensitive and unpredictable environments in which offshore decommissioning operations typically occur pose additional significant risks, ranging from wreck removal, pollution, environmental remediation, disposal of waste products and hazardous substances, personal injury, and property damage.[6] The more hostile and unpredictable the environment, the greater the attendant risks. Another significant risk factor is the number of contractors and/or subcontractors working at the worksite. These challenges are exacerbated by the idiosyncrasies of each decommissioning operation, which requires a bespoke solution.[7]

---

* Dr Pat Saraceni BJuris, LLM, SJD (University of Western Australia), Director, Clifford Chance, Perth, Western Australia, previous President of MLAANZ, and current Chair of its WA Branch. Pat has also lectured in Shipping Law at the University of Notre Dame.

[1] The Deepwater Horizon disaster (described by President Obama as the worst environmental disaster in America) occurred in 2010 in the Gulf of Mexico, following a blowout from the Macondo exploratory well and subsequent explosion and sinking of the oil rig. It took 87 days to stop the oil spill, with a total discharge of 4.9m barrels, and the loss of 11 lives: see Barack Obama, 'Remarks by the President to the Nation on the BP Oil Spill' (Speech, The White House, 15 June 2010) < https://obamawhitehouse.archives.gov/the-press-office/remarks-president-nation-bp-oil-spill>. It was preceded 9 months earlier on 21 August 2009 by the Montara casualty off the coast of Australia. For over 10 weeks, 400 barrels of oil per day spilled into the Timor Sea, affecting 90,000 square km: see David Borthwick, Montara Commission of Inquiry, *Report of the Montara Inquiry* (Report, June 2010). Twenty-one years earlier on 6 July 1988 the Piper Alpha casualty occurred in the North Sea off the coast of Scotland, with 167 fatalities and an insurance loss of USD$1.4bn. These incidents saw parties invoking the knock for knock regime to limit their financial exposure to claims. See also Chidi Egbochue, 'Reviewing "knock for knock" indemnities following the Macondo Well blowout' (2013) 7(4) *Construction Law International* 7, and William Prescott Mills Schwind and Nara Galeb Porto, 'After Macondo: How has Brazil Reacted to the Largest Accidental Marine Oil Spill in History' (Conference Paper, Rio Oil and Gas Expo and Conference, 17–20 September 2012).

[2] Sasha Chapman, 'Oil Rigs Are a Refuge in a Dying Sea' (4 January 2022) *Hakai Magazine*.

[3] NGO Shipbreaking Platform, 'Press Release – Platform publishes list of ships dismantled worldwide in 2022' (Press Release, 1 February 2023).

[4] The number of vessels scrapped is believed to have increased since the abolition of single hull vessels. The largest shipbreaking countries are China, India, Bangladesh, Pakistan and Turkey: Norwegian Maritime Authority, 'Scrapping of ships' (Web Page, 29 January 2021) <https://www.sdir.no/en/shipping/vessels/environment/scrapping-of-ships/>.

[5] Post plugging and abandonment of wells.

[6] The legal risks include exposure to significant liabilities (both civil and regulatory exposure), delays, clean-up costs and the like, damage to property and personal injury.

[7] No two decommissioning operations are the same. Differences include: the nature, size and condition of the installations and structures; their distance from the coastline; the seabed typography; water depth and sea conditions; the potential effect on the safety of surface or subsurface navigation or other use of the seas, and on the marine environment; the risk the material may shift in the future; and the feasibility, risk, and cost of removing the installation. These variables result in different risk profiles and require flexibility in decommissioning.

A suite of standardised international commercial contracts has been developed for use in the offshore sector, aimed at promoting harmonisation, certainty, and cost savings. Despite the advantages of standardisation, some oil and gas majors still seek to impose their own contractual terms, or to otherwise deviate from the standard form contracts[8] to cater for the specific requirements of the decommissioning project at hand.[9] Amendments to the traditional strict knock for knock regime are often criticised by insurers for introducing uncertainty and undermining the objectives and efficacy of the knock for knock regime.[10]

The standardised contracts[11] engage an armoury of risk allocation mechanisms. Two well established mechanisms operating in both offshore construction contracts, and offshore decommissioning contracts are: (a) the 'knock for knock' (or 'mutual hold harmless') liability regime;[12] and (b) insurance coverage for the predetermined risks and responsibilities. The two mechanisms are intrinsically connected, and both are endorsed in the two principal standard form decommissioning contracts, *LOGIC General Conditions of Contract (including Guidance Notes) For Offshore Decommissioning* (Edition 1, December 2018) ('LOGIC General Conditions')[13] and BIMCO's DISMANTLECON General Conditions ('DISMANTLECON') published in September 2019.[14]

This paper considers these two risk mitigation mechanisms in the context of these standardised offshore decommissioning contracts. Before doing so, a brief review of the regulatory framework governing decommissioning operations is warranted.

## 2. The Decommissioning Regulatory Framework

The universal objective of all regulatory decommissioning frameworks is to ensure that decommissioning operations are undertaken in a safe, responsible and sustainable manner.[15] Offshore decommissioning operations are governed by international and regional conventions and guidelines, which operate within the context of domestic laws, at varying levels of maturity and sophistication.[16] From an international law perspective, Article 60.3 of the 1982 United Nations Convention on Law of the Sea ('UNCLOS') provides that artificial islands, installations or structures which are abandoned or disused:

> [S]hall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the *competent international organization*. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.

The IMO is the 'competent international organization' for purposes of Article 60.3. It has developed *Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone* ('IMO Guidelines and Standards'), which contemplate the complete, or partial removal of disused

[8] Finn Bjornstad et al, 'Contracting Trends in the offshore Sector' *Wikborg Rein Shipping Offshore* (Web Page, 2012).
[9] Philip Loots and Donald Charrett, *The Application of Contracts in Developing Offshore Oil and Gas Projects* (Informa Law, 2019) 170 [14.5.3].
[10] Ibid.
[11] Leading Oil and Gas Industry Competitiveness, *General Conditions of Contract (including Guidance Notes) For Offshore Decommissioning*, December 2018, identifies its objectives as 'promot[ing] competitiveness and commerce by implementing supply chain management practice and promoting collaboration, benefits and cost savings, in relation to the means by which organisations…operate…to achieve "real" business results'.
[12] Other risk management mechanisms include caps on liability and exclusion of liability for consequential losses. See the knock for knock provisions in other standardised offshore construction contracts, e.g. BIMCO's TOWCON, PROJECTCON and HEAVYCON 2007 Standard Transportation Contract for Heavy and Voluminous Cargoes. See Alistair Loweth and Nicholas Kazaz, 'Offshore' in Andrew Chamberlain, Holly Colaco and Richard Neylon (eds), *The Shipping Law Review* (Law Business Research Ltd, 8th ed, 2021) 32.
[13] LOGIC (Leading Oil and Gas Industry Competitiveness) is a not-for-profit subsidiary of Oil & Gas UK. It publishes a series of standard contracts for use in the oil and gas industry. LOGIC General Conditions were specifically developed for use in decommissioning operations in the North Sea, although it has gained international acceptance and is now widely used well beyond the North Sea.
[14] BIMCO (Baltic and International Maritime Council) is an organisation representing the global shipping sector. It too publishes a series of standard contracts for use in the maritime and associated sectors.
[15] See for example the legislative changes introduced by the passage of the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021* (Cth), which was passed by the Australian parliament on 24 August 2021. Those changes included: (a) the introduction of new trailing liability provisions; (b) regulator approval of changes in control of titleholders, and expansive investigative powers.
[16] The decommissioning regimes governing the North Sea and the Gulf of Mexico are sophisticated, tried and tested, with the sector having an extensive history in those regions. This contrasts with the position in Australia, where the sector is relatively embryonic.

offshore installations.[17] In 2009 the IMO adopted the *Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships* ('Hong Kong Convention'), which aims to reduce the risks to the environment and to personal health and safety in ship decommissioning operations.

These international and domestic regulatory regimes operate amidst parties' private commercial arrangements. As detailed above, in their commercial arrangements parties employ risk allocation mechanisms such as the knock for knock regime and insurance coverage to manage and mitigate the parties' respective risk exposures.

We now consider each of these risk mitigation mechanisms.

## 3. Risk Mitigation Measure 1 — Knock for Knock Regime

### 3.1. What it's All About

In essence, the operation of the knock for knock regime means that loss lies where it falls, irrespective of fault and without recourse to counterparties. Each of the Contractor and the Company is responsible for its own property and workforce, for third party damage or injury which is caused by its negligence, and for pollution emanating from its property or equipment. The Company is also generally responsible for the asset being decommissioned, and for property located at the decommissioning site (reflective of title remaining with the Company throughout the contract).

The principal features of a knock for knock regime include:

(a) Designation of a 'Company Group' and a 'Contractor Group', each member of which is afforded the same protections as the principal parties;[18]

(b) each contracting party is liable for loss or damage to its own property and personnel, regardless of fault or causation, and without recourse to the counterparty;

(c) the counterparties provide a series of mutual indemnities — each indemnifies the other primary party and its respective 'group' members against liability for claims by the indemnifying party's designated 'group', irrespective of fault;[19] and

(d) the primary parties procure insurance coverage to protect themselves and their respective 'group' members, which includes a waiver of the insurer's rights of subrogation against other primary parties and their respective designated group.

Each of these elements will be addressed below.

Generally, courts have broadly recognised the enforceability of knock for knock clauses, although some more readily than others.[20] Jurisdictions that enthusiastically embrace the concept see it as a manifestation of the principle of freedom of contract. The less enthusiastic exponents focus on the perceived inequity of an innocent party being burdened with liability for its counterparty's culpability. Some jurisdictions have passed legislation that proscribe such risk allocation regimes, or otherwise undermines their efficacy. Examples of such legislation includes Part 1F of the *Civil Liability Act 2002* (WA),[21] and the anti-indemnity statutes in force in the American states of Texas, New Mexico,

[17] As does UNCLOS. See International Maritime Organisation, *Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone*, Doc No Assembly 16/Res. 672, 6 December 1989, arts 1.1–1.2, 2.1 ('IMO Guidelines and Standards').

[18] Regard should be had to any domestic legislation affecting the rights of non-signatories to claim benefits directly under a contract, and whether those provisions should be expressly excluded: e.g. for contracts governed by English law regard should be had to the *Contracts (Rights of Third Parties) Act 1999* (UK), and for contracts governed by the law of Western Australia regard should be had to section 11 of the *Property Law Act 1969* (WA).

[19] Which lead to circuity of action among counterparties.

[20] For example, *Shipowners, Knock – Knock Clauses and Towage Agreements: A Greek Law Perspective* (Publication, 23 March 2023), which suggests that the application of knock for knock clauses in Greece 'remains somewhat unclear', pending completion of reforms to the Commercial Maritime Law Code, which are underway.

[21] Although it can be contracted out of. See also equivalent legislation in other Australian states.

and Louisiana. Consideration should also be had to the *Unfair Contract Terms Act 1977* (UK), which provides that in contracts to which it applies,[22] parties cannot exclude or restrict liability for death or personal injury caused by negligence, and only permits exclusion of other losses if the contract term is reasonable. Chidi Egbochue in his article *Reviewing Knock for Knock indemnities following the Macondo Well blowout*,[23] suggests it may be possible to argue that the knock for knock regime does not exclude or limit liability for personal injury or death, but instead shifts the liability, and that in any event the regime is reasonable. An analysis of those statutes is beyond the scope of this paper.

Despite its imperfections (considered below) the knock for knock regime is an established and integral feature of offshore contracting and is generally preferred to its alternative fault-based regime. In the absence of a knock for knock regime, the claimant bears the onus of proving fault-based liability. This necessitates investigating the occurrence of loss, establishing fault, and establishing the causal nexus between the loss and the wrongdoing (be it breach of contract, negligence, or breach of statutory duty). Establishing fault can be problematic and is burdensome especially when liability is to be apportionable among multiple wrongdoers. The knock for knock regime circumvents these difficulties. It paves a predetermined path through the labyrinth of complexities that otherwise characterise an event of loss. Predetermined allocation of risks and liabilities at the time of contracting provides certainty, reduces the cost of investigations and reduces the prospect of disputes which typically characterise the attribution of fault. It also is said to promote the maintenance of good business relations and safe practices.[24]

In short, the knock for knock regime (while imperfect)[25] is an effective means of managing and mitigating the uncertainties, risks and liabilities inherent in offshore decommissioning. This is an attractive feature in a sector marred by uncertainty and dangers. There is therefore merit in adopting a knock for knock regime in decommissioning contracts, despite its imperfection.

The benefits of 'knock for knock' are exponentially increased when the regime is accompanied by an effective insurance strategy. Such a strategy procures insurance coverage against identified and predetermined risks and liabilities, and no more. This results in efficiencies. The benefits include a reduction in parties' cost of insurance by avoiding wasteful over-insurance (or multiple coverage of the same risk), which can itself be fertile ground for disputation, both between insurers and between counterparties to the insurance contracts.

We now turn to consider the specific liability regimes under each of the standardised decommissioning contracts, LOGIC General Conditions and BIMCO DISMANTLECON.

## 3.2. Knock for Knock Regime under LOGIC General Conditions

### 3.2.1. Designation of Parties Covered

LOGIC General Conditions[26] provides for reciprocal indemnities for loss or damage to personnel and property of the Company Group, the Contractor Group and third parties respectively. 'Contractor Group'[27] is broadly defined as the Contractor, its subcontractors and their respective affiliates, directors, officers and personnel (including 'agency personnel'), but excluding members of the Company Group. It expressly includes 'subcontractors (*of any tier*) of a Subcontractor which are performing Work at any Worksite, their affiliates, directors, officers and personnel (including agency personnel)'.

The definition of 'Company Group'[28] is more restricted — it is limited to the Company, its co-venturers (including

[22] *Unfair Contract Terms Act 1977* (UK) does not apply to contracts which but for the choice of law provisions would not otherwise be governed by English law: see Chidi Egbochue, 'Reviewing "knock for knock" indemnities following the Macondo Well blowout' (2013) 7(4) *Construction Law International* 7.
[23] Chidi Egbochue, 'Reviewing "knock for knock" indemnities following the Macondo Well blowout' (2013) 7(4) *Construction Law International* 7.
[24] Patrycja Mielcarek, 'The knock-for-knock agreements in the offshore sector under the United States and Norwegian law' (Master Thesis, University of Oslo, 2012).
[25] A question arises as to the scope of protection actually afforded by the knock for knock regime in the standardised decommissioning contracts, and in particular how comprehensive are the mutual indemnities in light of well established carve outs and limitations. This is discussed below.
[26] Leading Oil and Gas Industry Competitiveness, *General Conditions of Contract (including Guidance Notes) For Offshore Decommissioning,* December 2018, cl 22.1 ('LOGIC General Conditions').
[27] Ibid cl 1.13.
[28] Ibid cls 1.5, 1.15.

any entity with whom the Company is in a joint operating agreement, a unitisation or similar agreement relating to the operations for which the work is being performed) and their respective affiliates, directors, officers and personnel.

### 3.2.2. Contractors' Liabilities

The Contractor is responsible to indemnify the 'Company Group' against claims, losses, costs and liabilities relating to the performance of (or failure to perform) the Contract in respect of:

> 22.1(a) [L]oss of or damage to *property of the Contractor Group* whether owned, hired, leased or otherwise provided by the Contractor Group…; and
>
> (b) *personal injury* including death or disease *to any personnel of the Contractor Group*…; and
>
> (c) subject to any other express provisions of the Contract, *personal injury* including death or disease or loss of *or damage to the property of any third party* to the extent that any such injury, loss or damage is *caused by the negligence* or breach of duty (whether statutory or otherwise) of the Contractor Group …[29]

The Contractor is also responsible for wreck removal/recovery and removal of debris from property, equipment or vessels of the Contractor Group if it interferes with the Company's operations or is hazardous to navigation or fishing, and agrees to indemnify the Company Group for costs, liabilities and claims arising therefrom irrespective of any negligence or breach of duty of the Company Group.[30] Where the Company transports the Contractor's property to the offshore worksite, and elects or is obliged to remove any wreck or debris from that property, the Company indemnifies the Contractor Group for the cost of that recovery/removal, unless it was caused by the negligence or breach of duty of the Contractor Group.[31]

Contractors often seek to negotiate a cap on liability to limit their potential financial exposure (whether in contract, tort or otherwise at law).[32] In the absence of an agreed limit clause 35 specifies a default limitation sum.[33] The limitation of liability applies notwithstanding any other provision to the contrary, and can arise at three discrete stages of the decommissioning project:

> (a) From the effective date until before completion of the works, for the whole of the works;
> (b) after completion of the works, for the whole of the works; and
> (c) after termination of the contract due to the Contractor's default or insolvency.[34]

Contractors may also negotiate a temporal limitation on their liability, after which they are no longer liable, under clause 35.2. Any agreed liability period is to be included in Appendix 1 to Section 1 of the standard form contract. The temporal limitation does not apply to certain specified liabilities which are assumed by the Contractor.

[29] (Emphasis added). For the purposes of cl 22.1(c) 'third party' means any party which is neither a member of the Contractor Group or the Company Group.
[30] LOGIC General Conditions (n 26) cl 22.5.
[31] Ibid cl 22.6.
[32] Ibid cl 35.3.
[33] It should be clear whether the limitation of liability excludes the knock for knock regime. The same applies to exclusions for consequential losses. See *Westerngeco v ATP Oil & Gas (UK) Ltd* [2006] EWHC 1164 (Comm), and *North Sea Ltd v London Bridge Engineering Ltd* [2002] UKHL 4.
[34] See LOGIC General Conditions (n 26) cls 29.1(b), (c).

### 3.2.3. Company's Liabilities

The Company is responsible for and indemnifies the Contractor Group for claims, losses, costs and liabilities in connection with the performance of (or failure to perform) the Contract in respect of:[35]

> 22.2(a) [L]oss of or damage to *property of the Company Group* (including removed or decommissioned material) whether
>
> (i) owned by the Company Group, or
> (ii) leased or otherwise obtained under arrangements with financial institutions by the Company Group which is *located at the Worksite* …; and
>
> (b) *personal injury* including death or disease to any *personnel of the Company Group* …; and
>
> (c) … *personal injury* including death or disease *or loss of or damage to the property of any third party*[36] to the extent that any such injury, loss or damage is *caused by the negligence* or breach of duty (whether statutory or otherwise) of the Company Group …; and
>
> (d) *loss of or damage to such permanent third party oil and gas production facilities and pipelines and consequential losses* arising therefrom (as specified and defined in Appendix I to Section I – Form of Agreement) … The provisions of this Clause 22.2(d) shall apply only to such specified permanent oil and gas production facilities and pipelines which are within a 500 metre radius of any working barge or vessel which is at the time directly engaged in the Work but not while such working barge or vessel is in transit to or from the Facility or when performing any other operations.

Broadly, each of the Company and the Contractor respectively bears the risk of pollution emanating from its own equipment. The Company must indemnify the designated Contractor Group from any claim arising from pollution which originates from the reservoir, from Company Group property or from third party property referred to in Article 22.2(d) in connection with the performance of (or failure to perform) the contract.[37] Reciprocally, the Contractor must indemnify the Company Group from claims arising from pollution occurring on or emanating from the Contractor Group's premises, property or equipment (including vessels) in connection with the performance or non-performance of the Contract.[38]

The Company can also be exposed to residual liabilities even after completion of decommissioning operations. This risk needs to be considered when negotiating decommissioning contracts.

## 3.3. Knock for Knock Regime under BIMCO DISMANTLECON

BIMCO DISMANTLECON provides a knock for knock regime in clause 22 titled 'Liabilities and Indemnities'. Like its counterpart in the LOGIC General Conditions, it operates irrespective of fault, although there are some differences between the two regimes as discussed below.

Under the DISMANTLECON regime the Contractor is responsible for and must indemnify the Company Group for claims, losses, damages, costs and liabilities in connection with the performance of the contract in respect of:[39]

> (a) Loss or damage to Contractor Group property whether it is owned, hired, leased or otherwise provided by the Contractor;[40]

[35] Ibid cl 22.2 (emphasis added).
[36] For purposes of cl 22.2(c) 'third party' means any party which is neither a member of the Contractor Group or of the Company Group.
[37] LOGIC General Conditions (n 26) cl 22.3.
[38] Ibid cl 22.4.
[39] Baltic and International Maritime Council, *DISMANTLECON: Dismantling, Removal and Marine Services Agreement* (Standard Form, 2019) cl 22(c) ('DISMANTLECON').
[40] Ibid cl 22(a)(i).

(b) personal injury, death or disease of Contractor Group personnel, or of any third party. In the latter case the injury or death must be caused by negligence or breach of duty (whether statutory or otherwise) of the Contractor Group relating to the performance (or non-performance) of the contract;[41]

(c) 'pollution or hazardous waste occurring on the premises of the Contractor Group' or emanating from Contractor Group property or equipment (including marine vessels);[42]

(d) removal of debris, to the extent caused by the Contractor Group's negligence.[43] This is important given the risk of items being dropped on to the seabed; and

(e) wreck removal costs arising from the negligence of the Contractor Group in decommissioning, up to a specified limit (i.e. USD250,000 in the absence of any agreement between the parties).[44] The Company is liable for wreck removal and debris costs above the stated limit.

'Contractor Group' is defined to mean the Contractor specified, its affiliates and subcontractors (of any tier), and their respective personnel. 'Company Group' is defined to include the owners of the facility, its co-venturers, licence partners, and their respective affiliates, the Company's other contractors, their subcontractors (of any tier) and personnel of the said entities.[45]

The Company is liable for and must indemnify the Contractor Group for claims, losses, damages, costs and liabilities in respect of:

(a) Loss or damage to the Facility or other Company Group property which is located at a worksite or worksite areas;[46]

(b) personal injury, death or disease of Company Group personnel;[47]

(c) third party personal injury, or property damage to the extent caused by the Company Group's negligence or breach of duty (whether statutory or otherwise);[48]

(d) loss or damage to any third party fixed property within the worksite area, and pollution emanating therefrom including consequential losses.[49] However, if the loss is due to negligence of the Contractor Group, the Contractor is to pay USD250,000 per occurrence (subject to a different sum being agreed); and

(e) all pollution or hazardous waste emanating from the reservoir or property of the Company Group.[50]

[41] Ibid cl 22(a)(ii), (iii).
[42] Ibid cl 22(a)(iv).
[43] Ibid cl 23.
[44] Ibid cl 23(a).
[45] Ibid cl 1(a) (definition of 'Company Group'). Both definitions contain the words 'but always related to the Services, the Facility or the Remaining Property'. The meaning of that qualification is unclear.
[46] Ibid cl 22(b)(i). 'Worksite' is defined in clause 1 as the facility identified in Box 4 and 'anywhere else where Services will be undertaken. 'Worksite Area' is defined in clause 1 as a perimeter of 500m radius from the 'from the centre point of the original position of the Facility' or in the case of a pipeline, 100m either side of the centre point of the pipeline.
[47] Ibid cl 22(b)(ii).
[48] Ibid cl 22(b)(iii).
[49] Ibid cl 22(b)(iv).
[50] Ibid cl 22(b)(v).

## 3.4. LOGIC General Conditions -V- BIMCO DISMANTLECON — A Comparison

While the knock for knock regimes under the two standard form decommissioning contracts are broadly comparable, there are some notable differences which to a greater or lesser extent impact on the knock for knock regimes. The differences include:

(a) Under the BIMCO DISMANTLECON the 'method of work' expressly falls within the definition of the 'Services' to be provided by the Contractor.[51] The Contractor is responsible for the adequacy, suitability and safety of 'all operations and methodology' in performing the Services and for managing the risks.[52] There is no such provision under the LOGIC General Conditions. However somewhat analogously, although under clause 38.2 LOGIC General Conditions dealing with Health Safety and Environment (and hence more restricted) provides that the Contractor takes full responsibility for the '*adequacy*, stability and safety of all of its operations and *methods* necessary for the performance of the *work*.'[53]

(b) Both standard contracts provide for 'Technical Information' (drawings and documents) supplied by the Company and *'*Assumptions*'* made by the Contractor at the tender stage. However, BIMCO DISMANTLECON also provides for 'Rely Upon Information' supplied by the Company, as set out in Annex B.[54] DISMANTLECON's treatment of such information is unnecessarily cumbersome, and complex, and is susceptible to disagreements and disputes.[55] This contrasts with the relatively simple treatment of Company supplied Technical Information under LOGIC General Conditions, where:

(i) the Company states that to the best of its knowledge, the Technical Information 'gives a reasonable representation of the Facility',
(ii) the parties acknowledge that the Company does not warrant the accuracy of the Technical Information, and the Contractor must satisfy itself of the accuracy of that information, and
(iii) the parties acknowledge that the scope of the work, program and contract price are based on the accuracy of the Technical Information and the Assumptions;[56]

(c) BIMCO DISMANTLECON entitles the Company to appoint a Marine Warranty Surveyor to advise it on technical marine operations.[57] The surveyor can make recommendations and issue instructions to the Contractor. There is no such clause in the LOGIC General Conditions;

(d) BIMCO DISMANTLECON provides greater scope for the Contractor to seek a variation than under LOGIC General Conditions. The former broadly defines variations as 'any modification of the Services … includ[ing] additions, … alterations in quality, form …', and reprogramming or rescheduling that is required, and any modification due to any inconsistency.[58] This is contrasted to the more restrictive definition in LOGIC General Conditions of 'an instruction to the Contractor in accordance with Clause 14.1' and an adjustment to the schedule of key dates and/or

[51] Ibid definition of 'Services', clause 1(a) includes the services specified in Box 6 and Annex C. The latter includes the method of work, and a schedule of key dates and all relevant operational details of the proposed craft, equipment and employees to be used.
[52] Ibid cl 13(b) (emphasis added).
[53] Breach by the Contractor of the health, safety and environment requirement is a ground for termination of the contract under clause 38.3 LOGIC General Conditions (n 26) (emphasis added).
[54] See for example DISMANTLECON (n 39) cls 2(a), 4(a)–(g), 6.
[55] Ibid cl 4, and especially cls 4(c)–(f) inclusive.
[56] LOGIC General Conditions (n 26) cls 12.1–12.3, 12.7. Subject to the accuracy of that information and Assumptions, the Contractor warrants it has the necessary skills and resources to complete the work for the specified price and in accordance with the program (see cl 6.1). If any error or deficiency in the Company supplied information or any Assumption causes delays, additional expenses, or risks endangering life or the environment, the Contractor can seek a variation (see cl 6.3). Under BIMCO DISMANTLECON clause 2(a) the parties agree that the services (defined to include the key dates) are based on the accuracy of the Assumptions, Technical Information and the Rely Upon Information, but no mention is made of the contract price being dependant on the accuracy of that information: see HKA publication '*LOGIC and BIMCO Decommissioning Contracts – A Practical Comparison*'.
[57] DISMANTLECON (n 39) cls 5(d)–(e).
[58] Ibid cl 1(a) (definition of 'Variation').

contract price 'to which the Contractor is entitled under any Clause of …Section II – Conditions of Contract.'[59]

(e) BIMCO DISMANTLECON provides that the Contractor's obligations cease on delivery of the (facility or the final part of the facility) at the place of delivery (identified in Box 9).[60] The simplicity and ability to objectively verify completion under this provision is contrasted with the amorphous nature of the completion clause in the LOGIC General Conditions, pursuant to which completion occurs when the Contractor (subjectively) considers it has 'substantially completed' and has 'satisfactorily passed any final test that may be prescribed in the Contract'.[61] The tests for completion under the LOGIC General Conditions are more difficult to establish and hence more susceptible to disputes.

### 3.4.1. Limitation on Indemnities

The indemnities in the LOGIC General Conditions are said to be 'full and primary' and apply irrespective of cause and notwithstanding any negligence or breach of duty (whether statutory or otherwise) on the part of the indemnified party.[62] The indemnities apply irrespective whether the indemnified party has insurance cover for the claims and liabilities the subject of the indemnity.[63] However, the indemnities provided by each of the Contractor and Company are not a perfect or total indemnity. There are a number of express limitations that restrict the operation of the indemnity regime and can have a material impact on risk allocation and the operation of the knock for knock regime. Some of the express limitations which impact on the on the knock for knock include:

(a) the indemnity for third party[64] personal injury or property loss is limited to loss caused by the negligence or breach of duty (whether statutory or otherwise) of the indemnifying party (be it the Contractor Group or the Company Group respectively).[65] In the circumstances, third party property loss or personal injury which is not caused by the negligence or breach of duty of the indemnifying party is not covered by that party's indemnity, leaving the counterparty exposed to potential liability for that loss. Hence in the event of third party personal injury or property loss, an investigation is required to determine if the loss is caused by the negligence or breach of duty of the indemnifying party;

(b) the Company's indemnity for damage to Company property is limited to property owned or leased by the Company Group that is located at the 'worksite'.[66] 'Worksite' is defined in clause 1.33 as the location where the work is to be performed. It expressly includes offshore installations, floating construction equipment, vessels, workshops where equipment are obtained, stored or used for purposes of the Contract. Despite the breadth of this definition, the Contractor could potentially be liable for loss of property owned or leased by the Company Group which is not located at the 'worksite', but at a location adjacent thereto. Again this could be fertile ground for disputation;

(c) as the explanatory notes to the LOGIC General Conditions point out, the definition of 'Company Group'[67] does not extend to other contractors of the Company, nor to their subcontractors.[68] Hence not all contractors undertaking decommissioning activities at the worksite are covered by the indemnity. LOGIC's Explanatory Notes recognise this deficiency in the regime, and suggests

[59] LOGIC General Conditions (n 26) cl 1.30.
[60] DISMANTLECON (n 39) cl 17(a).
[61] LOGIC General Conditions (n 26) cl 28.1.
[62] Ibid cls 22.7–22.8.
[63] Ibid cl 22.8. Note also the indemnity does not extend to criminal sanctions in accordance with cl 22.9.
[64] Ibid cls 22.1(c) and 22.2(c) define 'third party' as any party that is not a member of the Contractor Group or of the Company Group. See also DISMANTLECON (n 39) cls 22(a)(iii), 22(b)(iii), 22(f).
[65] LOGIC General Conditions (n 26) cls 22.1(c), 22.2(c)
[66] Ibid cl 22.2(a). There is no such restriction on the Contractor's indemnity for loss of the Contractor's property under cl 22.1(a). The same position applies under DISMANTLECON (n 39) cls 22(a)(i), (b)(i).
[67] LOGIC General Conditions (n 26) cls 1.5, 1.15.
[68] This deficiency does not arise under the DISMANTLECON, as the Company's other Contractors and their subcontractors '(of any tier)' (other than the Contractor Group itself) are expressly included in the definition of 'Company Group' under clause 1(a).

that the Standard Contracts Committee's Industry Mutual Hold Harmless ('IMHH') may be 'the most appropriate means' of dealing with the allocation of liability for injury to persons, damage to property and consequential loss between the Company's contractors;

(d) there are also a number of express limitations applying to damage to oil and gas production facilities, and losses consequential thereon under clause 22.2(d):

(i) Firstly, the third party production facilities and pipelines that are damaged must be 'specified and defined' in Appendix I. The Company is not liable for damage to third party facilities and pipelines that are not adequately defined and specified in the contract. Notably, there is no guidance on the level of specificity required for the Company's indemnity under clause 22.2(d) to operate. Whether the third party production facilities and pipelines are adequately 'specified and defined' may also be fertile ground for disputation between the parties;

(ii) Second, there are geographical limitations i.e. the third party property must be located within a 500m radius of a relevant vessel. This could leave the Contractor exposed to potentially significant risks in the event of damage to a third party subsea pipeline or oil and gas facility that is located outside the 500m radius of a working vessel; and

(iii) Third, the relevant vessel must be 'directly' engaged in work at the time of the damage, and the vessel cannot be in transit to the facility at the time of the loss. The Contractor could therefore be exposed to loss when the vessel is not at the time 'directly' engaged in the work, or when the vessel is in transit to the facility. The absence of a definition of 'directly' in the LOGIC General Conditions can also lead to ambiguity, and potential disputes. This is especially so if loss occurs when the vessel is undertaking work which is necessary, but only incidental to the scope of work. Would the Company be liable to indemnify the Contractor for loss occurring during this incidental work? Similarly uncertainty can arise in determining the terminus of the vessel's transit to the facility. Is a notice or readiness or some other written acknowledgment of the vessel's arrival at the facility required? If not, what marks the end of the vessel's transit to the worksite? The Contractor might be incentivised to seek a total indemnity from the Company to minimise its potential exposure;

(e) the indemnities do not extend to criminal sanctions that might be imposed.[69] While this limitation is understandable and accords with public policy, it is nonetheless an inroad into the knock for knock regime.

The limitation of liability provisions under BIMCO DISMANTLECON are found in clause 33(a), which enables the Contractor to negotiate a limitation of its liability for damages and other claims by the Company. In determining whether the limit of liability has been reached insurances and sums allocated by the indemnity provisions for the Contractor's own property, personnel, pollution, consequential losses, fines and third party indemnities are not included.[70]

Arguably the limitation of liability provisions under both standard form contracts undermine the certainty and efficiency which is at the very core of the knock for knock regime.

Neither LOGIC General Conditions nor BIMCO DISMANTLECON expressly exclude from the scope of the mutual indemnities loss caused by gross negligence or wilful misconduct. However, in the event of a dispute, would Courts construe the mutual indemnities so as to cover liability arising from such conduct? Such exclusions for losses caused by 'gross negligence' or where a party has engaged in 'wilful misconduct' are common.[71] While limitation or

[69] LOGIC General Conditions (n 26) cl 22.9. There is no such express limitation in BIMCO DISMANTLECON, but public policy issues may operate to preclude the indemnities under BIMCO extending to criminal sanctions.

[70] DISMANTLECON (n 39) cl 33(b). See also cl 22(e) which expressly preserves any rights that both the Contractor and Company have to limit their liability under any statute, applicable law or convention (including as against each other).

[71] 'Gross negligence' and 'wilful misconduct' are not distinct concepts in many jurisdictions, including in England and Australia. 'Gross negligence' is more than ordinary negligence, but determining how much more is problematic. In *Red Sea Tankers v Papachristidis ('The*

exclusion clauses, on their proper construction, can apply to wilful misconduct or wilful breaches of contract,[72] in the absence of clear language, Courts are generally reluctant to extend contractual protections to such conduct, as to do so may be repugnant to public policy.[73] Australian Courts determine how a reasonable business person would have understood the mutual indemnities, taking into account the language used in the context of the entire decommissioning contract, the surrounding circumstances and the commercial purpose.[74] Did the parties objectively intend a party who has been 'gross negligence' or who has engaged in 'wilful misconduct' to enjoy the protections of the knock for knock regime? However, based on *Andar Transport Pty Ltd v Brambles Ltd*[75] Australian Courts may adopt a stricter reading against the indemnified party where (as is the case in the knock for knock regime) the indemnity clause shifts liability away from where the law would otherwise have provided. While an analysis of this issue is beyond the scope of this paper, such limitations, if found to apply could undermine the scope and efficacy of the knock for knock regime.

Similarly, a question arises whether the knock for knock provisions in BIMCO DISMANTLECON and LOGIC General Conditions operate in the face of a material breach of the decommissioning contract. Should a party who has materially breached the contract be deprived of the benefits of the knock for knock regime? Conversely, does the knock for knock regime only operate if the contract is being performed, not when there is a substantial and ongoing breach?[76] An analysis of this issue is also beyond the scope of this paper. Suffice to say that if it applies, this may also constitute a further inroad into the knock for knock regime contemplated in the standardised decommissioning contracts.

Under LOGIC General Conditions, the parties mutually indemnify each other for consequential losses they each suffer, irrespective of cause and notwithstanding any negligence or breach of duty on the part of the indemnified party.[77] BIMCO DISMANTLECON excludes liability for consequential or indirect losses arising in connection with the performance or non-performance of the contract.[78] This constitutes a further inroad into the knock for knock regime.

## 4. Risk Mitigation Measure 2 – Decommissioning Insurance

An integral part of an effective risk mitigation and management strategy is for the parties to procure and maintain appropriate insurance coverage for the risk allocation effected by the knock for knock regime. It is important for participants in the decommissioning sector to appreciate the inter-relationship between these two risk mitigation and management measures. Both LOGIC General Conditions and DISMANTLECON require parties to procure and maintain appropriate insurance coverage. Given the specialist, highly technical, complex and uncertain nature of offshore decommissioning operations, parties' traditional insurance cover is unlikely to sufficiently manage the risk of loss inherent in such operations.[79] Regard should be had to the specific risks inherent in decommissioning activities, and the parties' predetermined allocation of risks before determining the nature of scope of insurance coverage required.

While much depends on the insurance philosophy of the parties, the insurance arrangements provided under LOGIC

*Hellespont Ardent')* [1997] 2 Lloyd's Rep 547, 'gross negligence' was found to encompass engaging in conduct appreciating, and turning a blind eye to obvious risks. Determining whether a party's conduct constitutes 'wilful misconduct' can also be problematic. In *TNT Global SPA v Denfleet International Ltd* [2007] EWCA Civ 405 the Court of Appeal accepted that 'wilful misconduct' contemplates intentionally engaging in conduct knowing and appreciating it is wrong, or doing so recklessly.

[72] *Glebe Island Terminals Pty Ltd v Continental Seagram Pty Ltd* (1993) 40 NSWLR 206.

[73] *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd.* [1959] AC 576, 587; *Kamil Export (Aust) Pty Ltd v NPL (Australia) Pty Ltd* [1996] 1 VR 538, 553; *Regus (UK) Ltd v Epcot Solutions Ltd* [2009] 1 All ER (Comm) 586; *Trident Turboprop (Dublin) Ltd v First Flight Couriers Ltd* [2008] 2 Lloyd's Rep 581.

[74] *Darlington Futures Ltd v Delco Australia Pty Ltd* (1986) 161 CLR 500; *Mount Bruce Mining Pty Limited v Wright Prospecting Pty Limited* [2015] HCA 37; *Wood v Capita Insurance Services Limited* [2017] UKSC 24; Nicholas Neuberger and Robert Meade, LexisNexis, *Knock-for-Knock Indemnities: Risk Allocation in Offshore Energy Contracts* (online at 14 August 2023). This is to be contrasted with the approach in England which generally adopt a stricter construction of indemnity clauses (in the absence of clear words to the contrary) on the basis of cases such as *Canada Steamship Lines Ltd v The King* [1952] AC 192.

[75] (2004) 217 CLR 424.

[76] See *A Turtle Offshore SA v Superior Trading Inc* [2008] EWHC 3034 which involved a tug which was contracted to tow a rig on the standard TOWCON form. Tug owner was obliged to use 'best endeavors' to perform the towing. The knock for knock provision provided that loss or damage of 'whatsoever nature' would be to the sole account of the hirer. The Court held that the tug owner's breach of its express duties under the contract did not preclude it from relying on the protection afforded by the knock for knock regime.

[77] LOGIC General Conditions (n 26) cl 25.

[78] DISMANTLECON (n 39) cl 22(d).

[79] See, eg, Willis Towers Watson, *The new normal? Energy Market Review* (Report, April 2017).

General Conditions and BIMCO DISMANLTECON warrant consideration.

## 4.1. Insurance Arrangements under LOGIC General Conditions

Clauses 23 and 24 of the LOGIC General Conditions deal with insurances by the Contractor and Company respectively.

Clause 24.1 of LOGIC General Conditions provides that the Company 'shall arrange Decommissioning All Risks insurance' cover ('DAR') as summarised in Appendix 1 to Section 1.[80] The DAR is specifically designed to cover all parties involved in the decommissioning throughout the decommissioning activities, given the broad scope of potential exposure faced by the parties. It provides primary coverage to the Company (or platform operator) as the principal assured, with Contractors and subcontractors engaged in the decommissioning activities being 'other assureds' under the policy. The policy provides total loss coverage over the structure being decommissioned for the period specified in Appendix 1 of the standard form contract. The principal risks covered include wreck removal, liability risks (whether at common law, contractual, statutory under international law), unforeseen extra costs of dismantling and removal of structures[81] following damage to the asset being decommissioned, and the risk of objects being dropped on the seabed (which as stated above is a significant risk in decommissioning offshore oil and gas projects).

The DAR cover is intended to complement the Contractors' other insurance arrangements. For example, generally Contractors who are required to use vessels in decommissioning activities will hold P&I (Protection and Indemnity) cover for maritime liabilities associated with the operation of the vessels in question. Specialist cover may be available to Contractors depending upon the terms of cover of the particular P&I Club.

However, despite the mandatory language, the Company may in its discretion elect not to arrange DAR cover, but to provide an indemnity to the Contractor, its subcontractors[82] and their respective affiliates in lieu of the DAR.[83] If the Company elects to issue an indemnity instead of arranging DAR coverage, the indemnity must be 'expressed in full' in Appendix 1 to Section I – Form of Agreement, and must apply in excess of any amount(s) specified in Appendix 1 to Section I – Form of Agreement. If on the other hand the Company elects to arrange DAR coverage (instead of an indemnity), the DAR must cover the Contractor and subcontractors and their respective affiliates as 'additional assureds', and the insurer must waive any right of recourse (including a waiver of subrogation) against the Contractor, the subcontractors and their respective affiliates.[84]

Notably, 'subcontractor' is defined as a party with whom the Contractor has contracted for the performance of any part of the work[85] (other than the Company or personnel of the Contractor). As such, the Contractor must be a counterparty to any 'subcontract'. This definition limits subcontractors to only tier 1 subcontractors who are in direct contractual relations with the Contractor. It does not cover subcontractors further down the contractual chain. This may constitute a limitation that undermines the efficiency of the contractual risk mitigation measure provided for.

Under clause 23 of the LOGIC General Conditions, the Contractor is also obliged to arrange and maintain in full force throughout the life of contract, ('as a minimum') insurance cover for:

(a) employer's liability and / or workers compensation covering personal injury to or death of the personnel of the Contractor engaged in performance of the work,

(b) general third party liability insurance for any incident covering the Contractor in the performance of the Contract,

(c) third party and passenger liability insurance and other motor vehicle liability cover for all vessels

[80] The London insurance market has developed a range of DAR products providing cover to both the Company and Contractors throughout the entire decommissioning operations.
[81] Operator's Extra Expense ('OEE') cover.
[82] LOGIC General Conditions (n 26) cls 1.26–1.27.
[83] Ibid cl 24.3.
[84] Ibid cl 24.2.
[85] Ibid cls 1.26–1.27.

used by the Contractor in performance of the work,

(d) marine hull and machinery insurance (including war risk cover), collision liability in respect of all vessels used by the Contractor to perform the work,

(e) Protection & Indemnity cover for wreck and debris removal and oil pollution in respect of all vessels and floating equipment whether owned, leased or hired by the Contractor for the performance of the work, and

(f) such other insurances as agreed by the parties.[86]

The Contractor must 'procure' that all subcontractors are insured 'to appropriate levels as may be relevant to their work.'[87]

The Company, Co-Venturers[88] and their respective affiliates are to be named as additional assureds under the Contractor's insurance policies. Those insurances are to contain a waiver of any rights of recourse, including a waiver of subrogation against the Company, Co-Venturers and their respective affiliates to the extent of the contractual liabilities assumed by the contractor.

## 4.2. Insurance Arrangements under BIMCO DISMANTLECON

Unlike its LOGIC counterpart which envisages the Company procuring a DAR policy or offering an indemnity to the Contractor in lieu thereof, BIMCO DISMANTLECON does not specifically require the Company to procure DAR coverage. Indeed it does not mention DAR coverage. Instead it specifies the types of insurance cover that both the Contractor and Company are to procure and maintain throughout the duration of the contract 'suitable insurances' set out in Annex H.

The Contractor's insurances are to name the Company as co-insured, and the Company's insurances are to name the Contractor Group as 'additional assured'. In addition to any other insurances that may be agreed,[89] DISMANTLECON specifies the following insurances are to be procured by the Contractor under Annex H (Insurance):

(a) Hull and Machinery at a limit not less than the vessel's replacement value;

(b) Protection & Indemnity (marine liability), including for collision and damage to fixed and floating object (unless otherwise covered) at a limit not less than USD10 million for any one event;[90]

(c) general third party liability insurance, including bodily injury and property damage not less than USD10 million per person or occurrence;[91]

(d) workers compensation and employer's liability insurance for its personnel and for persons for whom the Contractor is liable;[92] and

(e) air transport insurance covering bodily injury and property damage to the stated limits.[93]

The approach adopted in BIMCO DISMANTLECON is reflective of the approach advocated by some insurers and

[86] Ibid cl 23.2.
[87] Ibid cl 23.4.
[88] Defined at cl 1.15 LOGIC General Conditions (n 26) as any other entity with whom the Company is or may be in a joint operating agreement or unitisation agreement or similar agreement relating to the operations and the successors and assigns of the co-venturers.
[89] DISMANTLECON (n 39) annex H cl (6).
[90] Ibid annex H cl (2).
[91] Ibid annex H cl (3).
[92] Ibid annex H cl (4).
[93] Ibid annex H cl (5).

operators to the effect that DAR policies are unnecessary, and parties should instead assess the adequacy of their existing coverage. Those advocates maintain that all decommissioning risks are adequately covered by the traditional suite of insurance policies. Such an approach is problematic in the context of offshore decommissioning. It turns a blind eye to the uncertainties and risks inherent in all offshore decommissioning operations, and it fails to acknowledge the limitations of the traditional policies in the context of offshore decommissioning. It can also give insureds a misplaced sense of financial security. For example, if coverage is limited to a nominated percentage of the value of the structure or facility, the extent of coverage is limited to the reduced or written down value of the structure being decommissioned. If the written down is near zero, then so too will be the limit of insurance protection provided by the policy.

In addition to any other insurances that may be agreed,[94] the Company is to obtain and maintain the following insurance coverage:

(a) General third party liability insurance, including bodily injury and property damage at not less than USD10 million per person or occurrence;

(b) pollution damage of at least USD100 million (including clean-up costs, loss of business, revenue and profit);[95] and

(c) workers compensation and employer's liability insurance or personnel covering the Company's employees and persons for whom the Company is liable.[96]

The Company must be named as a co-insured on the Contractor's insurance policies.

## 5. Conclusion

As detailed above, the mutual indemnities provided under the knock for knock regime contemplated in the LOGIC General Conditions and in the BIMCO DISMANTLECON do not provide a perfect or comprehensive indemnity for all risks likely to be encountered in decommissioning operations. Knock for knock regimes have been generally described as a 'blunt and crude regime'.[97] As detailed above, there are several carve outs or limitations, which can lead to uncertainty, and possible disputation among the parties, thereby undermining the key objectives and benefits to the knock for knock regime. Further, many jurisdictions do not allow indemnification for criminal fines, penalties or for the consequences of fraud, and uncertainty remains whether a breach of contract by the indemnified party invalidates the indemnity in its favour.[98]

Further, while knock for knock regimes are broadly accepted in the oil and gas sector, this is not universal, with some jurisdictions in which oil and gas production is prominent passing legislation that, prohibit expressly such regimes, or otherwise raise doubts as to the efficacy of such regimes.

The interpretation of the knock for knock provisions will depend on the principles of contractual interpretation adopted in each jurisdiction. Not only may those principles vary from jurisdiction to jurisdiction, but the interpretation of the concepts within the knock for knock regime may also differ. This may be seen to undermine the benefits of comity or harmonisation offered by standardised contracts and emphasises the importance of the choice of law clauses in the decommissioning contacts.

The need for careful and clear drafting to avoid the risk of uncertainty and of disputation remains.

Nonetheless, despite the perceived shortcomings of the knock for knock regimes in the LOGIC General Conditions and BIMCO DISMANTLECON they provide a reasonably effective and efficient means of mitigating and managing

[94] Ibid annex H cl (9).
[95] Ibid annex H cl (7).
[96] Ibid annex H cl (8).
[97] In the words of Morison J in *Smit International (Deutschland) GmbH v Joseph Mobius Baugesellschaft GmbH & Co* [2001] 2 All ER (Comm) 265.
[98] *Smedvig Ltd v Elf Exploration UK Plc ('The Super Scorpio II')* [1998] 2 Lloyd's Rep 659.

risks in offshore decommissioning operations. The regimes also allow for flexibility and adaptability, which are important features, given that no two decommissioning projects are the same; each carries its own bespoke risks, requiring its own bespoke risk management solution which is best suited to the degree of risk and idiosyncrasies of the specific Project. There is good reason for the offshore sector, of which decommissioning is a prominent component, to embrace the well established knock for knock regime as a viable means of providing some certainty in an otherwise uncertain environment.