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## **Deepwater Digitalized Critical Control Systems: The Interaction of Risk Allocation, Regulatory Compliance and Insurance Coverage**

Deepwater development projects increasingly rely upon digitalized information and control systems. Unfortunately, risk management terms have not kept up with this rapid pace of evolving technology. The industry must address this increased reliance on digitized control systems in terms of revised contractual risk management, evolving regulatory requirements and adequate insurance coverage.

Traditional enterprise risk management tools and contractual allocation mechanisms between operators and service companies are no longer sufficient to address the obligations and exposures inherent in the use of digitized control systems. Operators, service providers and contractors must consider new approaches to risk allocation, insurance coverage, and regulatory compliance.

We will address the use of digitalized control systems, including:

- The impact on agreements between operators and contractors, service companies, and equipment manufacturers regarding construction, repair, original equipment manufacturer warranties and service intervals. The presentation will address terms and obligations concerning:
  - Representations and warranties relative to the use and maintenance of digitized control systems, cybersecurity, real time monitoring, use of personal devices and updating cybersecurity measures;
  - Pre installation, installation, maintenance, repair and service periods;
  - Risk allocation relative to the use of digitized control systems and how cyber security impacts the traditional knock for knock regime;
  - Force majeure in the context of digitized control systems and breaches;
  - Breach/termination;

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- Limitation of liability/consequential damages; and
- Response time for repairs/services.
  
- Regulatory compliance relative to:
  - BSEE regulations– e.g., the new Well Control Rule and real time monitoring; and
  - USCG guidance – e.g., new regulations concerning cybersecurity measures like NVIC 05-17.
  - U.K. Network and Information Systems Regulations (NISR 2018) implementing EU Network and Information Systems Directive.
  - Maintaining contractual obligations and standards of care.
  
- The ability to obtain/maintain insurance for operators and service companies to cover liability, business interruption, control of well/OEE arising from cyber-related liabilities. Currently, most insurance and reinsurance coverages provided through the London insurance market contain the CL 380 cyber exclusion. Although operators and service companies can obtain coverage for catastrophic losses arising from negligence, defective products or operational failures, The CL 380 wording is intended to exclude coverage if these losses arise, in whole or in part, from a cyber attack or malicious virus.

We will address these issues under U.S. and English law.

### **Marketing Approach for Presentation:**

The presentation will address the reliance upon digitalized control systems and dedicated service programs to increase performance, enhance safety, and reduce costs in deepwater operations. The traditional risk allocation and insurance tools do not address the exposures related to the use and/or failure of these new systems or programs. The use of digitalized systems is also impacted by evolving regulatory requirements. HFW will address the contractual, insurance and regulatory issues in the context of increased use of digitalized control systems and dedicated service programs.