

Communication and operational challenges under Operating Agreements in the age of COVID-19

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Meet Our Presenters



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Overview

- This webinar will provide you with insights into some of the issues that the current COVID-19 epidemic may create under industry agreements and we hope to provide some practical tips to include in your strategy to weather the storm (pandemic)
- Topics include: force majeure, notice and timelines, disruption to operations, dispute resolution and transactional specific issues
- [Dentons COVID-19 Hub](#)

Force Majeure

Considerations before relying on a FM Clause

- All definitions are different – although some similar inclusions
 - Must fit exactly into definition
 - COVID-19 may not fit directly into a category
- Must follow the “formula” exactly re notice and timing
- May have an obligation to mitigate or remedy
- Will not release a party of payment obligations (and possibly, indemnity obligations)

Force Majeure

Future considerations

- Temporary (Force Majeure) vs. Permanent (Frustration)
- Litigation on specific provisions

[Dentons COVID-19 Force Majeure hub](#)

Notice Provisions

Method of service: Personal (couriers), fax, electronic and mail

- Contractual notice provisions: CAPL, Non-CAPL and PJVA forms
- Lack of contractual provision: contemplate electronic delivery or possibly verbal (telephone or video conference) followed by hardcopy

Notice Provisions

Correct address: Avoid cart before the horse

- Amending agreement for an electronic address, but consider electronic signature issues
- Notice to amend address for service to include general email address for Land Department, Operational Group and accounting etc., but needs to be monitored and needs to be served as under contract
- Notice to Industry: be clear, i.e. for any and all contracts and departments, but may not be accepted by all

Response Timelines

Failure to monitor time sensitive election provisions: **Deemed participation or non-participation**

- Casing and Completion
- Independent Operations
- Surrender of Joint Lands
- Abandonment

COVID-19 will not immediately act to suspend response timelines in an operating agreement

Timelines

What is **YOUR** company's ability to meet the timelines?

- Electronically available documentation, analysis and models
- Communication and authorization processes
 - Corporate governance requirements
 - Authorization thresholds
- Document exchange and communication with third parties

Operational Issues

Field operational issues

- Labour shortage and health and safety of the workforce (social distancing on well site, illness, coordination of backup plan)
- Joint operators information packages
- Trucking issues, service rigs, drilling rigs

COVID-19 should not be relied upon as effecting an immediate suspension of response timelines in an operating agreement

Operational Issues

Operator issues

- Challenge to operatorship
- Difficulties of operatorship
- Insolvency/receivership of operator or joint operators
- Approval of AFEs and Mail Ballots
 - Will the process be different?
 - Are there alternatives such as video conferencing?

Operational Issues

Regulatory obligations and processes

- Alberta Energy Regulator
 - Changes in meeting regulatory requirements
 - Oral portions of AER hearings will not be held
- Alberta Energy
 - IL 2020-09 → 1 year extensions
 - PNG and Oil Sands leases
- BC Oil and Gas Commission

Dispute Resolution

Current situation

- Alberta courts
 - Emergency and urgent applications only
 - Suspension of procedural timelines
 - Suspension of Limitation periods

[Dentons court availability guide during COVID-19](#)

Dispute Resolution

Current situation

- Arbitration proceedings
 - Delays
 - Arbitrator availability
 - Virtual proceedings

Dispute Resolution

Strategies

- Review DR clauses and elections
 - Consider amendments before disputes arise or escalate
- What if you are already in court litigation?
- Options
 - Settlement counsel and risk analysis
 - Independent/non-binding assessment
 - Mediation

General A&D

From LOI and P&S to closing and post closing: Timing

- AER - Land Transfer Applications
- ROFR Notices - Service
- Execution of GC and Specific Conveyances
- NOAs and A&N Agreements - Service
- Land Titles - Ministerial Order SA:008/2020
- Delivery of files (physical and electronic)
- Internal delay on updating land files and MPR

General A&D

Other considerations

- Conducting Due Diligence - physical access to files restricted
- Additional structuring requests and distressed companies
- Modifications to standard representations

Thank You



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