

# OIL & GAS EXPLORATION: STATE OF FORCE MAJEURE IN LIBYA LIFTED

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## From **MENA** to the **World**

### Oil & gas exploration: state of force majeure in Libya lifted

with

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## [From MENA to the WORLD](#)

With Suzan Taha

On 4 December 2022, Libya's internationally recognised Government of National Unity announced it would be lifting the state of force majeure on new oil & gas exploration and production operations.

The Libyan National Oil Corporation had introduced the state of force majeure to address the fact that oil & gas exploration sites were being frequently closed by armed groups and employees prevented from working at the sites.

Telling us more about the matter are **Saleh Mohammed Zahaf**, partner and founder of Zahaf & Partners and **Riccardo Biciato**, partner at BonelliErede.

### **What are the implications of the state of force majeure being lifted?**

The Libyan National Oil Corporation's aim in declaring a state of force majeure was to be temporarily

exempt from legal liability for its contractual obligations and commitments under oil & gas exploration and production agreements with international oil & gas companies.

Lifting the state of force majeure shows that security has improved enough for drilling work at oil & gas exploration sites to start up again.

Under Libyan law, much like in other civil law jurisdictions, a force majeure event is outside the parties' control and makes it permanently or temporarily impossible to fully or partially perform contracted work or fulfil obligations.

### **When can a state of force majeure be declared?**

The view that force majeure exists only if the cause is unexpected rather than unavoidable is debatable, particularly as no Libyan law provisions provide clarity in this respect. However, the Libyan Supreme Court ruled in an administrative case that for parties to be exempt from liability, the force majeure event "must be something that cannot be expected by the most attentive and insightful people, and impossible to defuse, an absolute impossibility, not only for the debtor alone, but for any person who is in the position of the debtor".

The general principle is that a party that does not fulfil or delays fulfilment of an obligation because of force majeure is not required to compensate the other party. However, Libyan civil law allows parties to agree that the defaulting party will fully or partially bear the consequences resulting from the force majeure event.

### **What are the consequences of a force majeure and how easy is to enforce it?**

A combined analysis of Articles 147, Articles 168 and 361 of the Libyan Civil Code and Article 105 of the Administrative Contracts Regulations law leads to the conclusion that under Libyan law, a force majeure event that makes it permanently impossible for a party to fulfil an obligation causes that obligation to no longer apply and, depending on the nature of the obligation, the related contract to terminate. This principle is confirmed under Art. 663 of the Libyan Civil Code, which states that "the construction contract expires when it becomes impossible to perform the contracted work".

Additionally, the Libyan Supreme Court ruled that merely claiming the existence of force majeure is insufficient: the party claiming it exists must prove it does. However, though some force majeure events are or seem undisputable, like revolution or war, parties often conduct lengthy negotiations with the Libyan authorities as to whether a force majeure event has occurred and what impact it has on contractual obligations. Why? Because Libyan law lacks detailed provisions on force majeure – and the Libyan courts or arbitrators therefore often have to intervene when parties are unable to settle disputes through direct negotiation or mediation.

### **How to deal with force majeure clauses in contracts under Libyan law?**

Force majeure clauses should be always included and carefully drafted in any long-term contracts governed by Libyan law. More specifically, particular attention shall be paid to the definition of force majeure, the cases in which force majeure can be invoked/excluded, and the economic

consequences that could result to ensure compliance not only with the principle of Libyan law (including Administrative Contract Regulation) but also consistency with the most recent opinion of the Supreme Court.

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