

Offshore Energy Law

FPSO Design Life

FPSO's are commonly built with a 25 year design life, which typically means that they are required to be designed and built so that they can be operated in the field for the stated period without any requirement dry docking. Of course, in practice, not everything always goes to plan and when it does not the losses can be significant. This article examines who bears the risk of the FPSO not performing for its full stated design life, for instance due to premature failure of the hull, mooring system or other critical equipment and how such risks can be managed.

The Cost of Repairing the FPSO

In the first instance, the owner of the FPSO is likely to bear much of the loss relating to the defective FPSO.

The Owner is likely to have insurance covering the property of the FPSO but insurers are not typically insuring (or intending to insure) the risk of the FPSO not being suitable for its full design life. Instead, they often insure FPSO's against all risks of accidental physical loss or damage that occurs during the policy period. The policies typically contain various exclusions such as for loss due to metal fatigue and gradual wear and tear. Further, they typically exclude damage to faultily designed parts. It is possible for the repair costs to be insured under the standard policy wordings but this is not a risk that the insurers are typically intending to underwrite. Each case will depend on its own facts and the policy wording in question.

Irrespective of whether the cost of repairs are insured, the Owner may look to the EPIC Contractor that designed and built the FPSO with the stated design life of 25 years. In each case the EPIC Contract will need to be examined to determine:

- (a) was the EPIC Contractor in breach of contract? This issue will require consideration of whether, on the correct interpretation of the contract, the Contractor was required to
 - (i) exercise reasonable skill and care to design and build the FPSO to the stated design life; or
 - (ii) to design and build the FPSO to the stated design life. If the latter strict obligation was accepted under the contract by the EPIC Contractor then it will have greater exposure as it will not be able to defend itself by arguing that it met its contractual obligations despite the existence of the failure.
- (b) whether there are any applicable limitation or exclusions? It is common to see time limited warranties given by EPIC Contractors and for liability to be excluded to the extent that loss is not covered by the warranty. It is also common to see overall caps on liability.

The EPIC Contractor may be exposed to the full value of the claim if the contract does not include appropriate exclusions and limitations. This is the case even if the failure is 24 years after completion and delivery of the FPSO!

Loss of Production

Irrespective of who owns the FPSO, the oil company Operator and its Joint Venture partners will, in the first instance, bear the risk of lost or delayed production. If the FPSO is chartered in, it is possible that the FPSO Contractor may be liable under the contract for some or all of the loss of production but, in practice, it is common for such liability to be excluded by a consequential loss clause. Such clauses typically expressly exclude the FPSO Contractor's liability for loss or delay in production.

Some Operators / oil companies purchase business interruption insurance cover which may offer some prospect of passing on the loss due to lack of production to the third party insurers. As we have seen, insurers are not, however, guarantors that the FPSO will be fit for purpose for its entire stated design life and business interruption cover typically only responds when the cause of the business interruption is physical loss or damage that is covered by the insurance over the FPSO property (see above).

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Loss of Hire

The FPSO Owner may have purchased loss of hire insurance which might insure the FPSO Contractor against loss of income during the repair period. Loss of hire insurance also typically only responds when the cause of the loss of hire is physical loss or damage that is covered by the insurance over the FPSO property (see above).

Conclusion

The insurance policies typically purchased are not designed to cover the risk of the FPSO not performing for its stated design life. We have experience of some bespoke insurance products that come close to covering this risk but not of any that cover the full value of an FPSO for its full design life. We anticipate that the cost of such insurance would be prohibitive for most parties even if insurers could be found to underwrite this risk. Accordingly, it is recommended that all parties give very careful consideration to their potential exposure if the FPSO does not perform for its stated design life and negotiate their commercial contracts with this risk firmly in mind.

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