

Offshore Energy Law

From old tanker to FSRU

In the last edition of *Well Heeled*, I promised a more detailed description of the legal issues relating to design, construction and installation of offshore regasification units. Central to this is the current hot topic of conversion of old LNG carriers (similar to tanker/FPSO conversion projects). In this article I shall look at some possible pitfalls and risks to keep in mind when undertaking such a project.

Selecting the vessel

Apart from being in good condition, the vessel needs to be fit for a design life, following conversion, of the whole project, often without dry docking. This could be for many years, depending on the duration of the project.

But there is a substantial risk at the outset. If a vessel is being acquired for the conversion, then the seller will certainly not want to warrant fitness for purpose (i.e. for use as an FSRU) and will insist that only the normal MoA sale terms will apply.

We have experience of this on FPSO disputes: in the *Kellogg Brown & Root Inc v Concordia Maritime AG* case, the court found that the seller had given no warranty for the condition of the vessel ([2006] EWHC 3358 (Comm)).

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So the buyer must proceed with caution and properly vet any likely candidate vessel.

Form of the conversion contract

It is worth noting that conversion contracts are substantially different from shipbuilding forms.

Take, for example, termination. With a new-build contract, the buyer can usually terminate the contract once the delay is sufficiently long, and demand a refund of instalments paid. For a conversion project, the

position is different and it is helpful to consider two major issues.

1. Title remains with the owner throughout the conversion. So the owner cannot terminate and walk away as in a shipbuilding project. Instead the owner's remedy should the shipyard perform badly and cause lengthy delay or cost overruns, is to terminate and have the work done elsewhere. But this will most likely be very expensive and in practice difficult to enforce. And there is never any guarantee that the new yard will do a better job on what is almost certainly a complicated project.
2. Where the owner has committed to a charter, the charterer will most likely be entitled to substantial liquidated damages and ultimately a right to terminate for delay. The major risk, of course, is that the charterer terminates before the owner has a right to terminate the conversion contract.

Mitigating these risks is something that we have considerable experience of in FPSO conversion projects.

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Acceptance at site

The end user client will not accept the FSRU until tests are successfully completed on location. The shipyard will insist that its obligations cease on ex-yard delivery, save for the usual post-delivery warranty obligations. This is similar to the regime under a normal shipbuilding project.

Thus, there is a potential exposure for the FSRU operator after delivery from the yard but before acceptance by the end user on site. It is therefore important to perform as much testing as possible at the shipyard in order to minimise risk.

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Local compliance

Another risk is the requirements of the authorities at the FRSU's operational location; these may change or may not be known at the time the conversion contract is entered into. This could trigger last minute variations which may cause controversy, not to mention delay and additional cost.

Project risk

The FSRU is usually required for a specific importation project. Therefore if that project is cancelled or seriously postponed, the FSRU operator will need the option to cancel the conversion contract or to postpone.

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Indeed, the very first offshore regasification project was cancelled (*El Paso*), requiring substantial payment of cancellation costs. So it is a real risk, and the conversion contract must cater for it.

Intellectual property

Finally, no FRSU article is complete without a nod to the importance of IP. A change of use of a vessel will impact on any applicable IP licences. Such licences will have originally been given on the basis of the original proposed use of the vessel and will require corresponding alterations following the change of use of the vessel.

For more information see Rob Jacob's article – The Power of IP Licensing.



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