

Offshore Energy Law

Is your FPSO fit for purpose?

Many types of contracts for the use of a facility impose an obligation to ensure it is fit for purpose. This may seem uncontroversial. However, those experienced in FPSO business may discover it is far from so: an oil company leasing or procuring an FPSO will often insist that the EPCI or FPSO contractor should undertake that the FPSO will be fit for purpose throughout the operating period, but the contractor will usually refuse. Why?

Under English law, there are two aspects to an obligation of fitness for purpose. The first is that the facility should be fit for its general purpose. The second is that it should be fit for any specific purpose the parties have agreed. The general purpose of an FPSO is usually found in a set of functional requirements in the contract specification. These include production capacity, storage, offloading capability, gas and water processing, oil specification requirements etc. If the contractor achieves each of these functional requirements, the FPSO may be said to be fit for its general purpose.

However, the oil company may wish to go one step further, and require the contractor to undertake that the FPSO will meet the contractual technical requirements and also be "fit for purpose". Again, this may perhaps be uncontroversial if the contract makes clear the fitness relates only to the general purpose of the FPSO. However, what would the position be if the specific purpose being described is the continuous production of oil at the intended location? From the oil company's viewpoint, this may seem reasonable. After all, continuous production is essential for an FPSO. But what if that could not be achieved, despite the contractor meeting all the specific technical requirements, for reasons outside the contractor's control?

For example, oil characteristics may affect production, environmental conditions may reduce the offloading window, the storage capacity or offloading capability may be insufficient to handle the nameplate production volumes, or the specified equipment may be insufficient to handle the volumes of gas and water. These are all factors that could or should have been taken into account in the design from which the technical requirements have been derived. By undertaking that the FPSO should be fit for the specific purpose of continuous production, has the contractor thereby accepted the risk that the design was inadequate to achieve that purpose? Does the contractor take on this risk and obligation even though the main elements of the design would have been produced by the oil company, or a design contractor operating on its behalf?

The answer is that where the contractor does give an undertaking that the FPSO will be fit for the purpose of continuous operations, potentially the contractor has taken on that heavy contractual responsibility, even though it relates to circumstances outside its control. It is for that reason that many contractors flatly refuse to accept any reference to fitness for purpose in their contracts, and those that don't refuse, often regret having failed to do so.



Stuart Beadnall
Partner

T: +44 20 7809 2936
E: stuart.beadnall@shlegal.com

Stuart is head of Stephenson Harwood's offshore energy team and lead author of "Offshore Construction Law and Practice."