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Issues arising in relation to LNG COAs

A contract of affreightment, usually known as a COA, is a voyage-based form of extended charterparty. It is used frequently for transportation of large volumes of oil products and LPG. Why is it not frequently used for transportation of LNG?

One reason has been the shortage of available vessels. Another difficulty has been the lack of suitable voyage charter terms – LNG COAs have previously been drafted as hybrids of time charters. With the growth of the fleet of LNG vessels, and the arrival of suitable voyage chartering terms, the opportunity now exists for increasing use of COAs for LNG transportation.

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There are no standard form COAs – the terms are heavily negotiated to take account of the cargo volumes, vessel types, the loading and discharging ranges, the frequency of shipments etc. Many of these issues are common to other tanker COAs. However, in our experience of drafting LNG COAs, there are specific LNG issues that must be addressed. Examples are as follows:

1. The COA is likely to include a range of discharge ports.

As such it is important to include a boil-off cap for each voyage to the listed terminals set out in the COA and to ensure that the freight rates listed for each port reflect that boil-off cap. In other words, owners need to be sure that there are different freight rates that include specific provision for the anticipated boil-off for the particular voyage.

2. Owners may not necessarily know how much heel is required for a particular voyage.

Owners should therefore look to include as detailed scheduling provisions as possible so that they can assess, as far as they can, the likely heel required. The key point is that owners need as much information as possible from charterers to try and have sufficient heel available and this should be built into the contract. If possible, the COA should also allow owners to retain sufficient heel for the next voyage.

3. Owners will want a full cargo to avoid sloshing.

However, there may well be a tension between charterers' commercial requirements and the actual ships available in owners' fleet. It is normal for cargo quantities to be nominated by charterers; owners are obliged to provide a suitable vessel to lift the nominated cargo. However, if there is a risk that available LNG vessels may be too large or too small for the nominated cargo, owners may wish to reserve the right to nominate cargo quantities. Alternatively, owners may wish to include a right to substitute different ships and, in some circumstances, to re-schedule the lifting of the LNG cargo in order that owners can provide the right ship.

4. In order for owners to ensure that suitable vessels are available to meet charterers' lifting requirements, it may be necessary for some vessels to remain idle awaiting nomination, or vessels to be repositioned requiring lengthy ballast passages.

As a consequence there may be a risk that the required vessel is not cooled down. This is not necessarily a problem if the nominated terminal will allow the vessel to cool down on arrival. But sometimes the terminal may not be able to cool the vessel down or may not be willing to. In those circumstances owners need a contractual right to deviate to another terminal in order that they can cool down before proceeding to the

nominated load port. Of course, ideally, owners should try to ensure that all of the vessels in their fleet are compatible with the terminals envisaged in the COA.

5. It is important to keep in mind that the port costs under a voyage based COA are usually for owners' account, in contrast to the position under a time based charter.

Therefore, an owner entering an LNG COA for the first time may be exposed to considerable unexpected cost, which would normally be managed and controlled by charterers. Owners would be well advised to undertake as much due diligence in advance, to restrict the scope of terminals to those with which owners are familiar, and ideally, to choose a counterparty that owners trust so that if there are teething problems, charterers may be relied upon to cooperate and resolve the problems encountered.

In our experience of negotiating COAs, and resolving disputes during performance, there is no substitute for identifying in advance as many potential areas as possible, and to address these in the COA terms.

7. "We commissioned/constructed a previous work to this design so we can produce a new work to the same design without infringing IP rights"

Just because you have commissioned/constructed a previous work to the same design, does not necessarily mean that you have the right to create a second work to the same design. It will depend on who owns the intellectual property. It might be that you were given an express or implied license to use the intellectual property in the first work. However, that does not automatically mean that you can use the intellectual property in the second work. The contractual provisions between you and the intellectual property owner will be key in this regard.

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