STEPHENSON HARWOOD

Offshore Energy Law

LNG – Terminal Conditions of Use

The Master of a vessel calling at an oil or gas terminal will typically be asked to sign a Conditions of Use document before the vessel is permitted to berth and carry out its cargo operation. These documents (sometimes also called Port Liability Agreements or Ship Shore Liability Agreements) contain terms which allocate the risk of incidents and accidents whilst the vessel is calling at the terminal.

The Conditions of Use are invariably 'terminal-friendly'. In practice, there is little or no opportunity afforded to the Master to negotiate the terms of the Conditions of Use on behalf of the owner, and even if there were, the Master cannot be expected to have detailed knowledge of every local legal regime that the vessel may call at, and the effect of complex contractual wordings thereunder. As such, it is rare that amendments to the Conditions of Use are proposed or accepted, with the result that much of the risk might be allocated to owners.

"The Conditions of Use are invariably 'terminal-friendly'."

This presents a potential problem for the owner, because its P&I will not cover liabilities that would not have arisen but for the terms of any contract or indemnity (e.g the COU), save where such contract or indemnity has been approved by the Club.

In many trades it would be impractical for P&I clubs to review COUs for every port call. But in LNG, where vessels are moving between a limited number of terminals with which they are compatible, and where charters are often longer-term and negotiated over a longer period, it is the practice that P&I Clubs will review LNG terminal COUs. The Club will confirm to the member if the terms are poolable or not.

"It is the practice that P&I Clubs will review LNG terminal COUs."

Under the International Group Pooling Agreement, the risks assumed under an LNG COU are only poolable where the COU meets certain criteria. The P&I Club approval process will check whether the terms meet those criteria, which broadly are as follows:

- The contract must be subject to a statutory limit, or if there is no such limit or it is waived, a contractual limit not exceeding US$150 million or a limit equivalent to that which is specified under the 1976 Limitation Convention.
- The terms must not impose liability on the owner for losses which are solely the fault of the terminal, unless that sort of provision forms part of a knock-for-knock regime.

The pooling rules recognise that LNG terminals sometimes try to remove the limit in circumstances of wreck removal and crew liabilities. In those circumstances, those risks may be poolable if the owner can show that the above criteria are met for all other risks, and that best endeavours were exercised to ensure the COU did meet the criteria in all respects.

Most LNG terminals understand the pooling criteria, and design their COU terms to reflect them, such that vessel owners calling at the terminal do not need to procure additional cover. Where the COU terms do give rise to non-poolable risks, typically P&I Clubs will advise owners on what COU terms to try and amend, or where additional cover can be obtained.

"Most LNG terminals understand the pooling criteria, and design their COU terms to reflect them"

Once the owner's P&I Club has pre-approved the terms of an LNG terminal's COU, the vessel is still well advised to check that the document presented for signature at the terminal matches the document that has been approved. Where the terms are too lengthy to make a comparison in the time available, the owner might try to endorse the COU to reflect that the Master's authority is only to agree the pre-approved terms. Whether that approach works (or whether the vessel's subsequent use of the facilities is deemed an acceptance of the terms presented notwithstanding the endorsement) is likely to be a matter of local law.

In some cases, a port may require an owner to enter terms of a COU, and then the particular terminal or the FSRU (which may act for all practical purposes as a terminal) will issue a further COU for agreement by the owner.

We will look at issues around FSRU Conditions of Use in our Well Heeled Special Offshore Edition (coming soon).

Tom Adams
Partner
T: +44 20 7809 2628
E: tom.adams@shlegal.com

© Stephenson Harwood LLP 2022. Any reference to Stephenson Harwood in this document means Stephenson Harwood LLP and its affiliated undertakings. Any reference to a partner is used to refer to a member of Stephenson Harwood LLP. Information contained in this document is current as at the date of first publication and is for general information only. It is not intended to provide legal advice. LONADMIN/16337245

STEPHENSON HARWOOD