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## Well Connected 5

The legal bulletin for those engaged in oil and gas floating production



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## Introduction

Chief Editor, Max Lemanski (Partner and co-head of our FPSO team)

Welcome to this latest edition of Well Connected – our specialist newsletter for clients engaged in oil and gas floating production.

In this edition Richard Connell takes a look at what happens when an EPC project just isn't working out and how carry over agreements can help the offshore contractor finish the job at a different yard.

Next, John Simpson tackles the thorny question of just what is a 'material' breach. Finally, Hayley Broome delves into the niceties of consequential loss clauses and whether your contract really does exclude the losses that you want to exclude, or whether you may find yourself in for a nasty surprise.

I am also very pleased to say that Stuart Beadnall, Simon Moore and I will be publishing the first dedicated book on the law of offshore floating production. If you have any thoughts as to what you might like us to include, then feel free to email me. There is still time to work in additional points and we look forward to seeing you at our book launch parties in 2022!

We hope this edition finds you safe and healthy, and we look forward to seeing you as and when we can. If you have comments or would like to learn more on any topic please do get in touch.

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Legal 500 UK, 2019



## Breaking up is hard to do - reconciling differences in offshore projects through carry over agreements



A common dilemma faced by many in the offshore industry is how to deal with projects and contracts when relationships go bad. Even well-intentioned parties and the best laid plans can often lead to a situation where the parties decide it would be best to go their separate ways part way through a project. If this occurs during the construction phase, one mutually attractive option to reconcile this is the carry over agreement.

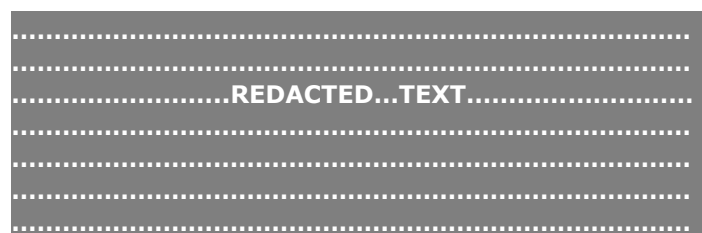
### I'm just not that into you

A project can start well but over time events may occur that are not in accordance with the contract. For example, the costs could substantially increase or the project timeline may become unachievable. If attempts to salvage the project and relationship are unsuccessful, the parties may look for a way out. For a project or vessel owner this means they will need to complete the work with someone else. The parties therefore need to agree on a breakup strategy – how the relationship will end, and what the relationship will be (if any) going forward.

Rather than an Owner/Company exercising contractual rights of possession to minimise losses where a Contractor is in default (which can be difficult), the parties may consensually enter into a new ad hoc agreement separate from the original contract. This agreement carries over the unfinished work to post-handover, to complete the work with a new Contractor after the Company takes back possession. The carry over of the work is the source of the term "carry over agreement" (or "COA").

### You can go your own way

A COA is used where a Company and Contractor amicably agree terms to govern how the end of the original contract will operate and what responsibilities will continue. The new agreement will generally deal with the contract termination, transfer of possession to the Company, and provide for how the relationship and any rights and obligations will work in the future. The Contractor will want to ensure it receives payment for the work it has completed and the Company will want to ensure it only pays for the good and services it received. The Company will also want to transition to a second, new Contractor as smoothly as possible to complete the work.



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