

TIME TO ASK QUESTIONS: FPSO DIGITALISATION

Floating production storage and offloading ("FPSO") digitalisation promises more reliable data, new key performance indicators and near real time operation efficiency. What this should mean for the future is limitless: new designs and philosophies for operations and maintenance all resulting in improved asset performance. With much more to come, it is now time to ask questions on how all this data will be used.

As we outlined in our briefing in July¹, project contracts have not caught up with any of this. The applicable law is also unlikely to be of any real assistance in determining the legal rights and obligations that arise from this data and its use. This leaves parties in a position where a wealth of data is available, with no written understanding on how it will be used. Wherever you might be in the FPSO contracting chain, this is far from ideal.

The FPSO operations and maintenance phase is perhaps the time when the true promise and legacy of digitalisation might be seen. It also may be where the unintended consequences of unregulated data might start rearing its head. What is typically expected from any FPSO provider during this phase is to:

- maximise FPSO availability, reliability, integrity and efficiency conditions during the whole field life and meet key performance indicators; and
- be responsible for maintenance of the FPSO during the entire period of performance.

To meet these ongoing demands, the FPSO provider will require corresponding obligations down the contracting chain in key subcontracts.

These operations and maintenance requirements are typical and not at all surprising. In the age of digitalisation, the expectation will be that the key performance indicators may well be easier to prove because the 'data' will accurately reveal the performance of the FPSO. Is that true? This will be a critical issue for any FPSO provider, its subcontractors and major vendors. A failure to meet these requirements is likely to have a negative effect on compensation levels; or worse, put a party in breach of contract. How reliable the data is may well depend on how it is gathered, what external variables might affect its reliability and the assumptions used when it is analysed.

Are there misunderstandings today between parties on how the data will be used? One party might believe the data will be used for monitoring purposes only, for internal consumption to improve future FPSO performance. Another party might be proceeding with the view that it will be the authoritative data on which to assess the performance of the FPSO, or any part of it – and may share it with the regulator. If these different views are not reconciled early, the scope for misunderstandings become greater and it provides a fertile ground for a protracted dispute and possibly regulatory action.

Resolving the dispute in either arbitration or court proceedings is not attractive, primarily because it involves contentious legal proceedings against parties who are meant to be working together, to perform FPSO operations, for two decades sometimes more. It will also be time consuming and costly. What is worse is that the outcome will be uncertain since there are no written contract terms to guide a judge or an arbitrator. It is almost certain that the parties in dispute will have to employ experts to prove what the data shows or what it does not.

In anticipation, it is better to ask the questions now, agree the answers and put it in the contract. A few basic questions will open up discussions. Who can use the data? Who will own it? Where will it be stored? What can it be used for? Who is responsible for maintaining it? If there is a dispute on its interpretation how will it be resolved? These are not easy questions, but it is best to ask and answer them now and not wait for either a judge or an arbitrator to answer them for you.

¹ <https://www.hfw.com/Digital-transformation-of-operations-but-not-contracts-July-2021>

This follows our briefing Digital Transformation of Operations but not Contracts on 29 July 2021 <https://www.hfw.com/Digital-transformation-of-operations-but-not-contracts-July-2021>. Future briefings will highlight legal issues around digitalisation and intellectual property, as well as digital transformation of whole organisations.

Chanaka Kumarasinghe and his partners and colleagues in the Energy and Resources group at HFW have extensive experience of leading and working in cross-functional teams, to ensure that contracts address the complex issues which arise in the industry.

For more information, please contact the author of this alert:



CHANAKA KUMARASINGHE

Partner, Singapore

T +65 6411 5314

E chanaka.kumarasinghe@hfw.com

M +65 9170 3100

hfw.com

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