

BOOK REVIEW

The Application of Contracts in Developing Offshore Oil and Gas Projects by Philip Loots and Dr Donald Charrett. Published by Routledge (2019). Pages 362. Paperback. £140.00. ISBN 978-0-367-13552-2.

Historical records show that, in China, oil wells have existed since at least as early 347 CE. The Industrial Revolution, made possible by petroleum based energy sources, led a mass increase in production. Further developments in the late 19th and 20th centuries resulted in the production of a range of new synthetic materials, from which plastic emerged as a staple of our daily lives. Rising global living standards have led to unprecedented demand for consumer goods in the global marketplace, many of which rely on oil and gas at one or more stages of production. This demand has been met by new technologies which have allowed the oil and gas industry to expand into unique opportunities on an ever-increasing size and scale.

However, as the scope of the oil and gas industry has expanded, so too has the number of considerations that must be balanced at the commencement of the project. This requires practitioners to be mindful of both commercial and environmental factors as well as domestic and international regulations. Further, the scale and upfront costs of these projects often necessitate their operation as a joint venture, with the involvement of a wide range of direct, indirect and external participants. While practitioners often resort to their own internal procedures, comprehensive and in-depth analysis in oil and gas contracting can be hard to find.

In *The Application of Contracts in Developing Offshore Oil and Gas Projects*, Philip Loots and Dr Donald Charrett provide a clear and succinct practical tool for practitioners and scholars alike, weaving considerations of contract, the oil and gas industry and case study analysis. As with their previous collaborative work, the 2009 book *A Practical Guide to Engineering and Construction Contracts*, the authors combine a wealth of practical legal and engineering insight to provide a comprehensive chronological guide to the oil and gas industry.

The book remains accessible for those new to the industry whilst retaining a depth of analysis which offers fresh ideas to seasoned practitioners. Those new to the field will enjoy the clarification of key areas and terms (Chapter 1) as well as the recognition of important participants (Chapter 2). Usefully, the book provides an industry background (Appendix A) together with an overview of the most important standard form contracts (Appendix C). The comprehensive nature of the work provides step-by-step guidance through the construction and legal process. Seasoned practitioners will enjoy these refreshingly concise and clear summaries and discussion of the challenges faced by the field, together with the potential solutions offered by these two great minds.

We start at the true origin of a project (Chapter 3), which is when someone says: “We should have a look at putting a new facility in at X.” Chapters 3 to 5 move through the preliminary appraisal, feasibility study and contract strategy stages. Together, these chapters provide a sense of the detailed work that goes into deciding on a project site. Considerations range from the technological to the environmental and from the logistical to the economical. We are taken through the information, and sometimes the lack thereof, with which owners must make critical decisions. All too often in construction literature, the nexus between preliminary decisions and final outcomes is lost. In this work, however, the authors provide detailed insight into this area of critical importance. Dr Peter Hopwood’s excellent contribution on feasibility studies also warrants mentioning in this regard (Chapter 4).

Contract strategy is discussed in Chapter 5. The distinctive features of offshore contracting are covered in Chapter 6, with very specific requirements detailed in Chapter 7. Particularly compelling is the recommendation that price should play a less decisive role as a criterion in the procurement process (Chapter 8), because the general lack of detail required in the bidding process often leads to the evaluations provided representing unrealistically low valuations of the total project cost. As occurs all throughout the work, the authors do not merely lay out the geography of the issue but instead they also point to useful potential solutions. The authors’ argument that resource schedules should play a more pivotal role in bid evaluation is particularly persuasive in my view.

The chronology of the work, which moves through detailed project phases, offers extensive insight from an engineering perspective. I found Chapters 9, 10 and 12 to be of particular interest, with their emphasis on the design to construction phases. Chapters 9 and 10 explain how the project matures from a series of designs and feasibility studies into what is known as FEED (the Front-End Engineering and Development/Design), which includes: basic engineering and design, project schedules and cost estimates for project control as well as elements of the procurement process which are further detailed in Chapter 11. Following this discussion of design, Chapter 12 then provides detailed analysis of the construction phase, including insights into the various relationships that must be juggled between labour, suppliers, contractors and sub-contractors. The authors note and explore the cost and time consequences of deviations from the proscribed design and contract. Further, engineering insight is provided in both Chapter 13 on Commissioning and Start-up and finally in Chapter 21 on Decommissioning.

The authors subsequently return to the contracting process in Chapter 16 and place it in a broader international context. They identify the fundamental importance of both the freedom to contract and the principle of *pacta sunt servanda*. Further, they work through some of the issues which

may occur in the enforcement of an international construction contract. In particular this involves in-depth discussion of the consequences which may flow from the choice of governing law and the interaction of a range of jurisdictions. Usefully, the work provides detailed checklists of many of the practical and legal issues which should be considered prior to entry into any international contract.

Of course, the authors do not neglect considering the vitally important topic of risk which is at the heart of dispute avoidance and dispute management. The growing size and complexity of offshore developments heighten the need to take care to ensure that the rights and obligations assigned under a negotiated agreement strikes a fair and reasonable balance of risks between the parties. Discussion of risk permeates the book. It provides an overview of the existing practice in risk allocation and its challenges (in particular, Chapters 14 and 17), and notes that there can often be a divergence in international oil and gas contracts between those best placed to manage risk and those who have the most appetite for risk. The book provides a range of strategies for dealing with this divide, particularly emphasising the value of communication between the parties.

Neatly following the chapters on both International Contracting (Chapter 16) and Managing Risk (Chapter 17), the authors then turn their attention to the common need to alter the contractual relationship through Variations (Chapter 18), together with the legal doctrine of Economic Duress (Chapter 19). Best practice often involves setting out a clear procedure for variations in the original contractual document, through clear and comprehensive terms. This analysis smoothly transitions into a discussion of economic duress, which often involves renegotiation of commercial terms of a construction contract with a non-performing Contractor. In their analysis, the authors delineate the concepts of robust commercial bargaining and illegitimate commercial behaviour. This theoretical framework is built upon through detailed discussion of the practical concerns which may ultimately effect disputes which concern economic duress.

The Application of Contracts in Developing Offshore Oil and Gas Projects is a highly comprehensive, practical and stimulating read. I have no hesitation in recommending it to all practitioners who work in the area, as well as to all non-lawyers in the oil and gas industry. After all, if the principles which Charrett and Loots discuss are understood by those undertaking commercial negotiations and running projects in the oil and gas industry, the scope of future disputes is likely to be more limited.