

## ACQUISITION OF FLOATING PRODUCTION STORAGE AND OFFLOADING VESSELS IN NIGERIA.

FPSOs are used in the production and storage of crude oil located and produced offshore. Nigeria is the ninth largest producer of crude oil in the world, currently producing an average output of about 1.7Mb/d, most of which comes from onshore. Offshore exploration and production began in the early nineties and the government is actively encouraging exploration and production in Nigeria's deep offshore with its allocation of oil blocks. This has resulted in FPSOs becoming increasingly popular in Nigeria. The FPSO may be the only economic means of developing a small marginal field located far away from any existing infrastructure.

FPSOs are designed around specific reservoir characteristics, water depth and the wind and wave conditions existing in the field where they are to be used. They can either be newly built or converted from old VLCCs (very large crude carriers) or VLCCs under construction. The main considerations in designing an FPSO are usually the oil storage capacity, which could range between 500 000 to 2M bbl, the topside facilities comprising a crude oil separation unit, water injection plant, gas compression modules and various other facilities to process the fluids produced. Other considerations are the mooring systems, which could be a spread mooring system or turrets to keep the FPSO moored at the site, and the offloading facilities.

The acquisition of FPSOs will necessarily involve a consideration of the legal and regulatory framework of the country where the FPSO is to be used. In Nigeria, the relevant regulatory authorities that would be involved with the acquisition of FPSOs are the maritime, petroleum, company and tax authorities.

There are two main ways by which FPSOs can be acquired. These are through an outright purchase/ownership of the FPSO and charter/lease. The principal legislations governing this are the Petroleum Act (PA) and the Petroleum (Drilling and Production) Regulations (PDPR) made under the PA and the Merchant Shipping Act (MSA).

The PA and PDPR deal with the exploration and production of crude oil and provide that the Federal Government is the statutory owner of all petroleum acreage. Qualified persons wishing to explore for, win and dispose of petroleum in the course of exploration can only do so on the basis of a lease or license granted by the Minister of Petroleum Resources. These legislations also give the Minister power to regulate the construction, maintenance and operation of all installations used in the production of crude oil. The MSA on the other hand regulates merchant shipping and defines ship as including any barge, lighter or like vessel and in this regard includes an FPSO. The MSA also

contains provisions dealing generally with the criteria of ships allowed to trade in Nigerian territorial waters.

Contracts for the acquisition of FPSO's are EPCI (engineering, procurement, construction and installation) contracts and are usually awarded on the basis of a turnkey project. For a charter/lease arrangement however, the charter party could either be a bareboat or time charter. In a bareboat charter, the charterer provides only the FPSO, while the oil company provides the offshore crew to operate the FPSO, insurance and general maintenance, although it must be stated that this type of charter is rarely used for an FPSO.

In a time charter, the charterer supplies the FPSO, the offshore crew, insurance and general maintenance of the FPSO. Depending on the parties, it is not uncommon to have two separate agreements, the charter party for the lease or hire of the FPSO and a separate operating and maintenance contract in which the charterer agrees to maintain the FPSO during the period of the hire.

The charter party could contain an option giving the oil company/charterer the option to purchase the FPSO after a stated period, usually after the costs have been amortised in the charterer's books. The main advantage in opting for a lease is that the acquisition does not involve the capital outlay required for an outright purchase/ownership and the purchase option gives the oil company the flexibility of purchasing the unit at the expiration of the charter period. In addition, FPSOs offered on a lease and operate basis are less likely to be field specific and can be used for more than one field without incurring huge conversion costs.

## REGULATORY FRAMEWORK

### Maritime Regulations

Under the MSA, there are two categories of ships allowed to trade in Nigerian territorial waters. These are: Nigerian registered ships and Nigerian licensed ships.

A ship is regarded as a Nigerian registered ship, if registered in the Nigerian Ships Registry unless granted an exemption by the Minister of Transport. An application for registration is required to be made to the Government Inspector of Shipping (GIS) accompanied with the: certificate of incorporation of the company, memorandum and articles of association, particulars of its director, current tax clearance certificate of the company and its directors, certificate of tonnage measurement of the FPSO, classification of the FPSO with a member of the International Association of Classification Societies and a declaration of ownership which should contain: a statement of the

applicant's qualification to own a Nigerian registered ship and the time and place where the FPSO was built.

In the case of a new building or conversion, before the agreement for the construction or conversion of the FPSO is concluded, the plans and specifications are required to be submitted to the GIS for approval.

There are no age limitations for FPSOs in Nigeria; however, they are required to be surveyed extensively prior to being commissioned on the field. A surveyor from the office of the GIS will be nominated to carry out a pre-registration survey to ensure that the life saving appliances is in conformity with the Safety of Life at Sea (SOLAS) requirements. In the case of a new building or conversion, the survey may be carried out at the shipyard where the hull is being built to ensure that it conforms to the specification/plan submitted. Prior to commissioning, the FPSO must be dry-docked extensively, (unless newly built) because once commissioned, the possibility of drydocking is impractical.

In the case of a new building, a provisional certificate will be granted to enable the FPSO sail from the shipyard into Nigerian territorial waters for commissioning on the field and subsequently, a permanent certificate of registry will be issued on registration.

Registration will amongst others give the FPSO the status of a Nigerian flagged vessel, which would in turn entitle it to the protection of the Nigerian government, exemption from certain fees and levies imposed on foreign vessels and a one-time registration fee as opposed to an annual licensing fee. In addition, registration will give the FPSO a Nigerian status under the cabotage law. Nigeria is presently considering adopting a cabotage law, which if implemented, would ensure that only Nigerian registered ships are allowed to engage in trade within Nigerian territorial waters. Foreign ships would only be permitted to enter into Nigerian territorial waters if granted a waiver by the Minister of Transport.

A Nigerian licensed ship is a foreign flagged ship, which is granted a licence to operate within Nigerian territorial waters. The following requirements must be complied with before the license is issued: the FPSO must be chartered to a Nigerian or Nigerian company, evidence of registration of the FPSO in a compatible registry, application for registration to be made by the charterer or an authorised representative and supported with the charter party agreement and the licensing fees. Also, a condition survey would be carried out to ensure that the FPSO is equipped with requisite life saving appliances in conformity with the SOLAS requirements.

The licence, if issued is valid for one year and is renewable annually on the payment of requisite fees calculated based on the tonnage of

the FPSO. A Temporary Importation Permit (TIP) will have to be obtained from the Nigerian Customs Service to avoid payment of import duties. The TIP is in the form of an insurance bond and the importer of the FPSO will be required to provide the bond in the amount of the duty which would have been payable. On the re-exportation of the FPSO out of Nigeria, the bond will be refunded to the importer. However, if the importer decides to convert the FPSO for permanent use in Nigeria, the bond will automatically be forfeited.

## Petroleum/Offshore Regulations

The operator of the field where the FPSO is to be used is required to submit a Field Development Programme (FDP) and Environmental Impact Assessment (EIA) in respect of the proposed development of the field. Upon approval of the FDP and EIA, the operator will be required to apply to the Department of Petroleum Resources (DPR) for all permits and approvals necessary for the different stages of the project.

These approvals include a conceptual design approval which would state the nature of the project and the proposed engineering works, a detailed engineering approval for the design and engineering works to be carried out, a facility-operating permit, an approval for calibration of the tanks and an approval for custody transfer metering system to monitor the offloading of crude oil in the FPSO for export purposes. An FPSO is regarded as an oil terminal and prior to the installation and commissioning of the FPSO on the field, the operator is required to apply to the DPR for a Terminal Establishment Approval of the FPSO. The geographical location of the FPSO/oil terminal should be stated with precise particulars and published in the Federal Government Official Gazette.

The operator is required to use methods and practices acceptable to the Director of Petroleum Resources for the production of crude oil and is therefore responsible for ensuring that all works carried out on the project conform to the approved methods and good oilfield practice. In addition, the operator should ensure that all works are carried out in accordance with offshore safety regulations and the American Petroleum Institute Codes.

The operator must also ensure that its contractors comply with Nigerian law in executing the project in order to avoid sanctions from the regulatory authorities, particularly with regard to registration.

Under Nigerian law, a company seeking to render services in the oil industry is required to make an application to the DPR for accreditation to carry on business as an oil service company. Companies seeking to bid for FPSO contracts will principally require

registration under construction services. Accreditation may be required in other categories depending on the range of services to be provided.

An application for accreditation will be made to the DPR, supported by a detailed company profile highlighting evidence of the technical expertise needed to justify accreditation. This will include evidence of previous jobs performed by the company, list of equipment, CV's of professional staff, accident status report VAT certificate of registration and a training and management succession schedule to ensure technology transfer.

The approval of the National Petroleum Investment and Management Services (NAPIMS), the commercial arm of the Nigerian National Petroleum Corporation (NNPC), would be required. NAPIMS' approval is required for all contracts of \$500,000.00 or N10million and above awarded in the oil industry.

All contracts awarded in the oil industry including FPSO contracts, are required to maintain a substantial local content which means there must be an active participation of Nigerian companies and professionals in the execution of all projects in their Engineering, Procurement and Construction phases. A recent directive by the NNPC prescribes a minimum 25% local content. Furthermore, the pre-qualification and commercial bids for the award of the FPSO contract must be carried out in Nigeria.

#### Investment Approvals

A foreign company intending to carry on business in Nigeria may establish a wholly owned foreign company or enter into a joint venture arrangement with an indigenous company. The newly incorporated company will be required to register with the Nigeria Investment Promotion Council (NIPC) and compliance will be required to be made with Nigerian immigration laws, which entail the obtention of expatriate quota (permission to employ expatriates) and business permit (investment approval).

A minimum of 2 and maximum of 50 subscribers are permitted for private companies. By law, minimum share capital is N10, 000.00. However, in reality N5, 000,000.00 is the minimum capital allowed by the authorities for the grant of requisite foreign investment approvals and permits.

#### Companies Income Tax

Foreign companies doing business in Nigeria are liable to 30% companies income tax on all income derived from their operations in Nigeria. Profits from such operations are deemed to have derived from Nigeria. In determining whether income is derived from Nigeria, the

Federal Board of Inland Revenue (FBIR) considers whether the company has a fixed based in Nigeria i.e. an office complex, building, engaged in construction, installation or assembly activities, operates through an agent authorised to conclude contracts on its behalf, executing a turnkey project or has a fictitious relationship with a Nigerian subsidiary. However, where it appears to the FBIR that the company's business produces either no assessable or unascertainable profits or assessable profits which in the opinion of the FBIR are less than might be expected to accrue from the particular business, the FBIR has a discretionary power to assess tax on a fair and reasonable percentage (currently 20%) on the turnover of the company's operations in Nigeria.

#### Withholding tax

Nigerian law provides for tax to be withheld at source from a receiving company or individual at various rates ranging from 5% to 10% depending on the category of the income generating activity.

#### Value Added Tax

The company awarded the FPSO contract will be required to register for Value Added Tax (VAT) under the VAT Act. Although the Act stipulates that registration should be within six months of commencement of business. In practice, the registration should be effected after incorporation, as it would be required for DPR accreditation.

Finally, the popularity FPSOs are gaining all over the world, Nigeria inclusive, cannot be over-emphasised. With the increasing number of new projects being negotiated, the importance of parties' familiarising themselves with the regulatory framework of the jurisdiction concerned will prevent costly litigation and ensure the ultimate success of the projects.

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