

Concept of Limitation and Definition of a Ship – FPSO and FLNG

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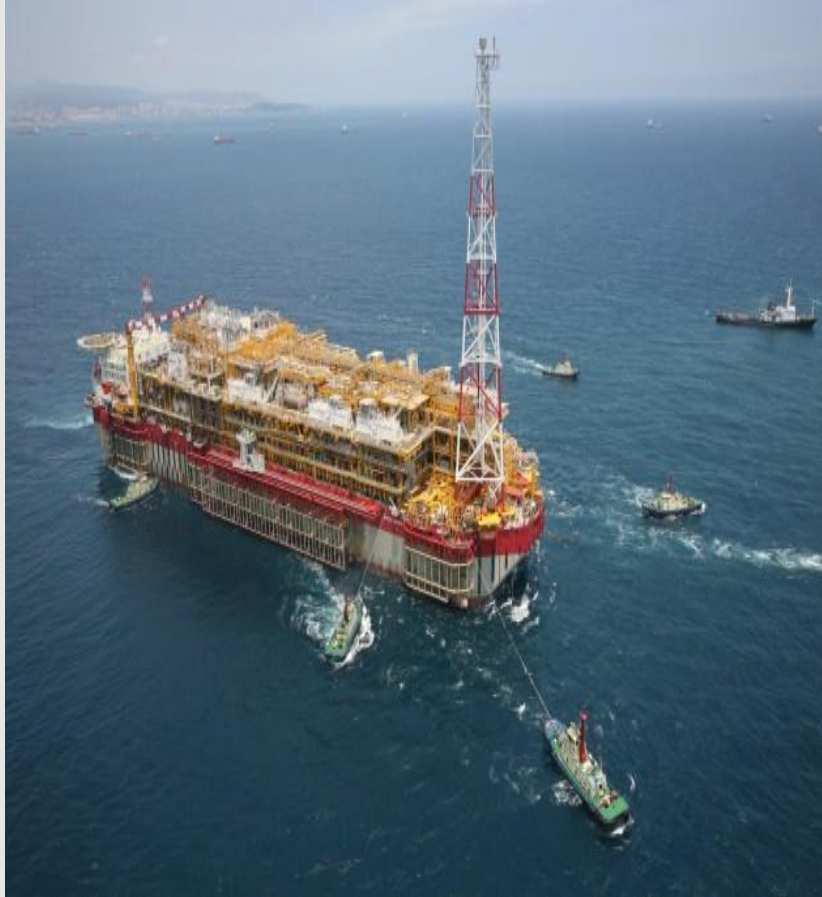
The Standard



IMO Conventions and Definition of a ship

FPSO and FLNG

The Standard



- Civil Liability Convention 1992 (CLC) and Fund Convention 1992
- Bunkers Convention 2001
- **1976 LLMC and as amended by the 1996 Protocol**
- Wrecks Convention 2007
- HNS Convention and 2010 Protocol

Is this a ship under CLC and Fund Conventions 1992



CLC and Fund Convention 1992

- compensation for oil pollution- split btwn shipowners and oil companies (2 tier)
- strict liability but limits liability for oil pollution compensation
- compulsory insurance and direct action against insurer (blue card)
- definition of ship:
 - any seagoing vessel or craft constructed or adapted for the carriage of oil in bulk as cargo provided the ship is capable of and **does actually carry oil in bulk as cargo during any voyage**
- excludes FPSOs and FSUs
- lobby by IG and ICS to extend to FSUs



The International Convention on Civil Liability for Bunker Oil Pollution Damage Bunkers (Bunkers Convention) 2001

- bunker oil - any hydrocarbon mineral used for operation / propulsion of ship
- compensation for pollution damage from bunkers of all “ships”
 - but not to ships subject to CLC i.e. trading tankers carrying
 - for definition of ship see local law
- modelled on CLC – strict liability, compulsory insurance and direct action against insurers (bunker blue card)
- allowed to limit up to 1976 LLMC, as amended

Convention on Limitation of Liability for Maritime Claims (LLMC) 1976

Recognition of the right of Shipowners to Limit For Maritime Claims

- allows a shipowner to limit once liability is determined
- different from the CLC, Bunkers, Wrecks and HNS Conventions
 - not a liability and compensation regime i.e. no strict liability, channeling of claims, compulsory insurance and direct right of action against the insurer
- provides fixed and practically unbreakable limits
- 1976 LLMC came into force 1 December 1986, 53 signatories
 - 1996 Protocol came into force 13 May 2004 - 46 signatories (including UK but not Singapore)
 - 1996 Protocol limits to increase by 51% in July 2015

1976 LLMC Article 2

Categories of claims subject to limitation

- (a) **injury or death and / or damage to property on board or in direct connection with the operation of the ship**
- (b) loss from delay to in the carriage by sea of cargo, passengers or their luggage of luggage
- (c) **claims resulting from infringement of rights other than contractual rights occurring in direct connection with the operation of the ship**
- (d) claims in respect of wreck removal of ship
- (e) claims in respect of removal ,destruction of cargo
- (f) **claims in respect of measures taken by third parties to avert or minimize loss and further loss caused by such measures**

1976 LLMC Definition of Ship

Will it include FPSO or FLNG?

- 1976 LLMC applies to seagoing ship
- article 15 (5) (aka the offshore craft exclusion) The Convention shall not apply to:
 - (b) floating platforms constructed for purpose of exploring or exploiting the natural resource of the seabed or subsoil thereof
- article 15(5) exclusion deleted in certain countries enactment of the LLMC Convention

- UK's Merchant Shipping Act 1995
 - incorporates 1976 LLMC , deletes offshore craft exclusion
- s.313 defines ship as “ include every description of vessel **used in navigation**”
 - Steedman v Schofield 1992 2 LLR
 - Perks v Clark 2001 2 LLR
 - navigation a significant part of the function of the unit , sufficient for navigation to be a part of the unit's function provided the unit was capable of &used in navigation however infrequently

Is a FLNG or FPSO a Ship?

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Is a FPSO and FLNG a Ship?



Who Needs to Know and Why?

- **Owners/charterers/P&I Clubs/Insurers :**
 - Limit liability under LLMC?
 - Liability for Pollution Civil and Criminal
 - Compliance with rules and regulations safety, crew etc
- **Builders, Yards, Suppliers services and equipment:**
 - Arrest?
 - Possessory Lien?
 - Mortgage?
 - Priorities?

Why under Singapore Law?

- Singapore is the conversion capital for FPSOs
- Singapore yards involved in conversion of LNG vessels into FLNG vessels
- Experts forecasting there will be a need for more FLNG production vessels

Relevant Conventions

Singapore has acceded to

- **1976 LLMC**
- **1992 CLC and Fund Convention**
- **2001 Bunker Convention**

Singapore has not acceded as yet to the

- **1996 Protocol**
- **2007 Nairobi International Convention on the Removal of Wrecks**

What is a FPSO?

- Floating vessel used for extracting hydrocarbons from sea bed
- Maybe purpose built or converted
- Does so through the use of the FPSO's equipment and cables /pipes which are attached to the oil well's head
- Not permanently moored
- Capable of navigation whether under its own steam or under tow
- Can be moved from A to B

What is a FLNG?

- Floating facility moored above an offshore natural gas field
- Extracts gas from the seabed then processed, liquefied and stored
- Offloads LNG to a tanker that take it into the market
- Designed to withstand severe weather
- Held in position by anchor chain arranged around the FLNG turret
- Chains secured by suction piles penetrating deep into the seabed
- Can turn in the wind; absorb impact of strong weather and stay afloat

Is this a Ship?

- It's 1,601ft long and weighs 600,000 tonnes... but floats
- World's largest 'ship', which is bigger than the Empire State Building
- Vessel's storage tanks have a capacity equivalent to approximately 175 Olympic swimming pools
- Bow to stern fits four football pitches
- Will operate in a remote basin for around 25 years

The “PRELUDE”

- Port of Registry: Fremantle
- Flag: Australia
- LR IMO number: 9648714
- Ship type: Gas Processing Vessel
- Gross Tonnage: 300,000
- Flag: Australia
- Year of Build: 2016
- Status: Launched
- Shipbuilder: Samsung Heavy Industry



Source Sea-web

Limitation of Liability for “PRELUDE”

- GRT 300,000

	Claims for loss of life or personal injury		Any other Claims	
	SDR	SGD	SDR	SGD
Convention				
LLMC 1976	58,984.000	113,961,806.72	29,183,500	56,384,856.68
1996 Protocol	140,000,000	271,264,032.00	70,200,000	135,632,016.00

What is a Ship? Isn't a Ship a Ship?

Merchant Shipping Act

s.2. “ship” means any kind of vessel used in navigation by water, however propelled or moved and includes

(a) a barge, lighter or other floating vessel;

(b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water; and

(c) an off-shore industry mobile unit.

s. 134. “ship” in the **LLMC** Convention includes:

(a) Any air-cushion vehicle designed to operate in or over water while so operating and

(b) Any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or part of a ship.

What is a Ship?

Prevention of Pollution of the Sea Act

“ship” means a vessel of any type operating in the marine environment and includes hydrofoil boats, air cushion vehicles, submersibles, floating craft and fixed or floating platforms.

MS CLC for Oil Pollution Act and MS CLC for Bunker Oil Pollution Act

“ship” means any sea-going vessel and seaborne craft of any type.

High Court (Admiralty Jurisdiction) Act

“ship” includes any description of vessel used in navigation.

What is a Vessel?

Interpretation Act

“vessel” includes *floating craft of every description.*

Maritime Port Authority Act

“vessel” includes any ship or boat or air-cushioned vehicle or *floating rig or platform used in any form of operations at sea* or any other description of vessel.

Collision Regulations

“vessel” *includes every description of water craft*, including non-displacement craft, Wing in Ground craft and seaplanes, *used or capable of being used as a means of transportation on water.*

Is a FPSO or FLNG a Ship within the LLMC?

Merchant Shipping Act s.2

“ship” means any kind of vessel used in navigation by water, however propelled or moved and includes

- (a) a barge, lighter or other floating vessel;
- (b) ...
- (c) an off-shore industry mobile unit.”

“off-shore industry mobile unit” means

(a) a vessel that is used or intended for use in exploring or exploiting the natural resources of the subsoil of any seabed, or in any operation or activity associated with or incidental thereto, by drilling the seabed or its subsoil, or by obtaining substantial quantities of material from the seabed or its subsoil, with equipment that is on or forms part of the vessel;

The Singapore LLMC as enacted by MSA

Merchant Shipping Act s.134

“ship” in the LLMC Convention includes:

- (a) Any air-cushion vehicle designed to operate in or over water while so operating and
- (b) **Any structure** (whether completed or in the course of completion) **launched and intended for use in navigation** as a ship or part of a ship.

Points to Note

- In **s. 2** of the MSA, the need for it to be a “vessel” “used in navigation” and includes an “off-shore industry mobile unit”.
- **Art 15** of the LLMC Convention expressly excluded the Convention’s application to “*floating platforms constructed for purpose of exploring or exploiting the natural resource of the seabed of subsoil thereof*”.
- However, **s. 134** does not contain a similar exclusion, the reason being to broaden the definition of ships to include mobile oil rigs.

Were these Ships “Used in Navigation?”

- **“pontoon crane”**: *“A structure upon which a crane is fixed, and permanently fixed . . . It is undoubtedly capable of being moved, but it is obviously so unseaworthy that it can only be moved short distances, or comparatively short distances, and only when the weather is exactly favourable . . . I think there are about five or six times when it has been moved since 1914 . . .”*
- A **mussel raft**, consisting of the forehead part of a former naval landing craft with no means of self-propulsion save when an outboard motor was attached to it spending most of its life in one location being navigated by its owner back to the shore by means of an outboard motor at the end of the 9 month mussel season

Were these Ships “Used in Navigation?”

- A type of **marine dredger** used to deepen the waters in harbour channels and estuaries. Consists of a floating platform with no bow, no stern, no anchors, no rudder or any means of steering and no keel or skeg. It had no means of self propulsion. When in use, it was held in position on the sea bed by three spud legs which were capable of being hydraulically lowered and raised. It could not carry cargo, spoil or personnel other than those engaged in the dredging operations
- It was designed and constructed for the purpose of carrying out specific activities on water, capable of movement on water and in fact spent significant periods of time in such activity

“Vessel”: “Used in Navigation”

The following appears to be minimum requirements:

- The structure should be capable of floating
- The structure should be designed or constructed for water activities
- The structure should be capable of being navigated
- The navigation should be a planned and orderly or purposeful movement
- The navigation should be from one location to another

“Vessel”: “Used in Navigation”

On the other hand it **need not include**:

- Movement under own propulsion
- Carriage of passengers or cargo
- Presence of a rudder
- Manning with a crew

Frequency of Navigation: Not Necessary

- This is not necessarily a deciding factor but whether the structure is actually capable of navigating the waters is
- A structure may be regarded as a “ship”, even though it does not traverse the waters frequently as long as it is not “wholly unfit” or “so unseaworthy” that it cannot be navigated. However, if the structure’s movement across water is non-existent, it will most likely not fall within the definition of a “ship”

Is a FPSO and FLNG a Ship under LLMC?

- Can it float?
- Was it designed or constructed for water activities?
- Is it capable of being navigated?
- Is the navigation a planned and orderly or purposeful movement?
- Is the navigation from one location to another?
- Is it *used or intended for use in exploring or exploiting the natural resources of the subsoil of any seabed*?
- Is it for *any operation or activity associated with or incidental thereto, by drilling the seabed or its subsoil, or by obtaining substantial quantities of material from the seabed or its subsoil, with equipment that is on or forms part of the vessel*?

Is this a Ship?



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2007 Nairobi International Convention on Removal of Wrecks (Wrecks Convention 2007)

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Wrecks Convention 2007

Application

- permits a state party to take measures to remove a wreck which poses a hazard in the Convention Area
 - “wreck” as “a sunken or stranded ship; or any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.” (Art. 1 (4))
 - “hazard” as “any condition or threat that: poses a danger or impediment to navigation; or may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.” (Art. 1 (5))
 - “convention area” as “the exclusive economic zone of a state party, established in accordance with international law or, if a party has not established such a zone, an area beyond and adjacent to the territorial sea of that state determined by that state in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.” (Art. 1 (1))
- the measures must be “reasonable” and “proportional” to the hazard faced, and such measures cease upon the removal of the wreck

- Limitation of Liability

- Art. 10 (2): “Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.”
- Art. 10 (2) VS Art. 18 (1): right of exclusion for the application of the limitation regime to wreck removal

e.g. United Kingdom – under the LLMC 1996 Protocol, reserve their right to exclude wreck removal from the limitation convention

Singapore – under the LLMC 1976, reserve their right to exclude wreck removal from the limitation convention

- Compulsory Insurance & Direct Action
 - requirement for owners of ships above 300 GT registered in a signatory state to maintain insurance or other acceptable form of financial security
 - value of any financial security shall not exceed the limits determined by the 1976 LLMC, as amended, i.e. 1996 Protocol
 - certification attesting to the satisfactory compliance of the shipowner to the required insurance (Blue Card) or other financial security provision.
 - claims brought directly against the insurer or guarantor stated in the certificate

Wrecks Convention 2007

- Definition of “ship”
 - a ship means “a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.” (Art. 1 (2))



The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (2010 HNS Convention)

The Standard



- Application
 - modelled after the existing regime for oil pollution from tankers (CLC 92) and the associated fund convention (Fund Convention)
 - registered owner is strictly liable to pay compensation following an incident involving HNS: both pollution damage and damage caused by other risks, e.g. fire and explosion, loss / damage to property, to the environment, etc.
 - relevance to FLNGs
 - the scope of the convention: EEZ and area adjacent not more than 200 nautical miles from baselines

- Limitation of Liability
 - Art. 9 (1): “The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows [...]”
 - an owner may lose his right to limit under the Convention if it is proven that “the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.” (Art. 9 (2))
- HNS Fund
- Compulsory insurance or other financial security – Blue card
- Claims > shipowner’s liability = HNS Fund
- HNS Fund will also respond when:
 - The shipowner is exonerated from liability
 - The shipowner liable for the damage is financially incapable of meeting his obligations
- Maximum amount payable by the fund is SDR 250 million
- Issue of “linkage” – jurisdictions which have remedied this issue through amendment
 - United Kingdom
 - Norway
 - Australia

2010 HNS Convention

- Definition of “ship” and “carriage”
 - “ship”: “any seagoing vessel and seaborne craft, of any type whatsoever” (Art. 1 (1))
 - “carriage by sea”: “the period from the time when the hazardous and noxious substances enter any part of the ship’s equipment, on loading, to the time they cease to be present in any part of the ship’s equipment, on discharge. If no ship’s equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship’s rail” (Art. 1 (9))



Conclusion

Is an FPSO / FLNG a “Ship”?

- Civil Liability Convention 1992 (CLC) and Fund Convention 1992: NO
- Bunkers Convention 2001: MAYBE (see local law)
- 1976 LLMC and as amended by the 1996 Protocol: MAYBE (see local law)
- Wrecks Convention 2007: YES (while “navigating” but not when exploiting / producing)
- HNS Convention and 2010 Protocol: NO

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