Drilling down to the detail
Construction and engineering in the oil and gas sector

Our expertise
At Eversheds, we have a team of lawyers who specialise in advising on construction and engineering legal issues in the oil and gas sector. Our lawyers advise on the full range of legal issues arising on EPC projects, ranging from the financing documentation, drafting and negotiation of contracts, providing live project support (dispute avoidance), and dispute resolution through international arbitration resolution forums (as well as appearing before domestic tribunals).

Our team also has significant experience of advising upon EPC contracts across a wide variety of jurisdictions in which oil and gas companies operate. Our global coverage means we understand the local market conditions/pressures which may be relevant to any project.

As such, we can provide global coverage, local expertise/presence and language skills/local time zone support to our clients, wherever their projects are being undertaken. We have advised clients on projects in a large number of EMEA countries, Russia and South East Asia.
- platforms and FPSO’s
- pipelines/pumping facilities (onshore/offshore)
- LNG processing facilities/terminals
- process engineering
- refining
- decommissioning

Because we have significant experience in the oil and gas sector, we understand the industry specific challenges faced by our clients operating in this sector and always ensure that our lawyers work as an integrated part of your team. We act for both purchaser clients and EPC contractors/the supply chain and so have a thorough understanding of the legal issues which may be of concern to you no matter what your role on the project.
EPC Projects – how we support our clients

1. Funding issues, drafting and negotiation support
We have a team of specialist lawyers who are experienced in advising and working closely with clients’ technical and commercial teams and/or their other external advisors on the selection and development of the appropriate value for money EPC model, incentivisation regime and/or risk allocation (whether bespoke or tailoring an industry standard form such as the LOGIC forms) and the procurement of such arrangements. We have numerous sector specific precedents which can be utilised and adapted. Our extensive experience means we can give clients expert practical legal guidance on how to best reflect their commercial objectives for the project into the EPC contract and other arrangements (including operating and maintenance contracts). Our experienced and pragmatic approach to procuring and negotiating EPC contracts is reflected in the fact that all members of the team are specialists with a number of our partners being dual qualified as lawyers and engineers.

2. Project support/dispute avoidance
After an EPC contract has been signed, both parties will be focussed upon delivering the project in accordance with the time, cost and quality targets agreed. However, in sophisticated and complex projects, change management can be challenging and can lead to cost overruns and delays. We often provide support to our clients during the course of live projects to handle change management efficiently and protect their respective positions – whether as contractor/sub-contractor seeking to protect potential entitlements/claims or as purchaser seeking to manage and mitigate cost/time overruns. We are also often called upon to provide advice on matters of interpretation and defective works which become contentious as the project develops.

Case study 2: Pipeline dispute
Our client let a turnkey contract for the design and construction of an onshore/offshore pipeline. During the course of the project, the contractor claimed its programme was affected by significant difficulties with ground conditions, environmental issues, horizontal and vertical alignment and route changes. In order to be entitled to increased costs/extensions of time as a result of these factors, the contractor had to serve timely notices. During the final year of the project, our team worked alongside the purchaser’s project team in managing and mitigating costs increases and schedule slippage, providing daily support to the project team dealing with volumes of correspondence/claims from the contractor. Ultimately, we helped our client close the project $34 million below the anticipated outturn cost when we first became involved. The claims were settled.

Case study 1 – Petrochem Project – India
We advised a global EPCM contractor on the acquisition of a partially designed and procured $2.4bn refinery project in India for the owner of a multi-national Indian petro-chemical company. Our client was approached to take over existing EPC contract with substantial FEED and licensed supply and installation responsibilities, when the original contractor was terminated at an early stage of the project. Our role involved advising the client on the novation, assignment and renegotiation of the EPCM contract (itself substantially based on FIDIC Silver Book and containing design, supply and installation warranties and guaranties) as well as all the various other direct FEED/EPC and supply contracts between the owner and various third parties, based in multiple jurisdictions and using various bespoke and FIDIC related forms. The procurement required the assignment/novation/re-negotiation of key sub-contracts, as well as placing new sub-contracts.

The negotiations took place in a short time scale to achieve the project programme, and ultimately the project was delivered on programme. There were particular complex issues arising in respect of partially completed design and works and the incorporation of the licensed technology which formed the core of the plant, including its testing and commissioning, which were compounded by the performance and availability warranties our client was required to underwrite. We advised the client on all aspects, including the FEED, EPCM (with EPC obligations), various commercial agreements, short term operating contracts, IP, licensing, warranties and bonds/guaranties, export credit and tax.

“We have “swift advisors, who can anticipate issues, adapt and resolve problems””
Chambers

“They understand that they become part of our team and our organisation. They do not come across as external lawyers who quote the law and leave us to do what we want with that information.... Their relationship management and interaction with our non-legal staff is second to none. ... They understand us as a client, and they not only talk a good story, but they actually do it.”
Head of Litigation, Major Utility Company
3. Dispute resolution and international arbitration

On certain projects, disputes between the parties will arise and need to be resolved. We advise our clients on resolution, in the first instance through advising on merits and prospects of their position and, if necessary, through the formal contract procedures. We have teams of experts who specialise in construction engineering disputes and have worked on major multi-million dollar claims resolved through various forums – ranging from Dispute Review Boards and Mediation to institutional and ad hoc arbitrations.

Case study 3: LNG Project – Russia

In this case, we acted for a Russian LNG company. The Russian LNG company appointed a Japanese EPC contractor to undertake the design, procurement and construction for an LNG terminal. After construction had completed, a number of leaks were found in the heat exchangers at the LNG terminal. We advised the client on the merits of its claims, the appointment of suitable technical experts, limitation and jurisdictional issues (as well as other potential legal challenges). We also advised our client on settlement strategies and settlement was ultimately achieved before formal proceedings were issued.

“The lawyers are approachable and responsible, and their advice is sound, flexible and accessible.”

Chambers

What happens next?
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Oil and gas projects

– Acting for one of the world’s largest utilities in multimillion pound gas pipeline litigation concerning assets critical to a nationally significant energy infrastructure project which related to the construction of two new LNG terminals. The issues include pipeline failure analysis, as well as programming and quantum analysis, health and safety matters and confidentiality issues.

– Acting for an incorporated JV operating company in Russia in relation to design deficiencies in an Onshore Processing Facility in an Arctic region on claims in excess of $950m. Claims involved process engineering, HSE engineering, M&E defects, civil engineering and legal issues such as jurisdiction, joinder of proceedings and limitation.

– Qatargas in relation to ship modification contracts and related bespoke engineering contracts and time charter party issues for a project impacting on up to 40 of its LNG carrying fleet.

– A shale gas developer on a range of its rig and related support services contracts.

– An oil major on its review and re-drafting of key precedent documents for the hire of offshore oil rigs, including specific detailed analysis of gross negligence clauses therein.

– An EPC contractor on an arbitration under UNCITRAL Rules in which claims were made against it for its work under FEED and EPC contracts for an Adriatic LNG terminal.