

Oil and Gas Decommissioning: law, policy and comparative practice

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The relatively long time span between the start-up and the end of an oil/gas project coupled with the relatively fresh international experience of decommissioning techniques have all led to neglect in relation to the deep analysis and preparation required for the decommissioning of these assets. In fact, these and other factors have led to decommissioning being seen as an ‘unknown art’. However, the maturity of the world oil and gas industry has made the costs of decommissioning offshore and onshore oil and gas installations more apparent. This necessitates a fresh consideration of the rules and regulations surrounding the oil and gas decommissioning business.

The book attempts this fresh consideration. To this end, it is well organised and the topics discussed in the consecutive chapters flow smoothly and logically. The UK oil and gas industry have just started to experience and practice decommissioning of its long installed assets, therefore, the book is timely and touches upon key aspects of the decommissioning of oil and gas installations.

Part A contains one chapter authored by Callum Falconer and Chris Wicks. The chapter presents the life cycle of offshore oil and gas projects and focuses on decommissioning as being a key part of this cycle. Part A of the book includes descriptions of the decommissioning process in general and gives insights into decommissioning oil and gas assets in the UK. It

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sheds light on the role of the newly established² Oil and Gas Authority (OGA) in authorising oil and gas decommissioning plans.

Whilst decommissioning expenditure is a capital expenditure for accounting purposes and attracts tax allowances, it differs from the initial capital expenditure (i.e. appraisal, exploration and development), in that it does not result in revenues. This is because decommissioning is a necessary expenditure to close an oil and gas investment cycle. It is a sort of a death-related cost! However, this cost should be planned well in advance by oil companies and a provision be calculated for it from the day of asset installation.

The book shows an interesting link between Maximising Economic Recovery (MER), as an objective set by the OGA, and the share of the UK government in decommissioning oil and gas assets through tax relief of 50% to 75%. However this link, whilst logically and fairly presented, does neglect the reality that the MER objective is underpinned by other energy, environment, economic and social security objectives. In order to enhance the economic recovery of the UKCS oil and gas resources, independents and smaller companies that specialise in extracting value from end-of-life fields seem to be a suitable vehicle for the OGA's diversification of the UK Continental Shelf (UKCS) investor base. However, this diversification of investors' base may have serious effects on meeting decommissioning obligations.

Part B of the book contains two chapters. This part tackles the international legal frameworks.

In the first chapter of this part, Leon Moller discusses the UK law on decommissioning offshore installations. This chapter describes the international legal framework concerning decommissioning oil and gas installations and dumping in the sea. An interesting point to be highlighted is that Moller explains that UNCLOS³ and IMO⁴ seem to offer a flexible approach allowing for partial removal of offshore installations. This approach, according to Moller, seems to be acceptable by most oil and gas producing countries that are signatory to these instruments. However, there seems to be a wave of opposition to the UNCLOS and IMO

² The Oil and Gas Authority was first established on 1 April 2015.

³ United Nations Law of the Sea Convention 1982.

⁴ International Maritime Organisation.

approach, this is expressed by a number of calls for complete removal of these offshore installations⁵.

The second chapter of this part sees Luisa Rodriguez-Lucas discuss the OSPAR⁶ Convention's decommissioning policy. In this chapter, Rodriguez-Lucas discusses the disposal of disused offshore installations of the North-East Atlantic. The chapter offers analysis as to how the OSPAR legal framework governing decommissioning has evolved from the original regime laid down in the Oslo Convention and OSCOM Decision 95/1 concerning the disposal of offshore installations to the current regime established in the OSPAR Convention and OSPAR Decision 98/3 on the removal of offshore oil and gas installations⁷.

Part C of the book contains nine chapters that address different, but related, aspects of the decommissioning of oil and gas installations in the UK North Sea.

The evolution of the UK oil and gas industry and the associated taxation and licencing systems are briefed in section C of the book. This sets the scene for discussing decommissioning business and obligations in some more detail. This section starts with making a logical link between international law and the UK domestic legislations in terms of maritime issues with some focus on decommissioning oil and gas assts. Jill Reid discusses, in this chapter on Decommissioning reform in UKCS, a number of key aspects that surround decommissioning. Among these factors are low oil prices, technology and fiscal regimes. Most importantly, Reid set light on the role of skills and availability of information to ease parts of the uncertainty that affect the decommissioning of offshore assets.

It is very interesting to see the critical discussion of: -the factors that lead to an extension of the production lives of offshore oil and gas fields; - the potential for an emerging market of late life assets; - on the opposite side the effects of decreasing oil prices and the lack of assurance of holding decommissioning commitments by potential buyers; - the presentation of decommissioning security agreements (DSA).

⁵ For Example, see: <http://www.oilvoice.com/n/Eiffel-Towers-in-the-North-Sea-Shells-decommissioning-plans-another-Brent-Spar-PR-disaster/13e3d01bed70.aspx> accessed 2/10/16.

⁶ Convention on the Protection of the Marine Environment of the North East Atlantic 1992 (OSPAR Convention).

⁷ For more information on OSPAR Decision 98/3 and OSCOM Decision 95/1 see: Ministerial Meeting of the OSPAR Commission, Sintra, 22-23 July 1998. Available on: <http://www.ospar.org/documents?v=6875>

Advanced skills and reasonable flow of information between operators may lead to creation of sophisticated expertise in extracting the last drops of oil from late life assets and in decommissioning offshore installations at a reduced cost.

On the 'Decommissioning and the Joint Operating Agreement (JOA)', Nicholas Ross-McCall has narrated the key features and types of JOA. The author discusses in an interesting manner the point that being part of the overall investment cycle in the oil and gas business decommissioning must be regarded as much a part of the scope of the JOA. He implies that sharing of risk and responsibilities to continue between the JOA parties to the last point of the investment cycle and not to cease with the cessations of production. However, JOAs experience problems with regard to ending or extending project lives, because some parties to a JOA may see that cessation of production is necessary while other members of the JOA may see that that field in question can still produce economically viable outputs.

In the Decommissioning Security Chapter (CH 7), Judith Aldersey-Williams discusses, in some detail, issues that relate to decommissioning security agreements (DSA). The focus of this chapter is on decommissioning regulations in the UK. Judith describes the different parties that have stakes in ensuring decommissioning security is in place. One important issue referred to by the author is that the UK regulations do not require oil and gas companies to set aside cash in order to meet their decommissioning obligations. For the smaller and independent operator this could create insolvency problems particularly if these companies do not have many fields operating at the time of decommissioning. This is because these companies would not have sufficient cash generating units in operation at the time of decommissioning to cover the relevant costs. This could lead to the insolvency of these companies. In fact, this issue is a serious concern for the sellers of late life assets as the last thing they want to see is a decommissioning liability of a sold asset be bounced back to their accounts. Given the scale of decommissioning liability, DSAs become a key part of the sale and purchase agreements (SPA) and may cause a problem for purchasers who cannot provide sufficient evidence to assert the required assurances of the seller. Hence, this necessitates an earlier intervention by the UK regulator in order to make sure that operators have sufficient funds to meet their decommissioning liabilities upon the expiry of their fields – an issue that may contradict the objective of the OGA to maximise economic recovery (MER) from UKCS oil and gas fields. Although the UK regulator, currently OGA and previously DECC⁸, has the right under Section

⁸ Department of Energy & Climate Change

38 of the Petroleum Act 1998 to require operators to provide financial information, the UK regulator does not have a legal right to ask for security until after approval of a decommissioning programme. It is pointed out that this would be at a very late stage of oil and gas fields and may be too late for ensuring availability of financial security to undertake the required decommissioning work.

The book offers a Chapter on International Taxation (CH 8), written by Robert Hodges. This chapter discusses the impact of decommissioning tax relief on negotiation of sales and purchase of late life assets. Robert Hodges details a number of bases for the decommissioning tax reliefs, including the cash basis, pre-funded basis and accrual basis. This chapter details a number of points that affect the functioning of decommissioning tax relief: administration, loss relief, rate of relief and tax relief uncertainty. Robert Hodges provided a number of explanatory boxes in the chapter; adding illustrative case studies into the discussion.

Environmental law in relation to decommissioning business is discussed in Chapter 6 of Part C of the book. The chapter is co-authored by Alexandra Gordon, Adam Hedley, Nicholas Rock and Maricela Robles. This chapter discussed the environmental aspects in the international guidance and obligations of the Maritime treaties: United Nation Convention on the Law of the Sea (UNCLOS), Oslo and Paris Convention (OSPAR) and International Maritime Organisation (IMO). The chapter discusses environmental issues that arise during the three stages of decommissioning processes: planning, implementation and post decommissioning. It should be noted that at the time of publication, the Department of Energy and Climate Change (DECC) was still the regulator of the UK oil and gas industry. However, the Oil and Gas Authority (OGA) has taken over a great deal of the regulatory responsibilities of the UK oil and gas industry and the DECC was recently abolished under the administration of the new UK Prime Minister, Rt Hon. Theresa May (July 2016). DECC has been replaced by the Business, Energy and Industrial Strategy Department.

A very well-received Chapter of the book is that on 'Decommissioning Contracts' (CH 10) by Simon Moore. The author rightly states that the nature of the installation, its location, regulatory requirements and operators' preferences will all influence how a facility will be decommissioned. Further, Moore claims that decommissioning gives rise to its own risks in terms of estimating the actual decommissioning liability and the fact about changing the taxation system; and challenges related to financing and managing decommissioning. These risks and challenges need to be addressed if problems and disputes are to be avoided. The

decommissioning business is actually a combination of a number of discrete work scopes: - plugging and permanently abandoning the wells; decommissioning the pipelines; removing and transporting the installation onshore; dismantling and recycling the installation once onshore. Hence contracting for decommissioning is not one type, because each of the prescribed work scopes is in fact regulated by a separate contract. Michael Davar and Ben Holland discuss the decommissioning disputes in Chapter 12 and there seem to be contractual and ethical disputes that are worth looking at. A number of these disputes that were highlighted by Davar and Holland are: Disputes as to which parties may be liable for decommissioning; disputes relating to incorrectly served Section 29 Notices; disputes relating to withdrawal of Section 29 Notices; disputes relating to cessation of production and the Programme; disputes relating to the Secretary's power to require security and disputes relating to liability imposed for decommissioning costs. Then the book provides case studies of decommissioning in a number of countries: Angola, Australia, Brazil, Canada, Denmark, Indonesia, Malaysia, Mexico, Namibia, New Zealand, Nigeria, Norway and United States. It would have been a plus to see a case study on the United Kingdom, however this hopefully may be added to the book in the next edition.

Having read the book and having researched issues around decommissioning liabilities and risks, I found this work to be very interesting, timely and comprehensive. The book touches on some very important issues around decommissioning oil and gas installations from different perspectives: practical, legal, regulatory, contractual, health and safety and taxation.

In September 2016 I attended a conference in Aberdeen that was organised by DecomWorld⁹. The participants were from many different backgrounds and setting: government bodies, charities, academics, consultants and oil and gas industry. There seems to be a start of industrial lobbying against the OSPAR Convention in a direction that is expected to capture future UK regulations on decommissioning oil and gas installations. The industry representative claim that offshore oil and gas installations are beneficial to the sea life and removing them will damage the ecological setting of the sea living! They actually questioned the beneficial of the OSPAR Convention and called against decommissioning oil and gas installations. I was wondering if the oil and gas industry's claim that decommissioning is not worth it and is waste of money and time holds true, whether they would be prepared to pay the equivalent of

⁹ *DecomWorld* was founded in 2009. It is a provider of business intelligence to the global offshore decommissioning oil and gas community. Their website is: <http://analysis.decomworld.com/> (accessed 2/10/16)

decommissioning costs towards building new grammar schools or training more medical doctors. This leave the door open for more research and questioning of the ethical claim of the industry of the usefulness and worthiness of decommissioning.

Decommissioning oil and gas installations in the UK North Sea is still at its infancy stage, lessons to be learned and time is needed to gain business experience, reduce costs and provide good decommissioning model for the UK oil and gas industry. This book is a great contribution to a consideration of major issues surrounding oil and gas decommissioning.