

Oil price volatility - risks and opportunities in 2015

March 2, 2015 | Written by Tracey Chippendale-Holmes

Update 5 – Offshore oil storage - legal implications



Tanker owners are happy. VLCCs and Suezmaxes are generating strong cash flows and charterers are rushing to procure tonnage in an increasingly tight market. Commentators estimate that 40-50 older VLCCs have been commissioned on long-term charters to store crude. Are there any legal concerns with tankers being used for floating storage? Tanker owners see less risk in their tankers sitting stationary than sailing the high seas, but need to ask where they will anchor, for how long and whether this changes the applicable regulatory regime. If a 'storage tanker' is actually a floating storage unit (FSU), there is increased permitting required and a reduced ability to limit liability under the International Convention on Civil Liability for Oil Pollution Damage. While the Convention imposes strict liability for pollution damage on the Owner, it does allow for this liability to be limited, absent actual fault of the Owner.

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This reduction in liability does not apply to FSUs though.

Owners will need to know up front where the tanker will sit. This is for maintenance and staff planning even if it is not a concern to the insurers. There are obligations under Flag and Class for the Owner to fulfil, plus the requirements of the Hague or Hague-Visby Rules and the law of the relevant coastal states.

Looking through the Tankers Fixtures List of the Lloyd's List on the day of writing, 25 VLCCs and Suezmaxes were chartered, with two thirds of the VLCCs taken by Unipet for China with Reliance, oil majors and traders accounting for the next. At the recent Marine Money, London Ship Finance Forum, it was reported that Chinese shippers were shopping for several VLCCs on 2 year charters after concluding an agreement with Russian sellers desperate for cash as the sanctions take hold.

Where in the World...?

For the sovereign charterers, it makes sense to anchor close to home. The three big risks facing tankers in parts of Asia are piracy, weather and terrorism. Owners have the technology and systems to look out for all three but may face reduced control so far from port. Good intelligence is given by the live IMB Piracy and Armed Robbery Map and there may be metocean data available for the area. It is this which will inform the tanker requirements, from global strength of the hull to structural design of both hull and topsides to withstand fatigue cracks. If there is a disaster, the Owner will be fully liable for a vessel failure which results from the strain of standing too long at sea. Of concern is not only the financial liability, but also the environmental damage that will ensue and the potential for loss of life.

Wherever located, the tankers will need space to move in strong winds and currents. With almost all tankers being double-hulled now, they are not as stable in strong currents. Movement of the crude in ballast and cargo tanks can cause the tanker to sway suddenly and, in addition, there may be leakage from the inner layer.

Other seas are off limits as they are Special Areas listed in MARPOL Annex 1 or are part of the seven main transit 'chokepoints' for crude oil. These are obvious targets for pirates and terrorists, as well as the risk of collisions and spills.

Some charterers choose much quieter locations as we saw from recent attempts to work around Iranian sanctions. The 'storage tankers' were well hidden in the South China Sea. Not to the extent of the United Kalavryta which disappeared from radar in the Gulf of Mexico for three days in Summer 2014 when the transponder was turned off (to help it hide from a legal arrest). It sat completely invisible with a million barrels of crude even from informed Texan coastguards.

The Charter allocation of duties

So are Owners using their negotiating strength to pass the additional vessel and environmental risks to the charterers? This still leaves the Owner with the scheduling burden of dry docking, SIRE inspections and Class surveys. Modification to the vessel and additional legal documentation may be required to ensure the vessel is in every way fit for long term storage and MARPOL compliant.

Charter forms have not yet evolved to reflect the different consequences of a long anchorage at sea. Clause 4 of Shelltime 4 does not require a charterer to indicate how many voyages the tanker will undertake or whether it will be stationary. Relevant charter considerations remain:

- The continuing duty to employ the tanker at safe ports and within trading limits. The Owner may object to instructions which take the vessel beyond trading limits and expose the vessel to increased risks. The liability

for this will sit with the charterer even if the additional insurance premiums are borne by them, because of the safe port obligation.

- The Owners will usually define the capacity of the tanker to perform as contracted in 'good weather'. It must still be capable of satisfying the Vessel requirements set out in the charter and be in every way fit for the service contracted.
- The nature and extent of the Owner's obligation to maintain depends on the exact wording agreed by the parties to the charter. Additional attention is required if the tanker is to sit in warm seas as the marine growth will undermine performance of the vessel.
- Due diligence and reasonable care in cleaning the hold and tanks will be both an express and implied obligation of the Owner. The Shoko Maru explosion was caused by a crew member cleaning paint off the deck when a little crude was remaining.
- Responsibility for cargo stowage frequently sits with the Owner but the charterer may accept this liability to obtain its choice of vessel and location. The Oil Majors (led by Shell) who are seen chartering the most VLCCs, perhaps for storage, are more amenable to this.

Worst case

If the tanker becomes damaged or new regulations are adopted which impact on the ability of the tanker to continue as a 'storage tanker', this may be a 'frustrating' event (under English law) and may mean that any advance hire paid will be repayable by the Owner. A claim to the insurer for 'lay-up' will not be possible because the tanker has been carrying crude.

And if there is an explosion, the Owner will look first to the insurance taken out in accordance with the International Convention on Civil Liability for Oil Pollution Damage. This is an amount equal to the Owner's total prescribed liability according to the tanker's gross tonnage. Even the amount applicable to VLCCs of up to 320,000 GT will pale in comparison with the likely third party claims though.

In the haste to sign up another charterer and dust off another underutilized VLCC, Owners will be asking where and for how long the tanker will be a storage unit and how the Owner will reconcile that with its international legal and environmental obligations.

This update is the fifth in our series on the impact of oil price volatility. To read the previous updates, please [click here](#).

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