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There was a time when vessels flew international maritime signal flags to communicate with ships.
Here the yellow or "Q" flag in the international code is a declaration that the ship has no illness onboard.

A Return to "Normal"?

The Credit Issue

FINANCING LNG CARRIERS AND MULTI-PARTY ISSUES IN LNG EXPORT PROJECTS

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BACKGROUND

2020 was a challenging year for the developers of LNG export projects as the economic downturn stemming from Covid-19 led many project developers to postpone investment decisions. It is now hoped and expected that a number of the export projects, postponed through 2020, will soon reach final investment decision **(FID)**, and that this will lead to a commensurate increase in demand for newbuilding LNG carriers **(LNGCs)** dedicated to these projects. With at least 30 LNGC newbuilding orders already having been placed in 2021, the anticipation of these LNG export projects coming on-line is further good news for shipowners **(Owners)**.

Nevertheless, there are certain challenges for Owners constructing and financing newbuilding LNGCs on the basis of charters entered into with independent LNG export projects which have yet to be completed (LNG Projects), as compared to where the charterer is an international oil and/or gas company or utility with an existing portfolio of cargoes **(Corporate Counterparty)**.

ISSUES FOR SHIPOWNERS

In this article we look at some of the more significant issues faced generally by Owners when constructing and financing LNGC against long term charters, and focus on some of the particular challenges when financing a vessel to be chartered to an LNG Project.

For an Owner intending to finance a vessel on any form of limited recourse basis (asset or project finance), the bankability of the underlying commercial documentation (considered below) will require consideration irrespective of whether the charter has been concluded with a project company **(Project Charterer)** for an LNG Project or with a Corporate Charterer. In each case, an Owner's financiers **(Owner's Financiers)** will assess the owner's ability to service the debt on the basis of the revenue receivable under the charter. To the extent that Owner's Financiers determine there are issues that relate to the bankability of the charter, they will look for additional security (through corporate support or otherwise) to mitigate any potential shortfall.

PROJECT RISKS

One key difference in the case of an LNG Project is the additional element of project risk. Where the charterer is a Corporate Charterer, Owner (and Owner's Financiers) will, broadly, be confident that, provided the contracted vessel performs the required service under the charter, the Owner will receive charter hire in accordance with the charter terms. The same does not apply in relation to an LNG Project because the Project Charterer will only have a requirement for the vessel once the project has been successfully completed and has commenced exporting LNG. Up to that point, the Project Charterer will have no income or resource to satisfy its liabilities and will be reliant on credit support from its shareholders (as **Project Sponsors**). Therefore, depending on the scope and adequacy of the security that the Project Charterer is able to provide in respect of its obligations, both Owner and Owner's Financiers will want to assess the economic viability of the underlying project as early as possible in the process, and will be requesting the Project Charterer to provide certain information relating to the project — such as data relating to the gas reserves, the Project Charterer's own financing arrangements, and the project's construction schedule — in order to complete this preliminary assessment.

Further important differences relating to an LNG Project arise from the additional parties (and documentation) involved and the timing of entry into the different aspects of the arrangements.

ADDITIONAL PROJECT PARTIES

In an LNG Project, there will

also be Project Sponsors and a financing of the Project **(Project Financing)** by their financiers **(Project Lenders)**. The requirements of the Project Sponsors, the Project Lenders and the terms of the LNG Project will affect a number of the agreements to be entered into by Owner and Owner's Financiers.

THE MAIN DOCUMENTS

The key agreements in this context are:

- **Shipbuilding Contract (SBC)** — between the designated shipyard (as **Builder**) and Owner (as **Buyer**) for the design and construction of the vessel.

- **Refund Guarantee (RG)** — to be issued by a commercial bank in favour of the Buyer as security for the repayment of any advance payments of the contract price in the event of Builder's default.

- **Tripartite or Step-In Agreement (TA)** — amongst Builder, Buyer and Charterer which, amongst other things, gives the Charterer the right to step-in to the SBC in the event of Builder's or Buyer's default.

- **Charter (TCP)** — between the Charterer and Owner, setting out the terms on which the Charterer agrees to hire the vessel from Owner, including various rights of the Charterer to monitor the vessel's construction prior to delivery.

- **Quiet Enjoyment Agreement (QEA)** — which deals primarily with the relationship between the Owner's Financiers and the Charterer.

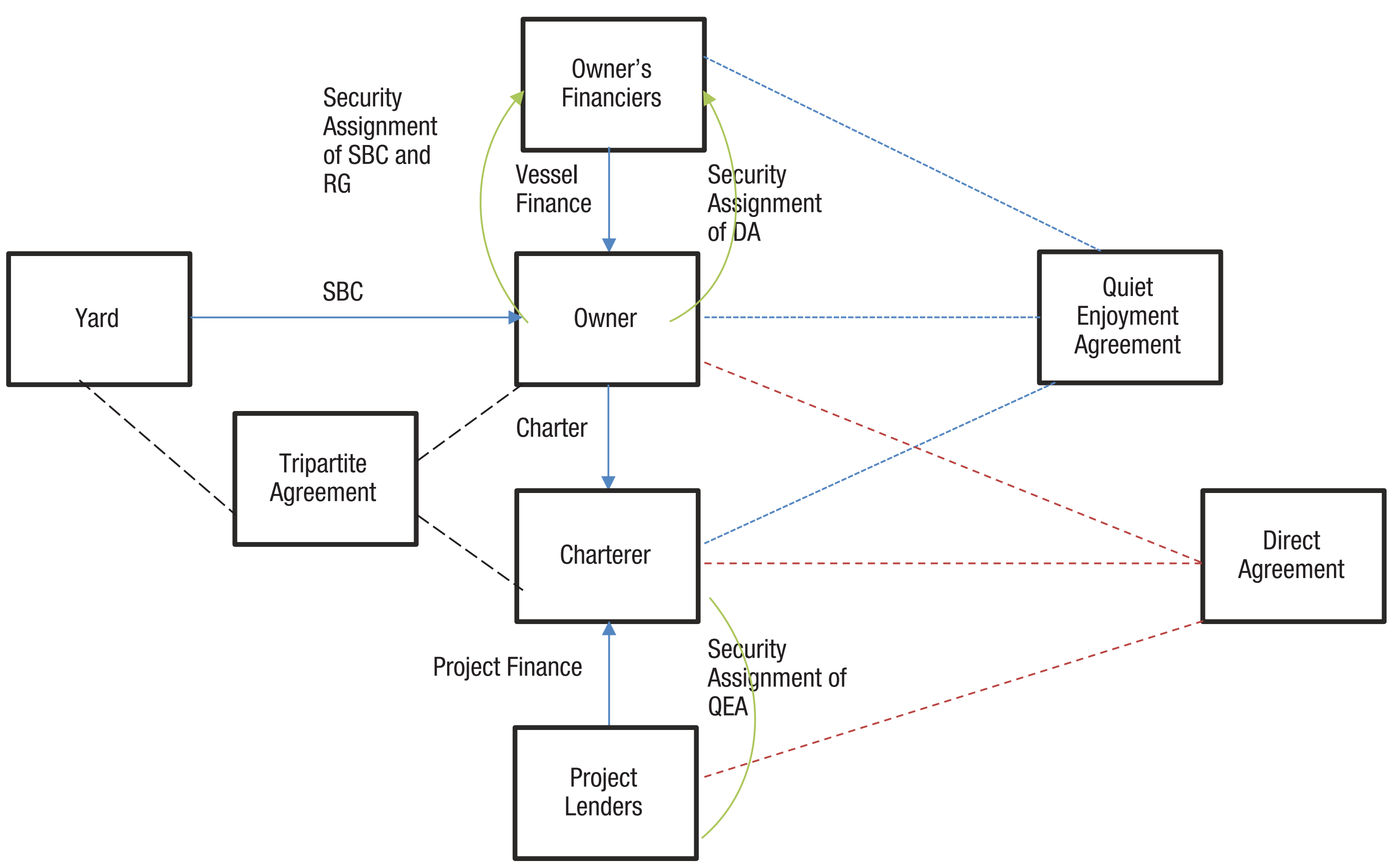
- **Direct Agreement (DA)** — which deals primarily with the relationship between the Project Lenders and Owner (and is only required in the case of a project).

(together, the **Relevant Agreements**).

The Project Sponsors will almost certainly have taken FID and substantially agreed the terms of the Project Financing prior to detailed discussions with the Owner regarding the Relevant Agreements. The terms of the Project Financing and the requirements of the Project Sponsors and the Project Lenders will be reflected in the terms of the Relevant Agreements and, at the time they are presented to Owner, they are likely to be presented as "set in stone" to some extent.

It may be necessary for Owner to negotiate, settle and execute the Relevant Agreements before it has secured its own financing, and possibly before it has decided upon the type of financing required. In these circumstances, Owner may be constrained in negotiating

PARTIES AND KEY AGREEMENTS



terms it would ideally require to reflect its own commercial position and for the purposes of its financing and, where Owner's Financiers have not yet been selected, it will need to anticipate their requirements as best it can.

In the sections below, we look at some of these issues in more detail and, in particular, at the Relevant Agreements in respect of which the competing interests of the parties must be reconciled.

PRE-CONSTRUCTION

Owner will want the SBC and the TCP (and, if it is a requirement of the Charter, the TA) to be executed, or at least to become effective, at the same time. This is because it will want to ensure that, at the time the TCP becomes effective, it has a fully effective SBC committing the Builder to construct the LNGC to meet Owner's obligations under the TCP, and because it will not want to be bound by the terms of a SBC unless it has an effective TCP in place pursuant to which the vessel will be employed following its delivery. Ordinarily, this is not an issue. However, in an LNG Project, Owner (and Owner's Financiers) will also want to be sure that all conditions to the Project Financing be satisfied at the same time as the TCP and SBC become effective.

CONSTRUCTION PHASE

If the Owner is seeking to finance any of the pre-delivery instalments payable under the SBC, Owner's Financiers will require an assignment of Owner's rights under the SBC and the RG. They will require an assignment of the SBC to give them a measure of control over the SBC. As a mere assignment, it will give them the right to exercise Owner's rights, but it will not give them the right to be substituted for Owner and perform Owner's obligations and, in particular, the supervision obligations. Their position will therefore be quite different from that of the Project Charterer with full step-in rights under a TA, as discussed further below. Owner's Financiers will want an assignment of the RG in order to ensure that, upon termination of the SBC resulting from Builder default, the lenders will receive the proceeds of any payments due under the RG.

If the vessel is being constructed against a TCP and the Charterer requires the parties to execute a TA, the Charterer will have full step-in rights and the right to regulate any potential termination of the Shipbuilding Contract by either the Owner or the Builder. A Project Charterer (and the Project Lenders) will almost certainly insist on a TA.

Under the TA, neither the Builder nor Owner will be entitled to terminate the SBC for the other party's default for a set period unless the Charterer consents, and the Charterer will generally be given rights to (a) remedy the relevant default (to the extent it is able) in which case the SBC will remain in place; or (b) instruct the Buyer to transfer the SBC to the Charterer by way of novation so that the Charterer assumes the rights and obligations of the Owner under the SBC. These rights will usually be expressly agreed to take precedence over Owner's Financiers position under their assignment. This position is usually acceptable to an Owner's Financiers, but there can be points of contention.

If the Charterer exercises its right to "step-in" to the SBC following a Buyer's default, the Buyer/Owner will wish to receive an amount equal to the sum of the pre-delivery instalments already paid under the SBC, and both Owner and Owner's Financiers will want to ensure that the amount payable is at least equal to the sums that Owner's Financiers have lent the Buyer (including any break costs). However, in these circumstances, it is likely that the Charterer will also want to be reimbursed for (and therefore deduct) any costs it incurs in stepping into the SBC resulting from Owner's breach. Ultimately, the amounts recoverable by the Charterer from Owner in these circumstances will be a point for commercial negotiation between Owner and the Charterer. However, Owner's Financiers will require recourse to the Owner for any shortfall between the amounts payable by Charterer and the amounts owing to them – and the Owner will be exposed to any shortfall between amounts paid to the Builder under the SBC plus its own project costs (i.e. financing and supervision costs) and the amounts it recovers from the Charterer in these circumstances.

Second, it is generally accepted that the Charterer will be afforded a certain amount of time to decide whether it wishes to consent to the termination or take either of the other two actions referred to above (i.e. to remedy the default or to "step-in" to the SBC). When the Charterer is a Corporate Charterer, the parties could legitimately expect the Charterer to make the decision relatively quickly as to whether it wishes to maintain the SBC. However, the process is often more complicated when dealing with a Project Charterer because of the number of stakeholders in the project that may need to be consulted before a decision can be made. However, irrespective of a Charterer's wish to take its time over this decision, the time allowed for the decision-making process cannot be allowed to have the effect of prejudicing the Buyer's right to terminate the SBC or, where there is a Builder default, the Buyer's right to make a claim under the RG.

DELIVERY – TESTS AND TRIALS

The provisions in the documentation relating to delivery will be similar whether the underlying TCP is one with a Project Charterer **(Project Charter)** or not, and the SBC will provide that once the vessel has been constructed it will undergo a detailed test and trial regime to determine its conformity with the SBC's terms. The Charterer will want to ensure that the vessel meets the requirements of the TCP before it accepts the vessel into service. Ideally, from Owner's Financiers' perspective, delivery of the vessel to the Charter under the TCP will occur simultaneously on a back-to-back basis with the vessel's delivery to the Buyer from the Builder under the SBC. However, the Charterer will often have negotiated a right to defer the delivery of the vessel under the TCP, which right the Owner will want to ensure is replicated under the SBC. If the Charterer exercises such right (and there is a corresponding right under the SBC), Owner's Financiers will be keen to ensure that any additional costs incurred by the Owner as a result of such deferral will be reimbursed by the Charterer in order not to impact debt service. Alternatively, they will look to the Owner for any shortfall.

DELIVERY – PERFORMANCE WARRANTIES

One other key interface issue between the SBC and the TCP will be in relation to the performance warranties that the vessel is required to meet and, during the negotiation of these contracts, the Owner will want to ensure that the performance warranties under each contract are fully aligned. However, even if the Owner is obliged to accept delivery of the vessel under the terms of the SBC, it is possible that, due to margins of deficiency allowed for in the SBC (but not the TCP), the vessel may not be capable of reaching the performance levels as required by the TCP. In such case, it will be imperative that there is a mechanism within the TCP that enables the warranties to be adjusted to reflect the vessel's actual performance either during sea trials (conducted pursuant to the SBC) or for a stipulated period post the vessel's delivery. Unless there is such a mechanism for the adjustment of the warranties under the Charter, the Owner could potentially be liable for a breach of warranty throughout the charter term, with the consequential reduction of hire (and impact on debt service) that this would entail.

POST-DELIVERY / CHARTERING PHASE

Irrespective of the underlying nature of the TCP, where Owner is intending to finance the vessel against the revenue from the TCP, there will be various aspects of the TCP terms that will be heavily scrutinised by Owner's Financiers. Addressing all such bankability issues falls outside the scope of this article, but any elements of the TCP that could affect Owner's ability to service the debt — such as the length of the charter term, the daily rate of charter hire, and the Charterer's rights to reduce hire, place the vessel off-hire, or terminate the Charter — will be carefully reviewed by Owner's Financiers.

One key difference in relation to an LNG Project is that the Project Charterer (being a project company) will not generate any revenue from sales until it has commenced the export of LNG — and consequently, Owner will be looking to the Project Sponsors to provide security for the obligations of the Project Charterer at least up until the time that the LNG Project has been completed and has started to generate revenue. Should the LNG Project fail to complete and, as a consequence the Charterer does not take delivery of the vessel under the Charter in accordance with its terms, Owner would have a claim in damages against the Project Charterer for non-performance — but, in such circumstances, the Project Charterer will not have generated any income from LNG sales proceeds and, accordingly, the scope of the security package offered by the Project Sponsors will be a key element that will need to be assessed by both Owner and Owner's Financiers. It should be noted, however, that it is highly unlikely that the level of damages recoverable in these circumstances would be sufficient to satisfy the quantum of debt secured against the vessel and, therefore, Owner's Financiers will often require some form of additional support from the Owner to cover this initial project completion risk.

QUIET ENJOYMENT AGREEMENTS AND DIRECT AGREEMENTS

QEAs and DAs are the agreements in which there will be the most direct interface between the interests of the Project Charterer and Project Lenders on the one hand, and Owner and Owner's Financiers on the other. QEAs are, of course, common in vessel financings and are not specific to projects. DAs are common to project financings. In a project, there will likely be both. They each have a similar role in relation to their respective financings, and their combination in a project gives rise to a number of issues. These are explored below.

QUIET ENJOYMENT AGREEMENTS — OVERVIEW

A QEA deals with the relationship between Owner's Financiers and the Charterer, although the Owner will also be a party. Its function is to address and set out a regime for dealing with the consequences of an Owner default (under Owner's Financing or under the Project Charter) and of Owner insolvency. While the usual terminology *(quiet enjoyment agreement)* might suggest that it is primarily for the benefit of the Charterer (assuring quiet enjoyment), QEAs almost always include provisions for the benefit of Owner's Financiers. Owner's Financiers will want a mechanism to preserve their income stream or, failing that, a mechanism for enforcing and disposing of the vessel (see **Permitted Transfer Regime** below), notwithstanding (and in addition to) the Charterer's rights of quiet enjoyment. By definition, as the QEA deals with Owner default, Owner has limited interest in its terms, its main interest being to ensure that it is bankable.

DIRECT AGREEMENTS — OVERVIEW

A DA deals with the relationship between the Project Lenders and Owner, although the Project Charterer and sometimes the Owner's Financiers will be parties. Its function is to address and set out a regime for dealing with the consequences of a Charterer default (under the Project Financing or under the Project Charter) and of Project Charterer insolvency. The Project Lenders will want a mechanism to assure the continued availability and use of the vessel in these circumstances, notwithstanding the rights which Owner would otherwise have to terminate the Project Charter.

SOME INTER-CREDITOR AND TIMING ISSUES

One point to note before looking at the terms of these agreements in more detail is that, although the Project Lenders will not be a party to the QEA, and the Owner's Financiers may well not be a party to the DA, they each have a direct interest in these agreements, are affected by them, and there are likely to be assignments of the benefit of them; the Owner will assign the benefit of the DA to Owner's Financier's and the Project Charterer will assign the benefit of the QEA to the Project Lenders.

In an LNG Project, as a result of the timing issue discussed above (namely that all these documents will likely be negotiated among the Owner, the Project Charterer and the Project Lenders before the Owner's Financiers have been selected), it means that one party (i.e. the Owner's Financiers) will not be at the negotiating table and, accordingly the Owner will need to anticipate their requirements and the bankability of the terms being agreed.

QUIET ENJOYMENT AGREEMENTS – QUIET ENJOYMENT AND PERMITTED TRANSFER REGIME

The principal provisions of a QEA which are for the benefit of the Project Charterer are a right of quiet enjoyment and a restriction on the Owner's Financiers rights to enforce against the vessel for as long as Owner does not have a right to terminate the Charter for Charterer default. It is customary and will be essential to the Owner's Financiers for both of these rights to be subject to conditions because it will be these conditions that afford the Owner's Financiers the protection they require. Owner's Financiers will require that the right of quiet enjoyment is conditional and terminates upon the occurrence of various events. Similarly, Owner's Financiers will require that the restriction on enforcement *permits* a sale of the vessel in certain circumstances and sets out a permitted transfer regime **(Permitted Transfer Regime)**. Additionally, the Project Charterer (or the Project Lenders) may require that the Project Charterer have a right to seek to cure Owner's default **(Project Charterer's Cure Rights).**

The principal additional protections which Owner's Financiers are likely to require in a QEA for their benefit are an undertaking to comply with the Permitted Transfer Regime, an undertaking to notify Owner's Financiers of defaults by Owner under the Project Charter entitling the Project Charterer to terminate, an undertaking not to terminate until Owner's Financiers have been given a right to cure any such Owner default **(Owner's Financiers' Cure Rights)** in order to seek to avoid a sudden termination and possibly an undertaking to continue to pay hire during any such cure period.

PERMITTED TRANSFER REGIME

Owner's Financiers Permitted Transfer Regime will be essential to Owner's Financiers because it permits a disposal/transfer of the vessel in circumstances where Owner does not or cannot perform, and the Project Charterer cannot cure the default. In this context, it is to be noted that there may well be restrictions on sale/transfer by the Owner in the Charter and, even if there are not, the TCP would most likely be treated as a semi-personal contract at common law which cannot be transferred without the Charterer's consent. It will be in the interests of each of the Project Lenders, the Project Charterer and Owner's Financiers that an orderly transfer can be effected, preserving the use of the vessel for the project and the income stream for Owner's Financiers. Nonetheless, the Project Charterer will require certain conditions to be satisfied. These are likely to include that the buyer has adequate financial standing, sufficient experience and expertise in technical management of LNGCs, is not a competitor, and that the chartering by the Project Charterer from the buyer would not be unlawful under law applicable to the Project Charterer. On the other side, the Owner's Financiers will want the Project Charterer to cooperate in the implementation of any permitted transfer and commit, for example, to enter into necessary documentation, such as a novation of the Project Charter.

In substance, these provisions are not complex. However, the details can require careful negotiation, balancing the interests of the various parties and, as alluded to above and considered further below, the manner in which the parties' respective rights fit and work together requires careful analysis. In particular, it is necessary to consider how the multitude of cure rights given to the respective parties (Project Charterer under the TA, Owner's Financiers Cure Rights under the QEA with respect to Owner Charter default, Project Charterer's cure rights with respect to Owner default under Owner's Financing and Project Lender's Cure Rights) are intended to work together. In negotiating these, it is no doubt sensible to have an eye to the realistic likelihood of cure rights (other than payment default cure rights) being exercised, and capable of resolving issues in practice, and to focus on the most likely methods of resolution (which may well be substitution of a party).

AREAS OF DISCUSSION

There may well be a debate regarding the circumstances terminating the right of quiet enjoyment. Termination upon a breach of charter by the Project Charterer permitting the Owner to terminate under the express terms of the Project Charter or at common law should be uncontroversial. However, Owner's Financiers may also require quiet enjoyment to terminate upon non-payment of hire under the Project Charter, a breach by the Project Charterer of its undertakings to notify of Owner's defaults, or of its undertakings in respect of the Owner's Financiers Cure Right regime or the Permitted Transfer Regime. These last points relating to a breach by the Project Charterer of its undertakings may be more sensitive issues for the Project Lenders than for a Charterer because they will be outside the Project Lenders' control and they will wish to avoid a Project Charterer default terminating the quiet enjoyment.

There may also be a debate regarding the conditions for a transfer under the Permitted Transfer Regime. For example, the Owner's Financiers are likely to require the conditions regarding the financial standing and expertise of the buyer to be capable of being satisfied by (parent) guarantees of the buyer and a third party providing the technical management for the reason that, in such a scenario, bank lenders may use a special purpose company as the new vessel owning company, and appoint a third party manager. Perhaps of greatest significance will be the regime to apply where the Project Charterer does not agree to any of the proposed transferee entities, thereby blocking a sale/transfer or where, for other reasons, a permitted transfer cannot be effected. In these circumstances, the Owner's Financiers are likely to require the ability to sell outside the Permitted Transfer Regime, but subject to the Project Charter and the Project Charterer's rights of quiet enjoyment. It is possible that a Charterer may not agree to this, in which case – subject to any of the additional terms referred to below offering a way out — the contractual documentation will not be able to do more than recognise that there may be a potential deadlock situation.

QUIET ENJOYMENT AGREEMENTS – ADDITIONAL TERMS

The Project Charterer (or the Project Lenders) may seek a number of additional rights in the QEA, including a right of first refusal to be granted by Owner's Financiers, allowing the Project Charterer to acquire the vessel in circumstances where a permitted transfer is not agreed — or a purchase option, or an option to bareboat charter the vessel. Clearly, these are very significant provisions and, apart from the first one, if they are to be part of the commercial deal between the Project Charterer and Owner, they are matters that should be covered in the Project Charter — and if they are included in the Project Charter, the Project Charterer and the Project Lenders will expect them to be reflected/respected in the QEA.

Timing issues

In an LNG Project, with regard to the timing issues already mentioned, it is likely that Owner's task in negotiating these provisions will be complicated by the fact that it will need to anticipate Owner's Financiers likely requirements. In some cases, it will not be possible to agree to the terms in final form and for them to be set in stone. For example, an Owner cannot commit as yet unselected financiers to a right of first refusal, and the terms of a purchase option cannot be finalised without knowing the size of the debt, swap costs (and equity contributions) likely to be needed to be covered by the purchase option price. Accordingly, the Owner will need to agree to a formulation that allows the QEA to be further negotiated once its financiers have been selected. If it does not, it may limit its financing options.

Direct Agreements – main terms

As noted above, the function of a DA is to set out a regime to deal with the consequences of a Charterer default. For the Owner, the Project Lenders' requirement to ensure the (option of) the continued availability of the vessel will need to be balanced against the likely requirements of its financing arrangements.

A DA will usually afford the Project Lenders some combination of the following rights: a right to step-in temporarily or permanently (by substituting the Project Charterer) in the event of a Project Charterer default under the Project Charterer's financing (or the Project Charter); a right to replace the Project Charterer if it becomes insolvent; and a cure right where the Project Charterer defaults under the Project Charter **(Project Lenders' Cure Rights)**.

The first two options give rise to a number of issues for the Owner (and Owner's Financiers) which are similar to, but not the same as, the issues for the Project Charterer in relation to the Owner's Financiers Permitted Transfer Regime under the QEA, and Owner will want the substitution right to be conditional upon the proposed substitute satisfying certain criteria. However, a Charterer clearly has a greater interest in the identity of an Owner because of an Owner's technical and management responsibilities. By contrast, an

Owner's main concerns regarding the Charterer are likely to be that it has the financial resources to perform its obligations under the Project Charter and the required experience to trade the vessel in accordance with the charter. Additionally, it is likely to require that the substitute is not a competitor, is not involved in litigation with the Owner's group, and is not a sanctioned party. If the original Project Charterer's obligations under the Project Charter are guaranteed, it is highly likely that the Owner will require replacement guarantees of the substitute charterer.

Some of the terms will need to be negotiated by Owner with an eye to its Owner's Financiers likely requirements. For example, the conditions to transfer will need to cater to the assignment of any guarantees as referred to above to the Owner's Financiers, and for the substitute charterer to satisfy not only Owner's but also Owner's Financiers KYC and sanctions requirements. The terms will also need to provide for any transfer to be conditional upon both Owner's and Owner's Financiers' related costs being covered.

FINANCIAL AND TIMING ISSUES

There will be some important financial considerations and timing points. From Owner's (and the Owner's Financiers') perspective, while step-in/substitution rights, potentially provide a solution to a Project Charterer default and protect their long-term income stream, they also give rise to a stay on their usual termination/enforcement rights and, until completed, create a risk of a protracted period of non-payment, leaving Owner without the hire needed for debt service. Accordingly, it will be important that there are clear time limits for the Project Lenders to give notice of their intention to exercise any step-in or substitution rights and within which any such substitution must be effected. The Owner will want to provide that, if these time limits are not satisfied, the Project Lenders' step-in/substitution rights fall away. Owner will also want to provide that it is a condition to any step-in or substitution that any Project Charterer payment defaults are remedied prior to the substitution and, if other defaults exist, there is a clear agreement on the timing for remedying these and the consequences of failure.

The Project Lenders' cure rights give rise to similar issues. It will be important to both Owner and Owner's Financiers that there are clear time limits within which the Project Lenders must exercise any such rights and complete the cure, at the end of which and in the absence of the defaults having been remedied, the Owner can terminate.

There may be circumstances in which both the Project Lenders' step-in/substitution rights and cure rights arise, for example if the Project Charterer is in default under its financing and the Project Charter. Owner will need to ensure that the DA sets out how the regimes operate in these circumstances and, in particular, that the Project Lenders are required to make an election within a specified time (which does not cut across the time limits referred to above) which regime is to apply; otherwise a situation could occur where there is a doubling up of the time limits with, for example, first an attempt to substitute and then to cure.

As in the case of the QEA, with Owner's Financiers not at the table, Owner will need to anticipate their likely requirements and obtain the other parties' commitment to afford some flexibility, and adjust the terms as necessary to enable Owner to obtain funding.

FINAL THOUGHTS

It is clear that there may also be circumstances in which both the QEA and the DA apply — for example, Project Charterer default under its financing and under the Project Charter, leading to Owner default under its financing. Careful thought will be required as to which rights or regimes should or will prevail in these circumstances. In the normal course, a charterer default under a charter entitling Owner to terminate would terminate Owner's Financiers' quiet enjoyment obligations under the QEA. However, under the DA, which Owner's Financiers will have acknowledged, the Project Lenders will have a right to cure or substitute. This may well make sense commercially because it would most likely be in the interests of Owner's Financiers that the Project Charterer default is cured so that the income stream is preserved. However, it is important that the parties agree and set out the manner in which the different agreements (and the regimes under them) are intended to operate in circumstances where there may otherwise be a conflict.

In an ideal world, there would be a single agreement among all the relevant parties setting out how all their different rights operate in the various different circumstances, or an umbrella agreement setting out how the various agreements work together. In practice, this is likely to be difficult to achieve, not least because of the timing issues mentioned above. However, the fact that there may not be such an agreement does not remove the necessity of seeking to ensure that all the different elements, taken together, will operate as all the parties intend.