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Rely Upon or Non-Rely Upon Information: Who is liable for errors in FEED and Design Documentation in EPC Projects, and how is this related to EPC project financing?

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So, the Owner is building a factory—let's say, a chocolate one, why not. The Owner hires an EPC Contractor to ensure *turnkey liability* in the project, meaning that the EPC Contractor is fully responsible for the outcome.

Firstly, because it's convenient. Secondly, because project lenders are not always willing to finance a facility built under a multi-lot scheme, i.e., with multiple contractors. Why? Because for project lenders—banks—this increases risk: the more contractors involved, the greater the chance one of them will miss deadlines or fail to perform other obligations, increasing the risk that the chocolate factory won't be commissioned on time. This delay impacts revenue—which, in 90% of cases, is pledged to the lenders under the financing agreement—and that understandably makes banks nervous.

Designing the Chocolate Factory

There are several design routes an EPC project can take. Let's explore each of them under both Russian and English law (the latter often governing EPC contracts).

Vector 1: The EPC Contractor Designs Everything In-House

Rare, but possible. The EPC Contractor doesn't subcontract design work but uses its own in-house team. This is the ideal scenario, because if there are any calculation errors in

the FEED or design documentation that lead to the factory failing performance tests (e.g., 72-hour tests), the responsibility lies entirely with the EPC Contractor.

Vector 2: The EPC Contractor Subcontracts Designers

This is more common. Depending on the complexity of the project, a (usually foreign) designer may develop the FEED package (Front-End Engineering Design), which includes the core technology. The EPC Contractor then adapts this to Russian technical norms per Government Decree No. 87 dated 16 February 2008.

Alternatively, the EPC Contractor subcontracts a Russian design institute to adapt the FEED to local norms, resulting in fully compliant design documentation.

Vector 3: The Owner Provides the FEED Package as Input Data

Sometimes, the Owner contracts directly with a licensor (technology owner) to develop the FEED package, then provides this to the EPC Contractor to be integrated into the Russian design documentation.

What Is Rely Upon vs Non-Rely Upon Information?

Sometimes, the EPC Contractor refuses to be liable for technological decisions embedded in the project. How does this happen?

Take our chocolate factory: the EPC Contractor is usually not the licensor—it knows how to *build* the plant, not how to *design* a process that produces chocolate with certain properties and volumes as required by the Owner and lenders.

So, the EPC Contractor hires a licensor to perform the pre-FEED or FEED work, which embeds the technology into the base design. The EPC Contractor then adapts this to local standards.

But during contract negotiations, the EPC Contractor might say: "I'm happy to take full liability for performance guarantees *unless* those guarantees aren't met due to an error in the FEED package. I'm not qualified to verify the licensor's work. I consider the FEED to be 'rely upon information'—information I'm entitled to rely on and not required to verify."

What Can Be Done?

Whether certain input data is treated as *rely upon* or *non-rely upon* is largely a matter of commercial negotiation. But there are also technical constraints.

This is a crucial issue when the EPC Contractor accepts initial project data from the Owner. It must clearly define in the EPC Contract which data it will verify and which it will not.

- **Non-rely upon information** = data that must be verified by the EPC Contractor.

- **Rely upon information** = data that is accepted as-is, without verification.

Why does this matter? Any error in the Owner-supplied input data can significantly delay the construction timeline. If the EPC Contract doesn't specify which input data the Contractor is liable for, the Contractor may be liable for *all* errors - especially under English law.

Example: Subsurface Risks

Let's say the Owner provides site investigation results (geology, geodesy) from a third-party contractor. During construction, an ancient settlement is discovered—something the survey failed to detect. That could halt the project for a year.

If the EPC Contract doesn't specify that site investigation data is rely upon information, the EPC Contractor could end up liable for this delay—even though they didn't carry out the survey.

That's why, when we represent EPC Contractors, we sit down with their technical teams and prepare a schedule that specifies which data is verified and which is accepted as-is. For example, all site investigation results should be categorized as rely upon information. If a buried village is discovered during piling, the Contractor won't owe delay liquidated damages.

There's also a reasonableness principle: theoretically, the Contractor *could* re-do the geotech work, but that's not commercially feasible. So, in global EPC practice, subsurface risks are borne by the Owner as site owner.

But beyond site investigations, there are other types of input data that may affect timelines but which the Contractor genuinely cannot verify—e.g., utility connection terms, raw material specs for testing (if provided by the Owner), etc.

The Contractor's technical team must identify all such data and explicitly list it in the EPC Contract as rely upon information.

When We Represent the Owner

This issue is also key when we represent the Owner—and for the lenders. Sometimes, the Owner's shareholders don't realize that after several months of negotiations, the EPC Contractor suddenly reveals (casually, over coffee) that it's only liable for the Russian design adaptation. The base FEED, developed by the foreign licensor *hired by the Contractor*, won't be verified.

So, if the factory underperforms and an expert review shows the error lies in the FEED, there may be *no one* to pursue for performance liquidated damages.

Lenders will flag this too: if the EPC Contract includes such a clause, they'll deem it *non-bankable*. In other words, the project won't get financing.

The whole point of EPC—and the reason it costs more—is turnkey responsibility. This gives comfort to both lenders and the Owner. A single point of responsibility is far less risky than managing 30 different contractors.

Direct Contracts with the Licensor for FEED

As mentioned, sometimes the Owner contracts directly with a foreign designer for the FEED. If the EPC Contractor then refuses to verify the FEED, saying it lacks the expertise, the Owner may have to bring a claim against the foreign designer.

But that's not ideal. The designer's liability cap will be based on their (smaller) contract value—not the full EPC contract. So the Owner will recover less than they would have from the EPC Contractor.

Conclusion

Before spending months drafting and negotiating your EPC Contract, include in the tender package or term sheet a clause clearly stating which input data the EPC Contractor is expected to be liable for—especially the FEED.

EPC Contractors should take this issue seriously too, to avoid paying for mistakes they couldn't verify.