

Issue No : 14
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Author : Roger Trett
Title : Introduction - Aiming For A Common Goal

Aiming For A Common Goal

Since the last issue of the Digest, we have seen the publication of the Latham Report by Sir Michael Latham following his research into the construction industry. A number of the recommendations of Sir Michael have already been put in place and I trust that the on-going efforts will result in the implementation of further recommendations. This to a certain extent relies on the ability of somebody to drive them - and Sir Michael's contract expires at the end of the year! I do not propose to set out in this introduction specific recommendations of the report, as this has already been done on numerous occasions by very qualified personnel. However, the essence of Sir Michael's report is of co-operation and not confrontation.

Another facet of the report is that we should seek a 30% reduction in costs by the end of the century. I can hear the contractors whine from here (and I am writing this in the States), but such reductions can only arise from improved productivity, which in turn can only arise from improved planning of a project from initial design through to construction. Sir Michael cites the Japanese on planning the project for four years and completing construction in one year, where our industry seems to plan for one year, construct for four years and litigate for four years!

Until the adversarial nature of the construction industry is changed at the very root, I have my doubts as to whether the Latham report will have any effect upon the industry. Until there is a common goal recognised by employers, contractors and subcontractors, that is, for the employer to have his project completed on time and within budget and for the contractors to make a reasonable profit, then confrontation will continue.

You may say "*but that is the common goal*". I agree in theory but in practice it isn't. The employer wants his project for the minimum amount of money, thus making project times and prices reduced from what they really should be. The contractor therefore fights for every penny that he can get, plus more! So instead of having a situation that when a problem arises it is resolved, the employer and contractor and subcontractor blame each other. This exacerbates problems, not solves them! We have to train from ground roots that the object is to resolve problems, not prolong them.

A great deal of criticism has been made of experts, lawyers and barristers in the construction industry, (a natural reaction when vast amounts are spent in arbitration and litigation), but it is worthy of note that at one of our recent seminars, over a period of two days where Trett personnel were talking together with some of our solicitor and barrister colleagues, at no time did anybody say '*come to us and bring us your fees*'. Without exception, everybody said "*do not get involved in arbitration or litigation if at all possible*".

In other words, we were all advising people not to use our services if they could possibly avoid them. What this means is that the experts, solicitors and barristers are not the instigators of disputes but the last resort in resolution. This identifies, without doubt, that the disputes are started at a much earlier point in the construction process. If a concerted attempt was made to achieve that theoretical common goal at the earlier stage then perhaps the views of Sir Michael might take hold. On a cynical note however, if everybody listened to us we would be out of business!

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Author : C Wilcock
Title : The Flood Gates Re-Opened?

Concurrent Duties in Contract and Tort - The Flood gates Re-opened

INTRODUCTION

In July this year, the House of Lords delivered a judgment which could have far-reaching implications for professionals and others engaged in the construction industry. The case, *Henderson and Others -V- Merrett Syndicates* ([1994] 3 AER 506), did not concern the construction industry but the Lloyds insurance market. The House of Lords had to consider the position of professionals and quasi-professionals providing services to others, and to analyse the current state of the law.

Prior to the Henderson judgment, many had thought that the Courts were moving to restrict the scope and application of duties in tort, as evidenced by the decision of *Murphy -V- Brentwood District Council* in 1991. Also in 1986 the Privy Council in the *Tai Hing* case had indicated that where a contractual relationship existed usually no tortious relationship could exist. However, in the *Tai Hing* case the question considered by the Privy Council was, strictly, whether a tortious duty of care could be established which was more extensive than that which was provided for under the relevant contract.

It is important, therefore, to look briefly at the factual matrix of the *Henderson* case.

THE FACTS

Names at Lloyds invest in syndicates. The Names are not allowed to invest directly and must use agents to manage their affairs. The Names enter into an underwriting agency agreement with the Names. If those agents employed by the Names manage the syndicates that the Names invest in, the agents are colloquially termed '*direct*' agents. Names may, however, invest in syndicates which are not managed by their own agents but by other agents. In those circumstances, the agents with whom the Names have a direct contractual relationship enter into a sub-agency agreement with the '*indirect*' agents.

Many Names suffered heavy losses at Lloyds, alleging that they received bad advice from their agents about which syndicates to join, and that the sub-agents were negligent in underwriting decisions made on their behalf of the syndicates. None of those allegations have so far been proven and the House of Lords decided only whether or not the claims were possible.

The Names had good practical reasons for pursuing claims in tort -if the claims were limited to contractual claims, many would have been time-barred.

THE DECISION

The House of Lords found unanimously for the Names. The principal judgment of the House was given by Lord Goff who had no doubt that where a person (in this case, the indirect agents) assumes responsibility to perform (quasi) professional services for another who relies on those services, the relationship between the parties is itself sufficient to give rise to a duty on the part of the person providing the services to exercise reasonable skill and care. It makes no difference whether or not there is a contract between the parties. If, however, there is a contract, then a concurrent duty of care in tort may be owed by the party providing the service to the other, independent of the contractual relationship.

THE IMPLICATIONS OF THE DECISION

Individuals or firms who are retained under contract to provide professional or quasi-professional services on a construction project may owe a concurrent duty in tort to the person whom they advise. This will be the case unless the contract expressly or impliedly excludes that tortious duty. The benefits to the employer will lie in the greater limitation periods in respect of the tortious claim rather than in respect of any claim under the contract. Although the recent cases are about people who give 'advice', it could also be argued that a contractor, along with duties under his contract, owes duties in tort to his client. The employer relies on the contractor to '*do a good job*'. All the more so in design and build contracts where reliance on the services is more likely to be established.

But what of the further ramifications? Arguably, professionals retained by an employer to provide services in relation to a construction project may be forced to accept that not only will the client rely on their services, but a funding agency or party to whom the building might ultimately be sold or let, will also be relying on the services provided.

Sub-contractors may similarly owe duties to an employer where, as is usual, the employer will directly, or indirectly through the contractor or other professionals, rely on the sub-contractor's service', or the product of those services

The question of a sub contractor's liabilities direct to the employer remains to be resolved. Although *Henderson* suggested that by setting up a contract chain the sub-contractor will not assume a responsibility in tort direct to the employer, in many cases the sub-contractor will have given a direct warranty to the employer. There seems, therefore, no reason to doubt that in principle a duty of care in tort can exist side by side with the warranty. Similarly, and to the extent that the subcontractor provides design skills (in itself a vexed question), then that sub-contractor (domesticated or nominated) may to the extent of the provision of those services owe duties of care in tort to the employer.

CONCLUSION

The *Henderson* case seeks to lay down a general principle. In the context of a construction project, tortious duties concurrent with contractual duties may exist between the parties to the contract, unless they are excluded. Precisely what will constitute professional or quasi-professional services is not entirely certain, but parties providing those services are likely to owe duties of care to anyone who is reasonably likely to rely on the services or the product of the services.

In a construction context, the number of persons with whom a professional or quasi-professional is likely to place such a reliance, may be extensive. At a time when the construction industry was reconciling itself to the difficulties in establishing claims in tort, entrenched in the *Murphy* decision, the House of Lords in *Henderson* may have reopened the flood gates. Claims in contract which might recently become time-barred may be revisited so that advice can be taken on whether or not a claim in tort may be established.

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Author : M Hurst
Title : In Case of Fire

In Case of Fire

Dust off the contract and pick up the policy. This article looks at the insurance provisions of the contract and outlines what happens when disaster strikes the building site.

The Insurance Clauses

The JCT Standard Form of Building Contract 1980 Edition, as amended in 1986, contains three options for insurance against loss or damage to the works. Clause 22A applies to the erection of new buildings where the **contractor** takes out and maintains a *joint names* policy for *all risks* insurance for the full reinstatement value of the works. Clause 22B requires the same cover to be taken out and maintained by the **employer**. Clause 22C. 1 applies to works in, or extensions to, existing structures where the **employer** takes out and maintains a *joint names* policy in respect of the existing structures, together with the contents thereof owned by him for which he is responsible for the full cost of reinstatement, repair or replacement of loss or damage due to one or more of the *specified perils*. In Clause 22C.2 the **employer** also takes out and maintains a *joint names* policy for *all risks* insurance for the full reinstatement value of the works.

These clauses do not attempt to apportion risk but to define the contract insurance requirements. All of the options call for the insurance to be arranged on a *joint names* basis a policy which includes the contractor and the employer as insured, although others can also be included. Insurance cover is required to be in place for the duration of the project up until practical completion when the employer's buildings insurance should take over.

The *specified perils* are: fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding *excepted risks*. These are such things as radioactive contamination and pressure waves caused by aircraft, which are not readily insurable in the commercial market and the contractor is not responsible for them.

In fact *all risks* does not actually mean what it implies as no insurance policy covers everything. It provides cover against physical loss or damage to the works executed and materials on site but excludes the cost necessary to repair, replace or rectify:

1. property that has deteriorated through wear and tear, rust and so on, being risks which are uninsurable
2. work executed which is lost or damaged as a result of its own defect in design, plan, specification, etc. on the basis that this is more properly a form of professional negligence risk
3. the consequences of war, invasion, etc. being effectively unavailable in the commercial insurance market.

Thus, the works are covered in all cases for *all risks* insurance, but existing structures and the contents therein are covered only in respect of the *specified perils*.

Clause 22C.4.3 foresees a situation where, for example, damage to an existing structure could be so extensive as to effectively frustrate the reinstatement or resumption of the works. This clause provides that *'if it is just and equitable so to do'* the contractor's employment may be determined at the option of either party, subject of course to certain time periods and notices.

Policy Cover

An insurance policy is a contract between the insurer and the insured and will therefore contain further obligations, exclusions, and conditions. Unlike the building contract, there is no standard form of insurance policy for this type of contract insurance cover. Whilst many are similar they are not the same. They can extend cover beyond that required by the contract insurance clauses.

In particular circumstances it may not be possible to obtain cover for certain risks or specified perils, in which case the contract requires amending accordingly. Each individual policy wording should therefore be carefully considered and the interaction between the building contract and the insurance policy appreciated

Loss or Damage to the Works

In the event of a loss the contractor is obliged to reinstate the works and replace or repair any site materials lost or damaged. After any inspection required by the insurers, the contractor proceeds with the clearance of debris and reinstatement of the works as if they were a variation required by an instruction of the architect. It should be noted that all insurance monies are remitted to the employer who is then required to discharge such monies to the contractor under the usual procedure of architect's certificates. The employer will deduct from the insurance payments any amounts in respect of professional fees and other matters and also discharge those accordingly.

The value of the original works is not diminished by the loss, even though some of those works which have already been paid for are destroyed. The contractor is to be paid for all works properly executed and materials on site, as at the time of the loss. JCT Practice Note 22 provides guidance for the payment of insurance claims and recommends that separate *'reinstatement certificates'* are issued for the repair of the work lost or damaged.

It is not uncommon during the process of reinstatement for the original project to be changed in some way. Most policies will contain a *'local authorities clause'* which provides that variations to the original scheme, necessary as a result of a change in a statutory instrument after the loss occurs, can be incorporated and paid for by the insurers. The employer and the design team may also take the opportunity to change, improve or redesign some part of the project. Where this results in additional cost it is referred to as *'betterment'* and will not be paid for by insurers but should be instructed by the architect separately.

Although not envisaged by the contract insurance clauses, most commercially written insurance policies will contain an excess. It is usual practice for the contract to be arranged such that the contractor bears the cost of the excess.

Contractor's Plant and Equipment

There is no requirement under the contract insurance clauses to insure for contractor's temporary buildings, plant, tools and equipment which are covered by the contractor's all risks insurance cover. The JCT form remains silent on the matter of temporary works. In practice the policy extensions may cater for temporary works on the basis that they are in fact within the definition of the works. The definition of contractor's plant may also be open to interpretation. For example, insurers may regard scaffolding generally as plant, but it can be argued that scaffold being used as a support structure is temporary work and may therefore

be covered by the policy. The matter may become an issue if different deductibles apply between the contract insurance and the contractor 5 c.a.r. insurance cover.

Profit

There is a principle in insurance that the insured should not profit from the claim. However, the reinstatement of the works is treated as a variation with the normal valuation rules applying. Any element of profit contained in the rates, oncosts, and daywork percentages used for the purpose of valuing the reinstatement cost is not usually adjusted.

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Author : Christopher Foan
Title : International Experience 6 - A Planner in Singapore

A Planner in Singapore

Expatriate salaries may not be as lucrative in relative terms as they were in the heady days of the 70's and early 80's, but a spell working in the *developing world* can still be a rewarding experience - and not just in terms of money. Surprisingly few people are actually willing or interested in working in what they consider an under-developed area, so if you are keen you'll probably find that your particular skills are much in demand.

Singapore was, and still is, a fascinating country to visit - let alone live in. From the ultra modern Dallas style high-rise office blocks in the south to the shanty villages in the few remaining jungles of the unspoilt north, there is a tremendous variety of technology and culture on such a small island about the size of the Isle of Wight.

From Changi Airport you make your way to the main doors through which you can see sunshine, beautifully manicured shrubbery and a very efficient looking taxi service. When the doors open, however, you get your first shock - the heat and humidity take your breath away. Singapore is close to the equator and has a pretty constant climate of high temperature and high humidity. The biggest effect of these conditions that we noticed were the lack of seasons.

It is always hot and humid, the flowers are always in bloom and you are either too hot or too cold (because of air conditioning). My wife used to keep a pair of socks in her drawer at the office to put on her hands when she got so cold she couldn't write, or would take a walk outside to warm up!

The next thing you notice is the cleanliness of the place. Tight regulations on things as diverse as planning permission and pornography, import controls, severe sentences for many offenses, very high rates for office space, etc help to give Singapore the feel of a rather too clinically clean place. Controlled access by cars, motor-cycles, etc to the centre of Singapore is achieved by the use of permits which can be purchased in most shopping precincts. Ten years ago it cost about £5.00 per day to drive into the centre and a further £10 to park.

Last year publicity was given to the young American boy who received a beating under the local corporal punishment regulations in Singapore, highlighting the strength of feeling they have for conformity and respect. Some may say that they are too strict, while others point to the low crime rates as justification. Is, for example, the fact that the sale and chewing of gum is forbidden in Singapore such a bad thing'?

Gambling is officially banned in Singapore - although the reputation the Chinese have for their addiction to gambling (especially to *Ma Jong*) is supported by the many living room lights which bum well into the small hours of the morning punctuated by the occasional shriek of "*Maaaaaaa. . Jong!!!*".

Singapore is also a relatively safe place. Some people would go as far as to say that it is a police state. The police do carry weapons and the country is certainly more regulated than the UK, but you are free to travel anywhere and at any time (including across the Straits to Malaysia).

National Service is compulsory -which tends to give the Singaporean youth a stronger sense of identity with their country as well as some additional skills not required at school. Unemployment is very low -mainly because there is very little or no welfare safety net.

That is not to say that the Singaporean system is purely a capitalist one. One of their proudest achievements is the extensive public housing scheme run by the Housing Development Board (HDB). Nearly half of the country's population are housed under this scheme.

Singapore is used as a base by many companies conducting business in Asia, particularly the ASEAN region (Association of South East Asian Nations [Singapore, Indonesia, Malaysia, Thailand and the Philippines]). While based in Singapore I had to travel regularly to sites in these areas. Some countries are more developed than others, as are the language skills of some of the people working there.

During a visit to a Japanese building contractor, Hazama Gumi at their site office in Kuala Lumpur, Malaysia, the planning meeting had been underway for two hours already - and quite hard work too because of the size of the group (7 Japanese and myself) and the language problems. At 11.30am I asked whether we could have a break so that I could visit the '*rest room*'. Although I had never worked with Japanese contractors before, I had spent a number of years with Koreans and knew they used the term '*rest room*' rather than '*toilet*'.

Hearing my announcement, the group of Japanese immediately got up en masse and donned their jackets, whereupon they ushered me into a car outside and we all drove away. I made polite conversation as we left the site, proceeded along the main road to KL and turned into a shopping precinct - although I did wonder what the reason was that they would not allow me to use the toilet facilities on site.

I got out of the car and muttered that I would be back shortly but was somewhat surprised that all seven others followed me into the precinct. Looking around, all I could see were places to eat but could not see where the '*rest rooms*' were. Turning questioningly to my colleagues, the Project Manager proffered:

"Mista Foan plenty of restram in here to choose . . . Korean Restram, Japanese Restram or, if you prefer....Burger King!!!"

Face prevented me from explaining the funny side of this to my Japanese colleagues.

There are many Japanese and Korean companies involved in construction in the region. The Koreans are typically signed up for three years and work 6am-10pm, six days a week without returning home. Fortunately people working for western companies are given more opportunities for rest, relaxation and return trips home or time for holidays in the area. Many of the project teams are truly multi-national with British quantity surveyors, American electrical contractors, Japanese main contractors, Korean civil contractors, with local labour or any other combinations you could care to think of.

On construction sites, working in confined areas of land to the ever present accompaniment of pile driving in a hot and humid climate means that conditions can often be difficult. Although glad to come home after two years to the cold of an English autumn and the beauty of the changing seasons, I would happily return and go through the experiences all over again.

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Author : R Weller
Title : How to Afford the Unaffordable

How to Afford the Unaffordable

The designs are ready, the funding has been promised - but when the tender submissions come in even the lowest is way above your original budget. So do you abandon the project completely or start a desperate search for more money? There are some alternative solutions, says Roy Weller.

Procurement is like pruning roses: everyone has their own theory about how it should be done. It is easy and safe to follow traditional methods, but it is also important to occasionally stop and think whether a new approach might help you to achieve better results.

This is particularly important when looking at the mechanical and electrical content of a project, where there is often scope to make substantial savings without taking away from either quality or performance. The conventional approach to procurement in the construction industry can easily miss these opportunities for cost-cutting, sometimes stopping the project ever getting off the ground.

A good example with which Trett Consulting have recently become involved is a major national leisure facility. The client had obtained funding from a number of sources and had been promised grant aid from the Sports Council and other bodies, provided the project went ahead within a given timescale.

An architect and consulting engineer were briefed and prepared drawings and a specification for the work to go out to tender. When the tender submissions came back, the clients realised to their dismay that the available funds were simply not adequate to resource the developed scheme. Fearing that the project would never go ahead, they talked to the lowest priced main contractor to see if there was any way it could be saved.

The contractor then involved Trett Consulting in the discussions, enabling a strategy to be drawn up which eventually reduced the mechanical and electrical costs substantially and enabled the project to go ahead.

The cost savings came from two sources - from alterations made to the initial design and perhaps more significantly by going down the design-and-build route. Working as a team with the consulting engineer, new drawings were prepared eliminating some of the areas of waste -for example, by rationalising plant room locations and avoiding long external pipe runs which would also require trace heating.

Attention then focused on the form of the original specification, which had followed conventional practice by naming specific products, many of which could only be obtained from sole or preferred suppliers. This had the effect of reducing competition between sub-contractors, who were all restricted to buying items of plant and equipment from the same source at the same price.

Instead, a short brief was prepared with the client which stated in the broadest terms their requirements for lighting levels and criteria for heating, ventilation and air-conditioning etc. This was given to the two sub-contractors whose prices had been lowest in the initial tendering exercise, effectively freeing them up to do their own procurement and achieve economy through flexibility of design.

They were able to approach their own suppliers and make their own decisions about the products which gave best value for money and met the needs of the client. Because each was keen to secure the contract, competition was strong and the prices submitted were far below original estimates. The client and his funders were entirely happy with the changes made and the project is now going ahead within the planned timescale.

This is far from being an isolated case. Time and time again we see sole suppliers of engineering components putting a mark-up on a product because it is specified in a tender - and who can blame them? To avoid these pitfalls, contractors need to be given wider parameters within which to achieve savings.

Frequently there are other gains to be made by reviewing when and how contractors are involved - and as a typical contractor's fee is around 5% of the project, compared with 10% for a consulting engineer, these are worth looking at.

Design-and-build gives the contractor the power to do what benefits both his own business and the clients, ie to maximise the savings on site. Quality is no more at risk as long as the client's requirements are clearly set out and the project is carefully monitored at all stages.

It obviously helps to know the market - particularly in a specialist area such as mechanical and electrical engineering. A few chartered quantity surveying practices have their own M and E capability, one or two have concentrated on M and E as their main field of expertise. M and E specialists need to be able to work impartially for client or contractor. Very often their objectives are much more similar than you would imagine.

By acting as the honest brokers, a specialist surveyor can ensure that everyone gains the benefits of procurement techniques such as two-stage tendering. This process offers an increasingly popular alternative approach to that adopted by most professional bodies and clients.

The M and E surveyor, having established what the client is looking for, can produce an indicative programme for contractors to use when determining their overhead and profit recovery, declared labour rates and preliminaries. Comparisons can then be made to establish which contractor will provide the best value for money - perhaps by using modelling techniques to historic cost data.

At the end of the day the client will get a price for the job that is usually hard to better. Contractors also tend to favour this method as a project can be tendered and the contract awarded within a week. It can otherwise take several of the contractor's employees four or five weeks to deal with a conventional specification, where there may be numerous drawings and reams of paperwork to contend with -and this process in itself inevitably adds to the overheads.

Another area where the extent of potential savings is not always apparent is in the preparation of bills of quantities. These appeared to go out of favour for some time but are now coming back into vogue as a means of eliminating ambiguities in procurement and keeping control of costs throughout the contract period.

Finally, with forecasts of major increases in tender prices it will become all the more essential to adopt a flexible approach with regard to procurement. We are all well aware these days that time is money -and nowhere more so than in the procurement stage of a project.

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Author : A Thom
Title : Partnering and Alliancing in The Offshore Industry

PARTNERING AND ALLIANCING IN THE OFFSHORE INDUSTRY

Recent innovative concepts in offshore contracting have seen the industry move more positively in the direction of **partnering** and **alliancing** type agreements. In order to understand why this development has come about, it is necessary to examine the present climate in the oil business.

The first UK North Sea exploration licence was issued nearly thirty years ago. The sector has now reached maturity, but this does not mean that a decline in crude oil output will begin. In fact, the end of last year saw oil production moving up towards new record levels. Providing opportunities are taken, as much oil can be extracted in the future as has been produced so far. The overall climate, however, calls for a completely new approach and culture due to a number of reasons.

The global oil industry is confronted by the very real prospect that crude oil prices are likely to remain low for the next two or three years. After that, the level will rise only in line with inflation. With this and the current recession in mind, emphasis is on the need to reduce costs in the UK sector of the North Sea if it is to stay competitive.

Failure to take action could see companies spending more in other areas and less in the UK sectors. The UK North Sea industry now faces a critical period and needs to examine its way of doing business.

Over the past eighteen months, the major operators and contractors have met and produced 'CRINE' (Cost Reduction In the New Era). This initiative is intended to ensure that the sector remains competitive and attracts new investment. If the sector is to continue to exploit the oil in the UK North Sea, costs must be reduced dramatically in both the development and operational phases.

Some companies have already made much progress, but the real improvement will depend on an overall industry application. There is a limit to what companies can do on their own and this is why a new culture is required. Groups that previously had an adversarial stance towards each other must now cooperate and take advantage of each other's experience and expertise.

The first CRINE target is to reduce costs in the development sector by up to 30% in the next few years. The industry must eliminate as much red tape as possible in order to promote greater efficiency, thereby leading to the development of more fields and projects which hitherto may not have been viable.

With this in mind, major steps have recently been taken by a number of oil majors, together with key contractors, to establish and promote partnering and alliance type contracts.

PARTNERING

Partnering is a contracting strategy ideally suited to support the operations of producing fields and can be defined as '*a long term commitment between two or more organisations for the purpose of achieving specific business objectives*'. The relationship in a partnering agreement is based upon a high degree of openness, trust and co-operation between the parties.

It is worth noting that it is generally not the intent to create a partnership or other legal entity between the parties and the agreements are not to be construed as creating such a relationship, or constituting either party as a partner of the other.

There are many different interpretations as to what constitutes a partnering agreement. They can range from a close working relationship over a number of years between operator and contractor, but which is still based upon the traditional form of contracting, to a more novel arrangement whereby work packs are established, budgets set and savings on target costs are for the benefit of both operator and contractor.

The latter form of partnering agreements are normally overseen by a management board, which consists of members of both the operator and contractor's senior management, with a chairman or casting vote usually being held by the operator. This board will support, monitor and direct the project team. The decision of the management board is binding on both parties.

Whatever style or form of partnering agreement adopted, the common goal is to create a programme of improved efficiency through the creation of a relationship and work processes which encourage teamwork, improve efficiency, allow the development of new products and ensure long term survival.

The benefits of a partnering agreement to the operator can be measured in terms of the following:

- reduction in overheads due to the fact that policing or monitoring of the contractor is no longer required
- it gives the operator the opportunity to concentrate on its core business
- less likelihood of contention, which in itself has a significant cost saving
- it leads to savings due to the flexibility of contractors' scheduling (ie: mobilisations / demobilisations).

The benefits to the contractor are:

- a long term commitment, thereby giving security and stability of work force
- ability to plan capital expenditure
- removal of contention which allows the contractors' project team to concentrate on finding the best solutions to the workscope, rather than pursuing claims.
- an ability to improve profit margins, without adversely affecting the quality of work

ALLIANCING

Alliancing is a contracting strategy well suited to the development phase of operations. It is created only for a specific project and is disbanded on completion of that project. The basis of this strategy is founded on the principle of contracting work to those who have greater experience and expertise than the operator in any particular area and retaining work which the operator is better qualified to perform. The consequence is that the operator's project team size is reduced and greater responsibility and accountability is placed with the contractors.

Alliancing contracts, like partnering agreements, vary in style and construction, but a typical client / contractor alliance would consist of the operator and contractor or contractors forming an integrated project team that may or may not all share the same offices, depending on the type of work being carried out. At the outset of the project, a development target cost would be established and agreed by all the participants and a risk/reward mechanism established, such that if the final cost is less than the target cost, the savings are shared on an agreed percentage basis between the operator and contractor or contractors. Conversely, if the target cost is exceeded, then the overrun is shared by all parties.

There are a number of alliance agreements presently in existence relating to North Sea development projects and the participants include contractors from all phases of the work including design, engineering, fabrication, topside installation, hook-up, subsea construction and commissioning.

The success of an alliancing agreement will obviously be dependent on the successful interface between the various contractors and their ability to work together as a team. It is important that the team integrates at an early stage and the individual members are made aware of their contribution to the project and how this aligns with the project goal.

The aim of the alliance can be summarised as being to:

- provide the mechanism and opportunity for the operator and all selected contractors to gain financially, due to the applied team approach
- promote common objectives and commitment in alliance members
- maximise the contractor's /supplier's responsibility and accountability in their areas of expertise
- ensure an integration of client/contractor team members to maximise interfaces and to develop alliance relationships.
- where appropriate, maximise the use of existing company contracts and standard forms of contract.
- maximise the use of industry specifications and standards and standard products.

Although in its infancy, I believe that there is sufficient commitment being demonstrated by both oil majors and contractors to ensure that partnering and alliancing are here to stay and that the targets set by the CRINE initiative will in fact be met.