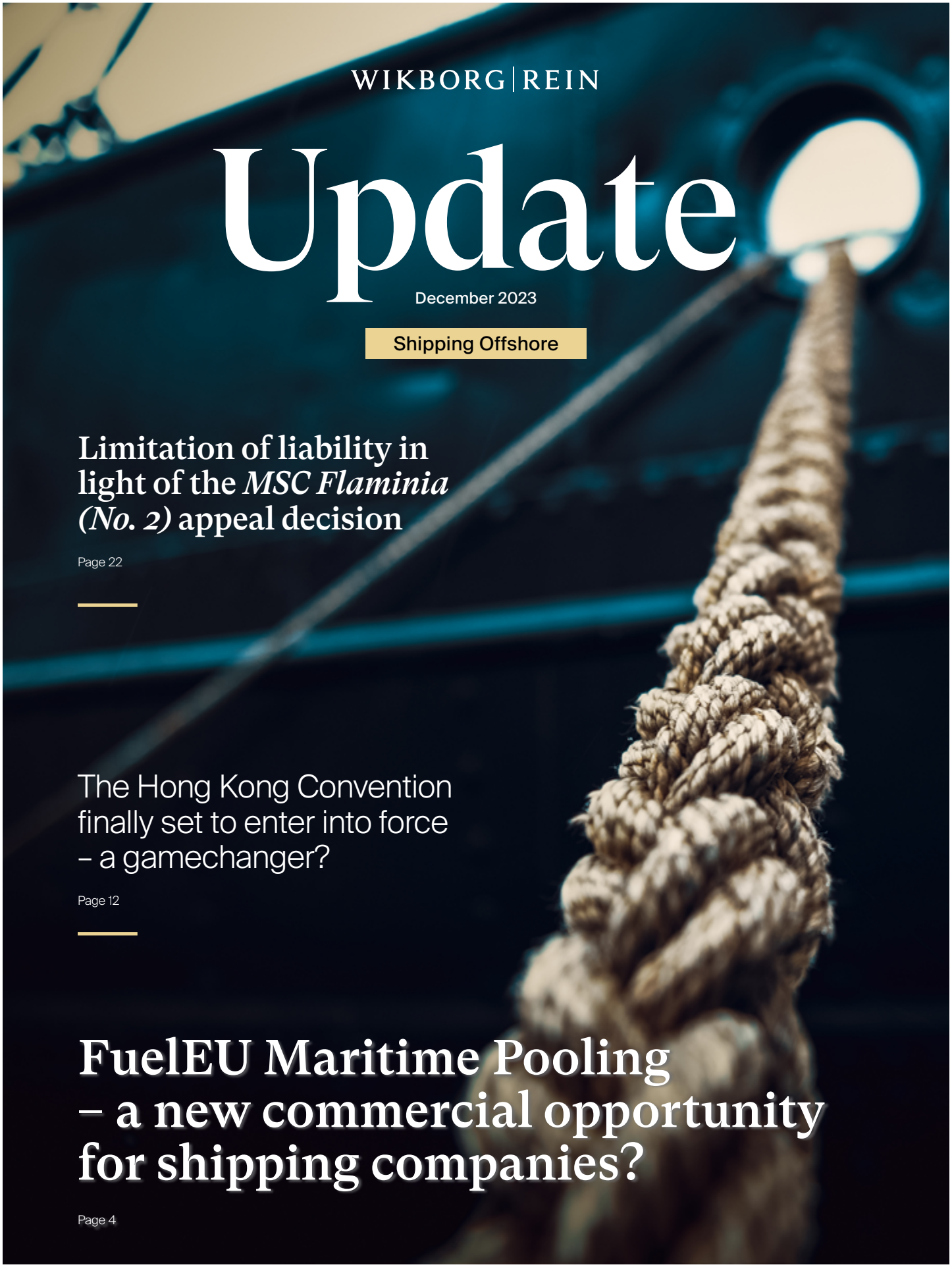

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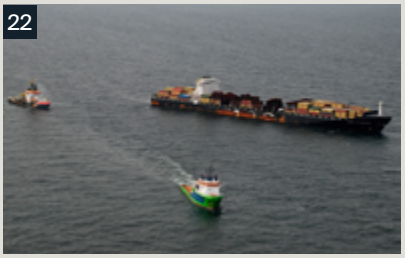

Publisher:
Wikborg Rein

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Photos:
gettyimages.com

Layout:
Helene S. Lillebye-Teien

Print:
Bodoni / 650 copies

UPDATE DECEMBER 2023 SHIPPING OFFSHORE

Dear friends and readers

As we steer towards 2024, the maritime industry finds itself in the confluence of regulatory changes, technological innovations and continued global political tensions which will no doubt herald both new challenges and new opportunities for industry players.

A topic much debated in the shipping industry is the impact of the green transition on shipping. In this edition of our Shipping Offshore Update we look into the possible commercial opportunities which may arise for green shipowners in the wake of the new FuelEU Maritime Pooling mechanism.

We also consider public and private initiatives aimed at facilitating the safe and environmentally sound recycling of vessels. An important milestone in achieving this is that the Hong Kong Convention on ship recycling is finally set to enter into force in 2025. BIMCO has also introduced the Ship Sales Further Trading Clause 2023, which is intended to provide protection for the seller from the buyer's disposal of the vessel in contravention of ship recycling regulations.

Also in this edition we give you some practical advice on what to do if your opponent fails to attend an arbitration and provide you with an update on the last chapter (this far) of the *MSC Flaminia* saga.

We hope this will be both an informative and an enjoyable read for all our readers!

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> **A topic much debated in the shipping industry is the impact of the green transition on shipping.**

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FuelEU Maritime Pooling

– a new commercial opportunity for shipping companies?

The FuelEU Maritime Regulation introduces a voluntary pooling mechanism. If shipping companies choose to use the pooling mechanism, they may effectively use the over-performance of one ship to compensate for the under-performance of another ship. This could present new commercial opportunities for shipping companies.

Regulation (EU) 2023/1805 on the use of renewable and low-carbon fuels in maritime transport (“**FuelEU Maritime Regulation**”) is aimed at accelerating the decarbonisation of the maritime industry. With certain exceptions, it will apply to all ships over 5000 gross tons calling at EU ports from 1 January 2025, and will require that greenhouse gas (GHG) emissions from these ships are reduced in accordance with the following sliding scale:

- 2% from 1 January 2025
- 6% from 1 January 2030
- 14.5% from 1 January 2035
- 31% from 1 January 2040
- 62% from 1 January 2045
- 80% from 1 January 2050

Rather than dictating the type of fuels to be used by the shipping industry, the FuelEU Maritime Regulation requires that the yearly average intensity of the energy used on board ships does not exceed a specific GHG intensity limit. The GHG intensity limit is calculated from a reference value of 91,16 grams of CO_2 equivalent per MJ. This reference value will be reduced by the same percentages set out above i.e. with the aim of achieving an 80% reduction by 2050.

In broad terms, if a ship’s yearly average GHG intensity of the energy used on board is below the applicable intensity limit, this ship will have a positive compliance balance, whilst a ship with a yearly average GHG intensity exceeding the applicable

intensity limit will have a negative compliance balance. Compliance with the GHG intensity limit will normally be calculated based on each individual ship. However, according to Article 21 of the FuelEU Maritime Regulation, the compliance balances of two or more ships may alternatively be "pooled" together.

BRIEF OVERVIEW OF THE FUELEU MARITIME POOLING-RULES

If a shipping company wishes to enter its ships into a "FuelEU Maritime Pool", the shipping company must register its intention to do so in the FuelEU database. The company must also register the allocation of the total pool compliance balance to each individual ship in the pool. Additionally, it must register its choice of a verifier who shall be responsible for verifying the allocation between the ships.

The above means that it is still necessary to specify (or allocate) compliance balances for each ship in the pool. Reporting and verification must also still be done for each individual ship. However, the benefit of the FuelEU Maritime Pooling-mechanism, is that that the "*total pool compliance balance*" may be allocated between the ships participating in the pool. Consequently, it is possible to allocate a lower compliance balance to ship A and a higher compliance balance to ship B, meaning that the over-performance of a ship may be used to compensate for the under-performance of another ship.

In order for a FuelEU Maritime Pool to be valid, the sum of the compliance balances of all the ships included in the pool ("*the total pooled compliance*") must be positive. Furthermore, for the pool to be valid, any ship within the pool which had a compliance deficit (ships which are under-performing) must not have a higher compliance deficit after the allocation of the pooled compliance, and any ship within the pool which had a compliance surplus (ships that are over-performing) must not have a compliance deficit after the allocation of the pooled compliance.

When considering whether to participate in a FuelEU Maritime Pool, shipping companies must take into consideration that the rules in the FuelEU Maritime Regulation on borrowing of advance compliance surpluses will not be available for ships participating in a pool. Instead, shipping companies participating in a pool must rely on the total pool compliance balance and its allocation. However, if the total pool compliance balance results in a compliance surplus for an individual ship, this surplus may still be "banked" and used in subsequent reporting periods in the same manner as for ships not participating in a pool.

There are no limitations on the number of ships which may be included in a single pool, hence, a shipping company may choose to include all of its ships in a single FuelEU Maritime Pool. The FuelEU Maritime Regulation also allows for pooling between two or more shipping companies, which enables different shipping companies to cooperate and effectively have a single FuelEU Maritime Pool for two or more fleets of ships. However, even though the FuelEU Maritime Regulation allows for different ways to pool ships, the same ship may not be entered into more than one pool at any given time.

> **Shipping companies should prepare for the full implementation of the FuelEU Maritime Regulation and consider the various possibilities it offers.**

CONSIDERATIONS AND POTENTIAL CONSEQUENCES

The GHG intensity limits will apply from 1 January 2025. It remains to be seen what effect the rules will have and whether shipping companies will use the pooling-mechanism. However, shipping companies should prepare for the full implementation of the FuelEU Maritime Regulation and consider the various possibilities it offers.

One aspect which should be taken into account, is that the FuelEU Maritime Pooling-mechanism may represent a new commercial opportunity for shipping companies. A shipping company with one or more ships with low GHG intensity in the energy used, can offer to pool these over-performing ships together with under-performing ships. If this is done, the under-performing ships could still be compliant, and would avoid being subject to sanctions under the FuelEU Maritime Regulation. This mechanism could therefore present new commercial opportunities – and additional commercial value – for over-performing ships.

The commercial aspect is, however, only one of the aspects that need to be taken into account. If a pool is established, the participants also need to agree on specific rules for the pool, hereunder targets and

consequences if the actual performance deviates from the targets. Competition law matters could also be relevant to consider, in particular since the pooling-mechanism may require that information is shared between the participants. These matters will be particularly important if the pool consists of ships from different shipping companies.

> **The FuelEU Maritime Pooling-mechanism may represent a new commercial opportunity for shipping companies.**

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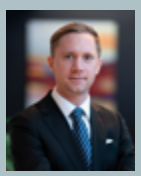

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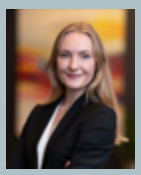

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Clarification on responsible entity under EU ETS

The inclusion of the shipping industry in the EU Emission Trading System as per Directive 2003/87/EC ("the EU ETS") from 1 January 2024 is now fast approaching. According to Article 3 in the said directive, it is the "shipping company" that is responsible for compliance with the EU ETS-obligations, hereunder to surrender emission allowances.

Up until recently, the general understanding in the industry has been that the "shipping company" referred to the holder of the Document of Compliance (the "**DOC holder**") – typically the bareboat charterer or technical manager. The Commission has now, through a new implementing regulation, changed this understanding and clarified that it is the shipowner who – as the general rule – will be considered to be the "shipping company" and therefore also is responsible for compliance with the EU ETS-obligations.

IMPLEMENTING REGULATION

On 22 November 2023 the Commission adopted Implementing Regulation (EU) 2023/2599 laying down rules for the administration of "shipping companies" by national administering authorities under the EU Emissions Trading System (the "**Implementing Regulation**"). The Implementing Regulation entered into force 26 November 2023, following its publication in EU's official journal.

The Implementing Regulation explicitly designates the "*shipowner*" as the default party responsible for compliance with the EU ETS-obligations, hereunder the obligation to surrender allowances. However, another entity may take over this responsibility if the conditions set out in the Implementing Regulation are fulfilled.

To formally qualify as an entity which may take over the responsibility, the entity must have assumed the responsibility for the operation of the ship from the shipowner. On assuming such responsibility, it must also have agreed to take over all duties and obligations imposed by the ISM Code. In practice, this means that the relevant entity – as a minimum requirement – must be the DOC holder. Responsibility for compliance with the EU ETS-obligations may not be transferred to other entities.

The Implementing Regulation clarifies that being the DOC holder is not sufficient in itself. In order for responsibility to be transferred, the entity must also have assumed responsibility for the EU ETS-obligations, hereunder the obligation to surrender allowances. In addition, documentation clearly indicating that the other entity has been mandated by the shipowner to comply with the EU ETS-obligations must be submitted to the relevant authorities. This documentation must be signed by the shipowner and the entity which is taking over responsibility for the EU ETS-obligations.

The Implementing Regulation includes further details on the documentation that needs to be submitted to the authorities.

It is also specified in the Implementing Regulation that until such documentation has been submitted, the authorities will consider the shipowner as the responsible entity. An agreement between a shipowner and a technical manager or bareboat charterer, is therefore not sufficient in itself.

It is worth mentioning that the EU ETS recognise the "polluter pays"-principle by providing that the EU member states shall take the necessary measures in their background law to ensure that when the ultimate responsibility for the purchase of the fuel, the operation of the ship or both, is assumed by an entity other than the "shipping company" pursuant to a contractual arrangement, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances. This could typically entail a financial recourse towards the charterer under a time charter. However, the scope and practical implementation of such arrangements in background law of member states remains unclear. In addition, owners must also take into account that many agreements within shipping are governed by English law, which is a non-EU country and which does not have rules on EU ETS.

CONTRACTUAL CONSIDERATIONS

While the Implementing Regulation clarifies the public law position under the EU ETS, industry players are still well advised to consider how the EU ETS rules should be taken into account in their contractual regulations.

BAREBOAT CHARTERS

For bareboat charters the general structure and provisions should imply that the bareboat charterers should cover the costs related to acquisition of allowances under EU ETS as this would be typical operational expenses. However, the registered owner should make sure that the bareboat charterer undertakes a contractual obligation to comply with EU ETS and to also take on the public law responsibility as the "shipping company" under EU ETS by delivering the necessary documentation to the administrating authorities. Having the bareboat charterer take on the public law responsibility for compliance with EU ETS will be beneficial for the registered owner as it will not need to get involved with monitoring of emissions or submission of allowances during the period of the bareboat charter.

In existing bareboat charter parties, owners could seek to get the bareboat charterers to take on responsibility for compliance with EU ETS going forward with reference to the general cost and responsibility allocation. Although the owners might get their costs related to submission of allowances under EU ETS covered under either existing contractual provisions or by reimbursement mechanisms under background law, the procedure and timing for such claims remains unclear. It would therefore be beneficial for the owners to shred the public law responsibility as the "shipping company" altogether.

The Implementing Regulation explicitly designates the "shipowner" as the default party responsible for compliance with the EU ETS-obligations.

> **These latest insights from the EU are beginning to outline the practical aspects of how the regulations will be managed.**

MANAGEMENT AGREEMENTS

For management agreements, the firm starting point now is that the registered owner will be responsible for compliance with EU ETS. However, the technical managers may agree to take on this responsibility. If this is agreed, documentation must also be submitted to the relevant authorities in order for the transfer to be effective. Irrespective of whether the responsibility as "*shipping company*" is assumed by the technical manager, the technical manager may also take on responsibility for monitoring and reporting of emissions from the vessel to the owner. BIMCO is expected to release both a revised SHIPMAN contract – which will include an EU ETS-clause – and a stand-alone ETS-clause in December 2023. These clauses are expected to address both the responsibilities for monitoring and reporting as well as the submission of allowances.

TIME CHARTERERS

While time charterers cannot take on responsibility as the "*shipping company*" under the public law regulations, they should be the ultimate financially responsible party – in line with the "polluter pays"-principle. For existing charter parties, owners should review the contractual provisions to clarify whether the charter parties offer protection through existing cost-covering clauses or potentially under reimbursement mechanisms to be incorporated in the background law in the EU countries. However, it is advisable to amend long term time charters to clarify the financial responsibility for EU ETS. Specific contractual provisions should, amongst other things, address what should be delivered by the charterers in relation to the EU ETS (allowances, derivatives relating to allowances or cash compensation allowing the owners to acquire allowances themselves), when to deliver / frequency (once a year, once a month, or something else), and the price (in particular if cash compensation is chosen). BIMCO released an emission trading scheme allowances clause for time charter parties already in 2022, which states that the charterer should provide allowances on a monthly basis.

While numerous clarifications are still pending despite the imminent implementation of the EU ETS regulations in just a month, these latest insights from the EU are beginning to outline the practical aspects of how the regulations will be managed. In recent months, Wikborg Rein has conducted a series of workshops with clients on this topic and remains vigilant in tracking the latest developments.

Industry players are still well advised to consider how the EU ETS rules should be taken into account in their contractual regulations.

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The Hong Kong Convention finally set to enter into force – a gamechanger?

With the recent accessions by Liberia and Bangladesh, the Hong Kong Convention on ship recycling, which was adopted in 2009, will finally enter into force on 26 June 2025. On 30 November 2023 there was a further breakthrough by Pakistan's accession, which means that all major recycling states have now committed to the Convention. What will be the practical implications? How will the Convention mesh with the existing regulations?

Ship recycling practices have been raising concerns for years, particularly in South Asia, where ships have often been rammed up on beaches at high tide and broken up in the tidal zone in ways that are unsafe for the workers and releases pollutants to the environment.

HONG KONG CONVENTION

The aim of the Hong Kong Convention is to ensure the safe and environmentally sound ship recycling on a global basis.

It adopts a cradle-to-grave approach by setting out extensive regulations that apply from the time a ship is designed until it is recycled.

The Convention applies to ships flagged in contracting states, which are required to carry an Inventory of Hazardous Materials (IHM) and will only be allowed to be recycled at authorised facilities. For the purposes of the Convention, ships include not only conventional ships but also floating platforms, jackups, FPSOs and FSOs.

The Convention also applies to recycling facilities located in contracting states, which must be authorised by national authorities. The facilities are required to have in place a Ship Recycling Facility Plan (SRFP) and also, in each project, to develop a Ship-Specific Recycling Plan (SRP). National authorities will be responsible for ensuring that recycling facilities under their jurisdiction comply with the requirements of the Convention.

EU SHIP RECYCLING REGULATION

The EU believed that the entry into force of the Hong Kong Convention was taking too long and that it was not strict enough. It therefore enacted the EU Ship Recycling Regulation in 2013, which implemented the Hong Kong Convention on an EU/EEA level. It also introduced additional requirements, most importantly that EU/EEA flagged vessels shall only be recycled at facilities which are approved by the EU Commission and placed on the so-called European List. So far, the EU Commission has not approved any facilities in South Asia, which means that EU/EEA flagged vessels cannot be recycled in for example India, Bangladesh or Pakistan.

The Ship Recycling Regulation also has certain additional downstream waste management requirements and health and safety requirements. These stricter requirements will be allowed to continue when the Hong Kong Convention enters into force, since the Convention only sets out minimum requirements and does not prevent national or regional regulations from imposing stricter rules. This will impact both ships flagged in the EU/EEA and recycling facilities located in the EU/EEA.

EU WASTE SHIPMENT REGULATION AND BASEL REGIME

An additional set of regulations is the EU Waste Shipment Regulation, which was enacted by the EU in 2006, and which implemented the Basel Convention 1989 and the Basel Ban Amendment 1995.

The Basel Convention regulates the movements of hazardous waste across international borders and its disposal. It requires ships which are destined for recycling and requires consent from the export, import and transit state.

The Basel Ban Amendment goes further and prohibits export to non-OECD states.

The export ban, as implemented in the EU Waste Shipment Regulation, means that a non-EU/EEA flagged ship would be prohibited from being exported to a non-OECD state if it was in EU/EEA waters when the decision to scrap the ship was taken.

These rules are very strictly enforced, as has been seen particularly in the Netherlands, as well as in Norway where the owner of the "Tide Carrier" was sentenced to 6 months in prison for having assisted a cash buyer in attempting to export the vessel from Norway for recycling at a beach in Gadani, Pakistan, which is outside the OECD.

HONG KONG CONVENTION VS. BASEL

India, Bangladesh and Pakistan have acceded to the Hong Kong Convention and will no doubt have Hong Kong compliant facilities available by the time the Convention comes into force. These countries are not OECD countries. A question will be whether the Basel Ban Amendment and implementing domestic legislation would mean that a non-EU/EEA flagged vessel would be prevented from being exported from the EU/EEA to an authorized yard in India, Bangladesh or Pakistan.

The general view, including that of the EU, has been that the Basel Ban Amendment would not prevent a vessel from being exported from an OECD or EU/EEA country to a yard in a non-OECD country like India, Bangladesh or Pakistan for recycling, provided that the yard is authorized by national authorities under the Hong Kong Convention or is on the European List. This is because the Hong Kong Convention and the EU Ship Recycling Regulation will supersede the Basel Convention if they impose environmentally sound waste disposal standards at least equivalent to those under the Basel Convention.

Therefore, the EU is in principle positive to including yards for example in India or Bangladesh as long as they satisfy the requirements under the EU Ship Recycling Regulation. However, this has been questioned by several NGOs and others who suggest that the Basel Ban Amendment would in fact bar the possibility of exporting ships from OECD or EU/EEA countries for recycling in a non-OECD country, even if the yard is Hong Kong authorised or on the European List.

The EU is currently considering whether to address these issues by revising the regulations.

IMPACT OF THE HONG KONG CONVENTION

It will be a significant milestone to finally have a binding set of international regulations aimed at ensuring safe and sustainable ship recycling.

With Pakistan also having acceded to the Convention, all major ship recycling states (except China) are parties to the Convention. Together, Bangladesh, India and Turkey recycle about 80 per cent of the world's recycled ships in terms of gross tonnage. When including Pakistan, this figure is about 95 per cent. Therefore, Pakistan's accession will be very important to the success of the Convention.

There are still only 23 contracting states. Flag states have been particularly reluctant to becoming parties to the Convention. However, the important commitment by the major recycling states means that many of the remaining flag states are expected soon to follow and accede to the Convention.

Standards have already been raised significantly, particularly at yards in India and Bangladesh. In the interim period before the Convention finally comes into force, it is expected that this trend will continue.

That Pakistan is now committed to making its yards compliant by the time the Convention enters into force in 2025 is very positive. There were questions as to whether Pakistan would feel pressured to accede to compete or whether it would operate outside the Convention, offering higher scrap prices which for some owners could make up for the legal and reputational risks associated with sending ships to non-compliant yards.

In many ways it has been good that the EU has been leading the way and managed to accelerate the adoption of the Hong Kong Convention, as well as the Basel regime. However, the regulatory landscape has become very complex with several layers of global, regional and national rules.

Moreover, the regional EU rules have not been very effective since it has been too easy to circumvent them by reflagging or trading outside of the EU/EEA when making the recycling decision.

Global regulations are necessary to tackle global problems.

The entry into force of the Hong Kong Convention represents an important commitment by the international community towards sustainable and responsible ship dismantling practices, especially as it ensures important and binding minimum standards applicable to yards in the countries where the problems related to recycling have been greatest.

Whether the Hong Kong Convention will achieve the goal of safe and environmentally friendly recycling, will to a large extent depend on how the Convention is applied by national authorities when it comes to authorising facilities and enforcing compliance with the Convention.

Shipowners and other stakeholders are in any event faced with the challenge of navigating through the complicated regulatory landscape. Compliance should be carefully considered, as there are significant reputational and legal risks related to non-compliance.

> **It will be a significant milestone to finally have a binding set of international regulations aimed at ensuring the safe and sustainable ship recycling.**

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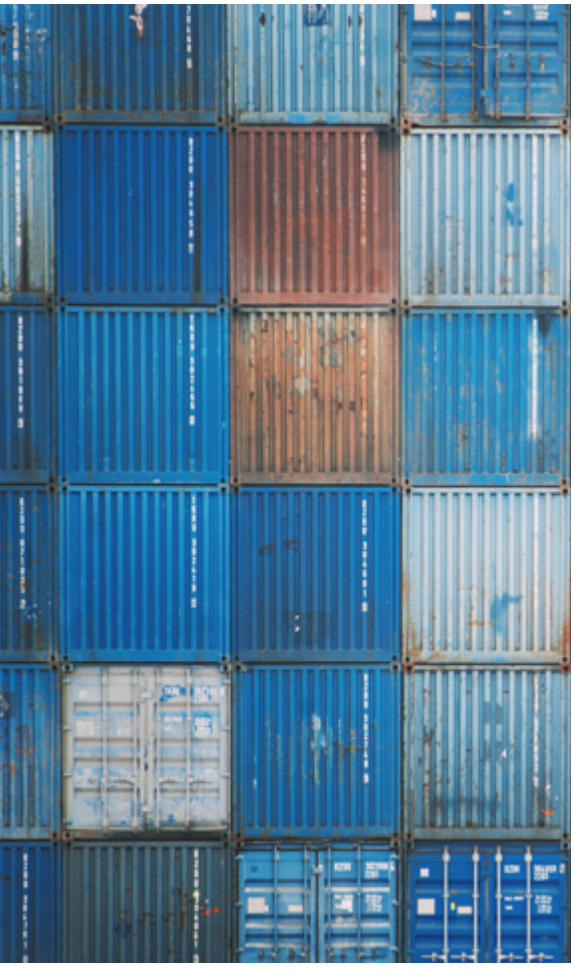
BIMCO Ship Sales Further Trading Clause 2023 – protecting the seller against unlawful recycling

On 11 October 2023 BIMCO adopted the Ship Sales Further Trading Clause 2023, which is designed to be included in memoranda of agreement for the sale and purchase of vessels, such as BIMCO's Saleform and Shipsale standard form contracts. The clause is intended to provide protection for the seller against the buyer's subsequent disposal of the vessel in contravention of any regulations related to ship recycling. It seeks to achieve this by imposing an obligation on the buyer to continue to trade the vessel within an agreed post-sale period. The clause is particularly relevant for the sale of older tonnage.



The background for the development of this clause lies in the very real concerns related to traditional ship breaking practices at some of the breaking facilities, particularly in South East Asia such as Bangladesh, Pakistan and India, where vessels have been (and to some extent, still are) broken up effectively by hand, with little or no concern for the potential environmental damage, pollution or the health and safety of the workers.

In response to these concerns, a number of protective regulations have been put in place over the past few decades, including the Hong Kong Convention 2009 (which will enter into force in 2025), the EU Ship Recycling Regulation of 2013, the Basel Convention 1989, the Basel Ban Amendment 1995, and the EU Waste Shipment Regulation 2006. There are also various private initiatives such as the Responsible Ship Recycling Standards pursuant to which banks often include compliance requirements in financing agreements.

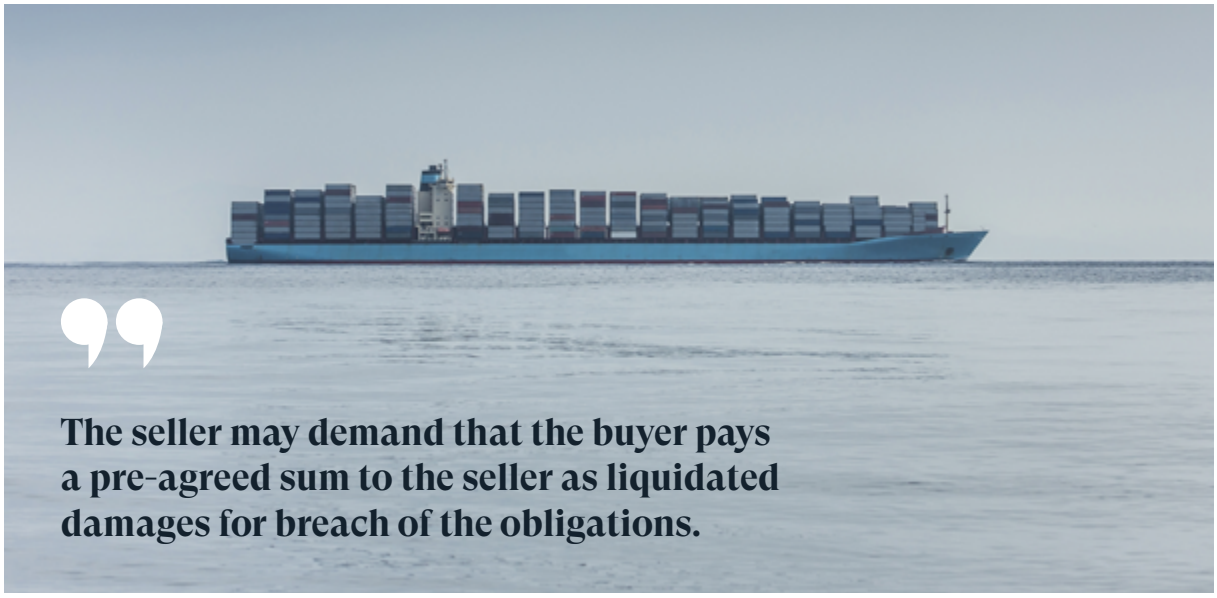
Whilst a shipowner obviously has full control as to how and in what manner a vessel is recycled whilst a vessel remains under its own ownership, once a vessel is sold and the owner no longer has any proprietary interest in that vessel, any subsequent disposal of that vessel in contravention of the applicable ship recycling regulations can still lead to significant reputational and financial damage for the original owners.

The purpose of the Ship Sales Further Trading Clause 2023 is to address these concerns and to provide protection for the seller against the potentially significant legal and reputational risks related to breaches of any such regulations.

OBLIGATION TO TRADE THE VESSEL

The buyer's primary obligation under the clause is to "continue to trade the vessel" for a specified time period determined by the parties, the so-called "Applicable Period". The length of the Applicable Period will be a matter of commercial negotiations, where relevant factors may include the specific characteristics of the sale and the age and value of the vessel.

The clause does not prevent the buyer from suspending trading for reasons related to the vessel's operation, such as dry-docking, mainte-



The seller may demand that the buyer pays a pre-agreed sum to the seller as liquidated damages for breach of the obligations.

nance, lay-up or repairs. Exceptions from the duty to operate the vessel apply, however, when the vessel is subject to a total loss.

The buyer has an obligation to include similar clauses in any sale and purchase agreement they may enter into if they sell the vessel on to a third party during the Applicable Period. The terms in the new sale and purchase agreement in this respect shall be substantially consistent with those in the original sale and purchase agreement for the remainder of the Applicable Period. In the same subclause, the buyer is also obliged to conduct due diligence on the prospective new buyer to the extent necessary to ensure that they will continue to trade the vessel. In this way, the original seller's position is intended to be protected even if the buyer sells the vessel to another party.

REMEDIES

The clause has two different and alternative remedies in case the buyer breaches its obligations. Under the first alternative, the seller may demand that the buyer pays a pre-agreed sum to the seller as liquidated damages for breach of the obligation, but this alternative only applies if selected by the parties and it requires the pre-agreed sum to be inserted into the clause.

Under the second alternative, the seller may hold the buyer liable for any losses incurred by the seller as a result of the breach, e.g. fines and expenses.

The clause finally stipulates that in addition to the above remedies, the seller may seek injunctive or equitable remedies and may also, notwithstanding any other provision in the sale and purchase agreement, disclose the existence and content of the clause and the nature of breach of the buyers' obligations. Of course, if the buyer is an SPV company, with no assets other than the vessel, once the vessel is sold (either to another owner/operator or for demolition), the indemnity for losses incurred by the seller as a result of the breach is likely to be somewhat worthless. To protect against this, sellers should consider obtaining a corporate guarantee from a company of good financial standing within the buyer's group in order to ensure that they are more likely to be able to effectively claim on that indemnity in the future.

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Protection of private parties' interests in investigations by the Norwegian Safety Investigation Authority

The Norwegian Safety Investigation Authority is tasked with conducting safety investigations into maritime accidents if they either involve Norwegian flagged ships, take place in Norwegian waters or involve significant Norwegian interests. Its reports may be important evidence in civil and criminal proceedings arising out of the casualty. The ability of private parties to protect their interests in respect of civil claims and criminal liability may therefore depend on the extent to which their interests are protected in connection with the investigation.

The investigative powers of the Norwegian Safety Investigation Authority ("NSIA") derive from Chapter 18 II of the Norwegian Maritime Code. Whether an accident shall be investigated is up to the NSIA's discretion, except that it shall generally investigate "*very serious*" maritime accidents, for example where the vessel becomes a total loss or where there is loss of life or significant damage to the environment.

Safety investigations are important for improving maritime safety and NSIA's mandate is to clarify the events leading up to the accident and the causal factors, and to consider how similar maritime accidents can be prevented in the future and maritime safety improved. Upon completing its investigation, the NSIA will issue a public report setting out its findings and recommendations to improve safety. The system of safety investigations by the NSIA has been in place since 2008, when it replaced the previous system of maritime enquiries held by the local district court.

ADMISSIBILITY OF REPORTS IN LEGAL PROCEEDINGS

Whilst the NSIA does not assess civil or criminal liability, its reports are generally admissible evidence in Norwegian civil and criminal proceedings.

The reports are often relied on by the police as well as by shipowners, insurers, cargo interests and other third parties. When a NSIA report is submitted as evidence in legal proceedings, which commonly occurs, it may be challenging for a party to dispute the findings in the report. It will also be too late to ask the NSIA to correct any errors in the report.

For these reasons, it is crucial that the interests of the involved parties are protected during the investigation and drafting of the report.

RIGHTS OF INVOLVED PARTIES

The Norwegian Maritime Code gives involved parties, such as the shipowner, charterer, insurer, master and crew, certain rights in connection with the investigation:

- Right to be notified by the NSIA that an investigation will be conducted and to receive information about their rights in connection with the investigation.
- Right to provide information and comments with respect to the accident and its causes.
- Right to receive the documents relating to the investigation to the extent that the NSIA believes that this will not impede the investigation.
- Right to be present during the investigation to the extent the NSIA believes that this will not impede the investigation.
- Right to receive the draft report for comments, provided that this has been requested by that involved party, but not if the circumstances strongly suggest that it should not be given this opportunity.

The purpose of these rights is to provide transparency and due process for the involved parties. When they are given the opportunity to provide input, the likelihood increases that the NSIA will reach correct findings and conclusions.

In practice the protection of the involved parties' rights will depend on the willingness of the NSIA to cooperate with the involved parties. This is particularly true for the right to be present during the investigation, which includes inspections onboard and crew interviews. The NSIA has the right, at its discretion, to deny such presence if it believes, on a case-by-case basis, that it will impede the investigation.

The NSIA has taken the general view that any participation for example by the owners or insurers (or their lawyers) will impede the investigation. This is notwithstanding that the main rule is that such participation shall be allowed and that a refusal must be based on a concrete assessment of the circumstances in each case.

OBLIGATION TO PROVIDE INFORMATION AND EVIDENCE

Pursuant to the Norwegian Maritime Code, any person – regardless of any duty of confidentiality – is obliged, at the request of the NSIA, to provide the information and evidence which is relevant to the investigation of the maritime accident. This means that for example the vessel's crew are obliged to be interviewed and provide documents and other evidence which may contribute to clarifying the factual circumstances.

THE PROTECTION OF WITNESSES

The Norwegian Maritime Code provides certain protections for witnesses:

- Witness statements cannot be used for purposes other than the safety investigation.
- Information obtained during interviews cannot be used as evidence against that individual in any subsequent criminal proceedings, in accordance with the general prohibition against self-incrimination.

However, in practice these protections have limited effect. The report will address the direct and contributory causes, as well as the root causes. In many instances it will be easy to identify the person – for example a navigational officer – who, according to the NSIA, has caused or contributed to the accident and both civil and criminal liability may be based on such findings. It will however often be difficult for a defendant in criminal proceedings to rely on the protections afforded to prevent the report from being admitted in evidence. The reason is that the report will normally not cite from or attach the witness statements, nor identify the sources of information in respect of the various findings. Therefore, a defendant in criminal proceedings may experience that the report is submitted as evidence, despite the fact that the relevant information may stem from a witness statement given by that person.

Based on this reality we believe it is in the best interest of all parties if the NSIA were more open to participation and input from the shipowner and insurers during these investigations.

Witnesses also have the unconditional right to be assisted by a lawyer or other representative when being interviewed by the NSIA, see the Norwegian Maritime Code section 477 (1).

In practice however, there have been several examples of the NSIA refusing crew members the right to be assisted by a lawyer during their interviews with the NSIA. These include where the relevant crew member has appointed lawyers who are already appointed to assist other involved parties, for example the owners, insurers or other crew members. The NSIA has also refused crew members the right to be assisted by another crew member during the interviews if that crew member is a higher ranking officer.

The NSIA's position in these cases, certainly has no support in the Norwegian Maritime Code since the right to be assisted by a lawyer (or other representative) is unconditional. Furthermore, the NSIA's position is contrary to the fundamental legal principle that everyone has the right to choose their lawyer.

It is often practical for crew members to appoint lawyers who are also acting for the owners, insurers or other crew members. Sometimes there are no other lawyers available at the place where the interviews are taking place.

To what extent a lawyer can represent several parties is a general question which lawyers consider regularly in all types of cases. For Norwegian lawyers it is assessed on a case-by-case basis pursuant to the Code of Conduct for Norwegian Lawyers.

GUIDELINES FOR ATTORNEY REPRESENTATION IN MARITIME ACCIDENTS

The Norwegian Bar Association has issued guidelines for legal representation in connection with maritime

accidents, which supplement the Code of Conduct.

According to the guidelines, the main rule is that a lawyer can represent more than one party, including crew members, in connection with a maritime accident. An exception applies where there is actual conflict of interest or a clear risk of a conflict of interest.

This is an assessment which the lawyer himself/herself must make, on the facts, when considering to act for several parties. This assessment is not subject to any right of objection on the part of opponents or other involved parties such as the police or the courts. The NSIA has no rights under the Code of Conduct, just as any other party has no right to challenge its opponent's choice of lawyer. The lawyer's assessments under the Code of Conduct is a matter between the lawyer and the client, and is not subject to complaint by opponents or other third parties such as the police or the courts.

If the NSIA refuses a witness to be assisted by a lawyer, which is a violation of the witness' rights under the Norwegian Maritime Code, the witness can refuse to be interviewed. The NSIA may then request a deposition to be held in the local district court, where the witness will of course be entitled to be assisted by a lawyer at the witness's choice.

When it comes to the rights of the shipowner and insurer, the guidelines provide that lawyers acting for the shipowner and/or the insurer have the right to be present during the NSIA's investigations, including during crew interviews. There is an exception in case the NSIA, based on a specific assessment, determines that the lawyer's presence impede the investigation. The lawyer will then need to leave the interview after having received an explanation from the NSIA.

HOPE FOR THE FUTURE?

In order to protect the interests of witnesses and involved parties, it is essential that the NSIA exercises its powers in accordance with the purpose of the protections afforded to such parties in the Norwegian Maritime Code.

In cases where the NSIA have allowed cooperation and participation in connection with the investigation of an accident, the cooperation has been productive.

In our experience, when involved parties are given the opportunity to provide information, alternative view points and other forms of contributions, the likelihood increases that the NSIA will reach correct findings and conclusions.

In other words this will in our view increase – and not reduce – the quality of the NSIA's investigations and subsequent report, and ultimately contribute to the goal of improving safety at sea.

While the NSIA does not assess civil or criminal liability, the reality is that its reports are often used directly or indirectly as a basis for both civil and criminal liability.

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MSC Flaminia

Photo Courtesy of Marine Nationale via German Central Command for Maritime Emergencies via Getty Images

Limitation of liability in light of the *MSC Flaminia (No. 2)* appeal decision

The Court of Appeal in London has given further guidance on charterers' ability to limit liability following the High Court decision in the *MSC Flaminia (No. 2)* reported in our December 2022 edition, giving some important clarification to the types of limitation claims charterers can make.

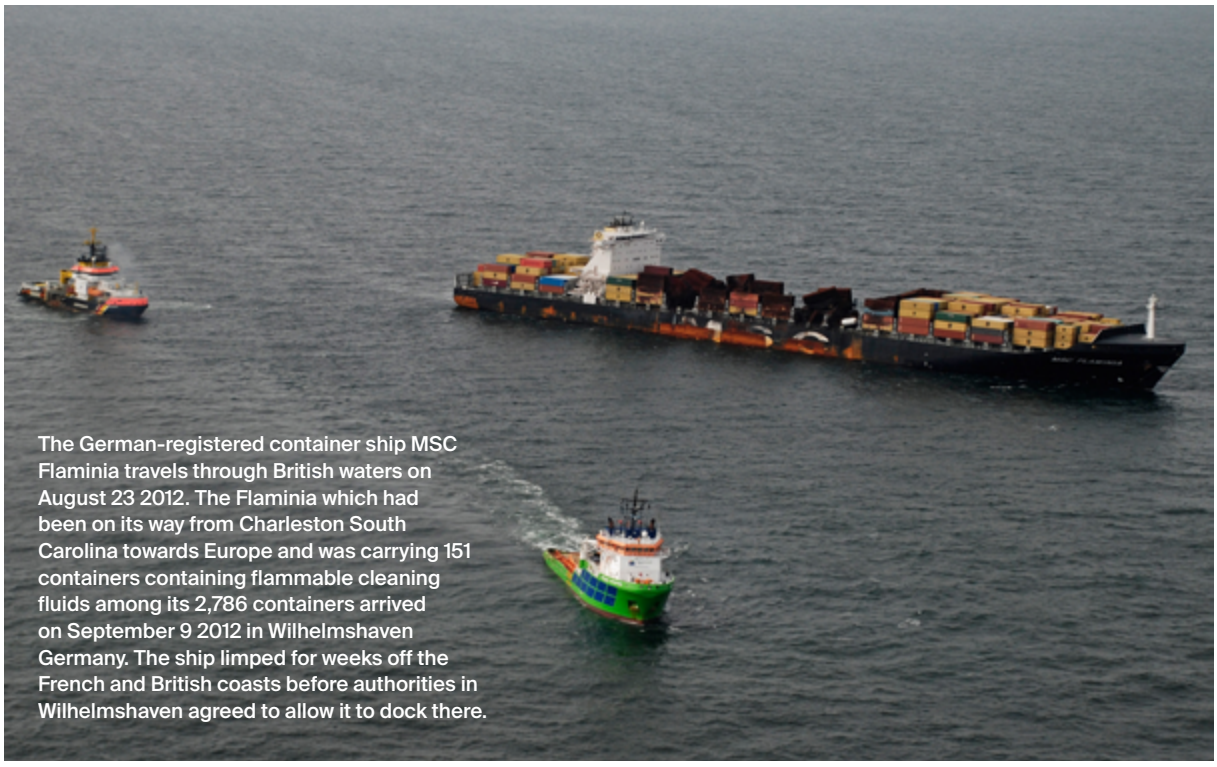
The English Court of Appeal has recently decided an appeal and cross appeal of the High Court decision in the MSC Flaminia (No. 2) and provided further clarification of the types of claims for which charterers can limit their liability under the 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol ("LLMC").

FACTS

The facts are as set out in the report on the High Court decision in our December 2022 edition. To recap, on 14 July 2012 the "MSC Flaminia" suffered a cargo explosion in the mid-Atlantic while en route to Antwerp. Salvors extinguished the fire, leaving about 30,000mt of firefighting water contaminated with dangerous and toxic residues in the vessel's holds. While the vessel was damaged, it was repairable, but this first required the cargo, burnt waste and firefighting water to be discharged. The vessel was towed to the port of refuge, Wilhelmshaven, through the English Channel. The cargo was then discharged, along with most of the firefighting water. However, owners then organised for the discharge of the burnt waste and remaining firefighting water in Romania and Denmark, after which the vessel returned to Romania for repairs. The total cost to owners for these operations was about €115,935,000.

Owners were awarded approximately USD 200m as damages (which included the costs of cargo and fire-fighting water removal) in arbitration against charterers, who then brought a limitation action in the High Court seeking to limit their liability for owners' claims to around GBP 28 million.

At first instance, the High Court held that charterers could not limit the owners' claims because, following the CMA Djakarta ([2004] EWCA Civ 114), a charterer cannot limit in respect of a liability to the owner for the loss of or damage to the ship itself, since loss or damage to the ship itself is not within the scope of Article 2.1(a) of the LLMC. The Judge in the MSC Flaminia case found that the losses for which charterers sought to limit were in fact the necessary costs of the claim to repair the ship, i.e. that the removal of the cargo and fire-fighting water was a necessary part of repairing the damage to the ship and therefore not limitable. In so doing, the Judge rejected charterers' attempts to limit liability on the basis that the losses claimed were consequential losses resulting from damage to property (the cargo) within the scope of Article 2.1(a) of the LLMC, or



The German-registered container ship MSC Flaminia travels through British waters on August 23 2012. The Flaminia which had been on its way from Charleston South Carolina towards Europe and was carrying 151 containers containing flammable cleaning fluids among its 2,786 containers arrived on September 9 2012 in Wilhelmshaven Germany. The ship limped for weeks off the French and British coasts before authorities in Wilhelmshaven agreed to allow it to dock there.

Photo Courtesy of Marine Nationale via German Central Command for Maritime Emergencies via Getty Images

By making the deposit, the insurer is considered to have satisfied its payment obligations under the relevant policy regardless of the policyholder or the co-insured's interests, rights, or claims for compensation.

claims for cargo discharge and treatment which constituted the removal or destruction or rendering harmless of the cargo within the scope of Article 2.1(e), or claims for payments to public authorities that constituted measures taken to avert or minimise loss (to cargo, by aiding its voyage to Wilhelmshaven) under Article 2.1(f).

Owners argued in the High Court that limitation under Article 2.1 is only possible for losses originally suffered by a party who was not a "shipowner", as defined in LLMC (which includes both owner and charterer), i.e. for genuine third party claims, rather than for claims as between owners and charterers. However, the High Court considered this argument was too wide, for example by not allowing limitation in respect of damage to cargo or bunkers owned by charterers.

In any event, the Court concluded that the claims which charterers sought to limit were not limitable, as they were

in fact the necessary costs of repairing the damage to the ship, for which limitation by a charterer against an owner is not available.

Charterers appealed this decision on four grounds:

1. the Judge was wrong to hold that claims between owner and charterer for the cost of removing cargo do not fall within Article 2.1(e)
2. the Judge was wrong that claims could only be limited under Article 2.1(f) if the measures taken were solely in order to avert or minimise loss for which the person liable may limit his liability in accordance with the LLMC.
3. the Judge was wrong to say that charterers' liability was a single claim by owners in respect of damage to the ship. Instead, one should look at the individual elements of the claim.
4. the Judge was wrong to hold that none of owners' claims were for consequential loss resulting from loss of or damage to property occurring on board the ship for the purpose of Article 2.1(a).

Meanwhile, owners served a Respondent's Notice, in which they advanced a slightly narrower formulation than the case they had run in the High Court (where they argued that limitation is only available as against third party claims, originating from outside the shipowner class). They said that "*a charterer is only entitled to limit in respect of claims originating with an "outsider" and is not entitled to limit in respect of claims for losses originally suffered by the owner itself.*"

THE DECISION

The Court of Appeal agreed with owners' Respondent's Notice, holding that all the claims originated with owners, rather than a third party, and therefore could not be limited. Males LJ said:

"*When a claim falling within Article 2 is made by an owner against a charterer, the charterer's right to limit does not depend upon the capacity in which the charterer was acting so as to give rise to the claim, but simply on whether the owner is claiming for a loss which it has suffered itself (no right for charterer to limit) or to pass on liability for a claim made against the owner by a third party (charterer entitled to limit).*"

That conclusion was therefore a complete answer to all of charterers' claims to limit in this case and therefore the Court did not need to consider charterers' grounds of appeal.

But it did so nonetheless and Males LJ said that "*It is open to [charterers] to argue that the various losses which [owners] seek to recover fall within one or more of the paragraphs of Article 2.1 and are therefore subject to limitation*" and the Court then went on to suggest that the costs of removing and decontaminating the cargo would fall within Article 2.1(e).

As regards the High Court's single claim finding, the Court of Appeal considered that whilst there might be a claim for a single breach of charter, namely shipping a dangerous cargo, the types of loss recoverable could be various, so it was necessary to check each section of Article 2.1 in respect of the type of loss claimed.

However, this did not change the position that the Court of Appeal had already found that charterers could not limit for claims made by owners for losses suffered themselves.

COMMENT

The Court of Appeal's rejection of the single claim argument and clarification of the scope of Articles 2.1(e) and (f) will be welcome news for charterers, but its expression of the insider/outsider requirement for limitable claims may need further elucidation and we understand that permission to appeal to the Supreme Court has been sought.

The Court of Appeal appears to have reached its conclusion on the basis of what it considered to be the purpose of the LLMC and common sense, in that its conclusion means that one avoids the slightly odd result that an owner's claim against a charterer can be paid out of the very limitation fund set up by the owner, thereby prejudicing third party claimants against the fund.

However, on the other hand, the Court of Appeal decision implies words into the LLMC that are not there and overrides the plain meaning of, for example, Article 2.1(e) that claims in respect of the removal, destruction or the rendering harmless of cargo are limitable absolutely.

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Suppose you went to arbitration and the opponent did not show?

In arbitration, you have to prove your case even if the opponent does not show up. The no-show creates some pitfalls to avoid.

A respondent who does not participate will not prevent an arbitration from proceeding. However, unlike the ordinary courts in many (or even most) countries, arbitral tribunals generally cannot render default decisions. The claimant will still have to submit evidence and present legal grounds supporting its claims. Tactically, refusing to participate allows the respondent to raise jurisdictional objections in set-aside or enforcement proceedings. If the non-participation is not handled properly, further grounds for challenge of the award may appear.

> **The non-participation of a party does not prevent an arbitration from proceeding or a tribunal from rendering an enforceable award.**

NO-SHOW IS NOT A SHOWSTOPPER

First and foremost, the non-participation of a party does not prevent an arbitration from proceeding or a tribunal from rendering an enforceable award. This principle may be spelt out explicitly in arbitration laws and institutional rules, and may also be reflected in provisions dealing with the practical hurdles of non-participation. For example, the competent court or arbitral institution will generally always be empowered to appoint an arbitrator on behalf of the non-participant.

However, the tribunal will generally never be entitled to render a default award, i.e. to grant the relief requested just because the respondent did not show up. Again, this principle may be explicitly spelt out, and may also be reflected in requirements for the tribunal to apply the law and to consider the evidence before it.

Furthermore, tribunals are always required to safeguard both parties' rights to fair proceedings. This means that the claimant will still have to present legal grounds and submit evidence supporting its claim. Moreover, the non-participating party shall generally be given a reasonable opportunity to join the arbitration at all stages of the proceedings. Therefore, the non-participant should be included in all correspondence with the tribunal and any arbitral institution, and be given the opportunity and also be encouraged to comment at all procedural and substantive milestones.

ADVANCING WITHOUT RESISTANCE(?)

Presenting your case without an opponent to dispute your legal reasoning and question your evidence may sound like a dream come true. However, this situation also has its downsides. (As the saying goes, if you advance without resistance, you are walking into an ambush.)

First, the resistance from an opponent may also assist you in presenting your case better, by pointing out weaknesses in your reasoning and evidence thereby allowing you to remedy them. Secondly, as the tribunal's obligation to safeguard the interests of the non-participating party will not necessarily be fulfilled if the tribunal simply accepts everything presented to it, you still have to convince the tribunal.

In our experience, tribunals and participants deal with the above challenges by adapting the procedure. For example, the procedural timetable may have two tracks, one for where the respondent joins the proceedings at a given milestone, such as the due date for the respondent's first submission on the merits, and another for where the respondent does not. In the latter case, the tribunal will partly step into the shoes of the respondent, and submit questions to the claimant, aiming to clarify the claimant's position.

In such cases, the practical evidentiary burden on the claimant may even be effectively somewhat higher. In practice, there may be only one main pleading on the merits in the proceedings, and all relevant arguments and evidence should be submitted with it.

Finally, the non-participant would normally be precluded from raising jurisdictional objections in set-aside proceedings only if it actually appeared in the arbitration at least once without raising such objections. As such, the non-participant is often not precluded from disputing the tribunal's jurisdiction before the state courts. Not knowing the respondent's jurisdictional objections, the claimant cannot rebut them in the arbitration, and the tribunal is not necessarily able to pre-empt them and properly discharge of them in an award. This may make the award more vulnerable to subsequent challenge.

AVOIDING THE PITFALLS

Non-participation may be part of a delaying strategy, where the non-participant plans to disrupt the proceedings by joining late with extensive submissions, attempting to postpone hearings and/or the award. This risk is particularly high if the proceedings are divided into separate phases, for example dealing with jurisdiction before the merits. An unfavourable award on jurisdiction may often prompt the respondent to change strategy and enter the arbitration in the second stage of the proceedings, and then also attempt to relitigate already decided matters of jurisdiction. In order to pre-empt and mitigate such tactics, the claimant may want to ask the tribunal to establish a clear procedural timetable and a strict cut-off date.

In our experience, the timetable should first safeguard the non-participant's reasonable possibility to join the arbitration with a generous time limit for responding to the claimant's first main pleading. Thereafter, the timetable and the supplemental procedural rules should regulate in full the possibility to submit pleadings and evidence in case of a late entry. Depending on when the non-participant enters the proceedings, it may have a more limited opportunity to present its case. However, this should not be a breach of due process if the non-participant has had earlier opportunities to enter the proceedings but has chosen not to do so.

Non-participation may also require adaptions of the supplemental procedural rules, in particular those dealing with evidence. For example, common provisions saying that documents shall be deemed to be authentic unless disputed by a party, do not work when one party does not participate. Theoretically, the non-participant may allege that any reliance by the tribunal on the non-participant's failure to dispute the authenticity of the documents is a procedural error which affected the outcome and try to set aside the award and/or resist enforcement on that basis. The logic is that because the non-participant was not there, it could not dispute anything, and therefore the tribunal could not deem or assume anything. In our experience, this potential threat against the integrity and enforceability of the award is dealt with by amending these evidentiary provisions and replacing references to agreement or failure to dispute by the parties with references to the tribunal's discretion. Obviously, the tribunal retains its discretion to assess the evidence even if a party does not participate.

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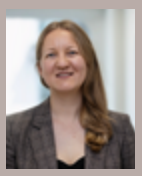

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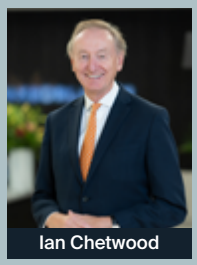
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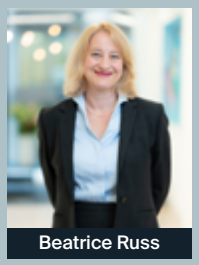
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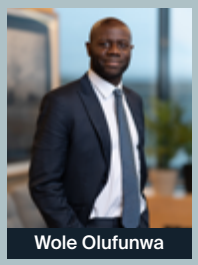
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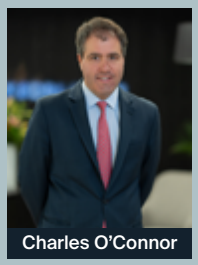
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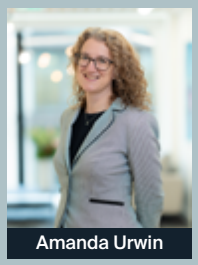
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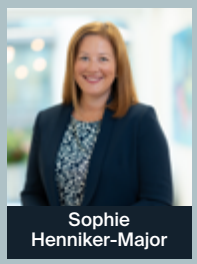
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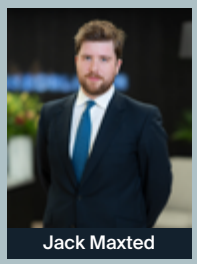
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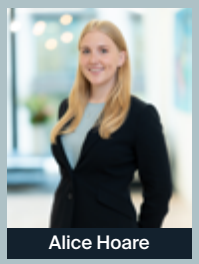
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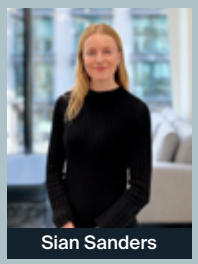
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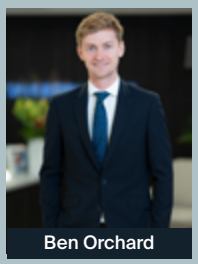
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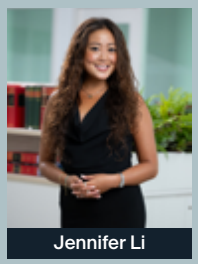

Jennifer Li

Welcome to our new team members in London and Singapore

Embarking on an exciting new chapter, Wikborg Rein proudly announces the expansion of its global shipping and offshore team with 12 new lawyers in our London and Singapore offices.

In September 2023, Wikborg Rein's global shipping and offshore practice grew significantly with the addition of 2 teams comprising 10 lawyers into our London office, and in December, the practice further grew with the addition of 2 lawyers into our Singapore office. This expansion notably enhances our international shipping dispute and finance practice, marking a key milestone in our growth trajectory.

Chris Grieveson, London Managing Partner, shared his enthusiasm: "*Welcoming these new colleagues, many of whom have been familiar to us for over two decades, allows us to further enhance our international shipping dispute and finance services. We are delighted that some of the most respected names in the field have chosen to join Wikborg Rein.*"

Key figures like Michael Volikas, Ian Chetwood and Wole Olufunwa will significantly strengthen our shipping disputes team. All have vast experience in complex commercial disputes in shipping law, representing shipowners and insurers, and join the firm with a team of associates. Michael Volikas, known for handling high-profile cases like the ongoing Prestige litigation, Ian Chetwood, recognised for his work in significant cases such as Ocean Victory and the Maersk Honam, and Wole Olufunwa, who handled the seminal Achilleas case and is currently handling the Xin Hong total loss, bring yet further depth and expertise to our team.

Joining our finance team is Beatrice Russ, a specialist in debt finance, focusing on the shipping and energy sectors, along with two associates. She is renowned for her work with German owners and banks, her expertise further diversifies our finance capabilities.

This expansion not only signifies an increase in our team size but also reflects our commitment to evolving alongside the dynamic needs of the maritime industry and our clients globally. It reinforces our position as a leader in maritime and offshore law, ensuring we provide top tier legal services in these sectors on a global scale.

See wr.no/en/people or page 34-35 for contact details.

The most important updates in GREEN SHIPPING

– December 2023

In this recurring segment, we provide a high level overview of the most important regulatory updates in green shipping, intended as a quick guide to stay updated.

FuelEU Maritime Regulation – Introducing compliance balance pooling

The FuelEU Maritime Regulation has been adopted by the European Union and enters into force on 1 January 2025. Compliance with the FuelEU Maritime-requirement relating to the yearly average greenhouse gas (GHG) intensity of the energy used on board vessels, is normally calculated based on each individual vessel. However, the FuelEU Maritime Regulation also contains a voluntary "pooling-mechanism", where the compliance balances of two or more vessels may be pooled together. Although the focus within the industry now primarily is on EU ETS, shipping companies should look further into this potential opportunity as they prepare for implementation of the FuelEU Maritime Regulation in 2025. You can read more about the possibilities of FuelEU Maritime Pooling in the article at page 4 of this edition of our Shipping Offshore Update.

EU Emissions Trading Scheme (EU ETS) – Clarifications on responsible entity

The EU ETS will be expanded to cover emissions from the shipping industry from 1 January 2024. According to the regulation, the "*shipping company*" is responsible for the ETS-obligations, including the obligation to surrender allowances. On 22 November 2023 the EU adopted Commission Implementing Regulation (EU) 2023/2599 of 22 November 2023 which amongst other clarifies who is the responsible entity under the EU ETS Directive. The default rule is that the *shipowner* is responsible for the ETS-obligations. Where another entity, such as a manager or bareboat charterer, has assumed responsibility to comply with EU ETS obligations, the Member States shall ensure that the entity has been duly mandated by the shipowner. Unless the other entity can document that it has been duly mandated by the shipowner to comply with the ETS obligations, the shipowner will remain responsible for the ETS obligations. The Regulation entered into force 26 November 2023.

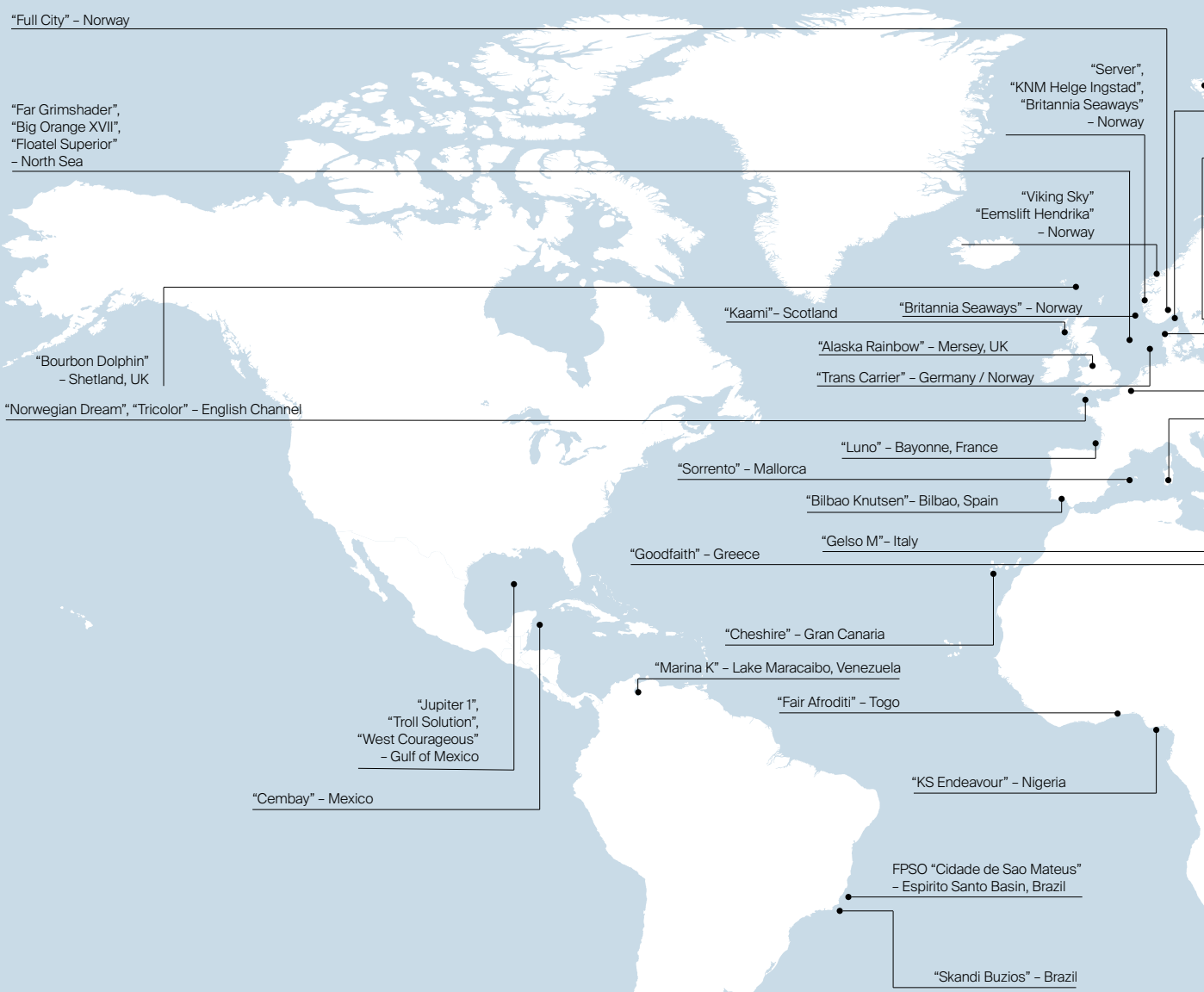
IMO 2023 GHG STRATEGY – Latest news from IMO

In July 2023 the Marine Environment Protection Committee (MEPC) held its 80th session, and came up with a revised GHG strategy. IMO has been criticised for not setting ambitious enough targets, however, in the revised strategy IMO has set an ambition to achieve net-zero GHG emissions from international shipping "by or around" 2050. IMO also sat out milestones of 20% emission reductions in 2030 (while striving for 30%) and 70% reductions in 2040 (while striving for 80%).
Other noteworthy actions points from IMO include an ambition to increase the uptake of alternative zero and near-zero GHG fuels by 2030, to further strengthen the energy efficiency design requirements (EEDI) and to reduce CO2 emissions per transport work by at least 40% by 2030, compared to 2008 levels.

	Regulation[1]	Essence of regulation	Scope (technical)
Technical Requirements	Existing Energy Efficiency Design Index (EEXI)	Existing vessels must, through a one-time certification, comply with a minimum energy efficiency level set by the IMO.	Certain vessel types over 400 GT (including bulk carriers, general cargo ships, tankers, ro-ro ships and containerships)
	Ballast Water Management Convention (BWM Convention)	To prevent foreign organisms entering other ecosystems, vessels must implement a ballast water and sediments management plan, hold a ballast water record book, and use an approved ballast water treatment system.	Applies to all vessels as a starting point, but not necessarily to vessels solely operating within one jurisdiction.
	Energy Efficiency Design Index (EEDI)	New vessels required to satisfy a minimum energy efficiency level per tonne mile for different vessel type and size segments. The required efficiency level is tightened every five years, next in 2025.	New or majorly converted vessels over 400 GT
Operational Requirements	FuelEU Maritime	Vessels must adhere to increasingly stringent limitations on the carbon intensity of fuels/energy used on board (from 2025) and use an onshore power supply or zero-emission technology in ports (from 2030).	Vessels over 5 000 GT transporting passengers or cargo for commercial purposes.
	Carbon Intensity Indicator (CII)	The annual CO_2 emissions arising from a vessel's operation will get an operational carbon intensity rating from A to E, with vessels rated D for three consecutive years, or E, having to submit a corrective plan.	Certain vessel types over 5000 GT (including bulk carriers, general cargo ships, tankers, ro-ro ships and containerships)
	IMO 2020	Vessels may only use fuels with a maximum sulphur content of 0.5%, by either using low-sulphur fuel or implementing cleaning exhaust systems approved by the flag state of the vessel.	All vessels
	Ship Energy Efficiency Management Plan (SEEMP)	The ship operator must establish a ship specific plan to attain improved energy efficiency (SEEMP). In case of vessels of 5000 GT or above, the SEEMP shall also include a description of the methodology used to collect emissions data.	Vessels over 400 GT
Commercial Incentives	EU Emissions Trading Scheme (EU ETS)	Shipping companies must surrender allowances for emissions from shipping under the EU's "cap and trade" emissions trading system.	Vessels over 5000 GT (including offshore vessels from 2027)
	EU Taxonomy	The EU taxonomy for sustainable activities is a classification system established to classify which investments are environmentally sustainable, in the context of the European Green Deal.	Reporting obligations for large companies that fall under the scope of the NFRD (large public-interest companies with more than 500 employees), and financial market participants
	Poseidon Principles	A global framework establishing a common baseline to quantitatively assess and disclose to what extent financial institutions' lending and marine insurers' shipping portfolios are in line with adopted climate goals.	Banks and lenders

[1] The table includes a high level summary of some of the most influential and important regulations related to Green Shipping, but is not exhaustive

	Scope (geographical)	Implementation date	Next steps / recent updates
	Worldwide	Compliance required as from 1 January 2023	
	Worldwide	8 September 2017	All vessels subject to the BWM Convention must meet the performance standards contained in regulation D-2, meaning that vessels without a ballast water treatment system must install an approved system before 8 September 2024.
	Worldwide	1 January 2013	1 January 2025: Phase 3 requiring increased energy efficiency to initiate Updated ambitions in IMO 2023 GHG Strategy: Carbon intensity of the ship to decline through further improvement of the energy efficiency for new ships. IMO will review the framework with the aim of strengthening the EEDI-requirements.
	All voyages between ports in the EU and at berth in the EU, and 50% of GHG intensity of onboard energy used during voyages which start or end at an EU port.	Proposed implementation date 1 January 2025, with stricter requirements every five years.	■ 25 July 2023: Regulation adopted by the Council. ■ 1 January 2025: Implementation
	Worldwide	Compliance required as from 1 January 2023 (more stringent rating thresholds towards 2030)	Initial CII ratings will be given from 2024 based on reported data from 2023.
	Worldwide, with stricter requirements within emission control areas	1 January 2020	1 January 2025: The Mediterranean Sea becomes an emission control area
	Worldwide	1 January 2013 Compliance required as from 31 December 2022	1 January 2023: Shipowners must implement and verify a SEEMP Part III (document reflecting changing performance and required measures).
	100 % of emissions between EU ports and within the EU, 50 % of emissions from international voyages to or from the EU	1 January 2024	■ 31 May 2023: BIMCO's ETS clause for time charter parties released. ■ November 2023: Planned release of BIMCO's ETS clause for management agreements. ■ 22 November 2023: Commission Implementing Regulation (EU) 2023/2599 of 22 November 2023 adopted, with clarifications on the definition of "shipping company" and rules relating to administering authorities. Entered into force 26 November 2023. ■ Fourth quarter 2023: Planned implementation of changes in the Norwegian Greenhouse Gas Emission Trading Act (Prop. 3 LS). ■ 1 January 2024: Implementation
	Companies based in Europe, or operating a European legal entity	12 July 2020, the first of the disclosure obligations was applicable from 1 January 2022.	27 June 2023: The Commission adopted ■ (i) amendments to the EU Taxonomy Climate Delegated Act which expand on economic activities contributing to climate change mitigation and adaptation not included so far, and ■ (ii) amendments to the EU Taxonomy Disclosures Delegated Act, to clarify the disclosure obligations for the additional activities.
	Worldwide	■ 18 June 2019: (Financial institutions) ■ 15 December 2021: (Marine insurance)	Following IMO's Marine Environment Protection Committee meeting in July 2023 (MEPC80), the Poseidon Principles have been revised to align shipping finance reporting with new IMO climate goals.



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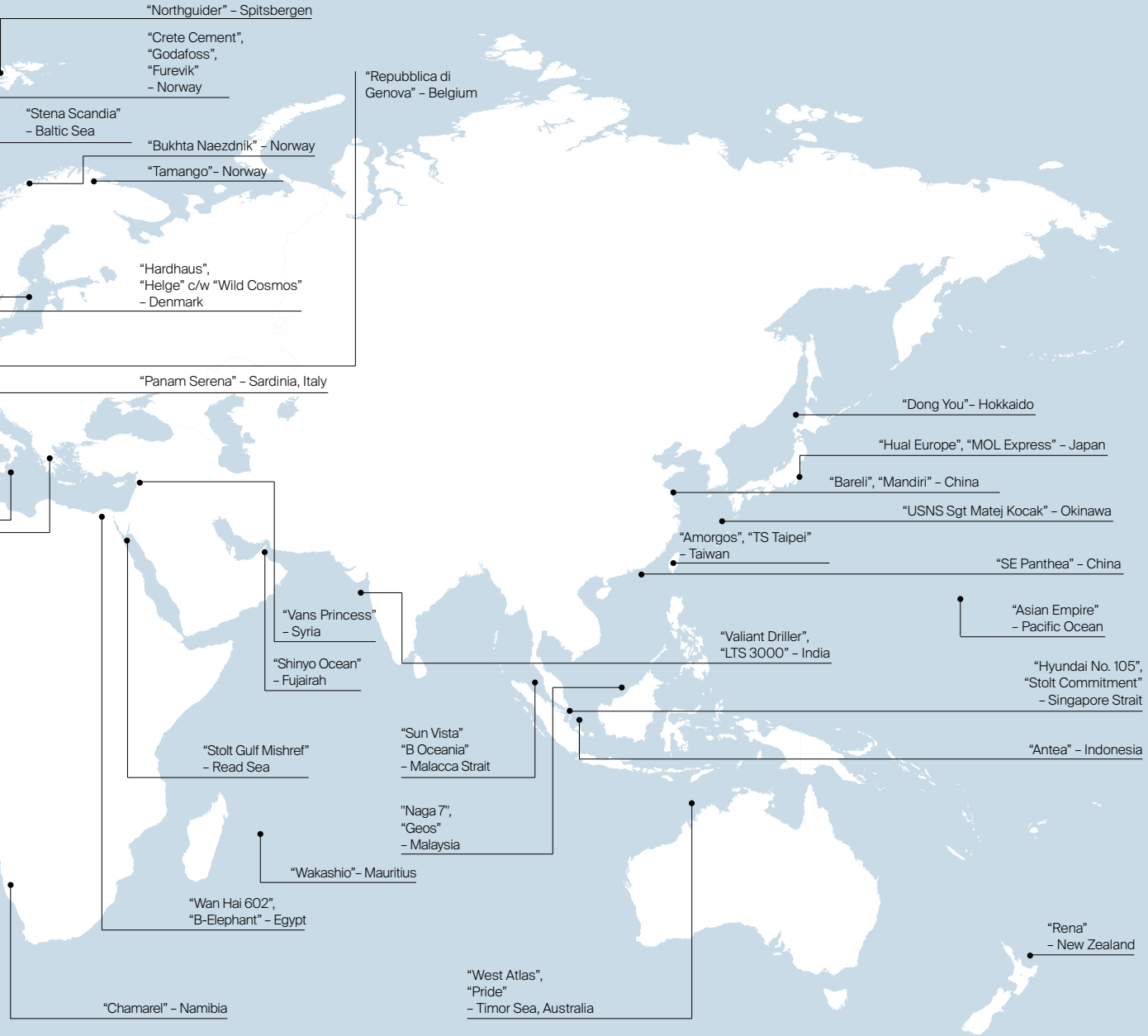
available worldwide 24/7

Members of our Maritime and Offshore Emergency Response Team have extensive experience in handling the practical and legal issues associated with casualties and maritime emergencies. Our team assists insurers, owners and others in connection with a wide range of incidents around the world, such as collisions, groundings, fires, explosions, salvage, wreck removals and other.



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