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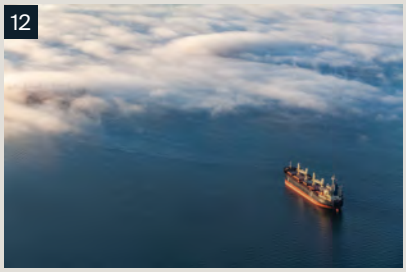

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Editors:
Herman Steen, Jonathan Page, Baptiste Weijburg

Editorial team:
Thomas Berger

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Dear friends and readers

As we transition into the winter months, geo-political tensions remain high.

The war in Ukraine persists and the situation in the Middle East has escalated. For more than a year, the Iran-backed Houthis in Yemen have attacked ships in the Red Sea and the Gulf of Aden, disrupting one the world's busiest shipping routes. As a result, most vessels are now sailing around Africa instead of going through Suez. In addition, tensions between the US and China are looming in the background and there will be a new and somewhat unpredictable president in the US on 20 January 2025.

Whilst the ever-changing sanctions against Russia have been wide-ranging and severe, they have not been as effective as hoped. A growing dark fleet of vessels have continued to trade with Russia in circumvention of the sanctions. The dark fleet is presently believed to be upwards of 1 000 ships, about a quarter of the world's tanker fleet. It undermines the rules-based order upon which shipping is based and poses serious threats to safety at sea, and exposes coastal states, vessels and others to damage for which the dark fleet ships may not be insured.

Furhermore, the green transition is creating an increasingly complex regulatory landscape, which can be difficult for industry players to navigate.

In this edition of the Shipping Offshore Update, we write about green transition regulations such as FuelEU Maritime and EU ETS, and also about how to future-proof your newbuilding project and navigate the complex international ship recycling regulations. We also consider the 2024 versions of the Lloyd's Standard Form of Salvage Agreement and BIMCO's Wreckstage form, as well as BIMCO's new Autoshipman for autonomous ships.

We hope you enjoy this latest edition!

Herman Steen

Editor-in-Chief and Partner
hst@wr.no

> **The green transition is creating an increasingly complex regulatory landscape, which can be difficult for industry players to navigate.**

Co-Editors of the Shipping Offshore Update

Baptiste Weijburg
Partner
baw@wrco.co.uk

Jonathan Page
Partner
jpa@wrco.co.uk

Thomas Berger
Associate
thb@wr.no

Introducing FuelEU Maritime: Contractual implications

Much has been written about the FuelEU regulations' impact on the shipping industry, but with just a month to go before regulations fully take effect, there will still be work to be done on contractual arrangements to ensure that they properly address the requirements of this new regime.

Starting 1 January 2025, vessels subject to the FuelEU Maritime regulations must monitor and report the greenhouse gas intensity (GHG intensity) of the fuel used annually, with maximum allowable values gradually decreasing from 2025 to 2050. The aim is to reduce the GHG intensity by up to 80% by 2050 through the adoption of renewable and low-carbon fuels. While the technical aspects of the regulations have understandably already been given particular attention, and ship operators have been busy on implementing compliance measures, contractual frameworks between stakeholders – such as shipowners, managers, and charterers – also requires careful attention and timely adjustments.

BACKGROUND LAW POSITION

The ”shipping company”, which is the entity legally responsible for compliance with FuelEU Maritime, is the ISM company – the holder of the Document of Compliance (DoC holder). Whilst the EU ETS framework initially placed responsibility on the registered owner, and allowed a transfer of responsibility to the technical manager or bareboat charterer, responsibility for FuelEU Maritime remains with the ISM company, which in many cases is the technical manager of the vessel.

This may initially seem counter-intuitive, given that the technical manager is rarely responsible for selecting or paying for the fuel of the vessel, or for deciding how and where the vessel trades. However, it is important to differentiate between the party that holds public regulatory responsibility vis-a-vis the authorities and the party that ultimately bears contractual liability within a contractual chain.

In line with the polluter pays principle, the charterer should in our view eventually be contractually liable for complying with the requirements and the costs incurred to ensure compliance or pay fines for non-compliance. In practice, this will *firstly* require that the technical manager, in their management agreement with the shipowner, states that that the technical manager will handle and report the vessel's GHG intensity, while the shipowner will be financially

> **In line with the polluter pays principle, the charterer should in our view eventually be contractually liable for complying with the requirements and the costs of FuelEU Maritime.**

Industry players may be well advised to begin evaluating whether to pool their vessels and consider the appropriate contractual structure for such pooling agreements.

responsible for compliance with the FuelEU Maritime regulations. *Secondly*, the shipowner should stipulate in their charter agreements that the charterer is responsible for ensuring the vessel uses a combination of fuels that meets the GHG intensity requirements or to compensate the shipowner for the consequences of non-compliance.

BIMCO released their time charter clause for FuelEU Maritime on 25 November, and we expect that they will also release a standard clause regarding liability allocation between the technical manager and the shipowner by the end of the year. Involved parties should promptly begin discussions with their contractual counterparts to address distribution of responsibility and compensation.

MANAGEMENT AGREEMENTS

As the technical manager (DoC holder) will be responsible towards the authorities for complying with the FuelEU Maritime regulation, additional responsibilities related to administration and reporting needs to be agreed in both existing and new management agreements. These additional obligations would typically result in an additional fee to managers as a compensation for the added scope of work.

Because the consequences of non-compliance of the regulation include fines of EUR 2,400 per ton of fossil fuel exceeding the current limit, managers will also need to consider obtaining cash coverage for any compliance deficit on an ongoing basis or proper security from shipowners.

Equally, shipowners are likely to require the right to issue instructions to managers on utilisation of any compliance surplus that could be banked for compliance in future years or utilised under the pooling mechanism discussed below.

It should also be noted that the shipping company (technical manager) who has the responsibility for operation of the ship on 31 December will be responsible for the *entire* reporting period of the preceding year. This means that in the event of a change of shipping company or sale of the vessel within a reporting period, shipping companies are advised to consider including provisions on exchange of information relating to GHG intensity and cash coverage or security for any compliance deficit for the reporting period in good time before any transfer of ownership or management.

TIME CHARTERS

New time charter parties and clauses in existing charters should include specific contractual provisions stating that the charterer is responsible for complying with the FuelEU Maritime scheme and the financial consequences. Because the FuelEU Maritime establishes a regime that creates both direct penalties if there is a compliance deficit and indirectly benefits that potentially could be capitalised if there is a compliance surplus, the regulation could be prove to be quite complex with a need to address:

- What benefit should be transferred to charterers if the GHG intensity exceeds the vessels' target in the relevant period and creates as compliance surplus – which in turn depends on how the consequential benefit should be capitalised and calculated;
- What cost should be transferred to owners if the GHG intensity is below the vessels' target in the relevant period and creates a compliance deficit – which is likely to be equal to the fines issued for non-compliance;
- Calculation of relevant periods, as the reporting period from 1 January to 31 December is unlikely to match the time charter period;
- Adjustments, e.g. off-hire under the time charter, flexibility mechanisms under FuelEU Maritime and intensified penalties for several years of compliance deficit; and
- When the owner or charterer should transfer the benefit or cost.

Contacts

Andreas Fjærvoll-Larsen
Partner
afl@wr.no

Thomas Berger
Associate
thb@wr.no

Whilst we, as a general starting point, will expect that the broadly adopted solution is that the charterer receives a benefit for achieving a GHG intensity exceeding the vessels' target, this may of course differ in bespoke commercial relationships. If the choice of fuel is a key factor, e.g. for dual fuel vessels, the charterer may well have good arguments that they should get a part of the upside when choosing the fuel generating a compliance surplus. However, a shipowner that constructs a newbuild vessel with a propulsion system likely to generate a significant compliance surplus, may have included the benefit of that surplus in the calculated earnings of the vessel and thus insist on retaining the same.

FLEXIBILITY MECHANISMS – POOLING AGREEMENTS

The EU has introduced three flexibility mechanisms in the new regulations – being (1) borrowing compliance capacity from the following year in case of a compliance deficit in the current year; (2) banking current compliance surplus for subsequent years or (3) pooling of compliance among vessels. Arguably the most intriguing of these is the option to pool multiple vessels to meet the target GHG intensity, which is possible irrespective of type of vessel, ownership or flag. Industry players may be well advised to begin evaluating whether to pool their vessels and consider the appropriate contractual structure for such pooling agreements.

Agreements may take the form of "traditional pooling agreements" among specific vessels or "derivatives" where the compliance surplus is somehow tokenised and traded in order to match vessels to establish compliance pools at the time of reporting. Important considerations in this respect include access criteria for participants, lock-in period for the number of reporting periods and exit opportunities. The structuring of benefits should be addressed, deciding whether participants will receive derivatives/tokens, cash, or other instruments.

It is also crucial to consider the relationship to other flexibility mechanisms, knowing that vessels participating in pools will be cut off from using the borrowing mechanism. Participants may still bank their compliance surplus, which is why provisions in pooling agreements must also address the allocation of any compliance surplus. Finally, the consequences of non-compliance should be clarified, particularly if assumptions regarding the quantity of surplus or deficits are incorrect.

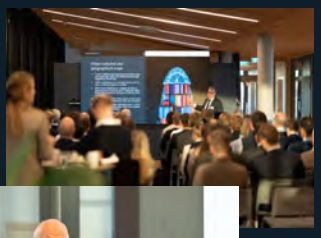
SUMMARY

As we enter the new year, FuelEU Maritime will be the latest decarbonisation requirement hitting the shipping industry. Its effect will be significant and only increasing in years to come. The regulation also require industry participants to actively consider its specific effects for their vessels and include adequate regulations in their contracts. The carrot and stick approach underpinning the regulation also implies that there may be commercial opportunities alongside the general actions needed to ensure compliance.

Seminars

Wikborg Rein has conducted a series of workshops and advised several clients on this topic over the last few months. Together with industry experts from DNV and Hecla Emissions Management, we also gathered around 100 industry participants at our Oslo office in November, and in Bergen on 10 december, for a breakfast seminar and a deep dive into the regulations. Equipped with practical insights from owners, charterers, managers, and financial institutions, our team remains available to assist going forward.

Would you like to receive invitations to future seminars at Wikborg Rein? Please sign up here.



Above right Benjamin Gibson from Hecla Emissions Management and to the left Helge Hermundsgård from DNV with Wikborg Rein's partner Andreas Fjærvoll-Larsen in the background.

WRECKSTAGE 2024 – new industry standard wreck removal agreement

On 4 June 2024 BIMCO released a new version of WRECKSTAGE, which has long been the industry standard agreement for maritime wreck removal projects where the contractor is remunerated on a lump sum basis. Several changes have been made to this new version, the most important being a new optional risk allocation procedure, which is intended to give greater certainty in the allocation of risks. The result is an improved form which will no doubt be warmly welcomed by the industry.

In addition to WRECKSTAGE, BIMCO's suite of wreck removal agreements include WRECKHIRE and WRECKFIXED. They are all agreed documents, negotiated between the International Salvage Union and the International Group of P&I Clubs. Updated versions of WRECKHIRE and WRECKFIXED are expected to be released in 2025.

Since these forms were introduced in 1999, and later revised in 2010, practically every major wreck removal project around the world have been contracted on the basis of these forms.

The main difference between the three wreck removal agreements is the pricing mechanism. WRECKSTAGE provides for a lump sum payable in stages, whereas WRECKHIRE provides for daily hire payments and WRECKFIXED provides for a lump sum payment on a no-cure, no-pay basis.

NEW RISK ALLOCATION PROCEDURE – QRA

The revision of WRECKSTAGE was prompted by the introduction of quantitative risk assessment (QRA) in the contracting process. QRA is used to inform and guide decisions on the allocation of risks between the contracting parties and the pricing ramifications if those risks materialise.

However, the new risk allocation procedure in the new Clause 4 does not need to be based on QRA, and may instead be based on a traditional risk allocation, as we expect will be the case in the majority of the projects where the risk allocation procedure will be used.
The risk allocation procedure is optional and only applies if the parties have so indicated in Box 10, in which case a risk allocation matrix shall be agreed and set out in the new Annex E and the procedures set out in subclauses 4 (b)-(d) applies.

Subclause 4(b)(i) provides that risks allocated to the contractor fall within the lumpsum and that the contractor shall not be entitled to any additional remuneration, except as described in subclause 4(c).

Subclause 4(b)(ii) provides that the risks allocated to the company shall give access to additional remuneration pursuant to the procedure under subclause 5(b)(i)-(iii).

WRECKSTAGE provides for a lump sum payable in stages, whereas WRECKHIRE provides for daily hire payments and WRECKFIXED provides for a lump sum payment on a no-cure, no-pay basis.

Subclause 4(c) sets out the limited exception to the risk allocation procedure in Subclause 4(b)(i), namely where a project change is required due solely to a misdescription or error in the vessel specification or in the documents provided in accordance with Subclause 6(d).

Subclause 4(d) specifies that any risks not specifically covered by the initial risk allocation in Subclauses 4(b)(i) and (ii) shall be subject to the variation order procedures in Clause 5 (old Clause 4) regarding changes in work method of work, personnel, craft, equipment and/or project timeline.

In the previous version of WRECKSTAGE, the system for variation orders – old Clause 4 – left much to bespoke clauses in the projects where the parties wanted to agree on a risk allocation procedure in addition to or instead of old Clause 4.

VARIATION ORDERS

Clause 5 (old Clause 4) has been revamped to clarify the variation order procedure, which provides a mechanism for increasing – or reducing – the lump sum to the extent that there are relevant changes in the project which makes the project more costly – or easier – to perform. Clause 5 sets out the requirements for invoking a variation order, the procedure to follow and how to deal with any disagreements between the parties.

BIMCO hopes that the new WRECKSTAGE 2024 will meet the needs of the industry by providing the optional QRA-based mechanism in combination with the variation order procedure and thereby giving greater certainty in the allocation of risks and the consequences of change.

EXTRA COSTS

Clause 11, which deals with extra costs, remains mainly unamended, but now provides that it only applies unless otherwise expressly provided under the risk allocation procedure in Clause 4.

DELAYS

Clause 8 (old Clause 7) provides that the delay provisions are also subject to the risk allocation procedure in Clause 4.

Furthermore, the contractor is no longer entitled to delay payment in case of breakdown of its own equipment or non-availability of personnel.

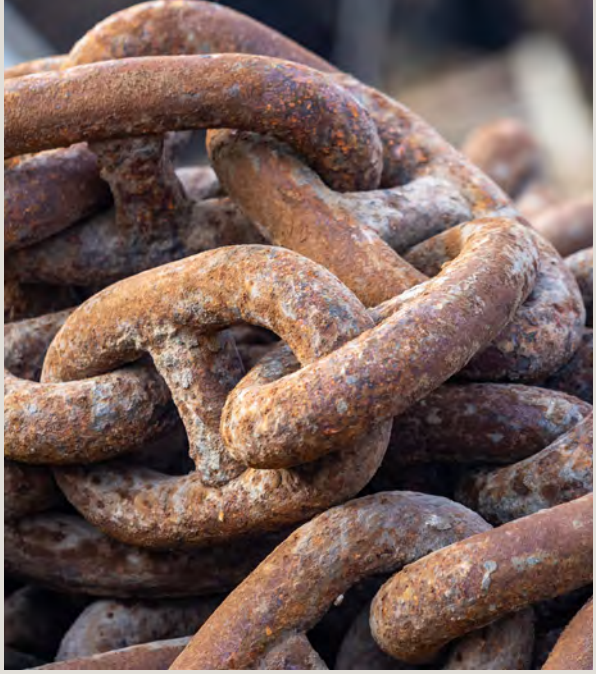
Instead, the contractor will be entitled to delay payment in case there is breakdown of sub-contracted craft or equipment or non-availability of the sub-contracted personnel. However, the contractor shall have used best efforts to ensure that offhire or delay payment rate clauses have been included in any sub-contracts and shall pass on any such benefit to the company.

Adjustments will probably still be negotiated to take into account the resources employed in the different stages of a project.

LIABILITIES (KNOCK-FOR-KNOCK)

The knock-for-knock liability provisions in Clause 14 (old Clause 13) have been amended to reflect amendments that have often been made in practice under the previous iterations of the agreement.

The core of the knock-for-knock liability principle is that damage and loss to property or person suffered by any of the party's groups are borne by that party regardless of fault.



The liabilities clause now refers to detailed definitions of "*Company Group*" and "*Contractor Group*" set out in Clause 1.

To address issues that arose during the pandemic, the indemnity provisions relating to persons now explicitly addresses injury, death and "*illness*".

Furthermore, the Himalaya provision in Clause 15 (old Clause 14) is amended to extend the benefits of the knock-for-knock regime to the wider company and contractor groups and their insurers.

CANCELLATION AND TERMINATION

The company's right under Clause 13 (old Clause 8) to terminate the agreement prior to commencement of mobilisation is now referred to as cancellation and is, as before, contingent on payment of an agreed cancellation fee to be stated in Box 17.

The contractor has the same right as before to terminate the agreement if completion of services or any agreed change under Clause 5 becomes technically or physically impossible, subject to the agreement of the company, which shall not be unreasonably withheld. A termination fee has however been introduced, which shall be based on an agreed percentage of the balance of unpaid stages to be stated in Box 18. This fee becomes payable together with the stage and delay payments earned and extra costs incurred if the contractor terminates.

COMPLETION OF SERVICES

Clause 9 now refers to completion of services instead of delivery and/or disposal, and has undergone significant changes in line with amendments often made in practice under the previous iterations of the agreement.

Recycling has not been expressly addressed in the WRECKSTAGE 2024. To the extent that the project includes recycling, bespoke clauses will need to be used to ensure compliance with required standards and methods.

PERMITS

Whilst the previous form placed the obligation to obtain permits on the contractor, Clause 7 (old Clause 6) now leaves the responsibility to obtain permits to be negotiated. The other party shall as before provide all reasonable assistance.

SECURITY – LOU

Clause 12 has been amended to reflect that the company will not always provide security before the signing of the agreement. The contractor is now given the right to request security (or further security) after signing and has the corresponding right to terminate the agreement if such security is not forthcoming by a certain number of days.

EXPERT EVALUATION

In the previous version of WRECKSTAGE, the expert evaluation clause was often deleted. In WRECKSTAGE 2024, Clause 18 (old Clause 17) has been significantly amended in the hope that it may serve as an efficient and swift dispute resolution mechanism.

If the evaluation by the appointed expert is not accepted by one of the parties, the clause now provides for payments to be made by the company on a without prejudice basis and allocates the risk as to costs, including the costs of the expert on an indemnity basis, to the party not achieving a more favourable outcome in arbitration.

INSURANCE

Under Clause 21 (old Clause 20) the company shall no longer warrant that the vessel maintains full cover against normal P&I risks, but rather that the vessel was covered against normal P&I risks at the time of the incident and for normal covered liabilities and consequences arising from or related to the incident and the services.

Furthermore, the parties are obliged to maintain insurances to cover their liabilities and contractual indemnities including those insurable liabilities under the knock-for-knock provision in Clause 14 and damage to the environment under Clause 22.

DAMAGE TO THE ENVIRONMENT

The indemnity provisions in Clause 22 (old Clause 21) have been amended to include not only pollution damage, but also damage to the environment, and also to reflect the introduction of the definitions of the company and contractor groups.

OTHER AMENDMENTS

A number of other changes have been made.

The significantly expanded definitions clause now has a more advanced definition of the Worksite, allowing for a diagram to be included in a new Annex A.

The obligation of the contractor to exercise due care in rendering the services in Clause 2 has been expanded to include a reference to applicable laws and good industry practice. In keeping with market practice, it is now clearly specified in Clause 2 that the contractor shall give

the company all reasonable assistance in complying the company's obligations under any wreck removal order or legal obligation to the remove the vessel.

The provisions in Clause 3 concerning the company representative have been amended generally in line with industry practice, including a regulation of the company representative's right of access and the costs of victualling. The right to substitute the company representative is now explicitly regulated. The company is now required to ensure that its representative has adequate insurance.

Clause 6 (old Clause 5) regulates various operational provisions. The right of the contractor to remove, dispose of or jettison cargo or parts of the vessel has been made subject to such operations being in accordance with applicable law, in addition to being subject to the approval of the company and competent authorities. In most wreck removal projects, however, the point of the exercise is to remove the entire wreck and leaving significant debris behind will not be an option. In line with industry practice, it has also been clarified that the contractor shall arrange and pay for marking or cautioning required in respect of contracted craft and equipment.

STILL NEED FOR BESPOKE CLAUSES

WRECKSTAGE 2024 does not contain standard clauses addressing confidentially, sanctions or anti-corruption. Parties may also want to address issues such as recycling, sustainability, climate reporting and cyber security, which will require bespoke clauses to be included.

Inevitably, each wreck removal project entails its owns unique risks and challenges, and some level of customisation of the form will always be required.

Overall, WRECKSTAGE 2024 represents a great leap forward and we would expect to see tenders based on this form being circulated in upcoming projects.

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Contacts

Herman Steen
Partner
hst@wr.no

Morten Lund Mathisen
Of Counsel
mlm@wr.no

Oddbjørn Slinning
Partner
osl@wr.no

Sindre Slettevold
Managing Associate
sis@wr.no

New Lloyd's Open Form 2024

Lloyd's Salvage Arbitration Branch has released a new Lloyd's Open Form of Salvage Agreement ("LOF 2024"), as well as a new Lloyd's Salvage Arbitration Clause ("LSAC 2024").

The main change in the LOF 2024 is that the salvor and the owners of the salved property will now be obliged to report ESG data, salved values and settlement data to Lloyd's following the salvage operation.

The LOF is the world's most widely used salvage contract on a no-cure, no-pay basis in the marine industry. It provides a framework for determining the remuneration to be awarded to salvors for their services in saving property at sea and minimising or preventing damage to the environment.

The main change in the LOF 2024 is that the salvor and the owners of the salved property will now be obliged to report ESG data, salved values and settlement data to Lloyd's following the salvage operation:

"*(i) ESG Data. Within 60 days of the termination of the services under this Agreement a completed Environmental, Social & Governance data collection form.*
(ii) Salved Values. Within 60 days of the termination of the services under this Agreement details of the value of the property salved (the "salved values")
(iii) Settlement Data. Within 60 days of a settlement concluded with any or all of the parties to this Agreement details of the settlement."

This is designed to enable Lloyd's to collect and publish, in aggregated and anonymous form, such information relating to all LOF services, whether the parties settle or proceed to arbitration.

The main change in the LSAC 2024 is that the fixed cost arbitration procedure ("FCAP") is replaced by a fast-track documents-only ("FTDO") procedure, which will apply:

1. Where the security demand is USD 10m or less, unless the arbitrator orders otherwise
2. Where the security demand is more than USD 10m, if the arbitrator orders that the FTDO procedure shall be applied

The LOF 2024 and LSAC 2024 can be downloaded here.

Contacts

Herman Steen
Partner
hst@wr.no

Chris Grieveson
Partner
cjg@wrco.co.uk

Matt Berry
Partner
mat@wrco.co.uk

Morten Lund Mathisen
Of Counsel
mlm@wr.no

Oddbjørn Slinning
Partner
osl@wr.no

Shipbrokers' liability in S&P transactions

– reflections from recent case law in Norway

In recent years we have seen several court cases relating to claims against shipbrokers arising out of shipping transactions. In a decision in one of those cases earlier this year, the Norwegian Court of Appeal provided useful guidance on liability of shipbrokers, and the duty of care of shipbrokers in shipping transactions.

In a judgment of the Frostating Court of Appeal on 22 February 2024, the seller of a vessel was awarded NOK 24 million in damages, of which the shipbroker was held jointly personally liable for NOK 5 million of the amount due to grossly negligent performance of brokerage services.

FACTS

The case related to the fishing vessel "*Stormfuglen*" which was owned by Stormfuglen AS, a subsidiary of Stormfuglen Holding AS. The vessel had the benefit of a catch quota of 317,5 basis tons per year attached to it.

The owners wanted a discrete sales process and contacted an experienced broker to assist with the sale of the vessel, fishing equipment and the quota. The broker was engaged on agreed commission terms, but no other written agreement was entered into nor was a confirmation of engagement issued.

The broker made contact with a potential buyer group, and fol-

> **When establishing the basis against which the conduct and services of the broker was to be measured, the Court referred to the ethical rules and service descriptions provided by the Norwegian Shipbrokers' Association.**

lowed up with an email offering the vessel and quotas for a fixed price. The email had not been presented to the seller prior to being sent, and the seller and the broker disagreed whether the content had been agreed before the email was sent. The broker did not contact other potential buyers, as he had also offered exclusivity to the potential buyers.

The seller and the buyers entered into a MoA for sale of the vessel and quotas at a purchase price of NOK 320 million. In an appendix to the MoA, the parties agreed the possibility of an alternative sale of shares in Stormfuglen AS. A share sale was made conditional upon agreement by both parties. This appendix was drafted by the broker.

The parties subsequently decided to structure the transaction as a sale of shares for a price of about NOK 270,5 million, resulting in a discount of more than NOK 50 million on the purchase price of NOK 320 million agreed for the vessel with quotas.

After closing the transaction the seller only paid part of the agreed commission to the broker, resulting in a claim for payment of the remaining balance from the brokerage firm. The seller responded to the claim by filing a counter claim for damages due to grossly negligent performance of brokerage services.

THE DECISION

The Court of Appeal held that a claim for damages could lawfully be brought by the seller against both the broker and his employer, the brokerage firm. A claim against the employer was founded on the agreed commission terms, under which the broker was obliged to perform the brokerage assignment as an employee of the brokerage firm. The Court further established that a personal claim against the broker could be founded on the basis of section 2-1 of the Norwegian Damage Compensation Act. In both circumstances, liability required the seller to establish negligence in performance of the services.

The Court emphasised that a strict duty of care applies for professional practitioners such as shipbrokers. When establishing the basis against which the conduct and services of the broker was to be measured, the Court referred to the ethical rules and service descriptions provided by the Norwegian Shipbrokers' Association. According to these rules and guidelines, a shipbroker shall inter alia:

- Contribute to optimal profit for his client;
- Ensure that the client receives the best terms and conditions;
- Avoid conflicts of interest; and
- Convey information to and from the client.

The Court concluded that, in breach of the duty of care, the broker had not acted in the seller's best interests when offering a fixed price and exclusivity to the potential buyer group, without the sellers' prior approval to do so. The Court also found that the broker had acted negligently in failing to ensure that the seller had understood the value of the item for sale and the most optimal way of structuring the transaction.

The majority of the judges further concluded that the broker appeared to have been more focused on establishing good relations with the buyers than ensuring the best interests of its client who were about to exit the market. This, in the Court's view, was so reprehensible that the Court held the broker's conduct as grossly negligent.

As regards losses, the Court found that there were alternative buyers and that the vessel's quotas could have been sold for a higher price had the broker not negotiated exclusively with the buyer group. The Court also considered that the appendix to the MoA prepared by the broker obliged the seller to structure the sale as a sale of assets, and that it was likely that this had deprived the seller of the possibility to obtain a more favourable price as a sale of shares would have to be agreed by the buyers.

The total loss for the seller was held to be NOK 35 million; however, a reduction was made due to the seller's own contribution to its losses. Thus, the Court concluded that the brokerage firm was liable to the sellers for a loss of NOK 24 million, of which the broker was held jointly liable for NOK 5 million of the amount.

The majority judges further concluded that the broker appeared to have been more focused on establishing good relations with the buyers than ensuring the best interests of its client who were about to exit the market.

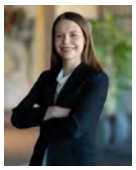
COMMENTS

This decision highlights the risks and potential exposure brokers face when making commercial assessment on behalf of their clients. Nonetheless, the decision provides useful guidance on the threshold for liability and the duty of care which brokers and their employers have to their clients in shipping transactions. There are a number of important takeaways of this case:

- **Written agreements:** The lack of a written agreement or even a confirmation of assignment, meant that the broker and his employer did not have any means to effectively limit liability.
- **Written correspondence:** When considering the evidence and deciding on the facts, the limited amount of written correspondence worked to the broker's disadvantage.
- **Client focus:** An apparent lack of focus on the client's best interest may easily amount to negligence, and in certain circumstances, this may also be grossly negligent.
- **Relevant expertise:** The appendix to the MoA drafted by the broker effectively bound the seller to an asset sale. Where legal or tax issues occur, be cautious of the delineation against legal and tax advice and engage relevant expertise.

Contacts

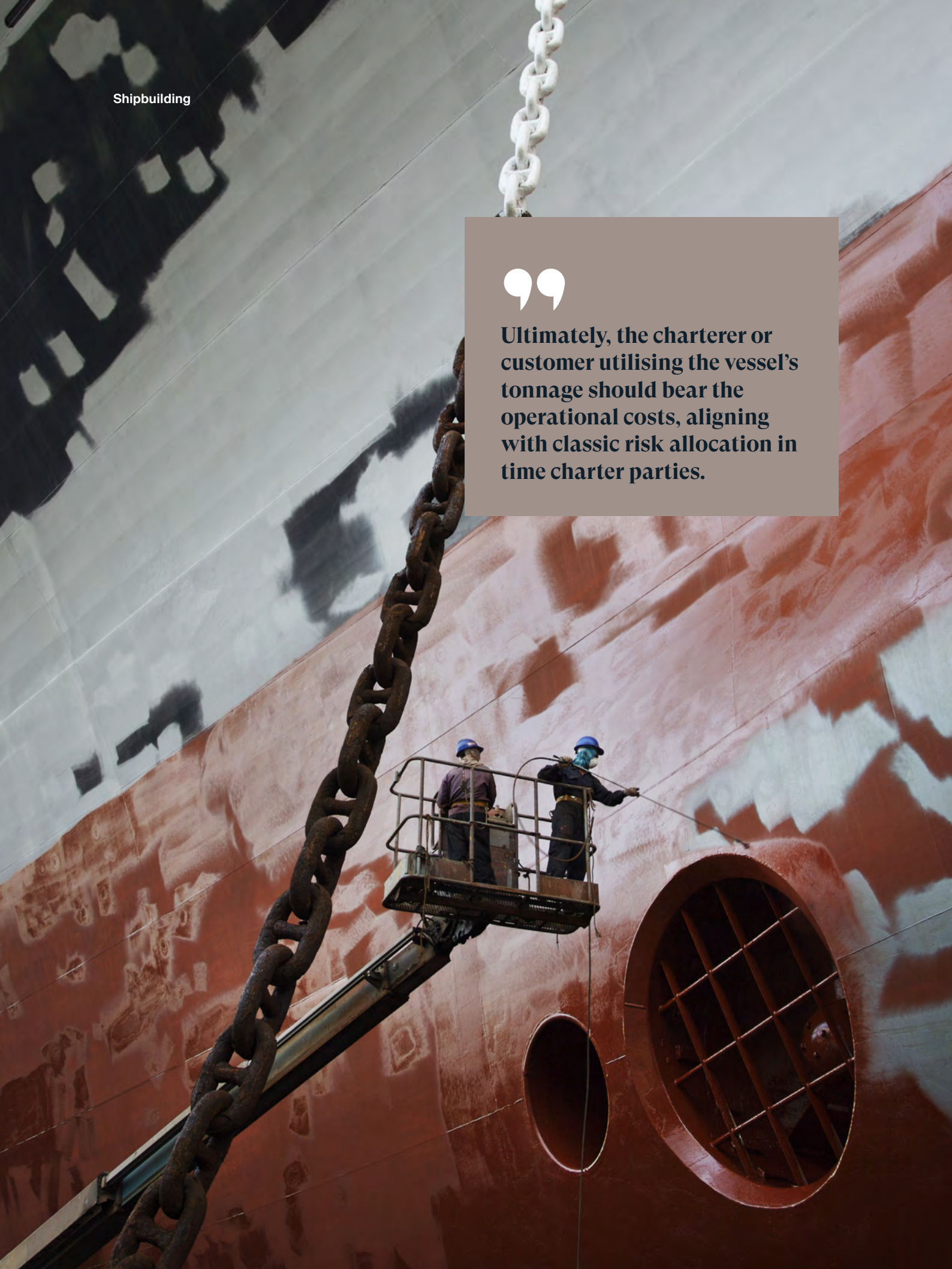
Stian Holm Johannessen
Partner
shj@wr.no



Lise Voraa
Associate
lvo@wr.no

How to future-proof your new-building project

The combination of strong cash flow in the shipping market and continued uncertainty related to regulatory requirements, fuel standards, and sustainability means that the focus on future-proofing investments continue to increase.



> **Ultimately, the charterer or customer utilising the vessel's tonnage should bear the operational costs, aligning with classic risk allocation in time charter parties.**

Despite favourable earnings trends across various shipping and offshore segments, there are no clear trends in newbuild orders. The ongoing debate regarding which fuel standard will dominate the future and whether to scrap old ships or upgrade them to reduce emissions remains intense. As regulatory requirements tighten, ensuring that your investments are secure for the future is more relevant than ever.

FLEXIBILITY IN THE NEWBUILDING CONTRACT

Construction contracts are complex instruments for risk allocation between shipowners and yards, and the number of factors a shipowner must consider has grown significantly. From the shipowner's perspective, flexibility in newbuilding contracts is crucial to cater for an uncertain future. Incorporating as much flexibility as possible at the lowest cost and with minimal delays should be the ultimate goal.

Shipping companies increasingly need to make contract modifications during construction. For example, an owner of an ammonia-ready LNG tanker may need to install the ammonia system before delivery at the request of the charterer. The need for these modifications emphasises the importance of including performance obligation clauses to ensure such modifications can be carried out efficiently.

Regulatory issues

Regulatory changes pose significant challenges for shipping companies as the IMO and the EU rapidly introduce new emission reduction rules. Because of this uncertainty relating to future regulations, it is crucial to ensure that ships can adapt quickly to necessary changes.

Flexibility through variation orders and options

To meet new regulations or shifting market requirements, shipowners may need to implement contractual modifications during construction. Owners should seek to include performance obligations on the yard to cater for the possibility of having to make such modifications, and to ensure that modifications are implemented if and when required.

Shipbuilding contracts should include mechanisms for flexibility. Such flexibility may be implemented through agreed options, such as options for different engines or hydrogen suppliers and timeframes for upgrades. Further, so called "sleeping beauty" clauses which allow for delivery delays until necessary infrastructure is available, are becoming increasingly relevant. It is also important to ensure that these contractual flexibilities are passed on to charter party agreements, where the end customer ultimately bears the cost.

Pricing and warranties

As with any project, increased flexibility must be balanced against costs. Thus, a cost-benefit analysis is essential when considering pricing, weighing the tolerance for delays. Longer delays generally result in lower costs compared to shorter delays requiring extensive performance obligations from the yard, leading to higher costs.

Owners should secure warranties that oblige the yard to make necessary adjustments if systems do not perform as expected and obtain warranties from subcontractors providing these solutions.

BACK-TO-BACK IN CHARTERPARTIES

Charterparties in a newbuild project have two aspects: their relation to the construction contract and their role as standalone risk allocation instruments between the shipowner/operator and the charterer.

In relation to the shipbuilding contract, a shipowner/operator will want to ensure that, so far as possible, the charterparty terms relevant to the ship's construction are "back to back" with the shipbuilding contract – subject to limitations on commercial feasibility.

As a standalone, and usually long term contract the charterparty also needs to try and foresee and address future regulatory, technological, and commercial changes.

Allocating costs according to the polluter pays principle

Ultimately, the charterer utilising the vessel's tonnage should bear the operational costs, aligning with classic risk allocation in time charter parties. This approach should also apply to regulatory changes.

Technological uncertainty, options and pricing

New technology involves uncertainties related to, among other things, functionality and repairs. Commercial risks resulting from non-conventional technology implemented at the request of the charterer should be governed in the charterparty. Typically, delays or loss of time resulting from such non-conventional technology should be the charterer's risk.

Where charterers are given options for upgrading or modifying the vessel, careful commercial considerations also have to be made. For instance, if a charterer implements upgrading or modification which is only of limited value to the owner or the subsequent charterer, it is important to include pricing terms or hire adjustment mechanisms reflecting the limited value to the owner.

CONSIDER OPTIONS FOR FINANCING

Banks and financial institutions meticulously scrutinise

new technology in credit approval processes. While they are *commercially* willing to finance new, especially green, technology, this depends heavily on their assessment of the technology. Detailed due diligence of the technical aspects ensures viability.

Loan agreements for construction projects also contain provisions closely tied to the project's risk profile. These include termination clauses for delays and conditions that prevent loan drawdowns until equity injections are made, as well as terms relevant to guarantees or deposit commitments.

Sometimes, shipowners may seek to finance specific equipment in addition to the main loan for refits or newbuilds. However, banks and lenders are often reluctant to provide such loans due to the difficulty in securing collateral, as equipment like cranes are considered part of the ship and are therefore included in the ship mortgage for the main lender.

Alternative financing

Leasing is becoming increasingly integrated into financing models, not just for individual equipment but also for larger systems. Equipment suppliers and financial leasing companies buy equipment packages that are then leased to shipowners, offering flexible financing solutions that facilitate necessary technological upgrades without overburdening the main loan.

Green loans

Green loans enable shipping companies to finance environmentally friendly projects under specific conditions. To draw on a green loan, the loan must be confirmed as intended for an environmentally friendly purpose.

One key advantage of green loans is their potential for lower interest rates if the shipowner maintains greener operations, providing incentives for sustained environmentally friendly practices.

> **Incorporating as much flexibility as possible at the lowest cost and with minimal delays should be the ultimate goal.**

Green loans also come with reporting requirements. Shipowners must regularly document and report on measures taken to ensure continued green operations. This includes fuel efficiency and emission reductions, thereby maintaining standards for green loans and contributing to shifting the industry in a more sustainable direction.

Navigating the complexities of newbuilding projects requires careful consideration of many factors to ensure future-proof investments. Key strategies include incorporating flexibility into newbuilding contracts, pushing obligations down to customer contracts, and exploring alternative financing options such as green loans and leasing. Our team is well-prepared to assist you with these critical aspects, helping you make informed decisions to safeguard your projects amidst evolving regulatory and technological landscapes.

Contacts

Stian Holm Johannessen
Partner
shj@wr.no

Mads Ødeskaug
Partner
mod@wr.no

Thomas Berger
Associate
thb@wr.no

IMO addresses fears that owners and others who comply with the Hong Kong Convention may be in legal jeopardy

BIMCO has, together with the International Chamber of Shipping, Norway, Bangladesh, India and Pakistan, urged the IMO (International Maritime Organisation) to solve conflicting requirements between the Hong Kong Convention and the Basel Convention ahead of the entry into force of the Hong Kong Convention on 26 June 2025 as currently shipowners and others may potentially be exposed to severe consequences, including criminal liability, when recycling ships in the major ship recycling countries in South Asia such as Bangladesh, India and Pakistan – even if the ships and facilities comply with the Hong Kong Convention. The IMO is looking into it and has asked the Conference of the Parties to the Basel Convention for clarification.

The Hong Kong Convention was adopted in 2009 in response to growing concerns about recycling practices particularly in South Asia, where ships are often rammed up on beaches at high tide and broken up in the tidal zone in ways that are unsafe for the workers and release pollutants into the environment.

An issue which has surfaced is that once the Hong Kong Convention enters into force, which will change the global legal framework for ship recycling, there are situations where recycling in compliance with the Convention may be a breach of the Basel Convention, which may result in severe sanctions.

For insurers these issues are relevant when insuring the last voyages, as well as in casualty scenarios where the vessel becomes a constructive total loss and/or where there is a wreck removal.

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 when the ship is designed until recycling.

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

> **The lack of clarity regarding the relationship between the Hong Kong Convention and the Basel regime creates unwanted uncertainty and risks for stakeholders.**

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.

Since 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 enacted the EU Ship Recycling Regulation 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.

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 when the ship is designed until recycling.

Once the Hong Kong Convention enters into force, recycling facilities and ships flagged in contracting states outside of the EU/EEA will also need to comply with the Convention.

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 facilities in most of the countries where the problems related to recycling have been greatest.

BASEL CONVENTION

The Basel Convention does not directly apply to ship recycling, but controls the movement of hazardous waste across international borders and its disposal. Ships are, however, normally considered as hazardous waste under the Basel Convention when they are heading for recycling. Shipowners must then seek prior informed consent from the exporting, transiting and importing state if they are contracting states.

The Basel Ban Amendment goes further by prohibiting export of hazardous waste to non-OECD states.

The Basel Convention and the Ban Amendment were implemented in the EU and EEA under the EU Waste Shipment Regulation 2006.

The rules are very strictly enforced, as has been seen in a number of countries, including in Norway, where the owners 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.

WHAT IS THE PROBLEM?

Once a ship has obtained an International Ready for Recycling Certificate (IRRC) under the Hong Kong Convention, which is valid for three months, there is a risk that it will at the same time be considered as hazardous waste under the Basel Convention.

The owners would therefore be exposed to criminal liability and arrest of the ship while still trading during this period or when they have sent their ships for recycling in compliance with the provisions of the Hong Kong Convention in any of the major recycling states in South Asia.

Some believe that the Hong Kong Convention will take precedence over the Basel Convention if the Hong Kong Convention impose waste management requirements which are no less environmentally sound than those under the Basel Convention, and also since the Hong Kong Convention is a more recent convention which regulates a more specific subject matter. This is however disputed by many.

Following the submission by BIMCO, the International Chamber of Shipping,

Norway, Bangladesh, India and Pakistan, the IMO Secretariat has drafted a provisional guidance for state parties to the Hong Kong Convention, which was approved early October 2024 at the 82nd session of the IMO's Marine Environment Protection Committee.

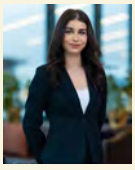
The provisional guidance stresses that interpretation of treaties is the sole prerogative of the state parties, but recommends that states that are parties to both conventions should consider notifying the Basel Convention Secretariat that the Hong Kong Convention shall take precedence in respect of ships intended to be recycled in accordance with the Hong Kong Convention.

The provisional guidance has been forwarded to the Basel Convention Secretariat and is expected to be discussed at the Conference of the Parties to the Basel Convention at their 17th meeting in April and May of 2025, which is just a few weeks before the Hong Kong Convention enters into force.

Whether this results in a clarification before the entry into force of the Hong Kong Convention remains to be seen. In the meantime owners and others are well advised to carefully consider their position and plan well ahead in situations where recycling is on the agenda.

Contacts

Herman Steen
Partner
hst@wr.no



Gisken Andersen
Associate
gan@wr.no

AUTOSHIPMAN – the first standard form management agreement for autonomous ships

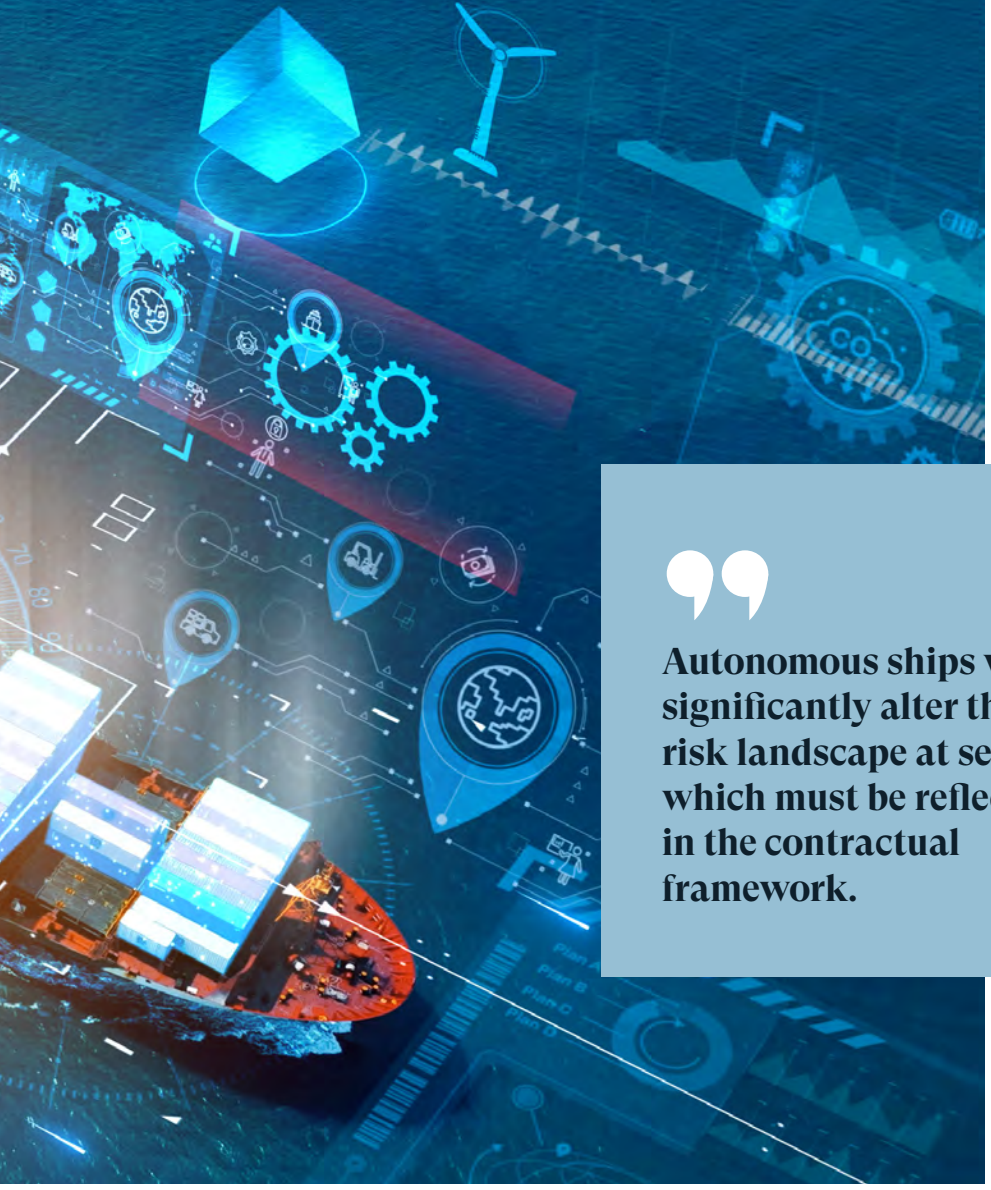
BIMCO's Documentary Committee has adopted the AUTOSHIPMAN form in response to the growing number of remotely controlled and eventually fully autonomous ships. The form intends to address the specific risks and responsibilities associated with remotely controlled and autonomous ships.

Technological innovation in the maritime industry is leading to rapid advancements that will enable the commercial use of autonomous ships, whether remotely controlled or fully autonomous.

The potential benefits are substantial, both for the environment, improved safety and cost savings. However, this shift will significantly alter the risk landscape at sea, which must be reflected in the contractual framework.

AUTOSHIPMAN

The AUTOSHIPMAN form provides a standard contractual foundation for third-party ship managers to deliver services for the operation of remotely controlled or fully autonomous ships. The form has



> **Autonomous ships will significantly alter the risk landscape at sea, which must be reflected in the contractual framework.**

Contacts

Herman Steen
Partner
hst@wr.no

Andreas Fjærvoll-Larsen
Partner
afl@wr.no

Ingrid Nerem
Associate
ine@wr.no

been developed on the basis of BIMCO's familiar SHIPMAN form to govern ship management services and provide the framework for the obligations, responsibilities and liabilities.

Since its original introduction in 1988, the SHIPMAN form (revised in 1998, 2009 and 2024) has established itself as the global standard ship management agreement. It may include crew, technical and commercial management, as well as insurance agreements in respect of ships.

During the development of the AUTOSHIPMAN, BIMCO received support from legal and insurance experts. BIMCO also gained valuable insights throughout the process from companies already engaged in operating remotely controlled ships worldwide.

One of the key features of the AUTOSHIPMAN is the flexibility that allows ships to switch operational modes even during a voyage. This is important because it may be a legal requirement for remotely controlled ships to be partially or fully manned when passing through the territorial waters of a jurisdiction or for calling at a port.

AUTONOMOUS SHIPS IN TODAY'S AND FUTURE MARKETS

Several autonomous ship projects are in various stages of development, with some already at the testing stage. However, widespread adoption depends on overcoming technological and regulatory hurdles, and also gaining trust in the eye of public perception.

In the meantime, as advancements in AI and automation continue, an increasing number of ships are adopting technologies like auto-docking and auto-crossing, which bring many of the benefits of autonomous technology as a tool which seafarers can use to optimise navigation, fuel consumption and safety. This will likely bring valuable lessons which can be used when advancing the true autonomous ship technology.

MOK Petro Energy v. Argo (No. 604) Limited – "damage" and breach of warranty under the Insurance Act 2015

Michael Volikas and Leah Rutley of Wikborg Rein's London office, instructing Benjamin Coffer and Simon Rainey KC of Quadrant Chambers, represented a syndicate of London reinsurers in the High Court in successfully defending claims against them for average loss in respect of a cargo of gasoil under a marine cargo reinsurance contract by the original assured pursuing their claims under a "cut-through" clause.

The decision handed down on 26 July 2024 by Mrs. Justice Dias examines the requirement for physical "damage" in an average claim and touches upon the application of sections 10 and 11 of the Insurance Act 2015 in instances of breach of warranty.

BACKGROUND

The claimant ("**MOK**") in *MOK Petro Energy v. Argo (No. 604) Limited* (The "F1") [2024] EWHC 1935 (Comm) was an oil trading company insured under an all-risks marine cargo open cover on ICC(A) terms for shipments of gasoline 'shore tank to shore tank' with Cedar Insurance & Reinsurance Co. Ltd and brought a claim against reinsurers (the "**Defendants**") directly via a "cut-through" clause.

The claim arose out of an off-specification gasoline-methanol blend cargo (produced by combining gasoline and methanol blend stocks on board the carrying vessel) which was loaded at Sohar but rejected at the discharge port in Yemen and subsequently sold as a "distressed" cargo. The cargo was found to be prone to phase separation (whereby the blended cargo separates out into its constituent parts) when cooled, affecting its ability to meet specification and intended utility. MOK argued that the deterioration in the cargo's phase separation qualities was caused by a fortuitous water ingress on

board the carrying vessel or, alternatively, that the proportions in which the blend stocks were loaded was a fortuity (i.e. that the final proportions of the blended product were not a certainty of the blending process) which caused damage to the cargo by resulting in the blended cargo having the propensity to phase separate at higher ambient temperatures than it should have done in accordance with its specification and that this fortuity was covered by the insurance policy.

The Defendants primary defence was that the actual condition of the cargo pre-loading (and therefore the "sound" condition for calculating any loss) could never have been on-specification or marketable from the outset and therefore there was no recoverable loss. Both parties' quantum experts had agreed that there was no material difference in the value of a gasoline-methanol cargo with phase separation temperature of 17°C (the likely temperature at the load port as established by the Defendants' expert) and 29°C (the temperature at the discharge port). Secondly, the Defendants argued that even if the proportions in which the blend stocks were mixed could amount to a fortuity, the act of blending caused no damage. Thirdly, in any event, MOK had breached the express warranty included in the insurance that required inspection and certification of the shore lines. Although arguably some kind of inspection had occurred, no certification was produced until 2023 (some years after the event).

THE JUDGMENT

The Judge rejected MOK's principal claim on the basis that the cargo had not suffered "damage", since "damage" requires a change in physical state (*Quorum AS v Schramm [2002] CLC 77*) which would be economically harmful to the party (*Pilkington United Kingdom Ltd v CGU Insurance plc [2004] LRIR 891*). Accepting the Defendants' evidence based principally on joint testing carried out in 2018, the Judge agreed that it was inevitable that the blend produced by the blending of the gasoline and methanol blend stocks in the proportions that were loaded onboard the vessel would undergo phase separation at relatively warm temperatures and would never have been able to pass the requisite specification tests, i.e. the product was inherently defective. As a result, to the extent that there was any water ingress during the period of cover, it did not cause any loss. The Judge made reference to the *Bacardi-Martini Beverages Ltd v Thomas Hardy Packaging Ltd* [2002] 2 Lloyd's Rep 379 decision which, although not an insurance case, had application to the facts at hand.

Additionally, the Judge noted that cargo as declared in the policy did not actually exist until it was blended on board, and that prior to that it was only in constituent parts. She found that MOK had failed to evidence that different blending proportions could ever have produced an on-specification cargo.

As to the warranty, the Judge agreed with the Defendants in finding that MOK had failed to comply with the survey warranty which required certification to be produced within a "reasonable time" of the inspection. MOK argued that this breach of warranty was immaterial to the re-insurers liability, relying on section 11 of the 2015 Act. This was also rejected by the judge on the grounds that compliance with the warranty as a whole would have minimised the risk of water contamination, thus making this warranty relevant to the claim.

This case has been widely reported in the industry as it contains important lessons for assureds under all-risk open cover for gasoline cargoes, especially those where blending is to take place onboard. The case also highlights the importance of well-documented and thorough joint testing at the time of (or as soon as possible) after cargo rejection. Permission to appeal was sought by MOK but refused.

Contacts

Michael Volakis
Partner
mvl@wrco.co.uk

Leah Rutley
Associate
rut@wrco.co.uk

The Judge rejected MOK's principal claim on the basis that the cargo had not suffered 'damage', since 'damage' requires a change in physical state which would be economically harmful to the party.

Clash of recollections: Contemporaneous documents as evidence

When two witnesses have conflicting recollections of oral statements made years ago, how does the court determine the truth?

The recent High Court judgment in *Jaffe v Greybull Capital LLP* [2024] EWHC 2534 (Comm) clarifies the use of contemporaneous documents in evidence and witness recollection.

THE CASE

In *Jaffe v Greybull Capital*, the High Court dismissed a claim for damages due to fraudulent misrepresentation, citing the unreliability of witness recollection nearly eight years after the alleged oral representations were made.

The case concerned allegations that an oral misrepresentation during a 2016 meeting led to Wirecard Bank extending credit to Monarch Airlines, which later became insolvent. The claimants sought £12 million in damages but despite a near-contemporaneous note the Court concluded that the alleged misrepresentations had not been made.

In the judgement, the conflicting accounts of two "*equally patently honest and truthful witnesses*" were taken into consideration alongside the "contemporaneous documentation, the parties' motives and inherent probabilities." The judgement shows how parties may challenge the accuracy of contemporaneous documents without suggesting they were produced with dishonest intent.

GESTMIN APPROACH

In commercial cases, contemporary documents have often been deemed far more reliable than oral evidence. In *Jaffe v Greybull Capital*, Mrs Justice Cockerill DBE referenced the "Gestmin approach" from *Gestmin v Credit Suisse* [2013] EWHC 3560 (Comm), which focuses on the fallibility of memory and the importance of contemporaneous documents over oral evidence. In the Gestmin case, the court noted that "*[m]emory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs.*"

CLASH OF RECOLLECTIONS

Cockerill J noted there was a fairly powerful "classic Gestmin" submission made by the claimants that the near-contemporaneous note of the meeting were an "accurate" reflection of the meeting.

At the heart of *Jaffe v Greybull Capital* was the clash of recollections, with the Cockerill J observing that there were "*very credible witnesses on both sides*" and that she had "*no doubt the individual witnesses' truths – in the sense of what they either do (now) recall or what they honestly think they recall – are simply different*". This presented a number of difficult issues around the science of memory.

Cockerill J noted that while the document in question could be taken as the "*basis for a compelling argument*", it still had to be tested against the facts in the full context, which included what each party was focussing on but did not communicate to the other side.

CONTEMPORANEOUS EVIDENCE

Reliance was placed on earlier cases such as *Avonwick Holdings Ltd v Azitio Holdings Ltd* [2020] EWHC 1844 (Comm), where contemporaneous documents were considered far more reliable than witness testimonies. This was considered particularly true where factual evidence was given by persons not in their first language or through an interpreter, which could "*lead to difficulties in making any assessment of demeanour and which can give rise to issues where a witness looks evasive because of miscommunications*".

In *Jaffe v Greybull Capital*, one of the witnesses' record of the meeting in 2016 where the alleged oral misrepresentation occurred was reconstructing what was said in his second language from handwritten meeting notes which were "*necessarily incomplete*".

The meeting was fairly length and Cockerill J said, "*[t]he note is not the live transcription with which we have been*

> **Cockerill J noted that while the document in question could be taken as the 'basis for a compelling argument,' it still had to be tested against the facts in the full context, which included what each party was focussing on but did not communicate to the other side.**

blessed at trial. It is a reinterpretation of his manuscript notes which he took at the time. The format of the note suggests that those manuscript notes were sketchy and not word for word."

This shows that issues may arise where handwritten notes of meetings have been given in a witness' second language or after post-meeting discussions.

MEMORY AND RECONSTRUCTION

The court also considered insights from Lord Justice Popplewell's 2023 lecture "*Judging Truth from Memory*", which expands on matters in the Gestmin case. The lecture dealt with the value of recollection, the science of memory and the problems which result from faulty encoding of memories.

Cockerill J made several references to the lecture, quoting, amongst others that "*contemporaneous documents… may be produced near the time, but they are produced after the memory has been encoded, and if there is an encoding fallibility, which there may be for all these different reasons, it infects the so called contemporaneous record every bit as much as other reasons for the fallibility of recollection which affect it at the storage and retrieval stage.*"

This shows that people often fill in memory gaps based on assumptions and past beliefs, as also noted in the Gestmin case (quoted above).

Indeed, Cockerill J mentions that there is "*scope for 'Chinese whispers'*", where, for example, a meeting note can be interpreted differently by the notetaker – especially if there has been a discussion immediately after the meeting and before the note is written down.

"*While the natural tendency is to imagine a note written up later in the same day or the next morning is as good as a transcript the evidence on the fall off of memory in the immediate aftermath of an event is clear and clearly collated in the speech of Popplewell LJ*".

Contemporaneous documents should therefore be scrutinised considering the witness' "worldview", which includes their biases and assumptions. Contemporaneous documents may not be entirely reliable as the recorder's state of mind may have influenced the content.

IMPACT OF *JAFFE V GREYBULL CAPITAL* IN COMMERCIAL AND SHIPPING CASES

In commercial and shipping litigation, the reliance on contemporaneous documents over witness recollection is normal. Due to the lengthy timelines and complex details involved, documentary evidence such as log books, VDR recordings, and near-contemporaneous notes often provide more dependable accounts than witness testimonies. Even when witnesses are honest and truthful, their memories of events that occurred years ago can be unreliable.

The judgement in *Jaffe v Greybull Capital* emphasises the need to scrutinise contemporaneous documents and to consider the full facts of the context, the potential biases and "worldviews" of those who created them.

Contacts

Chris Grieveson
Partner
cjg@wrco.co.uk

Emma Doyle
Associate
emd@wrco.co.uk

EU MRV: “Offshore ships” now defined and included by the European Commission

Starting 1 January 2025, offshore ships must comply with EU MRV emission reporting rules as the European Commission defines their role in meeting climate targets.

On 16 October 2024, the European Commission adopted a delegated act to clarify the inclusion of greenhouse gas emissions from offshore vessels under the Monitoring, Reporting and Verification (MRV) Regulation for maritime transport. While cargo and passenger ships of 5,000 gross tonnage (GT) or above have already since 1 January 2018 been required to submit revised and verified monitoring plans for CO2, CH4, and N2O emissions on voyages to or from ports in the European Economic Area, offshore ships have until now not been subject to the regulation. With this recent adoption, the term "offshore ships" is now clearly specified, identifying which vessels shall be covered by the regulation from 1 January 2025.

OFFSHORE SHIPS: WHO IS AFFECTED

The following vessels, designed to perform service activities offshore or at offshore installations, will fall within the definition and will be required to report their emissions:

- Anchor handling tug supply
- Offshore tug/supply ship
- Crew/supply vessel
- Pipe carrier
- Platform supply ship
- Drilling ship
- Floating production storage and offloading (FPSO), oil
- Gas processing vessel
- Floating storage and offloading (FSO), gas
- FSO, oil
- Accommodation ship
- Diving support vessel
- Offshore construction vessel, jack up
- Offshore support vessel
- Pipe burying vessel
- Pipe layer
- Pipe layer crane vessel
- Production testing vessel
- Standby safety vessel
- Trenching support vessel
- Well stimulation vessel

The EU MRV regulation aims to monitor CO_2 emissions and requires ship operators to monitor, report, and verify their emissions. The data collected through the EU MRV system contribute to accurately measuring emission levels and ensuring compliance with the climate targets set under the *Fit for 55* package. Additionally, the data which is collected and verified is essential for calculating and reporting emissions covered under both EU ETS and FuelEU Maritime.

FROM REPORTING TO COMPLIANCE

The maritime industry became part of the EU Emission Trading System (EU ETS) on 1 January 2024, requiring companies to obtain and surrender allowances corresponding to their emissions. Starting 1 January 2027, offshore ships of 5,000 GT and above will also be comprised by the regulation, while ships between 4,000 and 5,000 GT will be evaluated by 31 December 2026 for potential inclusion at a later date. The affected vessels will be required to report their CO_2 emissions and purchase allowances for their emissions. For a comprehensive review of the EU ETS framework, we refer to our previous articles addressing the topics of administering authorities and the responsible entity.

Offshore ships are currently not included in the FuelEU Maritime. However, the European Commission has indicated that they are considering whether this category of vessels should also be included in the future. For a more in-depth review of the FuelEU Maritime, we recommend taking a look at our previous newsletters and also our latest article on the topic at page 4 of this SO Update.

We strongly recommend that all affected entities in the offshore industry start preparations now to ensure full compliance with these upcoming regulations. Please do not hesitate to get in touch should you wish to discuss.

With this recent adoption, the term 'offshore ships' is now clearly specified, identifying which vessels shall be covered by the regulation from 1 January 2025.

Contacts

Andreas Fjærvoll-Larsen
Partner
afl@wr.no

Ingrid Nerem
Associate
ine@wr.no

Thomas Berger
Associate
thb@wr.no

The most important updates in GREEN SHIPPING

– December 2024

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.

Implementation of the Carbon Border Adjustment Mechanism (CBAM) in Norway

The Norwegian government has announced the implementation of the Carbon Border Adjustment Mechanism (CBAM). This will require certain in-scope goods imported into Norway and other EU countries to comply with CBAM regulations, necessitating adherence to enhanced emissions tracking standards

MEPC 82 in September and October 2024 – latest news from IMO

Between 30 September and 4 October 2024, IMO's Marine Environment Protection Committee (MEPC) met for their 82nd session. Following the discussions from MEPC 81 in March, topics relating to the adoption on a GHG fuel intensity standard and a GHG emissions pricing mechanism continued to be debated. The draft of the legal text will continue at MEPC 83 in April 2025, and it is expected that IMO will adopt both measures in 2025. These are expected to enter into force around mid-2027.

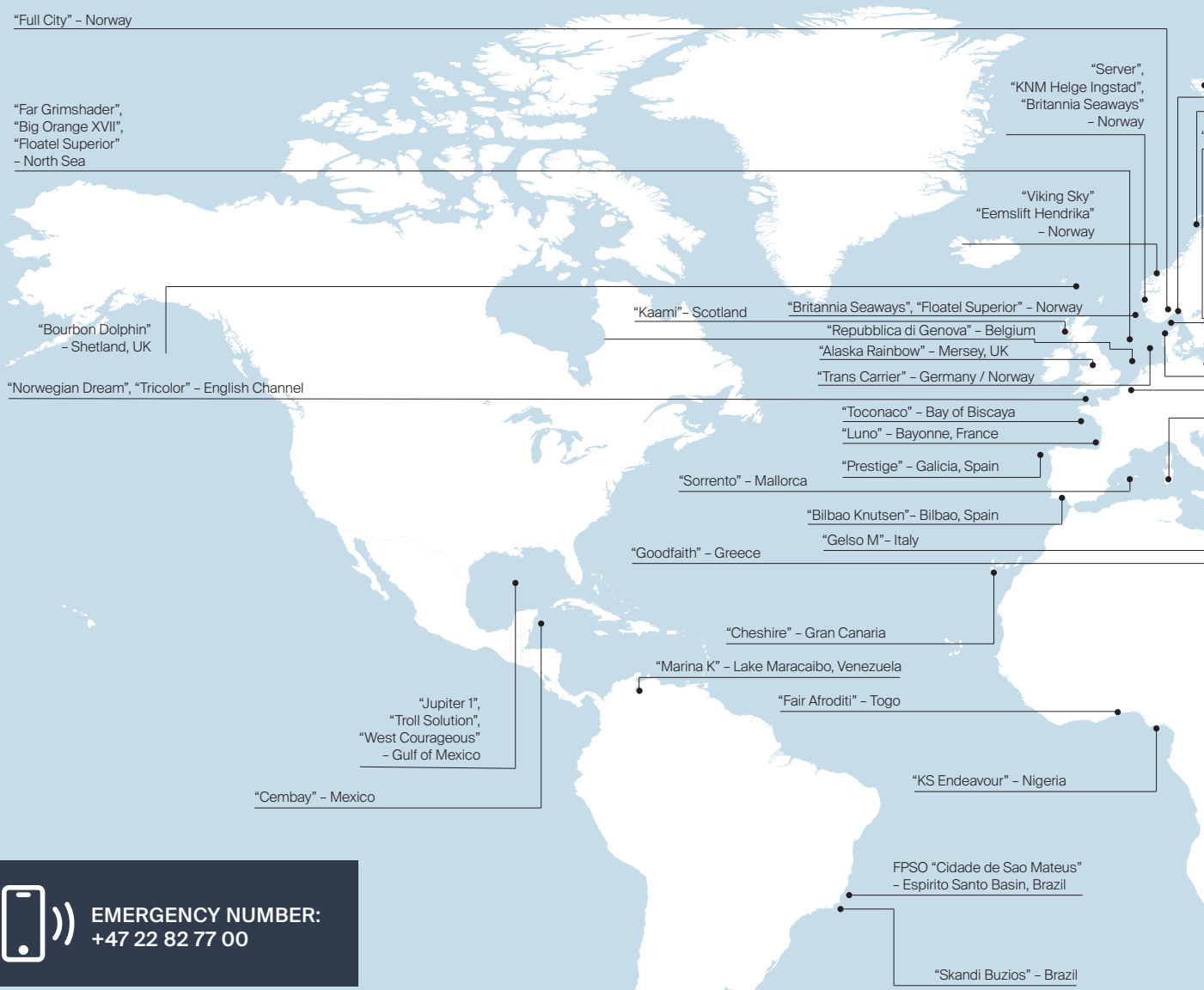
"Offshore ships" defined by the European Commission

Starting 1 January 2025, the EU MRV regulation will include offshore ships, following a delegated act by the European Commission on 16 October 2024. The regulation now defines which offshore vessels must monitor and report their emissions. From 1 January 2027, offshore ships of 5,000 GT and above will also be part of the EU Emission Trading System (EU ETS), requiring emission allowances. For more details, please see our article on this topic on page 34.

	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 CO2 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 and marine insurers

[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	■ MEPC 81 approved changes to the guidelines on use of shaft/engine power limitation systems to comply with EEXI requirements, to make it easier to access sufficient power in case of unexpected events. ■ At its 82nd session, MEPC initiated the review of EEXI.
	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. ■ MEPC 81 adopted amendments to the BWM Convention concerning the use of electronic record books. The amendments are expected to enter into force on 1 October 2025. ■ At its 82nd session, MEPC continued the review of the BWM Convention.
	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.	1 January 2025, with stricter requirements every five years	■ 25 July 2023: Regulation adopted by the Council. ■ 31 August 2024: Deadline for companies to submit to verifiers a monitoring plan for their vessels indicating the method chosen for monitoring and reporting the amount, type and emission factor of energy used on board by vessels, and other relevant information. ■ 1 January 2025: Implementation.
	Worldwide	Compliance required as from 1 January 2023 (more stringent rating thresholds towards 2030)	■ Initial CII ratings will be given in 2024 based on reported data from 2023. ■ At its 82nd session, MEPC initiated the review of CII.
	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	At its 82nd session, MEPC initiated the review of SEEMP.
	100 % of emissions between EU ports and within the EU, 50 % of emissions from international voyages to or from the EU	1 January 2024	■ 1 January 2024: Implementation of EU ETS and changes in the Norwegian Greenhouse Gas Emission Trading Act. ■ 31 March 2025: Deadline for emissions report
	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.	■ As the Corporate Sustainability Reporting Directive (CSRD) takes effect for the fiscal year 2024, taxonomy reporting will merge with CSRD reporting. ■ Companies subject to CSRD are required to seek mandatory audit (assurance) by a third party to verify its sustainability reporting including EU Taxonomy information.
	Worldwide	■ 18 June 2019: (Financial institutions) ■ 15 December 2021: (Marine insurance)	



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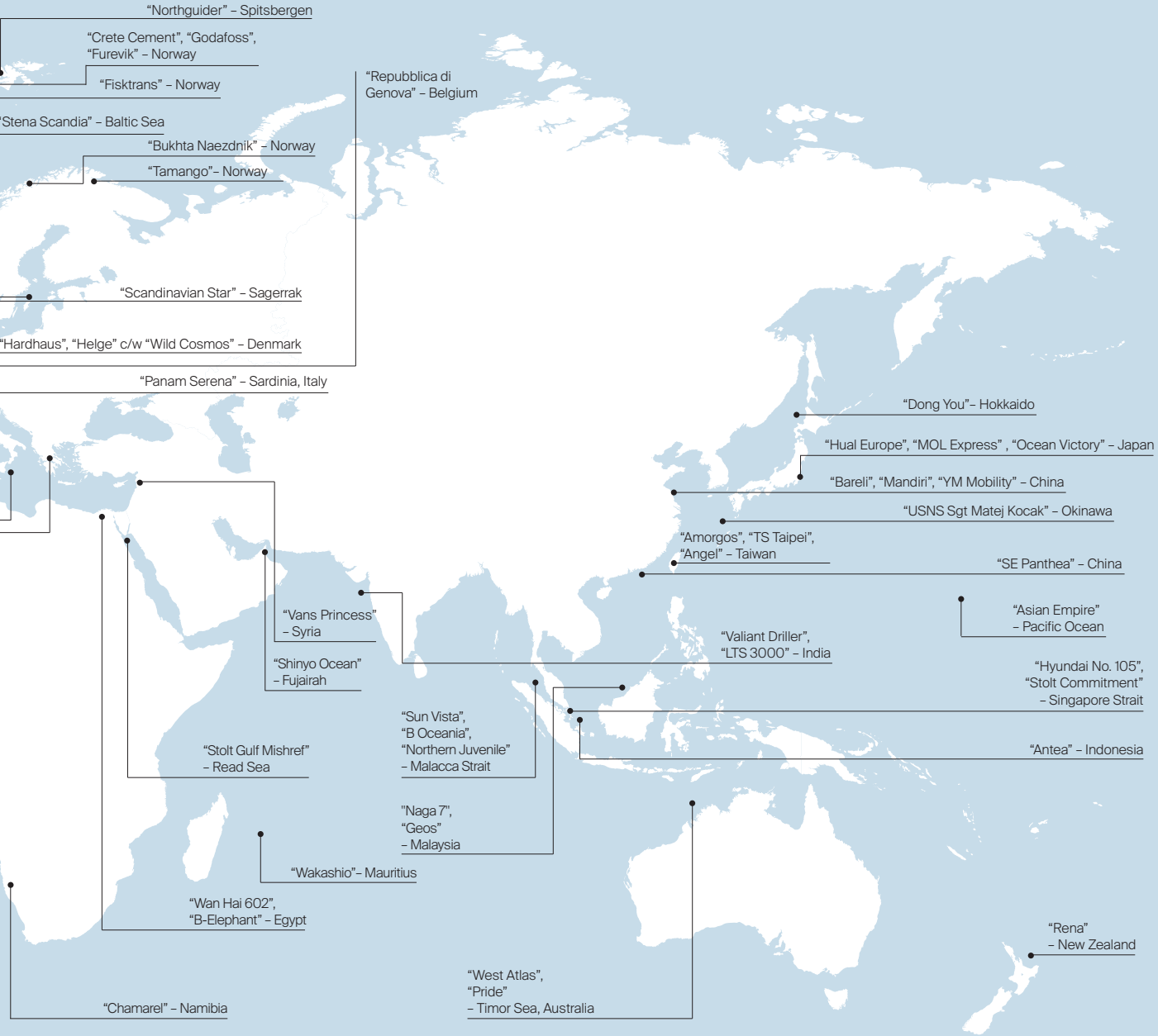

Contacts

OSLO

Herman Steen
hst@wr.no
+47 9303 4693

Oddbjørn Slinning
osl@wr.no
+47 4812 1650

Morten Lund Mathisen
mlm@wr.no
+47 9945 7575

Sindre Slettevold
sis@wr.no
+47 9775 9418

LONDON

Chris Grieveson
cjg@wrco.co.uk
+44 79 6644 8274

Matt Illingworth
mji@wrco.co.uk
+44 778 8959 9449

Matt Berry
mat@wrco.co.uk
+44 770 0971 6541

Michael Volikas
mvl@wrco.co.uk
+44 7515 196 691

SINGAPORE

Robert Joiner
raj@wr.com.sg
+65 8518 6239

SHANGHAI

Yafeng Sun
yfs@wrco.com.cn
+86 1391 700 6677

Chelsea Chen
cch@wrco.com.cn
+86 1381 687 8480

Wikborg Rein's shipping offshore group – contact list

OSLO

Partners
Finn Bjørnstad
fbj@wr.no / +47 41 50 44 81

Andreas Fjærvoll-Larsen
afl@wr.no / +47 95 93 36 14

Anders W. Færden
awf@wr.no / +47 90 82 83 82

Johan Rasmussen
jra@wr.no / +47 91 80 09 33

Oddbjørn Slinning
osl@wr.no / +47 48 12 16 50

Herman Steen
hst@wr.no / +47 93 03 46 93

Are Zachariassen
aza@wr.no / +47 90 91 83 08

Mads Ødeskaug
mod@wr.no / +47 99 26 99 43

Of Counsel
Morten Lund Mathisen
mlm@wr.no / +47 99 45 75 75

Managing Associates
Mari B. Rindahl
mrd@wr.no / +47 91 00 36 17

Halvard Saue
hsa@wr.no / +47 90 65 32 58

Sindre Slettevold
sis@wr.no / +47 97 75 94 18

Marte Sønstevold
msv@wr.no / +47 90 51 38 55

Peter Kristian Jebsen
pkj@wr.no / +47 93 83 55 77

Associates
Gisken Andersen
gan@wr.no / +47 46 95 06 08

Thomas Berger
thb@wr.no / +47 95 46 11 83

Ole Brænde
osb@wr.no /+47 90 25 88 44

Hallvard Håskjold
hlv@wr.no / +47 99 41 93 90

Ingrid Nerem
ine@wr.no / +47 95 41 69 08

Ida Wangsfjord
idw@wr.no / +47 94 89 51 38

BERGEN

Partners
Øyvind Axe
axe@wr.no / +47 97 05 55 58

Morten Valen Eide
mei@wr.no / +47 93 22 09 80

Christian James-Olsen
col@wr.no / +47 92 83 39 19

Stian Holm Johannessen
shj@wr.no / +47 91 75 92 72

Of Counsel
Geir Ove Røberg
gor@wr.no / +47 90 03 50 45

Senior Associate
Jonas Nikolaisen
jni@wr.no / +47 93 25 34 85

Associates
Kristine Engevik
keg@wr.no / +47 98 09 50 55

Martine Klein
markle@wr.no / +47 40 55 18 24

Emma Bolette Opdahl
eop@wr.no / +47 90 08 03 58

Guro Bjørnes Skeie
gbs@wr.no / +47 45 50 64 85

Lise Voraa
lvo@wr.no / +47 94 87 68 38

LONDON

Partners
Renaud Barbier-Emery
rbe@wrco.co.uk / +44 7889 598 672

Gillie Belsham
gbe@wrco.co.uk / +44 7756 286 886

Jonathan Goldfarb
jgo@wrco.co.uk / +44 7889 598 115

Chris Grieveson
cjg@wrco.co.uk / +44 7966 448 274

Matt Illingworth
mji@wrco.co.uk / +44 7889 599 449

Rob Jardine-Brown
rjb@wrco.co.uk / +44 7785 722 147

Shawn Kirby
sdk@wrco.co.uk / +44 7841 697 476

Benjamin Ogden
bpo@wrco.co.uk / +44 7471 763 258

Jonathan Page
jpa@wrco.co.uk / +44 7803 515 388

Beatrice Russ
bru@wrco.co.uk / +44 7756 285 154

Michael Volikas
mvl@wrco.co.uk / +44 7515 196 691

Baptiste Weijburg
baw@wrco.co.uk / +44 7841 481 102

Matt Berry
mat@wrco.co.uk / +44 7709 716 541

Consultant
Ian Chetwood
iac@wrco.co.uk / +44 7721 761 374

Legal Directors
Daniel Boden
dbo@wrco.co.uk / +44 7756 288 422

Christopher Crane
ccr@wrco.co.uk / +44 7411 121 222

Anna Devereaux
ade@wrco.co.uk / +44 7521 762 713

Olga Ivaniv
oiv@wrco.co.uk / +44 7521 762 713

Linda Roxburgh
lir@wrco.co.uk / +44 7935 711 918

Managing Associates
Camilla Burton
ccb@wrco.co.uk / +44 7540 760 797

Sophie Henniker-Major
soh@wrco.co.uk / +44 7756 289 541

Sebastian Lea
sle@wrco.co.uk / +44 7562 421 029

Fiona Rafla
fra@wrco.co.uk / +44 7841 470 380

Amanda Urwin
aur@wrco.co.uk / +44 7756 288 875

Ane Vilnes
avi@wrco.co.uk / +47 93 25 56 89

Tim Wright
twr@swrco.co.uk / +44 7756 289 716

Senior Associates
Andrew Cottrell
aco@wrco.co.uk / +44 7935 057 732

Laura Hyne
lhy@wrco.co.uk / +44 7561 108 727

Sindre T. Myklebust
smy@wrco.co.uk / +44 7736 040 741

Maria Oproglidou
mop@wrco.co.uk / +44 2073 670 317

Sebastian Bergeton Sandtorv
sbs@wrco.co.uk / +44 7935 002 048

Marcus Charles Sharpe
mcs@wrco.co.uk / +44 7889 575 055

Anna Sweeney
asw@wrco.co.uk / +44 7511 872 506

Ben Orchard
bor@wrco.co.uk / +44 7738 267 140

Sian Sanders
ssd@wrco.co.uk / +44 7756 285 859

Jack Wray
jwr@wrco.co.uk / +44 7596 566 221

Associates
Matthew Alker
maa@wrco.co.uk / +44 7547 406 95

Emma Doyle
emd@wrco.co.uk / +44 7561 709 293

Sofie Gleditsch
sgl@wrco.co.uk / +44 7999 029 976

Alice Hoare
ahr@wrco.co.uk / +44 7756 286 681

Iliana Mastoraki
iam@wrco.co.uk / +44 7470 215 708

Jack Maxted
jma@wrco.co.uk / +44 7756 289 546

Ella Morrison
emr@wrco.co.uk / +44 7955 400 969

Leah Rutley
rut@wrco.co.uk / +44 7751 930 509

Marine Manager
Wayne Salvidge
waysal@wrco.co.uk / +44 7511 867 738

Litigation Support Manager
Priscilla Jantuah
pja@wrco.co.uk / +44 7751 811 491

Trainee Solicitors
Alyson Akoka
ala@wrco.co.uk / +44 7355 035 562

Jessica Andreassen
jea@wrco.co.uk / +44 2073 673 379

Karina Horn
kah@wrco.co.uk / +44 7751 813 090

Alexandra Khan
akh@wrco.co.uk / +44 7845 642 774

James Ray
ray@wrco.co.uk / +44 7845 651 550

Paralegal
Olena Coggin
omi@wrco.co.uk / +44 7445 520 182

SHANGHAI

Partners
Chelsea Chen
cch@wrco.com.cn /
+86 138 1687 8480

Yafeng Sun
yfs@wrco.com.cn / +86 139 1700 6677

Ronin Zong
rlz@wrco.com.cn / +86 138 1665 0656

Managing Associates
Bård Breda Bjerken
bbb@wrco.com.cn /+86 185 2132 1616

Claire Jiang
cji@wrco.com.cn / +86 138 1676 7292

Senior Associates
Tianyi Li
tli@wrco.com.cn / +86 150 0055 5069

Jiahao Lu
jil@wrco.com.cn /+86 137 8890 9200

Sherry Qiu
shq@wrco.com.cn /+86 135 0171 2717

Iris Shen
irs@wrco.com.cn / +86 135 6414 9309

Associate
Shi Cheng
shiche@wrco.com.cn /
+86 177 1431 0624

SINGAPORE

Partners
Robert Joiner
raj@wr.com.sg / +65 8518 6239

Ina Lutchmiah
ivl@wr.com.sg / +65 9662 3756

Wole Olufunwa
wol@wr.com.sg / +65 8030 0380

Senior Associate
Solveig Frostad de Souza
sfr@wr.com.sg / +65 8620 7330

Associate
Jennifer Li
jli@wr.com.sg / +65 9088 7287

BRASIL

Vieira Rezende advogados in alliance with Wikborg Rein.

Contact:
Daniela Ribeiro Davila
dribeiro@vieirarezende.com.br /
+55 21 2217 2893

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