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# Update

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June 2021

Shipping Offshore



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– preparing the ground page 16

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How to handle bilingual contracts? page 30

*In our experience, when bilingual contracts are entered into there is often a lack of awareness of the potential consequences of imprecise translations or intended deviations between the two language versions. • PAGE 30*

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## Dear friends and readers,

According to UNCTAD (the United Nations Conference on Trade and Development), in the months following the onset of the Covid-19 pandemic, the global economy posted its sharpest annual drop in output since the 1940s with “no region spared”.

Whilst government intervention on an unprecedented scale has mitigated against the worst effects of the global downturn, there is still a long way to go and we can only hope that as the roll-out of vaccines accelerates around the world and borders start to re-open, that this recovery continues apace in the coming months.

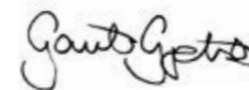
The pandemic has however forced governments to confront and focus on some of the more existential threats that threaten global security and the world’s economies. Of these existential threats, climate change is surely the most significant and as governments seek to rebuild their economies after the ravages of Covid-19, there seems to be a general consensus to “build back better” and in a more sustainable way.

This push towards more environmentally friendly practices and sustainability is no less evident in the shipping industry and we are seeing an increasing focus being placed on reducing global fleet emissions, fleet modernisations, greener fuels and sustainable financing. Business as usual is clearly no longer an option and the coming months and years will no doubt be an exciting and interesting time for the shipping industry with opportunities aplenty.

In this Update we look at recycling, CO2 transportation and storage agreements, and sulphur content disputes. We also review the new ASBAGASVOY form for gas tankers and ASVTIME for accommodation support vessels. We also look at opportunities for the shipping industry in deep sea mining and from the potential opening up of the Arctic regions as result of increasing ice-melt.

I hope that you will find our articles interesting and welcome any feedback you may wish to share with us. In the meantime, we very much look forward to borders re-opening and to seeing friends and colleagues old and new in person once again.

Enjoyable reading!



Gaute Gjelsten

Head of Wikborg Rein’s Shipping Offshore Group



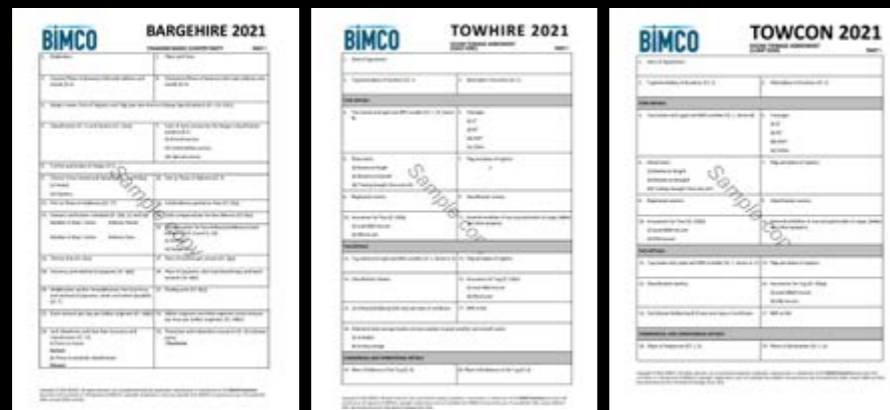
Herman Steen    Baptiste Weijburg  
 Editors of the Shipping Offshore Update





# Updated BIMCO contracts for TOWAGE AND BARGE HIRE

*BIMCO has recently published new editions of the widely used TOWHIRE, TOWCON and BARGEHIRE contract forms, which were last revised in 2008. The amendments are intended to improve legal clarity and bring the contracts more in line with current commercial practice.*



**T**OWHIRE is the industry standard ocean towage agreement with remuneration calculated on a daily hire basis and TOWCON is its twin where remuneration is calculated on a lump sum basis. BARGEHIRE is the industry standard bareboat charterparty specifically designed for unmanned, non-self-propelled seagoing barges.

#### TOWHIRE 2021 AND TOWCON 2021

Both towage contracts have undergone revisions with the aim of making the contracts more user friendly, including rearranging the layout as well as amending certain of the principle terms as described below. TOWHIRE has also been more closely aligned with TOWCON to the extent possible.

The knock-for-knock liability regime has been amended and now includes SUPPLYTIME-style definitions of "Hirer's Group" and "Tugowner's Group".

Responsibility for any salvage costs has been allocated to the party whose property needs to be salvaged, in an approach which is consistent with the knock-for-knock regime.

To address cases where the tow is located inside a port area which may take several hours to reach, the forms now include a new definition of "Place of Connection".

The clauses dealing with the hirer's responsibility to pay for repair or replacement of damaged or lost towing gear have been amended to the benefit of the hirer – it is only towing gear that the tug has

*In all likelihood, in time, the 2021 editions of these contracts will become the new market standards.*

provided specifically for the services that the hirer should pay for, and the compensation shall be calculated with due consideration of fair wear and tear of the towing gear damaged or lost.

Pursuant to the new clauses, the parties are now obliged to warrant that the tug and the tow are insured, with P&I insurance equivalent to cover provided by the IG clubs as the benchmark.

Clauses on daily reporting have also been included.

Clauses modelled on existing BIMCO standards have also been included, addressing infectious diseases, piracy, anti-corruption and sanctions, thus reducing the need for rider clauses.

One amendment made to the TOWCON form only is the free time and delay payments, where a provision has been made for bunkering of the tug mid-voyage. To reduce the risk of disputes surrounding the calculation of compensation to the tugowner to cover delays due to slow

steaming and deviation, there is now a box for the tugowner to state the "estimated average towage speed" which can be used as basis for calculating the compensation for extra time.

#### BARGEHIRE 2021

In an attempt to make BARGEHIRE 2021 easier to understand and more user-friendly, the clauses have been rearranged and some commonly found BIMCO clauses have been introduced.

The clauses dealing with survey, repair and redelivery have been given particular attention.

Other changes include a new and combined clause on ballasting operations and a default obligation on the charterers to take out P&I insurance.

Whilst the uptake of new contract forms by the industry is often somewhat slow, in all likelihood, in time, the 2021 editions of these contracts will become the new market standards. •

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# NEWS & VIEWS

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#1

Structuring of offshore wind farms, charters for vessels in the industry, and the established industry perspective

Oslo  
23 September 2020

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#2

Hydrogen, offshore floating wind and farms

Bergen  
30 October 2020

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#3

Cyber: Risk & Reward Reframed

London  
18 November 2020

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#4

Floating LNG Projects and LNG Market Outlook in Asia

Singapore  
4 February 2021

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#5

The EU taxonomy explained and how it impacts the shipping industry and ship finance

Oslo  
19 May 2021

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# BIMCO ASVTIME

*BIMCO has expanded their suite of offshore contracts by launching the new standard time charter form for accommodation support vessels, ASVTIME. Wikborg Rein participated in BIMCO's drafting committee for the form.*

The ASVTIME form is intended for use in both the renewables and oil and gas sectors of the offshore industry. Within the rapidly developing offshore wind sector the form is a useful basis for the chartering of walk-to-work vessel (WTWs) and service operation vessels (SOVs) – in particular as the offshore wind farms move further offshore.

The form is based on SUPPLYTIME, which is the longstanding industry standard time charter for offshore service vessels, but also incorporates several features from WINDTIME which was developed for crew transfer vessels in the offshore wind industry.

The objective has been to develop a new form that builds on well-established industry precedents, but with tailor made features for vessels designed to provide accommodation for personnel performing offshore installation, operation and maintenance work. BIMCO's drafting committee consisted of members from Deme, Eni, Floatel International, Hagland Shipbrokers, Siemens Gamesa, Wagenborg, Wikborg Rein and Ørsted.

## SERVICES

In addition to the general description of the chartered vessel, it will be no surprise that ASVTIME contemplates a detailed specification of the accommodation, recreational facilities, office space, workshops and other areas that are available for the charterer's use, as well as the catering to be provided to the charterer's personnel. The form also contemplates a detailed

description and limitation of the number of charterer's personnel on board.

Vessels providing accommodation services may also perform ancillary functions that are very important for the charterer's use of the vessel. ASVTIME therefore include provisions regarding optional equipment that may be available on the vessel, including walk-to-work gangways, cranes, offshore bunkering system for charterer's crew transfer vessels and daughter crafts provided by the owners.

The operational requirements for such optional equipment will need to be specified, as well as the environmental limits within which it should be able to work. This equipment would generally not be available on a 24-hour basis, and the number of operational hours per day therefore also need to be specified. Since "parallel operations" of the optional equipment may require particular planning, organisation and use of the same specialised crew, the parties also need to agree if and when such parallel operations may be required.



#### OFF-HIRE AND REDUCTION OF HIRE

The new form offers an off-hire regime covering traditional situations where the vessel is prevented from working during which the charterers' obligation to pay hire is suspended. However, in case of breakdown, or unavailability, of any of the optional equipment, the off-hire regime may not adequately address the competing interests of the parties. From the owner's perspective the vessel is still providing the key vessel and accommodation functions and they should therefore receive remuneration for same. From the charterer's perspective they may face issues due to the unavailability of the optional equipment, but may not be able to substantiate that the vessel is prevented from working or that there is a loss of time resulting in a corresponding off-hire period.

ASVTIME seeks to resolve this conflict by introducing a separate off hire regime which allows the parties to specify a percentage by which the hire may be reduced in case of unavailability of the optional equipment. The regime is however not mandatory. It provides that the charterers may request the continued performance of the vessel without the optional equipment at the reduced rate. If the owners consent, the reduction of hire applies, but if the consent is not forthcoming the charterers would need to rely on the general off-hire regime to the extent applicable.

#### EXTENDED OFFSHORE OPERATIONS AND OFFSHORE BUNKERING

Vessels providing accommodation services typically remain at the area of operation for extended periods of time, and do not have regular port calls such as other offshore service vessels. Issues that arise in relation to such extended offshore operations are addressed in a separate clause dividing the responsibilities for crew change, delivery of fuel, stores and other provisions, as well as vessel surveys or inspections that cannot be undertaken offshore. This clause in ASVTIME is based on the special annex to SUPPLYTIME that has also recently been developed by BIMCO.

The ASVTIME form also includes provisions for the use of an offshore bunkering system on the vessel for bunkering of crew transfer vessels provided by the charterer, thereby seeking to provide a contractual framework for a practice which is common in the offshore wind industry.

#### OTHER KEY FEATURES

Other key features of the new ASVTIME form include:

- **Delayed delivery** is addressed in a similar way as under WINDTIME. In addition to the right to cancel the charter, the parties need to specify remedies for such cancellation. The form includes three different options, i.e. (i) neither party is liable to the other for cancellation due

to late delivery, (ii) cancellation is without prejudice to the parties' rights under the contract or at law or (iii) agreed liquidated damages for cancellation. Failing agreement on one of these options, option (i) will apply.

- **Charter period extension** provisions provide an automatic extension to the charter period to allow completion of certain tasks undertaken, up to a maximum number of additional days to be agreed by the parties.
- **Fuel** is traditionally provided and paid for by the charterer under a time charter, but ASVTIME includes an option for the fuel to be provided and paid for by the owner in the first instance, and then reimbursed by the charterer to reflect a common practice in the offshore wind industry.
- **Maintenance allowance** amounts to 24 hours per month on a cumulative basis. During such periods the vessel will remain on-hire whilst performing maintenance, dry-docking, statutory or mandatory surveys or inspections. However, compared to SUPPLYTIME the reference to "repair" is removed in order to prevent parties from using the maintenance allowance to repair damage suffered by the vessel. Furthermore, the allowance can only be used for time spent carrying out surveys where such surveys are "statutory or mandatory".
- **Liabilities and indemnities** follow the typical structure in offshore contracts with a knock-for-knock liability regime for damage to personnel and property, the owner only being responsible for pollution and mutual exclusion of special, indirect and consequential losses. Similar to WINDTIME there is also an option to specify a cap on the parties' contractual liability, based on a percentage of the stated contract value which is to be specified by the parties on a case-by-case basis. The insurance obligations have been made mutual between the parties, and the annex for insurances has also been updated to reflect industry practice for these types of vessels. We consider it to be a particularly positive development that yet another (of very few) standard contract for vessels in the offshore wind industry includes knock-for-knock as the applicable liability regime.
- Certain adjustments linked to the accommodation service primarily being provided are also made in the clauses for *infectious or contagious diseases, war risk and ice clauses*. The adjustments are made to reflect that the vessels will typically not carry any substantial cargo, instead accommodating personnel on board.

#### SUMMARY

Although SUPPLYTIME is intended for chartering of offshore support vessels, it has in practice also been used with bespoke adjustments for accommodation service vessels in the offshore oil and gas industry for decades. By developing a specialised form for these types of vessels, BIMCO has provided yet another useful standardised form for the benefit of industry participants. Although the market for these types of vessel is relatively small, the ASVTIME form will also hopefully be of particular use for vessels in the offshore wind industry, as it continues to develop, and for accommodation and service vessels in other ocean industries.

Wikborg Rein is currently conducting one-to-one workshops with industry participants who would like a more detailed presentation of the form. Please do not hesitate to contact us should this be of interest. •

*The ASVTIME is intended for use in both the renewables and oil and gas sectors of the offshore industry.*

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The shipbuilder's interpellation right –

# OBTAINING CLARITY IN A DELAYED SHIPBUILDING PROJECT

*Delay in shipbuilding projects may ultimately grant the buyer a cancellation right, thereby giving rise to both legal and economic risks for the shipbuilder. Under the circumstances, the builder's "interpellation" right can help mitigate those risks and provide clarity for both parties.*



## SHIPBUILDING

**T**imely delivery is of utmost importance in shipbuilding projects. For various reasons, delays nevertheless often occur, thus creating a need for clear regulation of the parties' rights and obligations. Standard contracts such as the Norwegian Standard Form Shipbuilding Contract 2000 ("**SHIP 2000**") (Article IV) and the Shipbuilding Contract of the Shipbuilders Association of Japan (the "**SAJ Form**") (Article VIII), grant the buyer a right to claim liquidated damages, in addition to a right to cancel the contract if delivery of the new-build is delayed beyond a pre-agreed period.

The "interpellation" right entitles the builder to require the buyer to elect to either accept delivery of the delayed newbuild at a specified, new future date or cancel the contract forthwith. If the buyer does not respond, this may result in the buyer losing a right of cancellation. The builder may not like the buyer's decision, but by using the interpellation right, the builder can obtain clarity as to the fate of the delayed project.

#### THE CONCEPT AND RATIONALE OF THE INTERPELLATION RIGHT

The rationale for granting the builder an interpellation right becomes evident in cases where the buyer has a right to cancel the contract for delay, but instead does nothing and awaits further action whilst reserving his rights. This creates a challenge for the builder, who must honour his contractual obligations and continue construction, meanwhile facing the risk of significant losses if the contract is eventually cancelled by the buyer. The builder will want clarity as to whether he should proceed with the construction or prepare for a cancellation of the contract. Such clarity may be achieved through the use of the builder's interpellation right, which becomes relevant both when delivery is actually delayed beyond the agreed cancellation date and when it is anticipated that delivery will be delayed beyond this point.

#### ACTUAL DELAY

Article IV, 1 of SHIP 2000 contains provisions governing the situation where the project is delayed beyond the agreed cancellation date. If the buyer has not provided a notice of cancellation following the passing of the cancellation date, the builder may, by written notice, demand that the buyer elects either to cancel the contract forthwith or to accept delivery of the newbuild at a specific, future date reasonably estimated by the builder. Failure by the buyer to notify the builder of his choice within 15 days may result in the suspension of the buyer's cancellation right and the estimated future date specified by the builder being deemed accepted as the new delivery date. If the buyer elects not to cancel the contract, the builder shall proceed and aim for delivery of the newbuild by the future date. If the future date is successfully met, the buyer must take delivery of the newbuild (provided of course that the newbuild complies with the specification of the contract). If, however,



*The builder may not like the buyer's decision, but by using the interpellation right, the builder can obtain clarity as to the fate of the delayed project.*

the future date is not met, the buyer will (again) have the right to cancel the contract. Article VIII of the SAJ Form includes similar provisions.

#### ANTICIPATED DELAY

During the construction phase, but before the cancellation date, the builder may realize that delivery of the newbuild *will be* so delayed that the buyer has or will in the future have a right to cancel the contract due to anticipated delay. The buyer's right to cancel for anticipated delay is included in Article IV, 1 (d) of SHIP 2000. Thus, a builder will also want a right of interpellation during this phase of the build to address anticipated delay. Unlike in situations of actual delay, i.e. delay beyond the cancellation date, the standard wording of Article IV, 1 of SHIP 2000 does not explicitly grant the builder with an interpellation right for anticipated delay. Under Norwegian law, the builder can in such cases rely on the background law principles of interpellation, set out in the Norwegian Sale of Goods Act Section 24. This provision states that "[i]f the seller [...] notifies the buyer that he will deliver within a stated time, but the buyer

*fails to reply within a reasonable time after receiving the notice, he cannot cancel if performance is effected within the stated time*". Faced with the decision of whether to submit such a notification to the buyer, the builder must consider that by admitting that there is a significant delay in the shipbuilding project, he is also giving the buyer a right to cancel the contract. The risk of loss of contract in this context must be weighed against the builder's need for clarity on the way forward and the possibility to mitigate potential losses.

#### KEY CONSIDERATIONS

Where there is a risk of cancellation by the buyer, the builder should carefully consider the circumstances causing the delay before making use of an interpellation right. Relevant circumstances to consider are the extent and nature of the actual or anticipated delay, including the existence of force majeure or other circumstances for which delay is permitted under the contract. The builder should also be reasonably certain that he will in fact be able to deliver the newbuild at the specified, future date – if he fails to do so, the buyer will be entitled

to cancel the contract. The builder should also take note that once the buyer has been requested to elect between cancelling the contract or accepting delayed delivery, the builder may be deemed to have waived any potential rights to dispute the buyer's grounds for cancellation. •

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# DEEP SEA MINING

– preparing the ground

*The Norwegian Government has initiated a process for the potential opening up of deep sea mining on the Norwegian continental shelf. What is the legal framework for such developments and how does the Norwegian Government foresee that this process will be conducted?*

Fueled in part by our increasing reliance on technology as well as by a steadily growing global population, demand for the earth's rare minerals is increasing exponentially. The supply of such rare minerals is, however, somewhat limited and is currently dominated by only a few companies operating out of only a small number of countries, many of which have unstable political regimes and poorly regulated working conditions. With the supply of some such minerals already beset by geopolitical challenges as well as unpredictable pricing and the ever increasing threat of global shortages, many countries are looking for alternative domestic sources of supply.

Whilst the world's onshore reserves of core minerals are limited, it is thought that there may be significant reserves located on the seabed. This is particularly the case in Norway, with scientists at the Norwegian University of Science and Technology having already found mineral reserves with an approximate value of one thousand billion Norwegian Kroner

*Scientists at the Norwegian University of Science and Technology having already found mineral reserves with an approximate value of one thousand billion Norwegian Kroner in areas surveyed by them on the Norwegian continental shelf in 2019 and 2020.*

*As a country with a large continental shelf and significant experience within offshore oil and gas production, it is hoped that Norway may have an important role in this new industry in the coming years.*

in areas surveyed by them on the Norwegian continental shelf in 2019 and 2020. The Norwegian Government is looking to capitalize on this potential new industry and as a country with a large continental shelf and significant experience within offshore oil and gas production, it is hoped that Norway may have an important role in this new industry in the coming years.

#### LEGAL FRAMEWORK – THE SEABED MINERALS ACT

The Norwegian Seabed Minerals Act was adopted into law on 1 July 2019 and provides the legal framework for

the surveying and extraction of minerals on the Norwegian continental shelf, the proprietary rights of which belong to the Norwegian government. The Act's key purpose is to ensure that any such activities are conducted in accordance with broader societal goals, and that value creation, environmental concerns, safety, and the interests of other marine industries are all taken into account.

To a large extent, the Seabed Minerals Act mirrors the framework adopted in the Petroleum Act of 1996 and provides a general legal basis for sound resource management, including a licensing system for companies hoping to engage in subsea mineral surveying and extraction activities.

For surveying activities, licenses will be granted to both Norwegian and foreign companies for specific geographical areas, and will have a maximum validity period of five years. The licenses will be non-exclusive, meaning that several companies may be granted survey licenses for the same area. To the extent that mineral reserves are discovered, a public announcement or tender will be issued for the area and companies may then bid for a production license.

Such production licenses will be exclusive and may be granted to a single company, or several companies where one of them acts as the operator. Although the licenses will, in principle, be limited in time, the licensee(s) will have various rights to an extension. It should be noted that production licenses, subject to international agreements entered into by Norway such as the EEA Agreement on equal rights and obligations within the Internal Market, may only be granted to companies which are established in accordance with Norwegian law and registered in the Norwegian Register of Business Enterprises. However, there are no specific requirements on Norwegian ownership, and foreign companies may therefore also apply if they establish a Norwegian subsidiary.

No extraction will, however, be permitted before the relevant licensee(s) have had an extraction plan approved by the Ministry of Petroleum and Energy, which will need to include,

amongst other requirements, a project specific impact assessment study together with information on the potential environmental impact and any relevant mitigation strategies to be adopted.

#### CURRENT STATUS – ONGOING PROCESS FOR OPENING UP OF AREA FOR DEEP SEA MINING IN NORWAY

As of today, no areas on the Norwegian continental shelf have been actively opened up for deep sea mining. However, in January 2021, the Norwegian Government took a first tentative step towards making deep sea mining a reality and commenced a consultation process regarding how a potential impact assessment study should be undertaken in an area south of Svalbard and around Jan Mayen. This consultation period ended on 12 April 2021.

Based on the input received as part of the consultation process, it will be decided how such an impact assessment study shall be conducted. This will be done in the second quarter of 2021. After this has been decided, studies and reporting will be conducted, currently scheduled to take place in 2021 and 2022. After the impact assessment studies and reports have been completed, the impact assessment study will be published. It is estimated that the impact assessment study will be published in the fourth quarter of 2022. When the impact assessment study is published, a new consultation process will be initiated.

A final decision on whether to open up the area for deep sea mining will then, based on the impact assessment study and input from the further consultation process, be taken. Such final decision is currently scheduled to be taken in the second quarter of 2023. Based on the current schedule, companies could then potentially apply for survey licenses as early as in 2023.

It should, however, be noted that there are several unresolved questions in relation to this potential new industry which will require a good deal of further assessment before deep sea mining enters the mainstream, in particular the impact on the environment, how the mining will be conducted and whether it may be

conducted in a sustainable and economically viable manner. Although the experience and resources from the offshore fossil fuel industry may be called upon, further technological development and the establishment of a full value chain will also be necessary before offshore mining takes off as a new industry. •

*Based on the current schedule, companies could then potentially apply for survey licenses as early as in 2023.*

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## SHIPBUILDING

# Notice of defects – possible traps for the buyer and the builder

*A Norwegian Supreme Court decision from last year provides guidance on the importance of a buyer giving notice of defects in due time, as well as the importance of a builder reserving its rights before entering into discussions on the merits of those defects.*

In cases where time has lapsed between a defect occurring and the builder being notified by the buyer of the defect, a builder may rightfully argue that the buyer's notification is too late and so the buyer has lost any claim it might have had in respect of that defect.

*The relevant test is whether the builder gave the buyer reasonable grounds to believe that late notification would not be raised as a defence.*

According to the Norwegian Standard Form Shipbuilding Contract 2000 (“SHIP2000”) Article X No. 2 third paragraph, the buyer must notify the builder of defects “as soon as possible” after discovery. Similar provisions are found in the NEWBUILDCON clause 35 (a) (ii), the Shipbuilding Contract of the Shipbuilders Association of Japan (“SAJ Form”) Article IX No. 2, as well as in the standard Norwegian offshore construction contract, NF 2015, Article 25.1 second paragraph. This principle of

notification follows an internationally accepted legal principle of notification, see for example Article 39 of the Convention for the International Sale of Goods (the Geneva Convention) which requires a buyer to give notice of a lack of conformity in goods “within a reasonable time” of discovery, and can be found in various types of contracts and sectors.

However, the principle, founded on providing parties with certainty, can also affect a builder's rights. Just as a buyer may be prevented from claiming rectification of a defect where a claim has not been duly notified, a builder may also be prevented from objecting to the allegedly late notification on the grounds that the builder entered into discussions on the merits of the claim and did not raise a timely objection to the claim without reserving his rights. These two interrelated questions were addressed recently in a Norwegian Supreme Court decision – in the context of a different type of contract although relevant to shipbuilding – which highlights the importance of a buyer issuing a warranty claim swiftly and of a builder ensuring his rights are properly reserved.

#### THE FACTS OF THE CASE

In the decision by the Norwegian Supreme Court (published as HR-2020-2254-A) issues of late notification of a claim and discussions by the parties of the merits of the claim were addressed. The case concerned road construction but the judgment is also relevant to other sectors including the offshore and maritime industry.

The dispute arose between the Norwegian Public Roads Administration (“NPRA”) as proprietor and their advisor, Rambøll AS, in relation to a road construction competition. NPRA claimed that there was a defect in Rambøll's delivery of certain calculations which were used to form the basis for

NPRA's tender. NPRA notified Rambøll of its claim four weeks after discovery of the defect. Rambøll did not raise any late notification defence until almost three years after receiving NPRA's notification of the claim.

#### RATIONALE AND HOLDING

Regarding the deadline for notification of the defect, the agreement was subject to the Norwegian Standard Construction Contract NS8401 and a requirement that claims be notified “without undue delay” (item 13.4). This obligation was assessed in relation to the complexity of the claim and the scope of the construction project. The Supreme Court held, without further reasoning, that two weeks should have been a sufficient period to consider the defect and a claim. The notification presented by the NPRA after four weeks was therefore made too late and any consequent entitlement was lost.

The Supreme Court went on to address NPRA's argument that Rambøll had lost a defence of late notification due to discussions between the parties of the merits and ordinary principles of passivity.

The Supreme Court initially noted that there was no specific provision to this effect in the relevant contract, the NS8401 form. The position is the same in the commonly used standard form shipbuilding contracts referenced above and which also do not include any such provision. However, based on considerations of “symmetry”, the Court reasoned that where a claim for a defect may be lost due to late notification of the defect, the same rules of expediency should apply to objections to those claims – the right to object also being capable of being lost as a consequence of passivity. Or a party doing nothing.

Regarding the aforementioned discussions between the parties of the merits, the Supreme Court reasoned that in construction contracts, it is of utmost importance that the parties maintain good cooperation and continuous dialogue throughout the project. A rule that leads to the loss of contractual rights because one party has been eager to find practical and amicable solutions in order to drive the project forward, could easily give rise to a “trap” for that party.

The Supreme Court stated that the relevant criteria here is whether the defaulting party gave the other party “reasonable grounds to believe” that late notification would not be invoked as a defence. Based on the facts of the case – that three years had passed between the late notification and the defence being raised, the Supreme Court held that the defence of late notification had been lost.

#### KEY TAKEAWAYS

Although the case concerns a dispute in road construction, the principles of the judgment apply generally and are of relevance to shipbuilding projects. With respect to a buyer's deadline for notification of defects, this will depend on the scope and complexity of the relevant project and, of course, the contractual terms.

Further, the parties' discussion of the merits of a claim is only one of several relevant elements to be considered when evaluating whether a builder's claim for late notification is lost. The relevant test is whether the builder gave the buyer reasonable grounds to believe that late notification would not be raised as a defence. This consideration will be relevant in complex construction contracts where continued cooperation is essential, such as shipbuilding and offshore construction contracts and particularly where a project is ongoing. A builder should though, having received notice of a defect, be allowed time to investigate the alleged defect, and consider whether or not it falls within the guarantee, before rejecting a claim as being notified too late.

*The notification presented after four weeks was too late*

To avoid uncertainty and to avoid losing any defence of late notification, builders are well advised, before entering into discussions, to reserve all of their rights including making clear that a defence of late notification is not waived by virtue of those discussions. •

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# SHIP RECYCLING

## – ongoing liabilities for shipowners

*The English Court of Appeal has in a recent judgment (Hamida Begum v Maran (UK) Limited [2021] EWCA Civ 326) upheld the High Court's decision to decline to strike out a claim against a UK ship manager for the death of a shipyard worker in Bangladesh following a demolition sale.*

The *Maran Centaurus*<sup>1</sup> (the vessel) was a crude oil tanker owned by the Liberian company Centaurus Special Maritime Enterprise (the owner), and operated and managed by Maran Tankers Management (the manager), another Liberian company.

In 2013, the manager engaged Maran (UK) Limited (the agent), an English company, to provide agency and ship-broking services to the manager in respect of the vessel. The owner, the manager and the agent were all part of the same shipping group.

In August 2017, the agent sought offers for the sale of the vessel for demolition and conducted negotiations. An agreement (MOA) was eventually concluded with a cash buyer which required, *inter alia*, that the cash buyer should only sell the vessel to a “ship breaker’s yard that is competent and will perform the demolition and recycling of the vessel in an environmentally sound manner and in accordance with good health and safety working practice” (clause 22). The cash buyer ulti-

mately sold the vessel to a shipyard in Chittagong, Bangladesh where it was beached on 30 September 2017.

In March 2018, a worker at the shipyard, Mohammed Khalil Mollah, fell to his death while working on the demolition of the vessel. In April 2019, his widow (the claimant) issued proceedings in England against the agent on her own behalf and that of the deceased’s estate, claiming damages for negligence (under English, alternatively Bangladeshi, law).

In February 2020, the agent applied to the English court for summary judgment dismissing the claim on the basis that, among other things, the agent did not owe the deceased any duty of care. The High Court rejected the agent’s application but granted the agent permission to appeal.

### COURT OF APPEAL’S DECISION

As this was an appeal from a summary judgment application, the question for the Court was not whether a duty of care was owed but whether there was a “realistic as opposed to fanciful prospect” of a duty of care being established and thereby the claim succeeding. Like the High Court, the Court of Appeal held that, whilst the Claimant may encounter significant hurdles in establishing the duty of care at trial, there was a realistic prospect of success and on that basis,

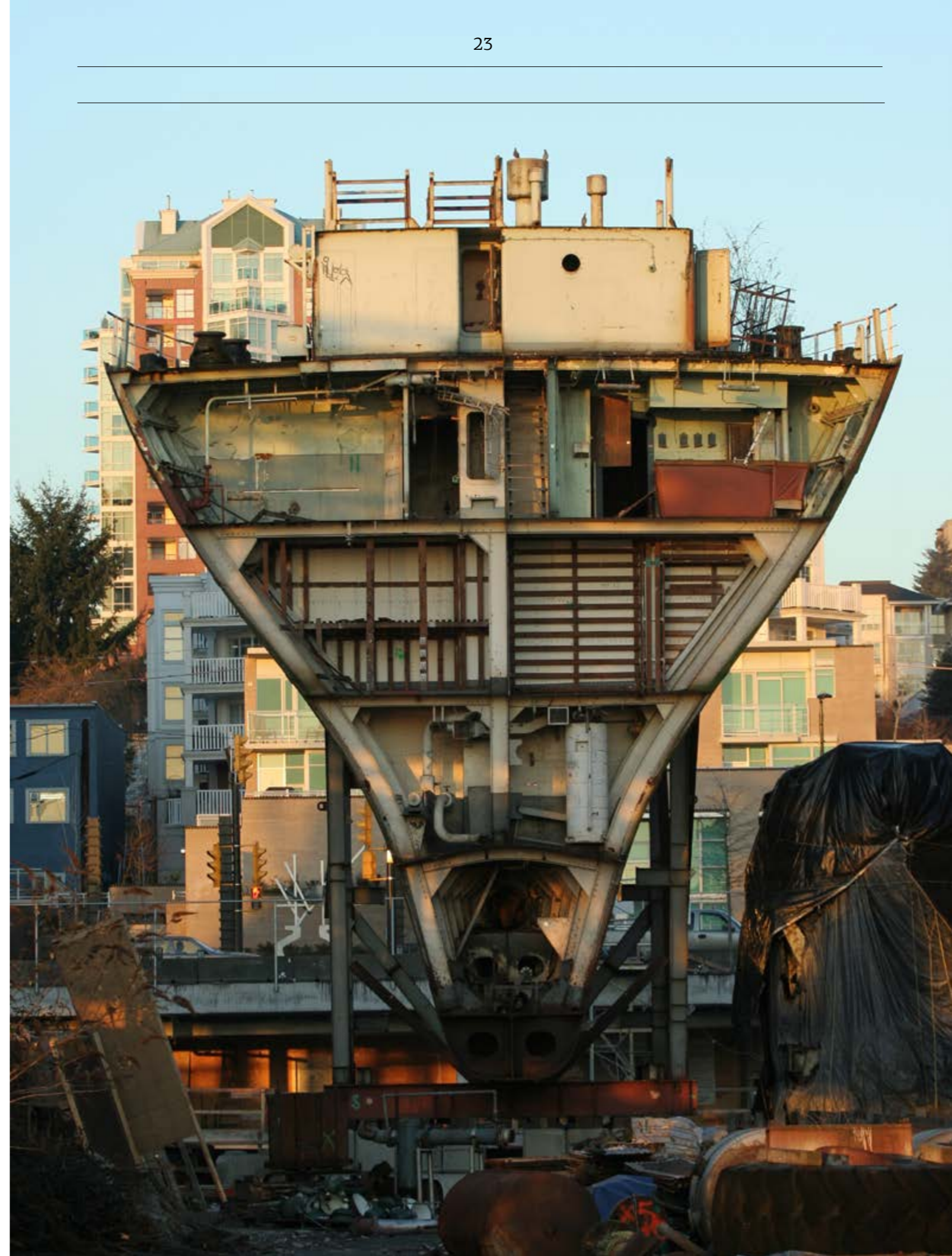
*The judgment should keep shipowners on notice that they may be held liable for injuries sustained by workers in notoriously unsafe demolition yards*

the claim should proceed to trial and not be struck out. In particular, the Court of Appeal opined that the claimant’s case would be most likely to succeed by establishing a duty of care on the basis of the agent’s creation of a “state of danger” (the beaching of the vessel at Chittagong) which was then exploited by others (the owner of the yard and the deceased’s employer).

At first instance, the agent’s application was determined by reference to, amongst others, the following assumed facts:

- I. the agent had a choice as to whether to entrust the vessel to a buyer who would convey it to a yard which was either safe or unsafe;

<sup>1</sup> A full explanation of the facts and summary judgment application is set out in our article in ILO: <https://www.internationalawoffice.com/Newsletters/Shipping-Transport/United-Kingdom/Wikborg-Rein/Court-declines-to-dismiss-claim-against-shipowner-for-death-of-shipyard-worker-following-demolition-sale>





- II. the agent had control and full autonomy over the sale;
- III. the agent knew or ought to have known that the vessel could only have been destined for breaking in Bangladesh; and
- IV. the agent knew that the modus operandi at many shipyards in Bangladesh entailed scant regard for human life.

The Court of Appeal stated that if the claimant is able to prove these assumed facts at trial then they would be capable of establishing a duty of care. Furthermore, having reviewed previous cases on this “creation of danger” principle, the Court noted that the scope and extent of this principle is one of the fastest-developing areas of the law of negligence and that it would therefore be inappropriate to strike out the claim before the principle, and the underlying facts of this case, could be fully explored at trial.

In addition to the High Court’s decision on the duty of care, the agent also appealed the High Court’s decision that the claimant had an arguable case that its claim was not time-barred. In the High Court, Mr Justice Jay found that the law of Bangladesh applied to this case and therefore a 1 year limitation period would ordinarily apply. However, he also found that the claimant had an arguable case that this was a claim “arising out of environmental damage” which could have the effect of replacing the one-year period with the three-year period applicable in England. This was rejected by the Court of Appeal who stated that the claim did not arise out of environmental damage. Notwithstanding this, the Court of Appeal still declined to strike out the claimant’s claim. The claimant’s secondary argument in relation to the time-bar was that the Bangladeshi limitation period should be dis-applied as it would cause “undue hardship” to the claimant. With respect to this argument, the Court of Appeal refused to reach a definite conclusion and instead ordered

*It is therefore important for shipowners to keep in mind that the closing of the sale of a vessel for demolition does not bring their exposure or responsibilities to an end.*

that this issue should be returned to the High Court to be determined as a preliminary issue. If the claimant succeeds with these preliminary issues and the High Court determines that the Bangladeshi limitation period may be dis-applied, then the claimant’s claim will proceed to trial.

#### COMMENT

As will be apparent, the claimant clearly has a number of obstacles to overcome for her claim to succeed. Not only must she succeed in dis-applying the Bangladeshi limitation period, she must also prove the factual assumptions referred to above. This will not be an easy task. Despite this, this judgment should keep shipowners on notice that they may be held liable for injuries sustained by workers in notoriously unsafe demolition yards and that they should take steps to ensure that their vessels are disposed of in a safe and environmentally sound way. Ultimately, even if the claimant in this case is unsuccessful on the particular facts of her claim, the judgment shows that in the right circumstances, English law (and other jurisdictions for that matter) may be capable of imposing liability on shipowners in similar situations.

From a practical perspective, it is worth highlighting the Court of Appeal’s concern that, whilst it is common for demolition MoAs to require the inter-

mediate cash buyer to sell to a yard that would perform the demolition “in accordance with good health and safety working practices”, these contractual requirements often seem to be largely cosmetic and are in fact often ignored. Whilst a number of vessel operators, in addition to carefully vetting the yards that are to be used to demolish their vessels, already engage independent supervisors to monitor yard’s compliance with their safety and environmental obligations, this still seems to be the exception rather than the rule.

It is therefore important for shipowners to keep in mind that the closing of the sale of a vessel for demolition does not bring their exposure or responsibilities to an end and we hope that cases such as this will raise awareness among shipowners of the considerations, both legal and moral, that ought to be factored into a decision to sell a vessel for demolition, the choice of yard and the sale process itself. •

*Wikborg Rein works closely with sellers, regulators, brokers, ship recycling supervisors, hazardous materials experts and a small number of reputable intermediate buyers and recycling yards in Europe and elsewhere and has extensive experience of handling related Basel Convention applications to regulators in many jurisdictions around the world.*

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# THE HIGH NORTH REPORT

## – an “ocean of opportunities”?

*On 27 November 2020 the Norwegian government presented a white paper on the the Arctic regions with the title “People, opportunities and Norwegian interests in the Arctic” (the so-called “High North Report”). This report is the first white paper on the Arctic region in nine years, and sets out the Norwegian government’s policy on foreign relations, climate change and environmental concerns, community development, business, infrastructure, transport and safety in this region.*

**T**his article contains an abstract of the issues discussed in the WR newsletter “The High North Report – an “ocean of opportunities”. To read the newsletter which contains a more detailed analysis of the issues commented upon in this article, you can visit our webpage<sup>1</sup>.

### SUSTAINABLE GROWTH AND VALUE CREATION

For the Norwegian Government, the Arctic regions, also known as the “High North” is its “most important strategic area of responsibility”. The white paper therefore addresses a broad range of issues, under the key taglines “potential for sustainable growth and value creation” and “the green shift giving potential for growth”. The goal is to facilitate industry and commercial activity in the North through sustainable value creation and green competitive advantage. The oceans are identified as being of particular significance, since 80 percent of Norwegian ocean areas are located north of the Arctic Circle.

The white paper highlights the government’s aim to ensure predictable conditions and the creation of a good framework for industry and commerce in the High North, particularly within the maritime and marine sectors. This is seen as important for ensuring sustainable blue growth in the High North.

Offshore oil and gas is still highlighted as having potential for growth in the next two decades, as well as other alternative energy sources of which offshore wind power is in particular mentioned as a possible target area.

Fisheries will of course continue to be of high importance to the High North and continuous sustainable growth in both fisheries and aquaculture is recommended to be prioritised.

The potential for investment, development and growth within the maritime industry and port services is also emphasised. Norwegian waters already have the biggest concentration of vessel traffic in the Arctic, including fishing vessels, offshore service vessels, cargo vessels and cruise vessels. The possibility of transit traffic through the Northern Sea Route brings further prospects. Green shipping is an important priority area

for the Norwegian Government, and there is potential for more environmental friendly solutions through zero and low emission technology, different fuel mixes and energy sources (electro, hydrogen, bio gas, charging systems). There is generally a surplus of renewable energy in the High North, which might be good for electrifying maritime industries, vessels, ports and aquaculture facilities.

Finally, the mining for sea bed minerals represents an interesting opportunity for future value growth in the High North and the government aims to facilitate the exploration and exploitation of these.

In these key areas and high competence industries, the Norwegian government will continue to facilitate for advanced technological development, continuous development of know-how and capability and long-term investment and access to capital. An investment fund with both state funds and private equity managed and administered from Northern Norway will be established for this purpose.

### NEW OPPORTUNITIES

The reason for the increased interest in the Arctic is understandable. The Arctic sea-ice is melting, and as the ice-cap withdraws, previously inaccessible areas becomes accessible and unveil economic prospects – hence the tagline “an ocean of opportunities”.

The temperature in the Arctic is rising at twice the speed as the global average, and has the last three decades risen 2.4 times faster than the Northern hemisphere average. The sea-ice is melting at rapid speed (every year or so reaching new record lows) and some studies suggest the Arctic will be virtually ice free during the summer as early as in the 2030s.

An ice-light Arctic Ocean enables increased commercial fishing, cruise industry and transport of people in the region. It might further represent an interesting alternative to the traditional cargo shipping routes between Asia and Europe, as it shaves off distance considerably (and hence cost, fuel, food, crew wages and tolls), (possibly) saves costs of fees imposed by the coastal states, and offers alternative routes to international choke-holes. The two routes that have advanced as the most promising options for intra-Arctic traffic, the Northern Sea Route (NSR) and the North West Passage (NWP) are however currently too ice-prone to be considered viable commercial options. The NSR runs from Dzhul’ga Cape along Russia’s northern coast to Kara Gate or Zhelaniya Cape, and the NWP runs through the straits of Canadian archipelagic waters linking Baffin Bay to the Bering Strait.

There is also extensive resource development in Arctic regions in the form of offshore oil drilling, and the decrease in sea-ice will make operations and access for vessels associ-

<sup>1</sup> <https://www.wr.no/en/news/the-high-north-report-an-ocean-of-opportunities/>

*The Norwegian government will continue to facilitate for advanced technological development, continuous development of know-how and capability and long-term investment and access to capital. An investment fund with both state and private equity managed and administered from Northern Norway will be established for this purpose.*

ated with these operations much easier. The development of Yamal and other associated LNG projects in the Russian Arctic and the Norwegian government's granting of licences in the 23rd licensing round are illustrating, but also mining for precious minerals on the sea bed and offshore wind offers interesting opportunities. In the proposed state budget for 2021, the Norwegian government suggested to grant NOK 30 million for mapping of seabed minerals and has opened up for future exploration and exploitation. Increased activity will again lead to further need for transport.

The opportunities that a more open Arctic offer are also closely monitored by other states than the so-called "Arctic 5+3" consisting of the littoral states to the Arctic Ocean – Canada, Norway, Russia, US and Denmark (through the courtesy of Greenland), as well as Finland, Sweden and Iceland. China in particular has shown an interest in the region and released its "Arctic Policy" whitepaper in 2018 proclaiming China to be a "near Arctic state".

#### WITH OPPORTUNITY COMES RESPONSIBILITIES

Even though the diminishing sea-ice presents interesting opportunities, increased activity in the Arctic is also precarious and has to be performed with caution.

The Arctic environment is harsh, cold and dark, there will be ice present for large parts of the year, the Arctic is sparsely populated and remote, and the weather has become more unpredictable. Combining these factors with increased shipping activities, the likelihood of a major maritime casualty increases.

The release of CO<sub>2</sub> and other emissions is an acute problem globally, but the Arctic is especially sensitive to air born pollutants and in particular black carbon emissions. When black carbon is deposited in the snow and ice it reduces the surface albedo, and instead of reflecting the heat from the sun it absorbs it – contributing to so-called Arctic amplification. Black carbon

is often associated with the use of heavy fuel oil in the shipping industry. Taking into consideration the particular challenges an oil spill of heavy fuel oil would pose in the Arctic, there is now a shift to regulate fuel standards in the Arctic.

A clean, healthy and sustainable marine environment is a prerequisite for future utilization of marine resources, and there is a need to take an holistic approach to ocean management in order to protect and preserve the marine arctic. The High North Report represents an innovative and modern approach to ocean management. However this modern approach is reflected mostly in policy documents, and less in law.

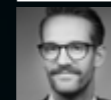
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# HOW TO HANDLE BILINGUAL CONTRACTS?

*Companies operating internationally sometimes face demands for bilingual contracts in foreign jurisdictions. This is particularly common in China. In this article we consider the practical approach for dealing with bilingual contracts.*

Our observations in this article are based mainly on our experience with bilingual contracts in China, but that experience can be relevant to bilingual contracts in other jurisdictions.

In many cases a bilingual contract is a practical necessity because of language limitations or barriers. Other reasons to agree a bilingual contract could arise from local requirements; perhaps to register the contract with public authorities, a need to report internally to group companies or to

present the contract to related third parties. Sometimes bilingual contracts are chosen simply out of respect towards the local business partner.

In our experience, when bilingual contracts are entered into there is often a lack of awareness of the risk that come with imprecise translations and the consequent unintended differences between the two language versions. Through our work in China, we have seen many examples of extensive contradictions between the English and Chinese texts in bilingual

contracts. Sometimes, a contract does not regulate how such contradictions are to be resolved. Even if the contract contains a prevailing language clause, this may not always be sufficient to avoid disagreement or clarity on the correct understanding or meaning of a clause. Contradictions between the English and Chinese text may therefore inadvertently impact a party's compliance with the contract and can give rise to disputes which, without the clarity of clear language, can be difficult to resolve.



## Practical advice for reducing risks of legal or practical challenges when entering into a bilingual contract:

- Include a prevailing language clause explicitly stating which language will prevail in the case of contradictions.
  - Have the contract reviewed by a local lawyer who masters both languages to ensure that the translation precisely corresponds with the English text.
  - In practice, the two language versions of the contract should be written paragraph-by-paragraph, meaning that the regulation in the English text comes first and then is immediately followed by the translated text. If the translated text is only an appendix to the contract, there is a higher risk that changes to the English text during the negotiations are not made in the translation, or that changes are made to the translations and are not detected and then reflected in the main body of the contract.
  - Make sure to apply strict document control on contract drafts being sent back and forth between the parties.
- A good rule is to always prepare a compare version between the last draft sent to the other party and the draft received so that also potentially unmarked changes are revealed. It is not uncommon in Chinese negotiations for changes to be made in the draft document but for those changes not to be specifically highlighted to the other party.
- Pay attention to the use of numbers in sums. Commas and full stops can indicate different amounts in a sum depending upon the language used. It is recommended to always include in parentheses a sum written in long form after the sum written in figures.
  - In a bilingual contract, it is all the more important that both choice of law and jurisdiction are clearly specified – and, of course that those provisions mirror each other in both languages.

## PREVAILING LANGUAGE CLAUSES FOR BETTER OR WORSE

In order to mitigate the risk of contradictions between the English and Chinese text, the parties may include a so-called “prevailing language clause”. Such a clause typically states that the English contract text will prevail where there is a conflict with the Chinese contract text. This is a good starting point but it can create a false sense of security.

For example, the Chinese text of the prevailing language clause may provide for the opposite, i.e. that it is the Chinese text that prevails in the event of a contradiction. Another example is that, whilst there is no contradiction in the prevailing language clause in English and Chinese, other provisions in the Chinese contract text might provide for the Chinese contract text to prevail in the event of contradictions.

These types of situations can lead to great uncertainty as to which language version prevails. If that dispute is referred to a Chinese court or arbitral tribunal, one should be prepared for a Chinese judge to find that the Chinese language version prevails.

## CHALLENGES IN PRACTICE

Take the example of a contract for the supply of goods. If there is a difference between the Chinese language clause dealing with product specification and the English language clause, this may result in material deviations in the product delivered and a dispute as to the specification to which the product should have complied. Often, such discrepancies will not be discovered before the mistake is made – in the example given, on delivery or in quality testing perhaps. At this point, the discrepancy can often not be rectified without significant delays and/or costs.

Or perhaps the Chinese text contains different provisions in relation to limitations of liability than those in the English text. If that is the case, the parties risk exposing themselves to levels of risk quite different to those they understood to accept.

We have seen cases where the Chinese text contains provisions on rights and obligations that are not mentioned in the English text at all. One example provided extensive exclusivity rights in favour of the Chinese party which were not mentioned in the English language text.

The above are just a few examples of how contradictions between two different language versions of a contract can play out in practice. Contradictions need not arise as a consequence of bad intention – it requires significant skill to prepare a Chinese contract text that precisely reflects the English text of a contract. For this reason, we often see discrepancies in the Chinese text that may cause misunderstandings or disputes later on.

Our clear recommendation is to ensure full control of both the English and Chinese texts before a bilingual contract is entered into. Although this requires more resources than negotiating, scrutinising and relying on the English text alone, it will be worthwhile. •

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# CO<sub>2</sub> transportation and storage agreements – IS IT ROCKET SCIENCE?

*Carbon Capture and Storage (CCS) projects have been referred to as “moon landings”. One may presume that, along with some of the technology, the underlying business and contracts are also something akin to rocket science. However, a closer look reveals major similarities to the gas sales business and gas sales agreements rather than something more ground breaking.*

In his 2007 New Year address to the nation, then Norwegian Prime Minister Jens Stoltenberg referred to the on-going pilot CCS project at the Mongstad refinery and crude oil terminal as “our moon landing”. Sadly, Norway never got to the moon – the Mongstad project proved unsuccessful and was eventually cancelled.

## THE RETURN OF CCS

However, today, against the backdrop of the urgency to deal with global warming and the emergence of new technology, several new large CCS projects are underway. On 9 March 2021, Equinor, Shell and Total launched a joint venture called “Northern Lights” (we do not know whether they use the same name as a major Soviet natural gas pipeline by coincidence or as an inside joke) in Norway. The venture is to offer commercial CO<sub>2</sub> transportation and storage services.

Similarly, the UK announced its Clean Growth Strategy in October 2017 (updated in 2019 and supplemented in 2020), aiming for deployment of CCS at scale by 2030. Notwithstanding Brexit, much of the applicable EU legislation in connection with CCS forms part of the UK’s ‘retained law’. On 17 March 2021, the UK Government awarded funding to the Northern Endurance Partnership to support the Zero Carbon Humber and Net Zero Teesside projects which intend to create decarbonised industrial clusters in the Humber and Teesside regions, including through the use of CCS. The Northern Endurance Partnership was formed in 2020 and consists of the National Grid, ENI, Shell, Total, BP and Equinor. In May 2021 the UK government issued additional guidance in cooperation with the Low Carbon Contracts Company.

## THE BUSINESS MODEL

The business of CCS can very broadly be described as taking a gas (CO<sub>2</sub>), processing it, liquefying it, transporting it by ship

and/or pipeline (or by truck or railcar for smaller quantities), and pump it into a geological structure where it is intended to be trapped for ever. The heavy taxation of CO<sub>2</sub> emitters incentivises those emitters to pay to get rid of the CO<sub>2</sub> in some way other than emission into the atmosphere.

The CCS business model bears close similarities to petroleum exploration and production – but in reverse. Petroleum exploration and production involves extracting liquids and gases which were trapped (more or less) forever in geological structures, processing, liquefying (if necessary) and transporting them by ship and/or pipeline for productive use. As indicated above, the main difference is that the sequence is more or less reversed, and the payment is for taking gas instead of delivering it (or oil). Those similarities probably explain why so many oil and gas majors are involved in CCS projects. After all, they are experienced in liquefying and shipping gas, as well as locating and accessing geological structures where liquids and gases can be trapped forever.

## CO<sub>2</sub> TRANSPORTATION AND STORAGE AGREEMENTS

Considering the business model, it is perhaps not surprising that CO<sub>2</sub> transportation and storage agreements (TSAs) show many similarities with other petroleum industry and renewables contracts, although naturally they have some special features of their own.

The term “storage” in a TSA is a bit of a misnomer. Unlike other petroleum storage agreements, the customers are never going to ask to get their CO<sub>2</sub> back, and you will not find provisions for withdrawals. Further, it is common for the service provider to take title to the CO<sub>2</sub> in the process. In that sense, the TSA is more similar to a gas sales agreement (GSA), only with reversed flows of gas and money.

To develop CCS, new infrastructure has to be built, with large up-front investments, and the project owners will want



*The heavy taxation of CO<sub>2</sub> emitters incentivises those emitters to pay to get rid of the CO<sub>2</sub> in some way other than emission into the atmosphere.*

to secure long-term payment commitments to underpin those investments. The number of customers and service providers within commercially reasonable shipping distance of each other may also be limited, creating a “hold-up” risk. Consequently, TSAs are likely to be long-term, and with some kind of supply-or-pay obligation, pretty much like the long-term, take-or-pay GSAs which were the norm in Europe when new big gas sales required developing new fields and/or pipelines. The contract issues are then also likely to be similar, including:

Should there be Force Majeure relief from an obligation to pay in case supply cannot be met?

Should there be a right to make up, i.e. to supply CO<sub>2</sub> in volumes corresponding to those not supplied but paid for at a reduced or no cost later, as is common in take-or-pay agreements?

Can there still be an obligation to pay damages for breach on top of the supply-or-pay payment (which is excluded by take-or-pay)?

In addition, there will need to be careful consideration of ‘reopener’ provisions. These will be dictated by geopolitical factors as well as the potentially competing regulatory regimes in connection with cross-border transportation, waste regimes and clean energy initiatives and incentives. Flexibility and forward thinking will be the watchwords in these areas.

Like the early gas industry, CCS providers face choices when it comes to pricing. The safe bet for the service providers is to go for cost-plus. But that may not satisfy the customers, whose

incentive is to avoid being taxed for CO<sub>2</sub> emissions, and will really only choose CCS if the “storage” fee is likely to remain below the CO<sub>2</sub> tax for (most of) the term of the TSA. If the service providers accommodate the customers on this point and accept the price risk, the service providers may see upsides or downsides, depending on how CO<sub>2</sub> taxes and CCS capital and operating expenses (and subsidies) move in relation to each other. When gas was first sold in Europe, the petroleum producers overwhelmingly chose to take the price risk, pricing gas a bit below the costs of using other alternative energy sources like oil products and coal. What is certain is that any asymmetric solution, where one side attempts to take only the upside and exclude the downside, will lead to conflict. •

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ASBAGASVOY 2020 –  
**A NEW VOYAGE  
CHARTER FOR  
GAS TANKERS**

*BIMCO and the Association of Ship Brokers & Agents (“ASBA”) recently released a dedicated gas tanker voyage charterparty, the ASBAGASVOY 2020. The form is based on the well-established ASBATANKVOY form for product tankers and has been developed in response to the growth of the gas spot market.*

The new charter form is intended to be used for vessels transporting LPG, anhydrous ammonia, and chemical gases, which is an industry sector that has seen significant expansion over the last decade.

Gas tanker fixtures have often been conducted on the basis of amendments to the ASBATANKVOY form and other tanker forms. However, the unique nature of storing and transporting gas poses technical and operational challenges that have, in the view of many industry players, not been adequately addressed in the forms traditionally used in the gas trade. In the words of the BIMCO President, Sadan Kaptanoglu, the introduction of the new form serves to “save time and reduce the risk of contractual disputes” by reflecting industry commercial practice and setting out the necessary terms in a clear and concise way.

*In light of many industry players having held the view that there is a need for a gas specific voyage charter standard form, ASBAGASVOY is likely to be a popular choice for gas tanker fixtures in the future.*

#### GAS SPECIFIC CLAUSES

The main purpose of the ASBAGASVOY form was to introduce provisions that address issues that are unique to gas tankers, whilst at the same time retaining the familiar clause numbering and structure of the ASBATANKVOY form.

The new form introduces a presentation clause (Clause 18), setting out the agreed condition of the cargo tanks at the loading terminal. This is a key technical element in gas transportation. The BIMCO/ASBA drafting committee for the new form has commented that the presentation clause is of key importance for when the notice of readiness can be

served to start the running of laytime, and with respect to a potential cancellation of the charter. The new presentation clause provides three options for the condition of the vessel's tanks, the latter of which allows the charterers and owners to insert their own bespoke agreed presentation requirements. We expect the “bespoke” option to be frequently used in light of the varying requirements of charterers and terminals.

Another important technical aspect of the gas trade covered by Clause 4 is the temperature at which the charterers shall supply, and the vessel shall discharge, the gas to be transported. The required loading and discharging temperatures are to be agreed between the charterers and owners and included in Part I of the charter.

The gas transportation sector has a particularly high focus on safety and environmental responsibility. The inclusion of the new Clause 13 in the form is therefore highly relevant and appropriate. The clause requires the owners to warrant that they are familiar with the characteristics of the gas cargo, its required handling and safety requirements and that the vessel and crew is certified for the carriage of the relevant gas cargo.

BIMCO and ASBA have also developed a new bill of lading form, the ASBAGASBILL, to be used with the new form. The new bill of lading form is based on BIMCO's CONGENBILL 2016 and is expected to be widely used with the ASBAGASVOY form.

#### USE OF THE NEW FORM

The shipping industry often takes some time to get used to and adopt newly introduced forms. However, in light of many industry players having held the view that there is a need for a gas specific voyage charter standard form, ASBAGASVOY is likely to be a popular choice for gas tanker fixtures in the future. The well-known structure and layout of the new form and its similarities to ASBATANKVOY, should also assist in it being quickly adopted by the industry. •

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## WIKBORG REIN'S

### MARITIME AND OFFSHORE EMERGENCY RESPONSE TEAM 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, led by Morten Lund Mathisen, assists insurers and owners in connection with a wide range of incidents.*

**Naga 7.** Jack-up rig foundering off Malaysia  
**Eemslift Hendrika.** Evacuation, loss of power off Norwegian west coast, cargo damage  
**Bukhta Naezdnik.** Fire, sinking, wreck removal  
**Viking Sky.** Blackout, heavy weather, claims, Norway  
**KNM Helge Ingstad.** c/w Sola TS; refloating of navy frigate, claims, Norway  
**Shinyo Ocean.** c/w Aseem; claims, off Fujairah  
**Northguider.** Grounding, removal, Spitzbergen  
**Antea.** c/w Star Centurion, total loss, claims, Indonesia  
**Geos.** Explosion on offshore exploration drill ship, fatality, wreck removal, Malaysia  
**Cheshire.** Decomposition of fertilizer, total loss, off Gran Canaria  
**Stolt Gulf Mishref.** Loss of propulsion of parcel tanker, GA, cargo issues, Red Sea  
**TS Taipei.** Grounding and wreck removal of bulk carrier, pollution, cargo, Taiwan  
**Stolt Commitment.** c/w Thorco Cloud which sank, wreck removal, cargo claims, multi-jurisdiction litigation, Singapore Strait, Indonesia  
**Fair Afroditi.** Explosion, sale of oil tanker, Lomé, Togo  
**Troll Solution.** Leaning instability of jack-up rig; fatalities, wreck removal, Gulf of Mexico  
**Sorrento Fire.** on ro-ro passenger vessel, CTL, cargo damage, off Mallorca  
**Goodfaith.** Grounding of bulk carrier; wreck removal, Andros, Greece  
**FPSO Cidade de Sao Mateus.** Explosion, fatalities, salvage, Espirito Santo Basin, Brazil  
**USNS Sgt Matej Kocak.** Grounding and salvage off Okinawa, Japan  
**Asian Empire.** Fire and salvage of car carrier, cargo damage, Pacific Ocean  
**Britannia Seaways.** Fire on cargo vessel carrying military equipment, including ammunition, off Norway  
**Luno.** Wreck removal of grounded bulk carrier, Bayonne, France  
**Wan Hai 602.** Exploded container under deck at Suez Canal

**B-Elephant.** Alleged submarine cable damage by VLCC, Alexandria, Egypt  
**Chamarel.** Wreck removal of grounded cable laying vessel, Namibia  
**Gelso M.** Wreck removal of grounded chemical tanker, Italy  
**Bareli.** Grounding of container ship; oil pollution, cargo damage, wreck removal, China  
**KS Endeavour.** Explosion and fire on jack-up rig, Nigeria  
**Rena.** Wreck removal of grounded container ship, New Zealand  
**Nordlys.** Fire on passenger ferry; c/w berth, salvage, Norway  
**B Oceania.** Wreck removal of bulk carrier; c/w MV Xin Tai Hai, Malacca Strait  
**Double Prosperity.** Salvage of grounded bulk carrier, Bakud Reef, Philippines  
**Godafoss.** Grounding; oil pollution, GA, salvage of multipurpose container ship, Norway  
**Jupiter 1.** Wreck removal of capsized semisub accommodation rig, Gulf of Mexico  
**Hub Kuching.** Salvage after fire and CTL of container ship, South China Sea  
**West Atlas.** Wreck removal of drilling rig; blow-out and fire, Timor Sea, Australia  
**Full City.** Grounding; oil pollution, refloating of bulk carrier, Norway  
**Bourbon Dolphin.** Capsizing and total loss of anchor handler; casualties, Shetland  
**Repubblica di Genova.** Refloating and sale of capsized ro-ro ship; cargo damage, Belgium  
**Cembay.** Grounding on coral reef; salvage of cement carrier, oil pollution, cargo damage, Mexico  
**Big Orange XVII.** Well stimulation vessel c/w platform, Ekofisk field, North Sea  
**Server.** Grounding; oil pollution, wreck removal of bulk carrier, Norway  
**Alaska Rainbow.** Cargo ship c/w passenger ferry, River Mersey, England  
**Hyundai No. 105.** Car carrier c/w VLCC Kaminesan; cargo damage, wreck removal, Singapore Strait  
**Rocknes.** Refloating of grounded and capsized bulk carrier; oil pollution, casualties, Norway

**Panam Serena.** Explosion and fire; salvage and sale of chemical tanker, terminal claims, casualties, Sardinia, Italy  
**Vans Princess.** Grounding of ro-ro vessel; oil pollution, cargo damage, Tartous, Syria  
**Tricolor.** Car carrier c/w container ship Kariba; sinking, wreck removal, cargo damage, multi-jurisdiction litigation, English Channel  
**Hual Europe.** Grounding of car carrier; fire, oil pollution, cargo damage, wreck removal, Tokyo Bay, Japan  
**Amorgos.** Grounding of bulk carrier; sinking, oil pollution, Taiwan  
**Norwegian Dream.** Cruise ship c/w container ship Ever Decent; fire, personal injury, cargo damage, salvage, English channel  
**Sun Vista.** Fire and total loss of cruise vessel, Malacca Strait

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