WIKBORG | REIN

Update

December 2014

Shipping Offshore

CONTENT

Bank mandate fraud most frequently occurs when the payee's bank details are fraudulently amended and sent to the payer in order to divert payment. • PAGE 14

SHIPPING OFFSHORE UPDATE

ARCTIC OPENING – AN EMERGING REALITY

PAGE 16

Publisher WIKBORG REIN DECEMBER 2014
Chief editor ODDBJØRN SLINNING
Editors HERMAN STEEN, ENA BARDER AARSETH, ROBERT JOINER, JOE MCGLADDERY
Cover photo ISTOCKPHOTO
Layout & design LISE H. RØED
Print ROLF OTTESEN / 2500 COPIES

Market uncertainty

2008 brought with it one of the deepest and most dramatic shipping crisis. Many predicted that 2014 would at last be the year when the cycle turned. The continued decline in world economic growth has hindered any forward leap and it is now difficult to predict when shipping will once again emerge from the darkness. The task ahead for shipowners has been made even harder as, together with market volatility and uncertainty, new energy sources, stricter environmental policies and fuel-efficiency developments look to play an increasingly important role in the future.

The offshore sector, by contrast, has seen a period of sustained growth and has provided a steady stream of new projects, works and opportunities for the market participants. In 2014 however the major oil companies introduced significant cuts in their investment budgets and there has been a steady downturn in oil and gas prices.

The forecasts for the Norwegian part of the North Sea are currently a 21 % reduction in overall investments and a 33 % reduction in field developments. The domino effect has caused significant ripples in the offshore supply industry which has not only been forced to reduce their forecasts but also to introduce massive workforce lay-offs. It was not so long ago that many said that the greatest challenge in the offshore sector was a lack of sufficient qualified personnel. Similar events are being seen in other key geographic areas for offshore investment and some market analysts have noted that the "pause" in the offshore markets has now turned into cyclical downturn expected to last 2 or 3 years. Major players in production and drilling have taken note of the decline in pricing and are cutting budgets. The overall picture is a somewhat gloomy one.

Despite these challenges in our key markets, Wikborg Rein has continued to strengthen our presence in Asia, London and Brazil. We are increasingly instructed in connection with projects that not only require core shipping and offshore industry competence, but also corporate, transactional and tax advice. We experience an even greater demand to find tailor made solutions which encourage us as a firm to continue to develop and diversify our services.

In this Update we once again look at difficulties with payments and deposits under the Norwegian Saleform, and Mexico's adoption of new legislation for the oil and gas industry. The Nairobi Wreck Removal Convention has entered into force and we consider the international developments this may entail. We revisit some of our more regular topics such as mutual hold harmless deeds in the North Sea, time bar for maritime liens, ship arrests in China and certain issues relating to liability for cargo claims. The opening of the Arctic remains an important part of the business and we look at what this emerging reality may have for business.

I hope that you will find our articles interesting and welcome any feedback you may wish to share with us. We are also most interested in receiving requests for topics that you would like us to address in future Updates.

Enjoyable reading!

Gaute Gjelsten
Head of Wikborg Rein's Shipping Offshore Group

PHOTO: Wikborg Rein

THE GRIFFON - another case of buyer beware

In this recent Court of Appeal case it was found that, upon failure of the buyers to pay the deposit to the sellers within the stipulated timeframe pursuant to a memorandum of agreement on the Norwegian Saleform 1993, the sellers were entitled to claim the deposit as a debt irrespective of the sellers' actual losses.

The Norwegian Saleform 1993 (the "Norwegian Saleform") has long been the most popular of the proforma contracts used for the sale of second-hand vessels and offshore units and was succeeded by a new version in 2012.

The provisions of the 1993 version of the Norwegian Saleform have been the subject of detailed consideration in the English courts. However, London arbitrations and previous court rulings had led to uncertainty in terms of the interpretation of clause 13 and, in particular, as to the extent of amounts recoverable in circumstances where a buyer had failed to pay the deposit in accordance with clause 2.

The recent Court of Appeal case of Griffon Shipping LLC v Firodi Shipping Ltd (the "Griffon") has provided further guidance on this point, as it was held in this case that clause 13 of the Norwegian Saleform does not exclude a seller's right to claim the deposit as a debt.

CONTACTS /

Joe McGladdery
jmg@wr.co.co.uk

Henrik Hagberg
heh@wr.no

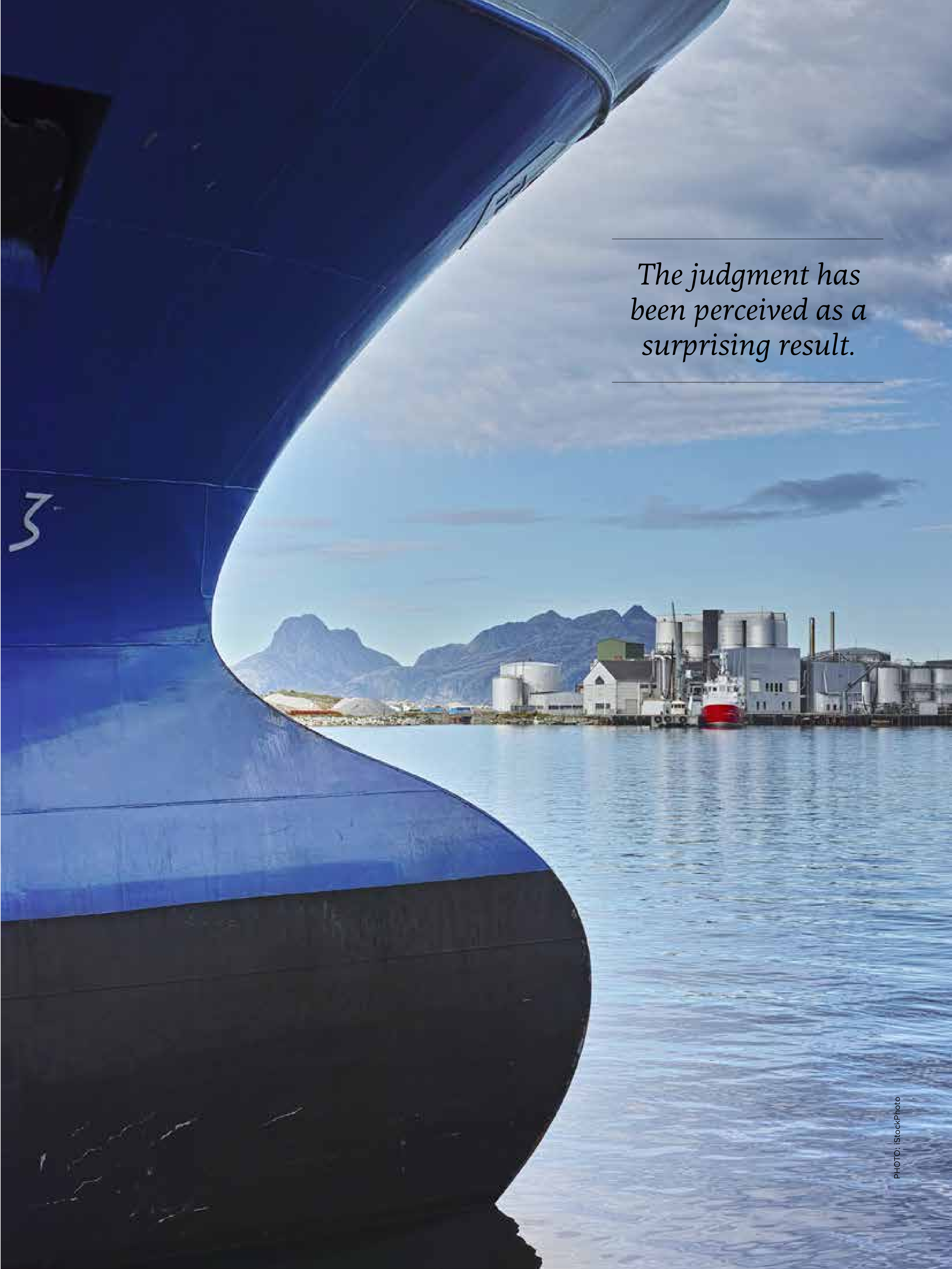
Oddbjørn Slinning
osl@wr.no

THE FACTS

Pursuant to a memorandum of agreement ("MoA") based on the Norwegian Saleform, the sellers, Griffon Shipping LLC, agreed to sell the vessel "Griffon" to the buyers, Firodi Shipping Ltd. at a price of USD 22 million. The MoA was governed by English law.

Clause 2 (Deposit) of the MoA provided that a deposit of 10 % of the purchase price, being just over USD 2 million, was payable within three banking days of signature. However, the buyers failed to pay the deposit within the contractual timeframe. Consequently, the sellers deemed the buyers' conduct as a repudiatory breach of contract and/or cancelled the MoA pursuant to an express contractual right to do so. The buyers accepted that their conduct amounted to a repudiatory breach of contract. The sellers sought to claim the deposit as a sum due and payable prior to termination of the MoA, but the buyers argued that the sellers were only entitled to claim compensatory damages for the loss they actually suffered.

The damages that would have been recoverable by the sellers under the conventional measure of damages, being the difference between the purchase price under the contract and the market price of the vessel, was accepted to be USD 275,000 – substantially less than the deposit. It was this significant difference in the amounts claimed that formed the basis for the dispute.



The judgment has been perceived as a surprising result.

PHOTO: iStockPhoto

THE ISSUE

The buyers' argument was based on the first paragraph of clause 13 (Buyer's default) of the MoA which stated that:

> "*Should the deposit not be paid in accordance with Clause 2, the Sellers have the right to cancel this Agreement, and they shall be entitled to claim compensation for their losses and for all expenses incurred together with interest.*"

Against this background, the sellers referred the dispute to arbitration and claimed the deposit from the buyers. In doing so, the sellers contended that pursuant to clause 2 of the MoA, the right to payment of the deposit had accrued before the MoA was terminated and, accordingly, the sellers were entitled to claim the deposit either as debt or, alternatively, the amount of the deposit as damages for breach of contract.

In response, the buyers submitted that, upon the true construction of the MoA (and with particular reference to clause 13), in the event of buyers' failure to pay the deposit, the sellers were only entitled to claim compensation for losses, and not the deposit – as the clause demonstrates a clear intention that if termination takes place before payment of the deposit has been made, the only remedy available to the sellers is compensatory damages.

> *The judgment enabled the sellers to claim a deposit in excess of the actual loss they suffered.*

At the hearing, the tribunal ruled in favour of the buyers and held that the first paragraph of clause 13 made it clear that the sellers were not entitled to the deposit (whether as a debt or in damages), and were only entitled to claim for their actual loss of USD 275,000.

The sellers appealed the decision to the Commercial Court, where the decision of the arbitration tribunal was overruled. In considering what he considered to be a "*controversial issue*", the judge held that the first paragraph of clause 13 did not intend to exclude the sellers' accrued right to the deposit granted to it under clause 2, but determined that the paragraph simply provided an additional remedy to the right already enjoyed by the sellers under clause 2 (i.e. their right to claim the deposit).

Unsurprisingly, the buyers subsequently appealed the judgment. In upholding the judgment of the Commercial Court, the Court of Appeal stated that the correct approach required two issues to be considered: Firstly, what rights did the sellers have under the contract in relation to the deposit immediately prior to the acceptance by the sellers of the buyers' repudiation? Secondly, what was the effect on those rights of the acceptance of the repudiation?

In answering the first question the Court of Appeal held that the deposit is "*security for the correct fulfilment of the contract*" and that the right for the sellers to receive it is unconditional. Consequently, on the day on which the deposit was due, the sellers were vested with an accrued right to receive and claim for the deposit as an agreed sum, forfeitable in the event of failure by the buyers to correctly fulfil their contractual agreement. As regards the second question, the court was of the view that rights unconditionally acquired by the sellers prior to termination survive termination.

> *It was held that clause 13 of the Norwegian Saleform does not exclude a seller's right to claim the deposit as a debt.*

Therefore, the conclusion of the Court of Appeal was that the nature of a deposit is to encourage a party's performance of a contract, not to compensate the sellers for more loss than they suffered. In describing its decision as being consistent with business common sense, the court highlighted the point that the deposit serves the commercial purpose of providing the sellers with security for the buyers' performance under the MoA.

COMMENT

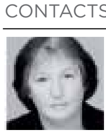
The judgment has been perceived as a surprising result as, in the particular case of the "Griffon", the judgment enabled the sellers to claim a deposit in excess of the actual loss they suffered. It has also attracted some criticism by commentators questioning whether the same decision would have been made had the deposit been a higher percentage of the purchase price. However, if nothing else, this is a welcome clarification on this particular point of law for both buyers and sellers using the Norwegian Saleform. •

EARLY REDELIVERY – What is the damage?

A difficult challenge that owners face in a volatile market is having a vessel redelivered early under a profitable charter.

Early redelivery may arise because charterers are no longer willing or able to perform the charter or where, faced with non-payment of hire, owners decide that they have no choice but to withdraw the vessel and terminate the charter.

CONTACTS /


Clare Calnan
clc@wrco.co.uk


Chris Grieveson
cjg@wrco.co.uk


Lesley Tan
les@wrco.co.uk

TERMINATE OR NOT TO TERMINATE?

Where a failure by the charterers to perform their obligations amounts to repudiation of the charter, then it gives owners, at least initially, a choice: they can decide either to maintain the charter and insist on charterers' performance, or they can immediately terminate. Both options may seem equally unpalatable to an owner faced with the prospect of having a vessel redelivered early. However, owners will need to give careful consideration to the consequences which follow any decision that is subsequently made.

Where owners decide to maintain the charter they can continue to invoice charterers for the hire, but they must continue to keep the vessel available to perform any services required by charterers.

A recent decision by the English High Court in *The Aquafaith*[1] confirmed that in certain circumstances it was legitimate for an owner to maintain the charter, and to continue to invoice the charterer for hire due up to the earliest redelivery date under the charter. The rationale behind this decision is that the Courts consider time charters to be different from other service contracts where a greater degree of co-operation is required from the defaulting party in order for the contract to be maintained. In the case of a time charter, an owner does not require the assistance of charterers to continue to give orders to the vessel to maintain its position and to perform the service required, despite a lack of any orders or payment from charterers.

Such a course might be attractive for owners to follow, at least in short term, since there is no obligation on an owner to mitigate losses. However, in the case of longer term charters, owners may need to balance the financial ramifications of having to fund the escalating costs of running the vessel against the prospects of actually recovering their losses from charterers (whose solvency may be become an issue).

WHEN THE CHARTER CANNOT BE KEPT ALIVE

The are two situations where the owners do not have the choice to maintain the charter. The first is where owners have no legitimate interest in continuing the performance of the charter, such that to insist upon further performance would be unreasonable. This may arise, for example, where the charterers are clearly insolvent or where it is abundantly clear that the charterers will not engage in any further performance of the charter. The second is where performance of the charter is reliant upon charterers' own performance. In such case, an owner has no choice but to accept that the charter is at an end, and to act accordingly.

MEASURE OF DAMAGES

In order to protect their claim for damages when the charter is terminated, owners need to be aware of the mitigation steps they must take. Where a vessel is redelivered early, owners are entitled to be placed in the position that they would have found themselves in had the charter been performed.

The standard approach by the Courts for measuring damages for early redelivery is the difference between the charter rate and the market rate for the vessel, determined as at the date of the termination of the charter, for the unexpired term of the charter.

It is important to note that where there is an available market rate for the vessel, then the damages calculation is based on that market level and hence is a theoretical one. The fact that owners may charter the vessel at a higher or lower rate than the market rate is ignored unless owners can show either that the replacement fixture rate is representative of the market, or that there is no available market rate for the vessel and the terms achieved were the best available. In difficult market conditions it may be challenging to establish what the correct market rate should be. Thus it will always be in an owner's interests to take all reasonable steps to mitigate their losses by entering into a replacement charter at market rates for the balance of the term of the original charter.

RECENT EXAMPLES FROM ENGLISH COURTS

Where there is no available market at the time the charter is terminated, but such a market subsequently emerges, then damages will be assessed by reference to the actual loss of the owner. In the decision in *The Wren*[2], charterers prematurely redelivered the vessel at the height of the economic crisis. The Court held that there was no available market at the time of termination and owners therefore chartered the vessel on the spot market at a loss. When the market subsequently revived, owners continued to trade the vessel on the spot market which had become more profitable than enter into a "like for like" charter. Owners based their claim for damages on the initial losses suffered on the spot market and thereafter by reference to the market rate. The Court held that this approach was not correct and that owners were under a duty to take all reasonable steps to mitigate their losses. As a result the damages payable by charterers were assessed by reference to the actual losses the owners suffered.

The decision in *The Golden Victory*[3] further established that any assessment of damages must take account of the charter terms, and where a supervening event arose after termination then its effect must be reflected in the assessment of damages. In this case the charter was prematurely terminated in 2001 and owners sought to recover damages for their losses during the remaining unexpired period of the charter of four years. However, in 2003 war broke out in Iraq and the charter's war clause would have entitled charterers to subsequently cancel the charter. The Court held that owners could only recover damages for the period up to when charterers would have been entitled to terminate.

REMARKS

The decision in *The Golden Victory* is perhaps a dramatic example of where subsequent events can influence the damages that owners are entitled to recover. Although accepting early redelivery allows owners to enter into replacement fixtures and earn revenue from the vessel, there are often disagreements with charterers as to how damages should be assessed. Disputes may arise over whether there is a market and what the applicable hire rate should be, or what deductions need to be made to reflect the likely off-hire periods and what credit should be given for accelerated payment of damages as compared with hire payments made over a period of time.

Given the frequency with which early delivery cases appear before the Courts there is now a wealth of case law to guide owners when faced with the early delivery. Whilst this does not always make the commercial decisions any easier (particularly during difficult market conditions) owners can perhaps derive some benefit from the experiences of others who have faced similar problems. •

[1] Isabella Shipowner SA v Shagang Shipping Co Ltd (The Aquafaith) [2012] EWHC 1077 (Comm)
[2] Glory Wealth Shipping Pte Limited v Korea Line Corporation (M/V Wren) [2011] EWHC 1819
[3] Golden Strait Corp. v. Nippon Yusen Kaisha (The Golden Victory) [2007] 2 A.C. 353

SHIP ARREST IN CHINA

China is not a signatory to any of the international conventions regarding arrest of ships. However, ship arrest is well established in China as an efficient and practical method of obtaining pre-judgment security, especially for maritime claims.

Arrests in China are regulated by the Maritime Procedure Law of the People's Republic of China, together with subsequent regulations and court interpretations. In practice the arrest procedures in China are very similar to the provisions set out in the 1999 Arrest Convention.

CONTACTS /


Yafeng Sun
yfs@wrco.com.cn


Ronin Zong
rlz@wrco.com.cn


Claire Jiang
cji@wrco.com.cn

JURISDICTION AND APPLICABLE CLAIMS

Applications for the arrest of ships are exclusively dealt with by China's ten maritime courts and their branches, which are mainly seated in cities on the east coast.

Generally ships may be arrested to secure the following types of maritime claims:

- Loss of or damage to property caused by ship operation;
- Loss of life or personal injury directly in connection with ship operation;
- Possession or ownership of, or mortgage on, a ship;
- Agreements in respect of the employment or chartering of a ship;
- Salvage, towage and pilotage;
- Wreck removal;
- Construction, renovation or repair of a ship;
- Crew's wages;
- Loss of or damage to cargo on board (including luggage);
- Acts of general average;
- Disputes arising out of a ship sale contract;
- Provision of supplies or rendering of services in respect of ship operation, management, maintenance or repair;
- Enforcement of judgment, arbitration award or other legal papers;
- Insurance premiums, port fees, agent service fees, broker commissions, any fees payable by the ship, the ship owner and/or the demise charterer, etc.

Under normal circumstances, the respondent for an arrest application would be the registered owner or bareboat charterer of the ship in question who also is responsible for the substantive claim.

SHIP ARREST

PHOTO: iStockPhoto

ARREST PROCEDURE

To arrest a ship, the arresting party must file a written application with the competent maritime court, accompanied by supporting documentation in the form required by the court. The arresting party is also usually required to provide counter security before an arrest application can be granted.

Upon receipt of the arrest application, the court must make a decision within 48 hours. Subsequently, the arresting party is required to initiate legal proceedings (e.g. a court case or arbitration proceeding), whether in China or abroad, in respect of the substantive claim within 30 days following the arrest, unless such proceedings have already been commenced before the arrest. A failure to initiate legal proceedings will result in the ship being released from arrest or the security provided by the respondent being returned.

Good communication with the maritime courts will be crucial for the arresting party.

DOCUMENTATION REQUIREMENTS AND FORMALITIES

In most cases the maritime courts will require the following documents:

(i) An original power of attorney issued by the arresting party to the local lawyers, plus identity certificates or documents of the arresting party, which must be notarized and legalized;
(ii) The arrest application;
(iii) Copies of prima facie details and evidence of the substantive claim; and
(iv) Counter security, if in the form of a letter of guarantee.

Chinese courts have a wide discretion as to the form of the application documents, and in urgent cases and upon prior agreement, the court might accept scanned or faxed copies of the documentation. In such a case the court will set a time limit within which the original documents are to be submitted.

The fact is that each maritime court in China has their own particular requirements concerning the documentation formalities and requirements, so prior communication with the court is critical for the success of the arrest application.

As a rule of thumb, it may typically take about two weeks for an arresting party to prepare and deliver the full set of the duly notarized and legalized arrest documentation to the lawyers in China for checking and submission to the court. A critical factor affecting the time is how quickly the arrest documents can be notarised and legalised by the relevant Chinese embassy or consulate.

COUNTER SECURITY REQUIREMENTS

As to the form of the counter security to be provided by the arresting party, the maritime courts generally accept cash deposits in Renminbi, or a letter of guarantee issued by a Chinese domestic financial institution, e.g. an insurance company, a bank, a security company etc. The wording of the guarantee must be acceptable to the court.

The amount of the security required is also largely subject to the court's discretion, but typically the amount will be equivalent to the amount of the arresting party's claim, or one month's hire of a similar ship in the market, whichever is higher. Different maritime courts have different practices and the amount of counter security required can vary significantly from region to region. Again, good communication with the maritime courts will be crucial for the arresting party.

Unless an agreement is reached with the court (which is rare), the counter security needs to be provided before the court issues the arrest order.

RELEASE

An arrested ship can be released by the court when appropriate security is provided by the respondent and an application for release is filed. Before the ship can be released, all costs and expenses incurred as a consequence of the arrest, such as court fees, must be paid, and an agreement with the arresting party must be reached.

WRONGFUL ARREST

In general, and in the absence of a valid jurisdiction or arbitration agreement between the parties to the contrary, the court that ordered the arrest will normally accept jurisdiction over the substantive claim.

The maritime courts in China acknowledge that compensation is payable in circumstances where a ship has been wrongfully arrested. However the test as to whether an arrest is wrongful or not is not defined in Chinese law or judicial practice. If such a claim is put forward by the respondent in the arrest proceedings, the arresting court will decide the matter on the basis of the particular circumstances of the case and whether the arresting party acted reasonably. The respondent (owner or bareboat charterer of the vessel) may seek indemnification from the arresting party from the counter security where the court has awarded compensation for wrongful arrest. •

RUSSIAN SANCTIONS - caution required

The stand-off between Russia and Europe and the USA over the conflict in Ukraine seems set to continue. In order to bring pressure to bear the European Union and USA have introduced ever more stringent economic and financial sanctions against Russia. Given that these sanctions now extend to commercial activities they can be a trap for the unwary and anyone trading with Russia must exercise considerable caution to avoid being inadvertently caught by the extensive sanctions that are now in place.

EUROPEAN SANCTIONS

EU Regulation no 269/2014 and no 208/2014 and the corresponding Norwegian Regulations are designed to prevent any dealings with the funds and economic resources of any designated persons. There are currently 141 individuals and 23 companies on the designated list and breach of the regulations amounts to a criminal offence.

EU Regulation No 833/2014 and 960/2014 have imposed trade sanctions particularly in connection with the oil and gas industry. The effect is to prohibit drilling, well testing, logging and completion services for use in deepwater or artic oil exploration and production and shale oil projects in Russia. The provision of specialised floating vessels for use in deep water or arctic oil exploration and production is also prohibited. Although deepwater and artic oil exploration are not defined in the EU Regulations the implementing UK Regulations define deepwater as anything greater than 500 feet and arctic as the area north of the Arctic Circle. There are two exemptions from these regulations. The first is where the provision of services arises under a contract that was concluded prior to 12 September 2014 and the second is where services are required to prevent or mitigate an event likely to have an adverse impact on human health or the environment.

The regulations have also introduced trade sanctions on certain listed equipment for which an export licence is now required from an EU Export Control Agency. In addition there are prohibitions relating to the purchase, sale and provision of investment services relating to certain transferable securities and money market instruments issued by five named Russian banks.

In Crimea the trade sanctions are more extensive and relate to activities connected to the creation, acquisition or development of infrastructure for transport, telecommunications and energy as well as the exploitation of oil gas or mineral resources in Crimea.

These sanctions apply to all EU or Norwegian persons or entities and to any non-EU person or entity when doing business within the EU or Norway. Article 11 of the EU sanctions, which has also been enacted in Norway, prevents any claim by

CONTACTS /

Clare Calnan
clc@wrco.co.uk

Anders W. Færden
awf@wr.no

Øyvind Axe
axe@wr.no

any Russian person or entity being enforced where it relates to a contract or transaction, the performance of which has been affected directly or indirectly, in whole or in part, by sanctions. Contracts which have Russian law and jurisdiction clauses may be enforced within Russia but EU and Norwegian Courts will not impose any liability or enforce any judgement if the transaction was prevented from proceeding because of EU and Norwegian sanctions.

US SANCTIONS

In July 2014 the US introduced sanctions targeting major banks, energy companies and parts of the defence and shipping industries. These sanctions apply mainly to new contracts. In September further sanctions were imposed and existing sanctions were tightened.

Under the current OFAC sanctions US persons and persons within the US are prohibited from dealing with new debt or equity issued by major state-owned Russian banks and in providing financing or dealing with new debt for the Russian energy firms Novatek and Rosneft. In addition any dealings with any person on the US SDN list are prohibited. There are also trade sanctions in respect of goods, services and technologies in support of exploration or production for Russian deepwater, Arctic offshore or shale projects that have the potential produce of oil and involve Gazprom, Gazprom Neft, Lukoil, Surgutneftegas and Rosneft.

The US Department of Commerce's Bureau of Industry and Security (DOC) has implemented restrictions on the export,-re-export and transfer of items classified under certain Export Control Classification Numbers. These items are in the main those used directly or indirectly in the production of oil and gas in Russian deepwater, Arctic offshore locations or shale formations in Russia. All such items now require export licenses, and for oil projects the DOC is applying a policy of presumptive denial. Sanctions are also in place in respect of high technology articles and services that contribute to Russia's military capabilities.

The application of US sanctions is both extensive and complex. They apply to all US persons and entities operating anywhere in the world and to any overseas company or person when conducting business in the US and to certain US origin equipment or technology which is exported or re-exported to Russia or transferred in any country. The nature of the US sanctions are such that even the use of the US financial system may result in sanctions being triggered in respect of US dollar payments that are processed through US.

COMPLIANCE

The EU and US sanctions against Russia contain broad and ambiguous rules which is partly the point of the sanctions but nevertheless is a challenge for those who need to comply with them. As with any sanctions regime it is essential for companies to put in place compliance programmes that clearly identify what sanctions are in force and how they impact on the business that is being conducted. Due diligence is required to establish whether a company's counterparties, whether in Russia or outside are directly or indirectly caught by sanctions. There also needs to be an awareness as to how sanctions are likely to expand to impact on the business which means that appropriate contractual protection should be put in place to meet that situation when it arises.

Any company that has financial connections with Russia or is involved in the oil and gas or marine industry needs to exercise considerable caution when conducting any business either directly or indirectly with Russian companies.

It is now common for most charters, financing and insurance agreements to contain provisions that both warrant that parties have and will continue to comply with any applicable sanctions and enable the contracts in question to be terminated in the event that sanctions prohibit or limit further performance. Much has been learned from the sanctions in force against Iran and compliance requirements arising from the anti-corruption and money laundering regulations that are now in force in most countries. And yet every sanctions regime is different and it is not enough to assume that existing compliance procedures will be sufficient to provide adequate protection in all cases. Russia is a major power and any company that has financial connections with Russia or is involved in the oil and gas or marine industry needs to exercise considerable caution when conducting any business either directly or indirectly with Russian companies. Such caution is needed not only by the companies directly engaged in providing services and equipment but also by those who provide services to those companies, and in particular insurance companies, financial institutions, brokers and other intermediaries. •

BEWARE OF CHANGES IN PAYMENT INSTRUCTIONS

Bank mandate fraud is increasing both in terms of frequency and sophistication. Even the best run companies are not immune to the risk of this type of fraud, but being aware and cautious when changes are requested to payment details can provide important protection.

Bank mandate fraud most frequently occurs when the payee's bank details are fraudulently amended and sent to the payer in order to divert payment.

CONTACTS /


Clare Calnan
clc@wrco.co.uk


Robert Jardine-Brown
rjb@wrco.co.uk


Emilie Christiansen
aec@wrco.co.uk

HOW IT WORKS

The contract typically provides for payments to be made to the payee's bank account, the details of which are specified in the contract. Shortly before a payment is due the payer receives a request for the payment to be made to a different account. The payment instructions appear genuine in that they are on the company letterhead of the payee and apparently authorised and signed. Often they are sent from what appears to be the payee's e-mail address; although close scrutiny may reveal that the address is not exactly the same. Similar requests can be made by way of letter or telephone.

Having updated the details of the payee's bank account, the payment from the payer will be diverted to a fraudulent bank account rather than the payee's genuine bank account. The fraudsters may need to rely upon the paying bank not checking that the name of the recipient on the payment instructions corresponds to the name of the beneficiary of the account to which the payment is made. However, this is a check which rarely is undertaken in practice and which, under English law, banks are not legally required to perform. The latter has recently been confirmed in a judgment from the Court of Appeal.[1]

PAYER'S RISK

Whilst some payees will contact the payer relatively quickly should an invoice be left unpaid there is no guarantee that this will be noticed immediately and several invoices may have been paid before such time a payee realises payment is overdue.

Once the payee becomes aware it has not been paid and chases for payment, the fraud is discovered. At this point both parties will be out of pocket and whilst some payees may be willing to cover some parts of the loss, the fact is that the payee is entitled to be paid and the payer is at risk of having to pay the full amount again to the payee.

RECOVERING A LOSS

Should you fall victim of bank mandate fraud the prospects of recovering the amounts paid to the fraudulent bank account are very limited. The likelihood is that the fraudulent account will have been opened in a different country to the one where you are located and that it has been emptied or closed shortly after the fraud has been committed. Whilst attempts can be made to contact the bank where the fraudulent account has been opened, the bank is unlikely to be allowed to provide any information relating to the account. Legal proceedings may be necessary in order to reveal the name of the person setting up the account and other account information, but this provides no guarantee you will establish the true identity of the fraudsters or trace the funds that have been diverted.

Shortly before a payment is due the payer receives a request for the payment to be made to a different account.

Bank mandate fraud most frequently occurs when the payee's bank details are fraudulently amended and sent to the payer in order to divert payment.

MINIMISING THE RISK

It is inevitable that payees may at some point during the life of a contract wish to amend payment details. When receiving such a request, particularly if made by a payee who is based in a different part of the world or to whom particularly large payments are to be made, checks should be made to ensure the validity of the request made. These checks should include contacting the payee by telephone and e-mail (via a telephone number or e-mail address with is known to belong to the payee) asking the payee to verify its payment details. Where the change in the payment details also identifies a change in the beneficiary of the payment, then a separate confirmation should be obtained from the payee that payment to the new beneficiary will discharge the payer from its payment obligation.

Consideration should also be given to putting in place standard procedures setting out how the accounts department should deal with requests of this nature. If in doubt, do not pay until proper checks have been made and you are certain that the payment is going to the right place. •

[1] Tidal Energy LTD v Bank of Scotland PLC [2014] EWCA Civ 1107

ARCTIC OPENING – an emerging reality

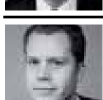
The unprecedented retreat of sea ice and changes to seasonal lengths and weather patterns in the Arctic region provide new opportunities and risks for the shipping industry. In particular the time saving achievable by sailing through the Northern Sea Route along Russia's coastline attracts increasing interest. This emerging reality is illustrated by IMO's on going work on the Polar Code, increased focus on polar hazards amongst the IACS members and rising attention to the risks and possibilities in the Arctic region shown by a number of governments.

As a matter of course the marine insurance industry is responding, and will increasingly respond, to the growing desire to navigate the Northern Sea Route and other polar waters. The purpose here is to take a bird's eye view at the insurance cover under the Nordic Marine Insurance Plan (the "Nordic Plan") in respect of navigation in the Northern Sea Route.

CONTACTS /

Anders W. Færden
awf@wr.no

Trond Eilertsen
tei@wr.no



Herman Steen
hst@wr.no

The starting point is that the Northern Sea Route is part of the excluded trading area. This follows from the Nordic Plan Cl. 3-15 and also from the so-called Cefor Trading Area Clause which was issued in November 2013. Hence, the insurance cover is suspended unless permission from the insurer to transit the Northern Sea Route has been obtained.

But what is the legal position if permission to transit the Northern Sea Route is granted by the insurer? Breach of "safety regulations" as defined in the Nordic Plan may lead to loss of cover if there is causation between the breach and the casualty and there is negligence on the part of the insured, ref. Cl. 3-22 and Cl. 3-25. It is common ground that the classification societies rules and the flag states regulations constitute safety regulations which must be complied with, but also coastal states' regulations constitute safety regulations to the extent that they are binding on the insured. When it comes to the Northern Sea Route in particular, provisions and orders given by the Russian authorities on the safety of navigation such as icebreaker assistance, use of ice pilots and shipboard ice navigators and rules on the regulation of maritime traffic, therefore constitute relevant safety regulations to the extent that they are legally binding on the insured. Information

about the Russian regulations can be found on **http://www.nsra.ru**. The views on the extent of Russia's jurisdiction over the Northern Sea Route differ. This may lead to questions as to the scope of the applicable safety regulations.

In addition to the statutory safety regulations and the rules of the classification society, the Nordic Plan provides the possibility to incorporate particular safety regulations into the policy. Such safety regulations may be demands for ice class, voyage planning, additional navigational and emergency equipment, additional spare parts, towage and other emergency preparedness, protection against ice build-up, particular Arctic operational manuals etc. If such particularly agreed safety regulations have been breached, cover will be lost if there is causation and negligence on the part of the insured or anyone whose duty it is to ensure compliance on behalf of the insured. Alternatively, special safety rules may be drafted as warranties, such as in the English marine insurance system, even where the policy is based on the Nordic Plan. However, it is probably less likely that Nordic insurers will adopt this approach.

The unprecedented retreat of sea ice and changes to seasonal lengths and weather patterns in the Arctic region provide new opportunities and risks for the shipping industry.

If a casualty has been caused by gross negligence, ref. the Nordic Plan Cl. 3-33, cover may be lost. Although the new Cefor Trading Area Clause (if incorporated into the policy) implies that the classification societies' rules regarding ice class no longer constitute safety regulations due to the deletion of Cl. 3-22 sub-clause 3, it may, depending on the circumstances, still be considered as gross negligence to navigate through ice infested waters without appropriate ice class. •

WRECK REMOVAL CONVENTION enters into force

The Nairobi International Convention on the Removal of Wrecks will enter into force on 14 April 2015 following the ratification of the Convention by Denmark, which on 14 April 2014 became the 10th country to ratify.

On 18 May 2007 the IMO (International Maritime Organisation) adopted the Nairobi International Convention on the Removal of Wrecks (the "Convention"). The Convention fills a gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks. Owners will now be required to take out compulsory liability insurance, and strict liability will be imposed on an owner for the costs of locating, marking and removing a wreck. Authorities will also be permitted to commence direct action against an owner's liability insurer.

So far, Bulgaria, Congo, Denmark, Germany, India, Iran, Malaysia, Morocco, Nigeria, Palau and the UK have ratified the Convention. Several countries, including Norway, are still considering ratification of the Convention.

The Wreck Removal Convention is the latest in a series of liability and com-

CONTACTS /

Morten Lund Mathisen
mlm@wr.no

Herman Steen
hst@wr.no

Beate Fiskerstrand
bfi@wr.no

pensation conventions emanating from the IMO and modelled on the Convention on Civil Liability for Oil Pollution Damage of 1992.

SCOPE OF APPLICATION

The geographical area of application for the Convention is the 200 Nm exclusive economic zone of any of the contracting states. States only have limited legislative and enforcement jurisdiction in their exclusive economic zone and may only order the removal of wrecks from their exclusive economic zone if there is specific legal basis under applicable public international law, such as the United Nations Convention on the Law of the Sea 1982 and the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 as amended. Under these conventions, the authorities may, broadly speaking, order wreck removal or intervene if there is an imminent and serious risk of pollution, but only have limited powers to claim compensation for costs related to the intervention. The Wreck Removal Convention provides firmer legal basis for both ordering wreck removal and for claiming compensation.

Several countries, including Norway, are still considering ratification of the Convention.

A state may opt to extend the application of the Wreck Removal Convention to its territorial waters, where the state has full jurisdiction. Norway argued that the state territories should be included in the area of application since most wrecks constituting a hazard are located in territorial waters. The opt-in solution was the compromise reached in the negotiations. Given the views expressed it is likely that Norway will extend the application of the Convention to its territorial waters. Of the states that have already ratified the Convention so far, only Bulgaria, Denmark and the United Kingdom have opted for extending the application to their territorial waters.

The Convention adopts a wide definition of ships, and this definition includes seagoing vessels of any type, for example cargo ships, tankers, drilling vessels, FPSOs, FSOs and floating platforms. However, the Convention does not apply to floating platforms on location which are engaged in the exploration, exploitation and production of seabed mineral resources. It will however apply to such floating platforms being towed to and from the field.

REPORTING, LOCATING, MARKING AND REMOVAL OF WRECKS

The Convention imposes a duty on the Master and the operator of the ship to report without delay when a ship has been involved in a maritime casualty resulting in a wreck. The state is obliged to locate the wreck and determine whether the wreck poses a hazard to navigation or the marine environment. If determined a hazard, the state shall ensure that all reasonable steps are taken to mark the wreck by using the international system of buoys and publish the location of the wreck through Notices to Seafarers. The owner will be under an obligation to remove the wreck. The owner will be free to contract with any salvor or wreck removal contractor of their choosing, but the state may issue a wreck removal order where they impose conditions for removal or they may intervene during the removal, to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

If the owner does not remove the wreck within a deadline set by the state, or if the owner cannot be contacted, or the circumstances require immediate action, the state may remove the wreck by the most practical and expeditious means available. Under Norwegian law the authorities currently have wider powers to order the removal of a wreck lying within territorial waters under the Harbour Act and the Pollution Act than are available under the Convention. For example, under the Pollution Act the authorities may order the removal of a wreck if the wreck is considered aesthetically unsightly, whereas the Convention limits the right to order wreck removal to situations where the wreck is considered to be a hazard. It is not clear whether Norway will choose to harmonise the rules in the Harbour Act and Pollution Act with those in the Convention or whether the Convention will be implemented as a parallel system in territorial waters.

LIABILITY OF THE OWNER

The Convention imposes strict liability (without regard to fault) on the registered owner for costs of locating, marking and removing the wreck, provided that the costs are reasonable and in proportion to the hazard. Liability is subject to the ordinary defences found in the IMO liability and compensation conventions, including that the maritime casualty causing the wreck (1) resulted from an act of war, hostilities, civil war etc., (2) was wholly caused by an act or omission done with the intent to cause damage by a third party or (3) was wholly caused by the negligence or other wrongful act of any Government or authority responsible for the maintenance of lights or other navigational aids in the exercise of that function. The latter would include a failure by the state to take adequate steps to mark the wreck and this causes another casualty.

The Convention fills a gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks.

LIMITATION OF LIABILITY

An owner will be entitled to limit its liability pursuant to any applicable limitation of liability regime, including the International Convention on Limitation of Liability for Maritime Claims 1976 ("LLMC 1976"), as amended by the 1996 Protocol. Many countries, like Norway, have exercised the option under the 1996 Protocol to implement higher limitation of liability limits for wreck removal. These higher limits will apply to liability imposed on an owner under the Convention.

COMPULSORY INSURANCE AND DIRECT ACTION

The Convention requires the owner of ships of 300 grt and above to maintain insurance to cover its liability under the Convention provided that the ship is flying the flag of a state party or is entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial waters. The insurance shall at a minimum cover an amount equal to the limits of liability under the national or international limitation regime, but not exceeding the limits under the 1996 Protocol. Wreck removal is already covered by P&I insurance and therefore insurance cover under the Convention is likely to be covered by P&I clubs. Each ship shall carry an insurance certificate in an approved format, a so-called blue card. Any claim arising under the Convention may be brought directly against the insurer. In practice the claimant will normally be the national or local pollution or coastal authorities. In many countries, like Norway, the claimant is entitled under local law to commence direct action against the liability insurer in certain circumstances for claims related to wreck removal. The Convention will however bring uniformity and clarity, and will further expand the right to commence direct action. •

PHOTO: iStockPhoto

Construction contracts: Getting the pricing method right

Choosing the most appropriate pricing method is critical for any construction contract. Nevertheless, a common cause for disputes are ambiguous – or even absent – pricing terms.

In this article we will look at the three most commonly used pricing methods in Norway for building projects.

COST PLUS

A cost-plus arrangement refers to pricing based on the actual costs of the project plus an additional fixed fee or percentage mark-up. The actual costs will depend on the circumstances of the project, but normally include the direct costs of materials, equipment rental costs and salaries. The additional fee is intended to cover the contractor's indirect costs and his profit.

Cost plus pricing is based on the contractor's own cost statements, making it challenging for the owner to both predict and monitor costs and efficiency.

Under this pricing arrangement, the owner carries all the risk of price increases or delay, and it is typically used for projects where committing to a firm price represents an unacceptable risk. Such risks may exist when the project requirements are uncertain, e.g. if the scope of works is difficult to define up front.

Cost plus pricing is based on the contractor's own cost statements, making it challenging for the owner to both predict and monitor costs and efficiency. To protect the owner, the contractor should be required to present evidence on a regular basis to justify the project costs. The owner may increase predictability of costs by requiring an estimate in advance, coupled with a notification clause obliging the contractor to notify in case of overruns.

Commonly used variations to the cost-plus pricing mechanism are:

- An **incentive fee** (cost-plus bonus arrangement) may be used to encourage certain behavior or targets, such as cost savings or finishing ahead of schedule. This can be structured on a lump sum, staggered, or shared basis.
- A **percentage fee** can be linked to the total project costs, however there is no real incentive here for the contractor to achieve cost savings.
- A **fixed fee** which is agreed at the outset and need not be linked to the actual project costs. This is often combined with other pricing features, such as an incentive fee.
- An **award fee** is designed to reward a contractor if certain pre-agreed performance criteria are met. These are usually more subjective goals than mere cost saving, and are intended to reward excellent overall performance.
- A **guaranteed maximum price** is a cost plus fixed fee arrangement where a maximum overall price is agreed. Cost overruns will normally be the contractor's risk, unless there are change orders. Cost savings are usually returned to the owner, unless an incentive bonus has also been agreed.
- A **time and materials contract** for projects with small scope but high uncertainty, this is a simple payment structure covering the actual costs of materials, an hourly labour rate plus an agreed percentage for overheads and profits. Owners may want to include a cap under this arrangement to minimize risk.

LUMP SUM

With a lump sum pricing arrangement, also known as fixed price or stipulated sum, the contract price is determined before works begin. This arrangement requires that the owner provides as complete plans, specifications and other construction documents as possible, in order for the contractor to give a reasonably accurate cost estimate. Therefore, the lump sum method is most commonly used on projects with a well-defined scope and agreed schedule, and where the risks regarding e.g. site conditions or construction methods are minimal. Normally these contracts are combined with a bidding process, assuming that at least two or more suitable suppliers can be found.

In principle, the lump sum contract assigns all the risk to the contractor, especially regarding the actual scope of works. The total project costs are more predictable, which may appeal to owners. However, it is worth noting that contractors will add a contingency to cover the high level of risk assumed by them under this arrangement.

CONTACTS /


Erlend W. Holstrøm
ewh@wr.no


Ola Ø. Nisja
oni@wr.no


Rita Allan
ral@wr.no

In principle, the lump sum contract assigns all the risk to the contractor, especially regarding the actual scope of works. The total project costs are more predictable, which may appeal to owners.

The final cost of a lump sum contract can be adjusted by change orders. Additional work that falls outside the original scope of works will entitle the contractor to additional compensation, while a reduction of the scope may reduce the original lump sum price. In practice, change orders are commonly used, meaning that the predetermined and final contract price often does not correspond.

To ensure that the lump sum arrangement provides predictable and accurate costs for the owner, it is important for the scope of works to be clearly defined. This reduces the risk of the contractor issuing change orders for additional work, which often causes disputes.

Since lump sum pricing requires a relatively complete design, a lump sum contract is often awarded later in the process. This may cause delays and a longer timeframe for the completion of the project.

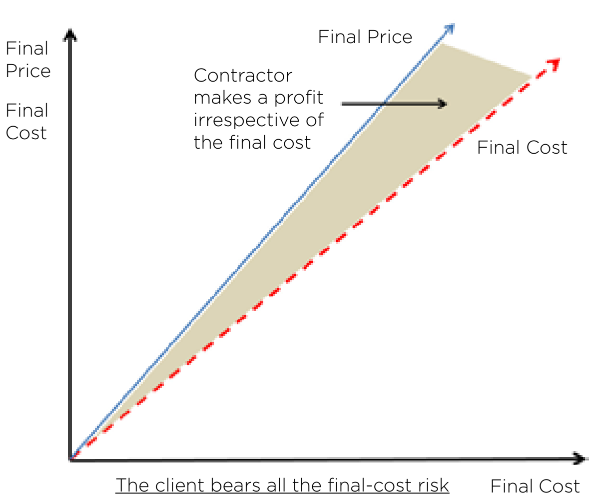
Another drawback to this pricing method is that it may indirectly decrease the quality of the work. Since the contractor is bound to a fixed price and will be liable for any cost overruns, he may be tempted to use cheaper materials or methods of construction.

Common variations of the lump sum pricing arrangement include:

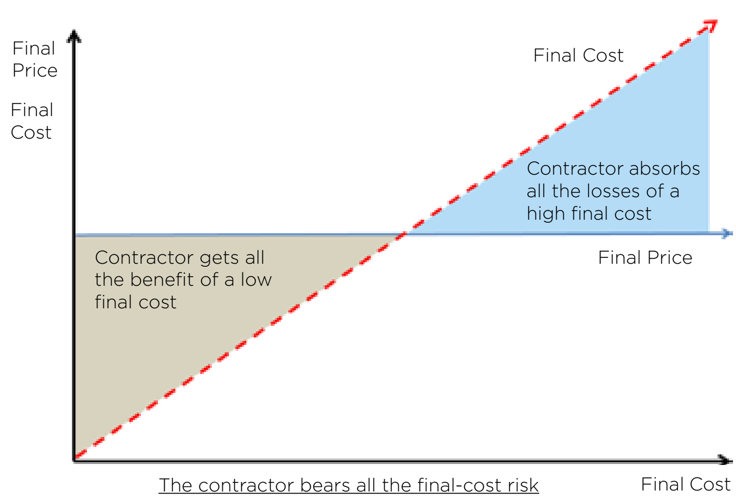
- **Lump sum, total cost contract:** Contractor combines all costs, including profit, in the price and bears the risk of cost increases.
- **Lump sum, with price adjustment:** Usually reserved for projects which will span years in duration. Adjustment factors may include currency inflation in vulnerable countries, or commodity risk adjustments where the cost of key materials can fluctuate wildly. Adjustments are made in favour of the contractor when price levels change, usually by reference to an agreed cost escalation formula.
- **Lump sum, with incentive fee** for certain desirable outcomes such as cost savings or early completion. Such contracts may also include penalties or liquidated damages if the work does not meet the contractual requirements or the scheduled date for delivery.

<u>**Main differences between fixed price and cost plus contracts:**</u>

Cost-Plus Contract



Lump Sum Contract



Contracting decision table:

Which contract...	Fixed price	Cost Plus
Allocates most of the cost risk to the contractor?	•	
Allocates most of the cost risk to the client?		•
Results in possible loss of contractor dedication if costs are much higher than estimated?	•	
Provides more incentives for speed?	•	
Provides a larger incentive for the contractor to cut corners?	•	
Provides more incentives for quality (and maybe too much quality)?		•
Is essentially a zero-sum game, and thus creates a more adversarial relationship?	•	
Requires more ongoing involvement by the client?		•
Requires more transaction-documentation effort?		•
Requires completely specified requirements?	•	
Results in greater difficulty to come to agreement on specification changes?	•	

UNIT PRICE

In unit price contracts the owner and contractor agree on specified prices for a particular task or scope of work (the "**unit**"), while the actual quantity or number of units may not yet be known (also called a fixed unit price contract). Unit prices are often set on the basis of general requirements of technical quality and rough scope estimates carried out by the owner. The final costs depend on the required quantity, and the owner bears the risk that the actual quantities turn out higher than anticipated.

Unit pricing is most suitable for construction and supplier projects where accurate identification and quantification of items are possible.

Often, the unit prices refer to specific routine activities or components, and these contracts often include detailed descriptions of the elements involved. Some contracts even distinguish between the degree of quality and of difficulty, such as welding different thickness of plates, or painting different types of materials. Therefore, unit pricing is most suitable for construction and supplier projects where accurate identification and quantification of items are possible, typically agreements with subcontractors and maintenance or repair contracts.

CONCLUSION

The certainty of the scope of works, the need for predictable costs and meeting milestones, and the proper allocation of risk will all influence what is the best pricing method for a project. In some instances a project may be divided into several contracts to allow the use of a variety of the above price mechanisms. A combination of the different pricing methods may provide flexibility, certainty and incentives as well as allowing for a smoother project delivery. In all cases, a clearly described pricing method will reduce the likelihood of disputes. •

MUTUAL HOLD HARMLESS DEEDS IN THE NORTH SEA

Even though the "knock for knock" liability regime is a common feature on both the Norwegian and U.K. continental shelves, the implementation of the regime is approached differently on the two sides of the North Sea.

The "knock for knock" principle is a contractual regulation of liability where each party assumes responsibility for the personal injury/death and property damage of its own personnel and property, as well as a defined group of other parties, typically affiliates and subcontractors. This applies irrespective of cause and even if such loss or damage is attributable to the act or omission by the other contracting party. This liability regime is very common in the offshore industry as such allocation of responsibility and risk is necessary to reduce the need for dual insurance for the same risks, and to avoid disputes between the contractual parties.

IMPLEMENTATION IN NORWAY AND THE UNITED KINGDOM

In the Norwegian sector the general approach has been to implement the "knock for knock" regime in contracts between oil companies and contractors with a wide definition of the respective co-ventures, affiliates and subcontractors for which they are responsible, thereby requiring each of the contractual parties to implement a similar "knock for knock" regime in the contracts with their subcontractors, preferably on back-to-back terms (back-to-back implementation).

In the UK sector whilst back-to-back implementation is not uncommon the industry has also sought to resolve the risk allocation between contractors working in offshore projects by establishing multiparty mutual hold harmless deeds (mutual hold harmless implementation). Under this regime, the contracts between the oil companies and contractors still implement a "knock for knock" principle between the two contractual parties, but with a more limited group of other persons for which they are responsible. However, the relationship between two contractors having different contracts with the same oil company will still be governed by a

CONTACTS /

Rob Jardine-Brown
rjb@wrco.co.uk

Birgitte Karlsen
bka@wrco.co.uk

Andreas Fjærvoll Larsen
afl@wrco.co.uk

PHOTO: Ilja Hendel

"knock for knock" regime implemented in a mutual hold harmless deed to which both contractors are parties.

The industry in the UK has developed the "2012 Mutual Indemnity and Hold Harmless Deed" providing a standardised liability scheme for all operations in the UK's territory of the North Sea and the Irish Sea[1]. The list of contracting parties is public and it is possible for new contractors to sign up to the scheme under a "deed of adherence". There are also examples of oil companies having their own standard deeds.

BENEFITS AND PITFALLS

We have seen examples of oil companies familiar with a mutual hold harmless implementation from the UK continental shelf, wanting to follow the same structure when operating in the Norwegian Sector. Oil companies familiar with a mutual hold harmless implementation may also wish to introduce this regime in other sectors worldwide. Such an approach will however need to be given due consideration by the contractors involved.

Although the "2012 Mutual Indemnity and Hold Harmless Deed" has had a successful application in the UK sector of the North Sea, there are certain challenges with a mutual hold harmless implementation as compared to a back-to-back implementation. These challenges could magnify where a mutual hold harmless implementation approach is introduced in sectors where there is no general regime with a publicly available list of the participants (such as on the Norwegian side of the North Sea). In such situations application of the scheme is dependent on the relevant oil company ensuring that all of its contractors adhere to the regime, and even then it can be difficult for a specific contractor to check whether all of the other contractors have in fact entered such a scheme.

A distinct benefit of mutual hold harmless implementation is the direct contractual exclusion of liability it provides for the specified losses in favour of all parties to the deed. However, if the relevant provisions are sufficiently well drafted back-to-back implementation should also achieve the same result, although perhaps not in such a straightforward manner. This is because any claim by one contractor against another contractor for claims covered under the knock for knock principle is likely to be circular. For example, if contractor A claims against contractor B for a property loss suffered due to the negligence of contractor B, and contractor B is held liable for such loss, contractor B will have a recourse claim under the indemnity provisions of the service contract it has with the oil company (assuming the definition of "company group" in the service contract covers such other contractors). In turn the oil company will have a recourse claim against contractor A under the indemnity provisions under its service contract with contractor A. This "backwash" of liability is in practice likely to prevent contractor A from making a claim in the first place.

Different mechanics and pitfalls in implementation may require particular attention to ensure that the parties get the best (and not the worst) of both worlds.

As mentioned above the mutual hold harmless implementation is likely to cover a more limited "group" of other persons for which the contractual parties are responsible. Here this "group" will often only cover the relevant party, its affiliates and their employees (and not co-venturers or subcontractors as you would expect to see in a back-to-back implementation). Consequently it is important for a contractor to have confidence that all other relevant contractors have adhered to the mutual hold harmless deed. As otherwise a contractor who has not adhered to the deed may be able to present a claim against another contractor who may not, given the limited "group", be able to claim indemnification under its service contract with the oil company. A contractor will also take more of a risk on the financial strength of the other contractors involved in a mutual hold harmless implementation as it will have to rely on each of the other contractors being able to honour its indemnity obligations.

Contractors should seek to limit these risks by ensuring that under its service contract the oil company is obliged to indemnify the contractor from any losses suffered as a result of the oil company's other contractors not adhering to the mutual hold harmless deed and/or who are not able to honour their obligations thereunder. However a contractor's success in achieving this result will to a large extent depend on the strength of its negotiating position with the oil company.

Further to the above, in situations where the back-to-back implementation and mutual hold harmless implementation are combined there may also be challenges in determining if a specific contract or the mutual hold harmless deed shall prevail in respect of a particular loss.

For contractors operating in both the Norwegian and UK sectors of the North Sea, it is important to note these differences in approach in the implementation of the "knock for knock" liability regime. Careful drafting of liability provisions will as always be required, but different mechanics and pitfalls in implementation may require particular attention to ensure that the parties get the best (and not the worst) of both worlds. •

[1] See http://www.logic-oil.com/imhh

ARBITRATION IN NORWAY: What's going on?

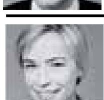
Arbitration is becoming increasingly popular in Norway. 35 years ago, a renowned Norwegian professor was asked to investigate why arbitration was chosen to resolve disputes. Recently, Wikborg Rein asked the same question again to a number of legal practitioners to see what has changed.

The most interesting finding was the almost unanimous emphasis on greater legal competence within the arbitration panel as a reason to choose arbitration. This does not mean that judges in the Norwegian courts are not competent. In fact, many judges regularly act as arbitrators. Rather, the parties preferring arbitration often require specific competence within certain areas of law; and oil and gas construction contracts are good examples. Knowing the standard form contracts of the industry and having a basis for understanding the relevant facts are advantages when it comes to deciding cases within this field.

CONTACTS /


Ola Ø. Nisja
oni@wr.no


Erlend W. Holstrøm
ewh@wr.no


Rita Allan
ral@wr.no

AD HOC OR INSTITUTIONAL ARBITRATION?

The tradition in Norway has been to use ad hoc arbitration. This means that the panel is appointed by the parties for a specific case. The alternative is to use an arbitration institute such as the Stockholm Chamber of Commerce (SCC), the London Court of International Arbitration (LCIA) or the International Chamber of Commerce (ICC), which means that the institute's rules govern the arbitration proceedings. Using an

FACTS /

The research referred to in this article will become part of an article in an upcoming book on arbitration to be published by Wikborg Rein in collaboration with law firm Thommessen in early 2015.


PHOTO: ilja Hendel

institute can have practical advantages, especially if agreeing on procedural issues is difficult. Norway has only one such institute, the Oslo Chamber of Commerce (OCC), but it is not often used. However, the institute has recently started a new project to become involved in more cases.

APPOINTING ARBITRATORS

The respondents were also asked about the process of appointing arbitrators. The general finding was that although some research is usually done, this is somewhat unsystematic and random. This is surprising, as the outcome of any arbitration will only be as good as the arbitrators on the tribunal. Another hot topic among international arbitration practitioners is to what extent it is acceptable to interview prospective arbitrators. The respondents showed a great deal of scepticism towards such interviews, and in Norwegian domestic arbitration interviews are normally not carried out. •

Reason	1979 finding	2013 finding
Quick decision	1,57	3,31 (down)
Technical, commercial etc. knowledge	3,28	3,31 (status quo)
Legal costs	4,21	5,39 (down)
Legal competence	4,64	1,77 (up)
Avoid publicity	4,64	3,54 (up)
Advantage in international disputes	5,64	3,69 (up)

The responses were given using a scale of 1 to 6, where 1 is the most important reason, and 6 is the least important.

TIME BAR

of maritime liens

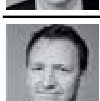
The Norwegian Maritime Code (the "NMC") states that a maritime lien becomes time-barred after one year from the time when the secured claim arose, unless the vessel is arrested and the arrest leads to a forced sale. A recent Norwegian Supreme Court decision has shed light on the level of activity that is required from the creditor after the arrest has been secured in order to maintain the maritime lien.

This article describes the legal characteristics of maritime liens and how to prevent a maritime lien from becoming time-barred.

CONTACTS /

Øyvind Axe
axe@wr.no

Hågen Hansen
hag@wr.no



Oddbjørn Slinning
osl@wr.no

LEGAL CHARACTERISTICS

The provisions that govern maritime liens on ships are found in chapter 3 of the NMC. To a large extent the NMC mirrors the corresponding provisions of the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages 1967.

Section 51 of the NMC contains five categories of claims that entitle the creditor to a maritime lien against the ship, as long as these claims arise out of the operation of the ship in question. The five categories are:

- wages and other sums due to the master and crew
- port, canal and pilotage dues

- damages in respect of loss of life or personal injury
- damages in respect of loss of or damage to property
- salvage reward, compensation for wreck removal and general average contribution

Maritime liens come into existence simultaneously with the claim it secures, by operation of law. It is not necessary for the creditor to take any further action in order to obtain or perfect his lien. Consequently, it is not required, or even possible, to register a maritime lien in the Norwegian ship register pursuant to Norwegian law.

It is noteworthy that the five categories of claims secured by maritime liens are also regarded as "maritime claims" under NMC section 92, and may as such give the creditor a right to arrest the ship. Claims secured by maritime liens (as opposed to the maritime claims only) entitle the creditor to arrest the vessel without having to substantiate that there also is a justifiable cause for arrest (Norw.: sikringsgrunn), such as typically that the debtor is trying to avoid enforcement of the claim.

Maritime liens have priority over all other encumbrances on a vessel, meaning that the legislators have put these creditors in a favourable position compared to creditors with other types of security (e.g. ordinary mortgages and a repair yard's right to retain the vessel). To balance this favourable position, and to ensure that claims secured by maritime liens will not accumulate to large amounts over time, the maritime liens are of temporary nature due to a relatively short limitation period. Furthermore, while it is possible to obtain security by arrest of the vessel, maritime liens do not permit the creditor to move directly to enforcement of the claim. It is required that he first obtains a court judgement for the claim, and preferably also a judgement that grants the creditor a right to commence forced sale of the vessel.

LIMITATION PERIOD

Section 55 of the NMC states that the one-year limitation period for a maritime lien starts to run when the claim comes into existence. In most cases this point in time is fairly simple to identify. Most of the case law on this point deals with the question of when a claim for crew wages comes into existence, and the Norwegian Supreme Court has decided that time starts running from when the wages were due for payment and not the subsequent point in time when a final judgement for the wage claim has been rendered.

The limitation period is one year. Time is protected by the creditor arresting the vessel. It is important to note that the date of filing the arrest application is not sufficient, neither is the date of the arrest award. The NMC clearly states that the arrest must both have been granted by the court and served on board the vessel in order to stop the limitation period. An additional requirement for protecting time is that the arrest ultimately leads to a forced sale of the vessel.

Up until this year, it was with respect to this additional criterion somewhat uncertain how actively the creditor must pursue a forced sale to prevent the maritime lien from becoming time-barred. The available legal sources have suggested that the forced sale would need to take place without undue delay after the vessel was arrested. However, a Norwegian Supreme Court decision of 28 January 2014 brought clarity to this issue. The Supreme Court stated that the criterion that the arrest "leads to a forced sale" does not in itself require the creditor to take any particular action following the arrest, but as the maritime lien itself does not provide basis for enforcement, it will need to be replaced by a court decision which orders a forced sale, or alternatively, which permits an execution lien to be registered against the vessel.

The Supreme Court further concluded that a maritime lien remains valid as long as the arrest is maintained. Consequently a maritime lien will become time-barred when the arrest is lifted or otherwise expires if the claim secured by the maritime lien is more than one year. A creditor should therefore pay attention to section 33-10 of the Civil Procedure Act which sets out when an arrest expires or otherwise is regarded as lifted, and in particular the following points which could be easy to miss:

- Commence legal action against the debtor within one year from the arrest was granted or by any other deadline specifically decided by the court.
- Apply for an execution lien against the vessel within one month after a final and binding judgement has been obtained against the debtor.

MEXICO approves first of its energy reforms

Mexico reached a major milestone on 5 August 2014 when its Federal Legislature approved the first of its constitutional reforms – the Hydrocarbons Law and the Law for Revenues on Hydrocarbons. But what do these laws mean for exploration and extraction activities in Mexico?

On 5 August 2014 the Mexican Federal Legislature approved a series of reforms to the Mexican energy market, including: the Hydrocarbons Law and the Law for Revenues on Hydrocarbons. These laws are linked to the constitutional energy reforms introduced by Mexico's President in December 2013. Their purpose is to establish a new legal framework for hydrocarbon activities in order to

The new laws provide two different regimes that allow for private entities to increase their role in the Mexican energy market.

CONTACTS /

Finn Bjørnstad
fbj@wrco.co.uk

Birgitte Karlsen
bka@wrco.co.uk

Carl Sheppard
csh@wrco.co.uk

maximise revenues for the Mexican state. The new laws provide two different regimes that allow for private entities to increase their role in the Mexican energy market.

HYDROCARBONS LAW

The first is the Hydrocarbons Law, which reaffirms the constitutional principle that all hydrocarbons within Mexico's boundaries belong to the state. It does however, provide for two regimes that allocate exploration and extraction rights: (i) Entitlements and (ii) Exploration and Extraction Contracts (EECs). Both regimes will be regulated by the National Hydrocarbon Commission (CNH).

Under the Entitlement regime the Mexican government may grant Pemex or any other State Productive Company (SPC) the exclusive right to develop exploration and production (E&P) activities within a particular area. Once an Entitlement has been granted to an SPC it can, in exceptional circumstances, and only with the approval of The Ministry of Energy (SENER), be transferred to another SPC. SPCs can also contract with private entities via service contracts in order to meet their Entitlement obligations. These contracts are allocated by an open process.

Under the EEC regime the CNH may grant E&P rights directly to private entities. Whilst private entities are allowed to bid for contracts under the EEC regime, Pemex and other SPCs are also allowed to participate in the competitive bidding process through alliances or joint ventures with private entities. Guidelines for the bidding process are set out by SENER (technical and financial issues), the Ministry of Finance (economic and fiscal issues) while the CNH is charged with conducting the process and awarding the contracts.

LAW OF REVENUES ON HYDROCARBONS

The Law of Revenues on Hydrocarbons will regulate the oil revenues and the level of taxation the Mexican government will receive from E&P activities carried out under the Entitlement and EEC regimes. This law makes clear that private entities will be subject to federal taxes (particularly income tax and value added tax). It also establishes the types of fees, royalties and other payments that will have to be made under the regimes.

It is expected that the tender process will be more transparent with better clarity on procedure as well as increasing the possibility for direct negotiations.

IMPACT OF THE NEW LAWS

The new laws and the responsibilities transferred from Pemex to the CNH will impact both the tender process and the terms of the Pemex contracts. It is expected that the tender process will be more transparent with better clarity on procedure as well as increasing the possibility for direct negotiations. No short term change in cabotage rules is expected, but new local content rules with up to a 25 % level will gradually be implemented. In addition, it is hoped that the reforms will enable risk to be allocated more in line with international risk allocation principles.

WHAT NEXT?

Although the approval of these laws is a milestone, there is yet further work to be done before the full impact on the Mexican energy market is understood. The next steps are the issuance of regulations, guidelines, administrative rules and forms of agreements needed in order to make the new legislation fully effective - a process that is expected to take several months. •

Liability for cargo damage due to insufficient packing

Cargo damage is sometimes caused by the packaging of the cargo being insufficient to prevent damage to the cargo during transportation. Whether the carrier is liable for such damage depends on the nature of the packaging and the care which is reasonably required to be exercised by the carrier.

The question of cargo packaging is at the intersection between the carrier's and the shipper's functions in connection with contracts of carriage. On the one hand, it is the shipper's duty to make sure that the cargo is packed in such a way that it is suitable for transportation. On the other hand, it is the carrier's duty to carry the cargo properly and carefully, taking the packaging of the cargo into account. If the carrier has accepted to carry the cargo with its existing packaging, the carrier is required to provide the care that would be required to protect the cargo.

The carrier's liability for cargo damage is governed by the Norwegian Maritime Code sections 274 – 289. The general rule on liability is section 275, which states that the carrier is liable for loss or damage to the cargo unless the carrier proves that the loss or damage was not due to the "*fault or neglect*" of the carrier or any of the carrier's agents or servants. The question is to what extent the carrier may exempt himself from liability under this rule when the cargo has been insufficiently packed. The Hague Visby Rules Article IV No. 2 (n) has an express exemption from liability when loss or damage results from insufficiency of packing (assuming owners have exercised due diligence to make the vessel seaworthy in this respect on or before commencement of the voyage). The Maritime Code incorporates the Hague Visby Rules, but the Maritime Code does not have the same express exemption in relation to packing of the cargo. However, the exemption for insufficient packing is deemed to be absorbed by the general liability provision under the Maritime Code section 275 whereby the carrier is liable for cargo damage unless he proves that there is no fault or neglect on his part as stated above.

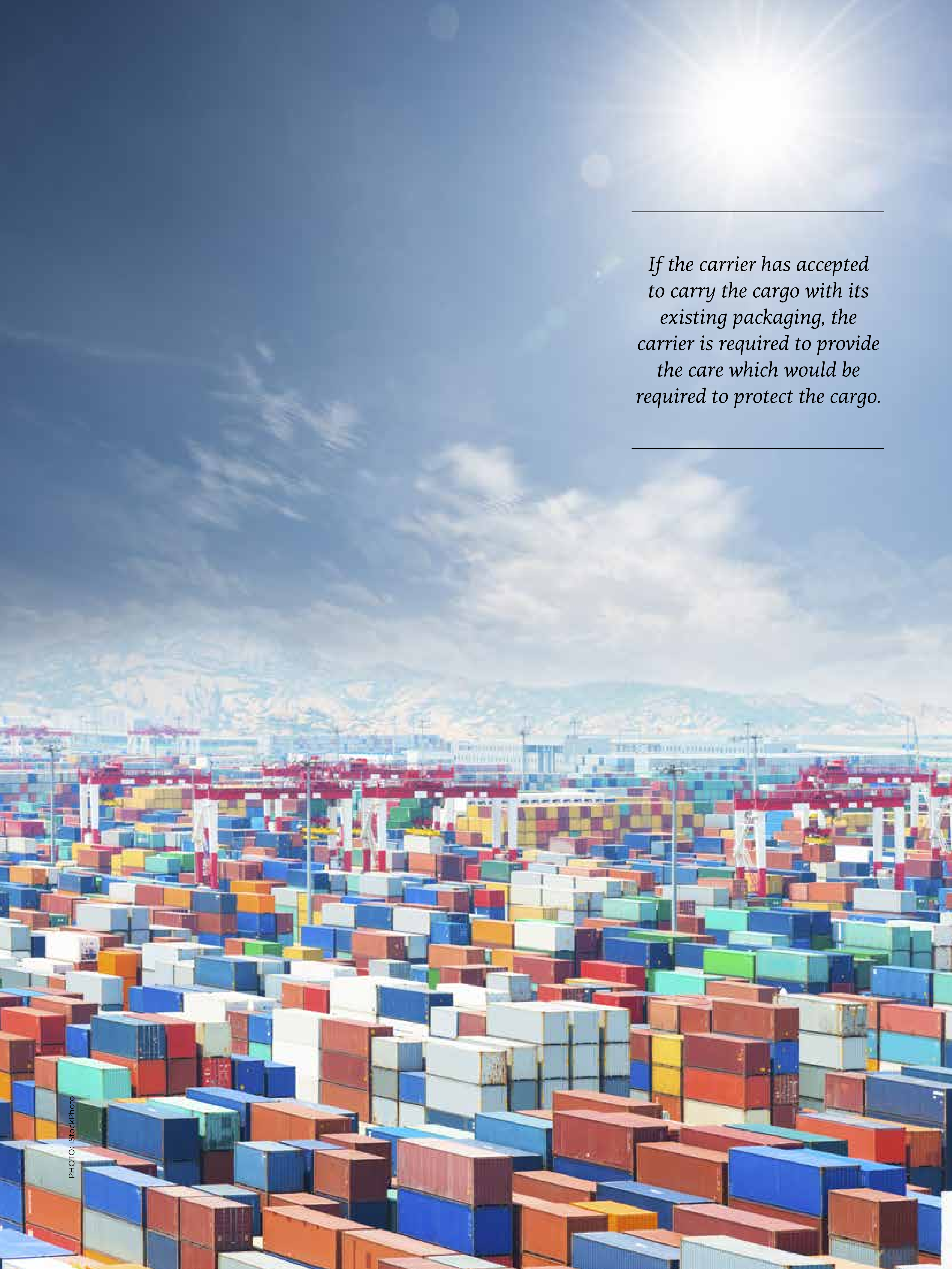
To determine liability one must consider the nature of the packaging. Normal or customary packaging in a particular trade is as a starting point deemed to be sufficient packaging. For example, the Norwegian Supreme Court (ND-1955-1) found that the carrier was liable for theft of cargo packed in cardboard boxes. Before World War II similar cargo was packed in wooden boxes, which provided better protection from theft. The Supreme Court held that even though wooden boxes provided better security, cardboard packaging had become common within the trade. Since the carrier had accepted the cargo

CONTACTS /


Gaute Gjelsten
ggj@wr.no


Herman Steen
hst@wr.no


Camilla Barr
cba@wr.no



If the carrier has accepted to carry the cargo with its existing packaging, the carrier is required to provide the care which would be required to protect the cargo.

PHOTO: iStockPhoto

without any remarks regarding the packaging, they were held liable for the subsequent theft.

Some types of cargo are normally barely packed. For example, steel rods are normally tied in bundles without other packaging and automobiles are often only covered by wax or plastic foil. This is usually also considered sufficient packing for such cargo.

If cargo packed in a normal or customary way is damaged – and it can be assumed that cargo packed in this way would not ordinarily be damaged – it can usually be concluded that the packing was sufficient and that the carrier was at fault for failing to exercise proper care.

As an example, the Maritime and Commercial Court in Copenhagen (ND-1989-123) found the carrier liable for damage to asphalt plates. It was emphasized that the packaging was the same as in several previous shipments of similar cargo, when no damage had been reported.

When determining whether the cargo was insufficiently packed, each case must be decided on its facts. The degree of packing that can reasonably be expected from the shipper must be balanced against the degree of care that can reasonably be required from the carrier.

For example, Nord-Troms District Court (ND-2003-489) found that the carrier was liable due to bad stowage in a case where oil tanks packed in steel crates were damaged during heavy weather. The carrier had stacked the crates in three tiers. The crates were made for stacking, there was no stacking limit marked on the crates and it was not generally known that they could not be stacked. Nevertheless, the court found that the carrier should have understood that, taking into account the prospects of the bad weather, there would be a risk of damage if the crates were stacked in three tiers. Therefore, it was held that the carrier had been negligent and that the packing was not insufficient.

This decision (albeit rendered by a court of first instance) shows that normal handling of the cargo may not be sufficient if the carrier should have understood that the packaging might not withstand normal handling.

The Maritime Code section 275 balances the interests of the shipper and carrier. It does not give a clear and direct solution to the question of liability, but allows for both the carrier's duty of care towards the cargo as well as the nature of the packaging of the cargo to be taken into consideration when allocating liability. Thus, both shipper and carrier are encouraged to exercise a degree of caution in connection with the carriage. •

Personnel news

Clare Calnan has returned to the London office after her stay at the Shanghai office. Fiona Elizabeth Pounds has joined the London office as a senior associate. Thomas Johannes Whitfield has joined the London office as an associate. Emilie Christiansen has completed her term as trainee solicitor and been appointed associate. Mari Berg Rindahl has started working as a trainee solicitor, and Julia Skisaker has started working as a paralegal. Olivia Boyle has left the firm to persue new challenges.

Claire Jiang from the Shanghai office is staying three months in Europe, working at our Oslo, Bergen and London offices and being on secondment to Assuranceforeningen Gard in Arendal.

In Oslo, Camilla Barr has joined as an associate and Kaja Oftedal Rasting has returned from maternity leave.

In Bergen, Mattias Grieg and Øyvind Grøneng have joined as associates.

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 including:

Asian Empire Fire and salvage of car carrier, cargo damage, Pacific Ocean
Luno Wreck removal of grounded bulk carrier, Bayonne, France
Britannia Seaways Fire on laden ro-ro vessel, off Florø, Norway
Wan Hai 602 Explosion of container below deck, 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
Ikan Jahan LOF/transhipment; grounded cargo ship, Indonesia
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
Navios Saggittarius Salvage of grounded bulk carrier, Denmark
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 semi-sub accommodation rig, Gulf of Mexico
Hub Kuching Salvage after fire and CTL of container ship, South China Sea
Far Grimshader Supply vessel c/w semisub Songa Dee, North Sea
West Atlas Wreck removal of drilling rig; blowout and fire, Timor Sea, Australia
Full City Grounding; oil pollution, refloating of bulk carrier, Norway
Big Orange XVII Well stimulation vessel c/w platform, Ekofisk field, North Sea
Crete Cement Grounding; oil pollution, refloating and sale of cement carrier, Norway
Bourbon Dolphin Capsizing and total loss of anchor handler; casualties, Shetland
Repubblica di Genova Refloating and sale of capsized roro ship; cargo damage, Belgium
Cembay Grounding on coral reef; salvage of cement carrier, oil pollution, cargo damage, Mexico
Server Grounding; oil pollution, wreck removal of bulk carrier, Norway
Alaska Rainbow Cargo ship c/w passenger ferry, River Mersey, England
Fjord Champion Fire and salvage of tanker, Norway
Ocean Victory Grounding and total loss of bulk carrier, Kashima, Japan. Unsafe port issues
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 roro 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
Dole America Salvage of cargo ship c/w Nab Tower; Portsmouth, England
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
Clipper Kawa Grounding and total loss and sale of bulk carrier, Kandla, India

CONTACTS

Global contact
Morten Lund Mathisen
+47 99 45 75 75

Oslo
Morten Lund Mathisen
+47 99 45 75 75

Gaute Gjelsten
+47 99 52 35 35

Herman Steen
+47 93 03 46 93

London
Chris Grieveson
+44 79 6644 8274

Clare Calnan
+44 75 9560 7958

Singapore
Torgeir Willumsen
+65 9236 6440

Robert Joiner
+65 8518 6239

Shanghai
Yafeng Sun
+86 139 1700 6677

Chelsea Chen
+86 138 1687 8480

Kobe
Tormod Kløve
+81 903 260 7668

Emergency number:
+47 22 82 77 00

OUR SERVICES /

- Construction, repair and conversion contracts for ships, rigs and other offshore units.
- Sale and purchase of ships, rigs and other offshore units.
- Ship financing, liens and mortgages
- Organization and management structures for shipowners.
- Restructurings and acquisitions of shipping and offshore companies.
- Emergency response and casualty work, including investigations, limitation of liability, liability for oil spill and collisions, maritime inquiry, wreck removal and related public law issues.
- Chartering and operation of ships, both general marine and offshore.
- Offshore charter contracts for rigs, FSOs, FPSOs, FSRUs and FLNGs.
- Cargo claims and crew matters.
- Arrest, salvage and general average.
- Maritime insurance, including hull & machinery and P&I claims and interpretation of club rules.
- Registration of ships, choice of flag and registration.
- Control and classification of ships.
- Freight forwarding and land transportation.

WIKBORG REIN'S **SHIPPING OFFSHORE GROUP**

Wikborg Rein's Shipping Offshore Group is a leading global maritime practice with more than 80 dedicated Norwegian, English, Chinese and Singaporean lawyers.

With offices in Oslo, Bergen, London, Singapore, Shanghai and Kobe, and an alliance with Brazilian law firm Vieira Rezende, Wikborg Rein has a unique industry knowledge and competence matched with an international presence. The Group, together with many of our individual lawyers, has for many years been recommended as leaders in their field by Legal 500, Chambers and other rating agencies.

Over the last three years we have been instructed on more than 2500 international shipping and offshore cases, and we have acted on numerous cross-border transactions in more than 50 countries. We serve clients across the full range of shipping, transport and offshore activities, including shipowners, offshore companies, marine insurers, shipyards, equipment providers, shipbrokers and agents, shipping banks as well as companies related to freight forwarding and land transportation.

OSLO
Kronprinsesse Märthas pl. 1
PO Box 1513 Vika
0117 Oslo, Norway

Partners
Trond Eilertsen tei@wr.no
+47 22 82 76 12/+47 901 99 186

Anders W. Færden awf@wr.no
+47 22 82 75 44/+47 908 28 382

Gaute Gjelsten ggj@wr.no
+47 22 82 76 31/+47 995 23 535

Henrik Hagberg heh@wr.no
+47 22 82 75 52/+47 916 16 888

Bernhard Haukali bha@wr.no
+47 22 82 76 16/+47 480 34 625

Morten Lund Mathisen mlm@wr.no
+47 22 82 76 75/+47 994 57 575

Johan Rasmussen jra@wr.no
+47 22 82 76 35/+47 918 00 933

Oddbjørn Slinning osl@wr.no
+47 22 82 75 14/+47 481 21 650

Geir Sviggum gsv@wr.no
+47 22 82 76 76/+47 911 11 841

Are Zachariassen aza@wr.no
+47 22 82 76 72/+47 909 18 308

Senior Lawyers
Ena Aarseth Barder eba@wr.no
+47 22 82 75 45/+47 958 30 638

Guy C. Leonard gcl@wr.no
+47 22 82 76 37/+47 977 35 003

Vidar Løhre vlo@wr.no
+47 22 82 76 42/+47 988 10 677

Herman Steen hst@wr.no
+47 22 82 75 94/+47 930 34 693

Senior Associates
Annette H. Andreassen ana@wr.no
+47 22 82 75 61/+47 954 09 207

Mari G. Christensen mgj@wr.no
+47 22 82 75 74/+47 990 32 991

Martine C. Dysvik mcd@wr.no
+47 22 82 75 75/+47 990 33 517

Marie Efpraxiadis mef@wr.no
+47 22 82 75 15/+47 913 76 313

Henrik M. Hafstad hmh@wr.no
+47 22 82 75 63/+47 922 15 283

Nina M. Hanevold-Sandvik nmh@w.no
+47 22 82 75 09/+47 911 18 200

Yannis Litinas yli@wr.no
+47 22 82 75 29/+47 912 46 775

Ellen Søiland eso@wr.no
+47 22 82 75 68/+47 938 14 014

Associates
Camilla Barr cba@wr.no
+47 22 82 75 26/+47 481 51 516

Jacob Sverdrup Borge jsb@wr.no
+47 22 82 76 02/+47 920 38 550

Beate Fiskerstrand bfi@wr.no
+47 22 82 76 68/+47 996 39 593

Solveig Frostad de Sousa sfr@wr.no
+47 22 82 75 27/+47 916 55 770

Kine Gundersen kig@wr.no
+47 22 82 75 11/+47 913 25 645

Åse Røynestad Konsmo ark@wr.no
+47 22 82 75 91/+47 473 55 008

Ingrid Bjørke Larsen inb@wr.no
+47 22 82 76 79/+47 416 01 203

Adnan Maric ama@wr.no
+47 22 82 75 10/+47 481 32 671

Kaja Oftedal Rasting kof@wr.no
+47 22 82 75 90/+47 926 26 034

Halvard Saue hsa@wr.no
+47 22 82 75 32/+47 906 53 258

Sindre Slettevold sis@wr.no
+47 22 82 76 26/+47 977 59 418

BERGEN
Olav Kyrresgt. 11
PO Box 1233 Sentrum,
5811 Bergen, Norway

Partners
Øyvind Axe axe@wr.no
+47 55 21 52 71/+47 970 55 558

Linn Hertwig Eidsheim lhe@wr.no
+47 55 21 52 21/+47 970 55 557

Christian Friis cfr@wr.no
+47 55 21 52 35/+47 911 48 237

Jon Heimset jhe@wr.no
+47 55 21 52 72/+47 908 55 702

Knud Lorentzen klo@wr.no
+47 55 21 52 64/+47 908 80 370

Øystein Meland ome@wr.no
+47 55 21 52 75/+47 901 42 033

Geir Ove Røberg gor@wr.no
+47 55 21 52 65/+47 900 35 045

Lars Inge Ørstavik lio@wr.no
+47 55 21 52 69/+47 918 53 534

Senior Lawyers
Richard Bjerk rbj@wr.no
+47 55 21 52 31/+47 918 71 961

Hågen Hansen hag@wr.no
+47 55 21 52 68/+47 920 67 807

Terje Fiskerstrand tfi@wr.no
+47 55 21 52 56/+47 917 97 279

Erik Hoffmann-Dahl ehd@wr.no
+47 55 21 52 39/+47 920 92 385

Christian James-Olsen col@wr.no
+47 55 21 52 70/+47 928 33 919

Kristoffer Larsen Rognvik klr@wr.no
+47 55 21 52 42/+47 970 55 566

Senior Associates
Morten Valen Eide mei@wr.no
+47 55 21 52 67/+47 932 20 980

Cecilie Koch Hatlebrekke ckh@wr.no
+47 55 21 52 81/+47 416 49 158

Anja Kallestad akl@wr.no
+47 55 21 52 96/+47 995 32 619

Øystein Sellevold ose@wr.no
+47 55 21 52 38/+47 926 54 341

Associates
Mattias Grieg mgr@wr.no
+47 55 21 52 47/+47 472 84 282

Øyvind Grøneng ogr@wr.no
+47 55 21 52 86/+47 908 86 333

Stian Holm Johannessen shj@wr.no
+47 55 21 52 78/+47 917 59 272

Astrid Pleym Løseth apl@wr.no
+47 55 21 52 19/+47 416 25 904

Karina Fossmark Pedersen kfp@wr.no
+47 55 21 52 08/+47 410 07 403

Gunnvor Dyrdi Remøy gdr@wr.no
+47 55 21 52 51/+47 991 60 608

LONDON
Cheapside House
138 Cheapside
London EC2V 6HS, England

Partners
Finn Bjørnstad fbj@wrco.co.uk
+44 20 7367 0335/+44 7714 126 300

Clare Calnan clc@wrco.co.uk
+44 20 7367 0304/+44 7595 607 958

Chris Grieveson cjg@wrco.co.uk
+44 20 7367 0308/+44 7966 448 274

Rob Jardine-Brown rjb@wrco.co.uk
+44 20 7367 0305/+44 7785 722 147

Birgitte Karlsen bka@wrco.co.uk
+44 20 7367 0309/+44 7525 071 742

Joe McGladdery jmg@wrco.co.uk
+44 20 7367 0302/+44 7713 113 115

Senior Lawyers
Jonathan Page jpa@wrco.co.uk
+44 20 7367 0303/+44 7713 112 103

Senior Associates
Andreas Fjærvoll-Larsen afl@wrco.co.uk
+44 20 7367 0321/+44 7711 304 251

Christian Emil Pedersen cep@wrco.co.uk
+44 20 7367 0306/+44 7841 697 476

Fiona Pounds fep@wrco.co.uk
+44 20 7367 0327/+44 7730 066 553

Lesley Tan les@wrco.co.uk
+44 20 7367 0314/+44 7889 605 529

Associates
Emilie Christiansen aec@wrco.co.uk
+44 20 7367 0331/+44 7545 592 818

Carl Sheppard csh@wrco.co.uk
+44 20 7367 0328/+44 7889 804 358

Thomas Joh. Whitfield tjw@wrco.co.uk
+44 20 7367 0337/+44 7738 117 521

Ben Williams bjw@wrco.co.uk
+44 20 7367 0319/+44 7568 106 131

SHANGHAI
Hong Kong New World Tower,
Room 1702
No. 300 Huai Hai Middle Road
Shanghai 200021, China
Tel +86 21 6339 0101

Partners
Yafeng Sun yfs@wrco.com.cn
+86 21 6339 0101/+86 139 1700 6677

Senior Lawyers
Chelsea Chen cch@wrco.com.cn
+86 21 6339 0101/+86 138 1687 8480

Tormod L. Nilsen tln@co.com.cn
+86 21 6339 0101/+86 186 2194 4892

Ronin Zong rlz@wrco.com.cn
+86 21 6339 0101/+86 138 1665 0656

Senior Associate
Yvonne Hu yhu@wrco.com.cn
+86 21 6339 0101/+86 138 1813 9635

Claire Jiang cji@wrco.com.cn
+86 21 6339 0101/+86 138 1676 7292

Alexander Levi ale@wr.no
+86 21 6339 0101/+47 906 01 248

Jay Shi jsh@wrco.com.cn
+86 21 6339 0101/+86 186 1189 9183

William Turner wtu@wrco.com.cn
+86 21 6339 0101/+86 185 1612 6780

Xiaomin Qu xqu@wrco.com.cn
+86 21 6339 0101/+86 135 6475 3289

Associates
Emma Yang eya@wrco.com.cn
+86 21 6339 0101/+86 139 1742 7798

Isaac Yang iya@wrco.com.cn
+86 21 6339 0101/+86 137 7420 9316

KOBE
Sannomiya Kokusai Bldg. 5F
1-30, Hamabe-dori 2-chome, Chuo-ku
Kobe 651-0083, Japan

Japan Representative
Tormod Kløve tkl@wrco.jp
+81 78 2721 777/+81 90 3160 7668

SINGAPORE
6 Raffles Quay #10-05/07
Singapore 048580

Partners
Robert Joiner raj@wr.com.sg
+65 6496 8359/+65 8518 6239

Florence Ong flo@wr.com.sg
+65 6496 8228/+65 9150 8237

Siri Wennevik siw@wr.com.sg
+65 6496 8219/+65 9674 4906

Senior Lawyers
Steffen Pedersen ssp@wr.com.sg
+65 6496 8358/+65 8218 8854

Torgeir Willumsen twi@wr.com.sg
+65 6496 8230/+65 9236 6440

Senior Associates
Simone Centola sce@wr.com.sg
+65 6496 8221/+65 9187 4211

Stewart Ian Munro sim@wr.com.sg
+65 6496 8212/+65 9833 4410

Associate
Maria Norum Aguilera mna@wr.com.sg
+65 6496 8229/+65 9771 9483

VIEIRA, REZENDE, BARBOSA
e GUERREIRO ADVOGADOS
in alliance with Wikborg Rein
Av. Presidente Wilson, 231
18 º andar, Rio de Janeiro, Brasil
20030-021

Wikborg Rein contact
Joyce B. Souza Jacobsen
jjacobsen@vrbg.com.br
+55 21 8094 6666/+55 21 2217 2834

www.wr.no

Oslo
Tel +47 22 82 75 00
Fax +47 22 82 75 01
oslo@wr.no

Bergen
Tel +47 55 21 52 00
Fax +47 55 21 52 01
bergen@wr.no

London
Tel +44 20 7367 0300
Fax +44 20 7367 0301
london@wr.no

Singapore
Tel +65 6438 4498
Fax +65 6438 4496
singapore@wr.no

Shanghai
Tel +86 21 6339 0101
Fax +86 21 6339 0606
shanghai@wr.no

Kobe
Tel +81 78 272 1777
Fax +81 78 272 1788
kobe@wr.no