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SHIP RECYCLING BACK IN THE SPOTLIGHT

The commitment recently made by Bangladesh, a leading ship recycling nation, to ratify the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships 2009 (the HKC)¹ within the coming weeks² is a seminal moment for the HKC. The criteria for the HKC's entry into force is complex, requiring (i) not less than 15 states to have acceded to it, (ii) the combined merchant fleets of the accession states to be not less than 40% of the gross tonnage of the world's merchant fleet and (iii) the combined annual ship recycling volume of the accession states over the past 10 years to be not less than 3% of the gross tonnage of the combined merchant shipping fleets of the same states³.

It has proved difficult for the HKC to achieve the third limb of the criteria. The first limb has been met, whilst the second could be met but, to date, has not been for fear of making it still harder to meet the third. However, with Bangladesh's very significant recycling volumes, if it does indeed ratify the HKC, the way should be clear for one of the major flag states or a coalition of smaller flag states to accede and thus satisfy the second limb of the criteria. With a need to find approximately another 9.89% of the gross tonnage of the world's merchant fleet to do so, accession by Liberia or the Marshall Islands would be enough. If this happens, the criteria for the HKC's entry into force will finally have been met and 24 months later it will duly come into force.

It remains to be seen how the saga of the HKC's entry into force pans out but, regardless of what happens, this development once again puts ship recycling in the spotlight, which is timely given the huge number of vessels expected to be sent for recycling in the coming years.

Whilst the news from Bangladesh is warmly welcomed, ultimately the entry into force of the HKC will not be a panacea to concerns around ship recycling capacity. In the 14 years since the HKC was adopted, the world has moved on in so many ways. The likely patchwork approach to enforcement by flag states and recycling states and the conflict with the approach adopted by the EU and others will do little to simplify the regulatory environment around ship recycling, which, for many, remains one of the least understood aspects of the maritime world.

For the vast majority of ship owners, regulatory compliance is a routine part of the day job and most take their environmental responsibilities seriously. However, whilst many will have in place detailed environmental policies, few of these policies pay serious regard to the subject of ship recycling. Historically, this was perhaps understandable, but not so any more.

The subject of ship recycling has seldom concerned those who operate relatively modern fleets and who have traditionally sold older vessels for onwards trading, rather than for recycling. Equally, many older vessels are operated outside of the confines of the existing regulatory framework and their owners have generally (with some exceptions) been less concerned by how and where their vessels are recycled. However, over the coming years, wholesale change in environmental regulation and technology is expected to push very large numbers of vessels towards premature obsolescence. At the same time, the HKC will (hopefully) come into force and we expect a growing number of jurisdictions to begin to take a more serious approach to their commitments under the international environmental regulations to which they are signatories, including the Basel Convention⁴. These factors, amongst others, mean that a growing number of ship owners will have to take a more considered look at how they dispose of their end-of-life vessels.

¹ See: [Recycling of ships \(imo.org\)](#)

² [BIMCO applauds Bangladeshi Hong Kong Convention pledge after industry visit](#)

³ See page 550 of [INTERNATIONAL MARITIME ORGANIZATION \(imo.org\)](#)

⁴ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland, in response to a public outcry following the discovery, in the 1980s, in Africa and other parts of the developing world of deposits of toxic wastes imported from abroad. See: [Basel Convention Home Page](#)

Even the owners of the most modern fleets should, at least to some degree, have a plan for the recycling of their vessels. Their lenders and insurers increasingly expect it of them and you never know what is around the corner. Markets can collapse without warning (as we saw happen to the cruise industry during the Covid-19 pandemic) and we have, in recent years, been involved in the recycling of several new vessels following their sudden and unexpected loss. In both cases, we have seen ship owners and other stakeholders give little prior thought to the process of ship recycling and consequently finding themselves embarked on a rapid and intense period of learning at a time when, arguably, they had more urgent matters to deal with. Given the attention such events can raise, the risk of legal liability and / or reputational damage arising out of the non-compliant recycling of a vessel is significantly increased.

Compliance with international conventions is second nature for many ship owners and on a day-to-day basis needs little or no input from external counsel. However, the international regulatory regime applicable to ship recycling is complex and likely to get more so as the HKC comes into force. The risk of legal liability, including criminal sanctions, and serious reputational harm is very real for those who fail to plan sufficiently far ahead, or who otherwise get it wrong. Despite this, most give it very little thought until the decision is taken to recycle a vessel or, in some cases, after that decision is taken.

Few ship owners regularly sell vessels for recycling and even fewer have to consider the application of the Basel Convention or the EU's Waste Shipments Regulation⁵ or Ship Recycling Regulation⁶. However, it is not enough simply to sell an end-of-life vessel to a third-party cash buyer and wash your hands of it. This will not absolve a ship owner of liability and ignorance is no defence to a breach of the regulations. We therefore recommend that all ship owners, regardless of the age of their fleet, as well as their lenders and insurers, take steps to understand the regulatory environment surrounding ship recycling and have in place a ship recycling policy that dovetails with and reflects their regulatory obligations and wider environmental commitments and policies. This will go a long way to mitigating the risk of liability or harm arising out of their decision to sell a vessel for recycling.

Much of the complexity arises because there is no global regulatory regime in force applying to the recycling of vessels. This leaves, at least, a two-tier system in place, with ship owners in Europe and a handful of other jurisdictions having to comply with these regulations, whilst the vast majority are left entirely outside of the envelope of a regulatory regime and free to recycle their vessels as they see fit.

If and when the HKC does come into force, this two-tier system will remain, albeit (depending on the degree to which it is enforced by flag states and recycling nations) it is to be hoped that the gap between the tiers will be reduced. In the meantime, because the world has moved on faster than the global regulations, with a growing regionalisation of approach to regulation and increasing pressure from environmentalists and the public alike, many ship owners are left having to comply with a range of conflicting regulations and, where such regulations do not apply, develop their own voluntary rules and best practice to fill the void.

Those who do not do so, and who deliberately or accidentally breach any of the applicable regulations, risk criminal prosecution (particularly in northern Europe, the UK and Australia but also in a growing range of jurisdictions including Brazil). Furthermore, there is also a risk that one day the activist lawyers will succeed in their attempts to establish a ship owner or ship manager's liability for the death or personal injury of a ship recycling worker.

Leaving aside the risk of legal liability, all organisations, and particularly those of any size and / or public profile, should approach each ship recycling project on the assumption that their every decision will be scrutinised by the likes of the NGO Shipbreaking Platform⁷ and others, and that their reputation will be exposed if they are found deficient in any way.

⁵ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, as amended. See: [Waste shipments \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2006/1013/oj)

⁶ Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (Text with EEA relevance). See: [EUR-Lex - 02013R1257-20180704 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2013/1257/oj)

⁷ See: [NGO Shipbreaking Platform](https://www.shipbreakingplatform.org/)

Charterers and others, particularly those in the retail sector, are likely to take an increasingly critical look at the environmental policies of all their suppliers as they develop an ever deeper understanding of their supply chains. It is reasonable to assume that this will include ship recycling policies. In the same way, whilst we appreciate that many ship owners are privately owned, the views of activist investors such as Norway's sovereign wealth fund cannot be discounted. They, and others, have wide ranging influence and have made clear their views on ship recycling and their intention to divest themselves of any investment they might have in ship owners or others who fail to take the subject of ship recycling seriously.

Ship recycling can be a complex and reputationally challenging business but, with care, all ship owners can develop policies and procedures that will enable them to face it with a greater degree of confidence and certainty. With further care and due diligence, deals can be structured and contracts drafted that mitigate the risk and apportion liability appropriately.

Within the confines of maritime law (itself already a niche corner of the legal profession), very few have a genuine understanding of the subject of ship recycling. Having worked with the full range of stakeholders in this sector for over 40 years, HFW is one of very few law firms who can genuinely claim real expertise on the subject of ship recycling. For this reason, HFW is regularly engaged by ship owners, offshore contractors, insurers, lenders and other stakeholders to support them in navigating this complex regulatory environment and ensuring that their risks are managed and their end-of-life vessels are recycled in a compliant and sustainable manner.

Should you wish to discuss any of the issues raised in this piece, please contact William MacLachlan on william.maclachlan@hfw.com.

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