

THE SHIPPING LAW
REVIEW

NINTH EDITION

Editors

Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

THE SHIPPING LAW
REVIEW

NINTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in June 2022
For further information please contact Nick.Barette@thelawreviews.co.uk

Editors

Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADER
Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER
Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGERS
Joey Kwok and Juan Hincapie

BUSINESS DEVELOPMENT ASSOCIATE
Archie McEwan

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Leke Williams

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Felicia Rosas

SUBEDITOR
Caroline Fewkes and Sarah Andreoli

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK
© 2022 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at May 2022, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-80449-079-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADAME GONZÁLEZ DE CASTILLA & BESIL

A KARITZIS & ASSOCIATES LLC

ASIALEGAL LLC

BLACK SEA LAW COMPANY LLC

BLOOMFIELD LP

BOSE & MITRA & CO

BUDIDJAJA INTERNATIONAL LAWYERS

CHANDLER MHM LIMITED

CHOI & KIM

COSTA, ALBINO & LASALVIA ABOGADOS

D L & F DE SARAM

DZUNGSRT & ASSOCIATES LLC

GAUCI-MAISTRE XYNOU

GORRISSEN FEDERSPIEL

HARRIS & CO MARITIME LAW OFFICE

HESKETH HENRY

HFV

IN LAW OFFICE

JORQUIERA & ROZAS ABOGADOS (JJR LAW FIRM)

MAPLES GROUP

MESTRE ABOGADOS SLP

MORGAN & MORGAN

PALACIOS, PRONO & TALAVERA

PPT LEGAL

SABATINO PIZZOLANTE ABOGADOS MARÍTIMOS & COMERCIALES

STUDIO LEGALE MORDIGLIA

TMI ASSOCIATES

VERALAW (DEL ROSARIO RABOCA GONZALES GRASPARIL)

VILLAGRAN LARA

CONTENTS

PREFACE.....	vii
<i>Andrew Chamberlain, Holly Colaço and Richard Neylon</i>	
Chapter 1	SHIPPING AND THE ENVIRONMENT 1
<i>Thomas Dickson and Johanna Ohlman</i>	
Chapter 2	INTERNATIONAL TRADE SANCTIONS 14
<i>Daniel Martin</i>	
Chapter 3	COMPETITION AND REGULATORY LAW 23
<i>Anthony Woolich and Daniel Martin</i>	
Chapter 4	OFFSHORE 33
<i>Paul Dean, Alistair Loweth and Nicholas Kazaz</i>	
Chapter 5	OCEAN LOGISTICS..... 41
<i>Catherine Emsellem-Rope</i>	
Chapter 6	PORTS AND TERMINALS 48
<i>Matthew Wilmshurst</i>	
Chapter 7	SHIPBUILDING 54
<i>Vanessa Tattersall and Simon Blows</i>	
Chapter 8	MARINE INSURANCE 65
<i>Jonathan Bruce, Alex Kemp and Jenny Salmon</i>	
Chapter 9	PIRACY 76
<i>Michael Ritter and William MacLachlan</i>	
Chapter 10	DECOMMISSIONING IN THE UNITED KINGDOM 86
<i>Tom Walters and Johanna Ohlman</i>	

Chapter 11	SHIP FINANCE	97
	<i>Gudmund Bernitz and Anna Papadopoulou</i>	
Chapter 12	AUSTRALIA.....	107
	<i>Gavin Vallely, Simon Shaddick, Tom Morrison and Carlita Bloecker</i>	
Chapter 13	BRAZIL.....	126
	<i>Geoffrey Conlin, Bernardo de Senna and Carolina França</i>	
Chapter 14	CAYMAN ISLANDS	138
	<i>Sberice Arman and Christian La-Roda Thomas</i>	
Chapter 15	CHILE.....	149
	<i>Ricardo Rozas</i>	
Chapter 16	CHINA.....	165
	<i>Nicholas Poynder and Jean Cao</i>	
Chapter 17	CYPRUS.....	179
	<i>Antonis J Karitzis and Katerina Kefaloniti</i>	
Chapter 18	DENMARK	227
	<i>Peter Appel and Thomas E Christensen</i>	
Chapter 19	ECUADOR.....	241
	<i>Leonidas Villagran</i>	
Chapter 20	ENGLAND AND WALES.....	252
	<i>Andrew Chamberlain and Holly Colaço</i>	
Chapter 21	FRANCE.....	269
	<i>Mona Dejean</i>	
Chapter 22	GREECE.....	282
	<i>Paris Karamitsios, Dimitri Vassos and Eliza Eliades</i>	
Chapter 23	HONG KONG	294
	<i>Nicola Hui</i>	
Chapter 24	INDIA	305
	<i>Amitava Majumdar and Tripti Sharma</i>	

Contents

Chapter 25	INDONESIA.....	338
	<i>Stefanny Simorangkir</i>	
Chapter 26	ISRAEL.....	350
	<i>Yoav Harris and John Harris</i>	
Chapter 27	ITALY	360
	<i>Pietro Palandri and Marco Lopez de Gonzalo</i>	
Chapter 28	JAPAN.....	374
	<i>Jumpei Osada, Masaaki Sasaki and Takuto Kobayashi</i>	
Chapter 29	MALTA.....	384
	<i>Jean-Pie Gauci-Maistre, Despoina Xynou and Deborah Mifsud</i>	
Chapter 30	MEXICO	401
	<i>Ramiro Besil Eguia</i>	
Chapter 31	NEW ZEALAND.....	413
	<i>Simon Cartwright, Zoe Pajot and Lydia Sharpe</i>	
Chapter 32	NIGERIA.....	433
	<i>Adedoyin Afun</i>	
Chapter 33	PANAMA.....	451
	<i>Juan David Morgan Jr</i>	
Chapter 34	PARAGUAY.....	461
	<i>Juan Pablo Palacios Velázquez</i>	
Chapter 35	PHILIPPINES	471
	<i>Valeriano R Del Rosario, Maria Theresa C Gonzales, Daphne Ruby B Grasparil and Jennifer E Cerrada</i>	
Chapter 36	RUSSIA	487
	<i>Igor Nikolaev</i>	
Chapter 37	SINGAPORE.....	496
	<i>Toby Stephens, Pooja Kapadia, Magdalene Chew, Edwin Cai and Vanesse Koh</i>	

Chapter 38	SOUTH KOREA	526
	<i>C J Kim</i>	
Chapter 39	SPAIN.....	538
	<i>Anna Mestre and Lluís Gomez</i>	
Chapter 40	SRI LANKA.....	550
	<i>Nadine Puvimanasinghe, Sachitra Abeywardane and Gayani Rambukwella</i>	
Chapter 41	SWITZERLAND	564
	<i>William Hold</i>	
Chapter 42	THAILAND	573
	<i>Nathee Silacharoen, Ittirote Klinboon, Rawi Meckvichai and Chonlawat Rojanaparpal</i>	
Chapter 43	UKRAINE.....	587
	<i>Evgeniy Sukachev and Anastasiya Sukacheva</i>	
Chapter 44	UNITED ARAB EMIRATES	601
	<i>Yaman Al Hawamdeh and Tariq Idais</i>	
Chapter 45	UNITED STATES	618
	<i>James Brown, Michael Wray, Thomas Nork, Chris Hart, Alejandro Mendez, Melanie Fridgant and Svetlana Sumina</i>	
Chapter 46	VENEZUELA.....	643
	<i>José Alfredo Sabatino Pizzolante</i>	
Chapter 47	VIETNAM.....	656
	<i>Dang Vu Minh Ha and Tran Trung Hieu</i>	
Appendix 1	ABOUT THE AUTHORS.....	667
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	699
Appendix 3	GLOSSARY.....	705

PREFACE

The aim of the ninth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry, including ocean logistics, piracy, shipbuilding, ports and terminals, marine insurance, environmental issues, decommissioning and ship finance.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development (UNCTAD) estimating that the operation of merchant ships contributes about US\$380 billion in freight rates within the global economy, amounting to about 5 per cent of global trade overall. Between 80 per cent and 90 per cent of the world's trade is still transported by sea (the percentage is even higher for most developing countries) and, as of 2021, the total value of annual world shipping trade had reached more than US\$14 trillion. Although the covid-19 pandemic has had a significant effect on the shipping industry and global maritime trade (which plunged by an estimated 4.1 per cent in 2020), the recovery was swift. The pandemic truly brought to

the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

Andrew Chamberlain, Holly Colaço and Richard Neylon

HFW

London

May 2022

OFFSHORE

Paul Dean, Alistair Loweth and Nicholas Kazaz¹

I INTRODUCTION

The development of the offshore oil industry in the 20th century gave rise to the need for specialised contracts for the hire of vessels in this technical (often highly technical) sector of shipping. Beginning with SUPPLYTIME in the mid 1970s, there are now numerous very specific charter parties for use within the industry. These include HEAVYCON 2007, a voyage charter party for the heavy-lift trade that contains a ‘knock-for-knock’ regime for semi-submersible vessels carrying cargo, such as jack-up rigs on deck, WINDTIME, a time charter party for high-speed personnel craft used in the offshore wind sector, and BARGEHIRE, a time charter party for the hire of non-self-propelled barges. BIMCO continues to update and introduce new forms for use by the offshore industry, including revisions in 2021 of TOWCON, TOWHIRE and BARGEHIRE, and the introduction of ASVTIME, a time charter party for accommodation support vessels.

These contracts, and the many others used in offshore shipping, have had to develop significantly over time to keep abreast of the advancing technologies and changing issues facing the industry. This has resulted in an increasingly complicated contractual matrix surrounding the exploitation of offshore natural resources. In this chapter, we provide a short overview of some of the most frequently used contracts in the field of offshore shipping, and make some general comments about their characteristics and nature.

II SUPPLYTIME

In the wake of the growth in offshore activities in the 1970s, and oil exploration in particular, there was a significant increase in demand for offshore service vessels. Originally these service contracts were based on standard time charter party forms or in-house forms produced by tug owners. Increasingly, the industry felt that it needed a specialist contract, and so the Baltic and International Maritime Council (BIMCO) was approached to draw up a suitable solution. This led to the creation of the SUPPLYTIME form in 1975 (SUPPLYTIME 75). Its purpose was to regulate the relationship between owners and charterers when chartering tugs and offshore service and supply vessels on a time charter basis. Similarly to the widely used NYPE and BALTIME forms, the owners were paid a daily rate in exchange for use of the vessels.

¹ Paul Dean is a partner and Alistair Loweth and Nicholas Kazaz are senior associates at HFW. The information in this chapter was accurate as at May 2021.

As the industry continued to specialise, a number of revisions were made to SUPPLYTIME in the form of SUPPLYTIME 89. In particular, the aim of the revised version was to strike a more equal balance between owners and charterers and to avoid the use of extensive rider clauses, which had become common with SUPPLYTIME 75. One of the key features introduced by SUPPLYTIME 89 was the knock-for-knock regime between owners and charterers (discussed further in Section II.i), which had been a feature of the 1985 versions of TOWCON and TOWHIRE (see Section III).

SUPPLYTIME 89 became the industry standard form contract for offshore activities. In 2005, a further review was undertaken (largely because of criticism of the early termination mechanism in Clause 26, which was the source of much litigation) and led to the creation of SUPPLYTIME 2005. Following the 10th anniversary of the 2005 form, BIMCO reviewed the contract and a new version came into force in 2017.

Given that the revised 2017 form appears broadly similar to its 2005 predecessor, we highlight and discuss some of the key changes contained in SUPPLYTIME 2017.

i Clause 14 of SUPPLYTIME 2017: liabilities and indemnities (knock-for-knock)

SUPPLYTIME 2005 reinforced the principle that the apportionment of liability should be on knock-for-knock terms, whereby the owners and charterers each assume liability for loss of or damage to their own property and that of their contractors and subcontractors, as well as for injury to their own personnel and that of their contractors and subcontractors, regardless of which party caused the loss, damage or injury. However, the 2005 form contains numerous owner-friendly exceptions whereby the knock-for-knock regime does not apply (e.g., if damage is caused by undisclosed dangerous or explosive cargo, or liability is incurred as a result of the owners' suspension of the vessel's service).

The 2017 form serves to level the playing field by removing the majority of these exceptions. The three remaining exceptions (down from 16) relate to:

- a* owners' and charterers' towing wire;
- b* limitation of liability at law; and
- c* salvage of charterers' property.

The reduction in the number of the available carve-outs has extended the scope of the knock-for-knock regime. This is a trend that has been supported by the amended definitions of 'charterers' group' and 'owners' group', which now include reference to 'clients (of any tier)' (for charterers' group) and 'affiliates' (being those legal entities under the corporate control of owners, charterers or charterers' clients or co-venturers). The expanded definitions address previous uncertainty as to whether these defined terms include other participants in a project further along the contractual chain. However, the amended definitions are still not without their problems and there may still be scope for claims from some parties to fall outside the knock-for-knock regime. Accordingly, thought should be given to appropriate amendments to the 2017 form to ensure that an effective knock-for-knock regime will apply.

In addition to expanding the scope of the knock-for-knock regime, SUPPLYTIME 2017 incorporates amendments to the included losses that fall within the regime. Clause 14(a) now includes reference to 'non-performance' so that parties are protected for losses arising from a total failure to perform the charter party. These amendments ensure that 'radical breaches' of

the charter party, such as deliberate non-performance, fall within the scope of the knock-for-knock regime.² The SUPPLYTIME 2017 form is now consistent with other recent forms in the offshore shipping sector, such as WINDTIME.

The knock-for-knock regime continues to be supported by reciprocal indemnities. In addition, charterers assume liability for the property and personnel of their co-venturers and of their clients (of any tier). This is necessary as charterers often hire a vessel as part of a wider project to which the chartered vessel is providing services.

ii Clause 14(b)(ii): consequential damages

Clause 14(b)(ii) of SUPPLYTIME 2017 excludes liability for any consequential loss. Under the 2005 form, this term was widely understood to incorporate an exclusion for loss of use, loss of production, loss of profits and similar losses. The problem was that, under English law, the word ‘consequential’ has a very specific meaning, restricted to losses that do not flow naturally from the breach. In addition, English courts have traditionally construed exclusion clauses restrictively pursuant to the *contra proferentem* rule.³

In *Ferryways NV v. Associated British Ports*⁴ (and a number of earlier decisions), it was held that exclusions of ‘indirect or consequential’ losses were effective only for excluding losses that did not flow naturally from the breach in question. However, exclusion clauses in commercial contexts between sophisticated parties are increasingly being given their ordinary meaning rather than the traditional narrow interpretation. Thus, in the more recent *Star Polaris* case,⁵ the court held that ‘consequential losses’ had the wider meaning of financial losses, as the words are typically used by commercial parties. Therefore, there was uncertainty as to whether losses of production and losses of profits that follow naturally from a breach of contract would be excluded under the 2005 form.

SUPPLYTIME 2017 addresses this uncertainty by including a separate head of excluded loss under Clause 14(b)(i), which expressly identifies excluded losses as including loss of use, loss of profits, loss of product and loss of business, inter alia. By including these specific heads of losses, the 2017 form removes uncertainty and aligns itself with the wording of TOWCON 2008, TOWHIRE 2008 and WINDTIME.

iii Clause 10: fuel

SUPPLYTIME 2017 contains updated provisions concerning the payment for fuel that more closely reflect current industry practice. The previous regime provided that charterers would purchase the fuel on board at the time of delivery and owners would purchase the fuel on board at redelivery (at the price prevailing at the relevant port).

The 2017 form allows for a more flexible regime that details two payment alternatives:

a the parties can pay for fuel in a manner consistent with the 2005 form, but the price to be paid must be supported by evidence obtained at the most recent bunkering operation; or

2 *A Turtle Offshore SA v. Superior Trading Inc (The 'A Turtle')* (2009) 1 Lloyd's Rep 177.

3 The rule requires (broadly) that the clause is to be construed against the party who proposed the relevant clause.

4 [2008] 1 Lloyd's Rep 639.

5 *Star Polaris LLC v. HHIC-PHIL Inc* [2016] EWHC 2941 (Comm).

- b the difference in quantity of fuel on board between delivery and redelivery is paid at a pre-agreed rate or a rate substantiated by evidence from the vessel's most recent loading of fuel.

The vessel's chief engineer can stop the loading of fuel should the owner reasonably believe that the charterer is loading fuel that does not comply with the specifications and grades agreed with the owner. Importantly, the vessel remains on hire during any stoppage of loading under Clause 10.

iv **Clause 34: termination**

The termination provisions in SUPPLYTIME 2017 have been clarified to avoid disputes regarding what constitutes an event of termination. Requisition, confiscation, loss of vessel and *force majeure* are now stated to be events of termination. Conversely, bankruptcy and owners' failure to acquire insurance only provide the innocent party with a right of termination.

The right of termination, after a stipulated period, in the event of vessel breakdown has been removed in the 2017 form. Breakdown is now referred to solely within the off-hire regime and is accompanied by a termination right linked to prolonged off-hire for a single continuous period or cumulative separate periods.

v **Clause: maintenance and dry-docking**

Under SUPPLYTIME 2017, owners will no longer be compensated for unused maintenance allowance unless such an allowance has remained unused at the charterers' request. Uncertainty still remains as to whether the owner can use maintenance as a defence against off-hire.

The 2017 form removes the owner-friendly provision that stipulated that the vessel remains on-hire during transit to and from the dry-dock facility. The vessel will now be off-hire once it is placed at the owners' disposal, a position that is more consistent with industry standards.

III TOWCON

Towage has been a maritime activity for centuries. The first recorded tug on the River Thames is said to be the *Lady Dundas* in 1832. A further example of early towing can be found in William Turner's painting of *The Temeraire* being towed to a breaker's yard in 1839. Since those formative years, towage has developed to assist with the arrival and departure of ships at ports, with offshore activities, and with salvage operations. Until relatively recently, however, there was a plethora of different towage contracts in use, such as the UK Standard Conditions for Towage and many other forms drafted by the tug owners themselves.

The International Salvage Union, which includes many of the major international towage and salvage contractors, approached BIMCO in the 1980s to produce a standard form international towage contract. The aim was to redress the perceived imbalance arising from the use of tug owners' agreements for ocean towage, which often contained exceptions favouring the tug. There was also inconsistent use of the American Conditions, which used a simple risk allocation between tug and tow, with each party bearing the risks incidental to their vessel, which was then laid off through insurance.

Accordingly, a subcommittee of the documentary committee of BIMCO debated with the International Salvage Union and the European Tugowners Association and produced two standard form contracts for international ocean towage services. The aim of the group was to

produce a more balanced contract based on the American Conditions that did not unfairly favour the tug. The result was the publication of the TOWCON and TOWHIRE forms in 1985, introducing the knock-for-knock liability regime.

The TOWCON form is a contract for the service of a tug for a particular voyage. It is a voyage charter designed for towage between specified locations and, accordingly, the remuneration is on a lump sum basis. In return for this lump sum (which may be payable in several instalments), the tug will bear the majority of the risks in respect of time and delay.

As already discussed, under a typical knock-for-knock regime, parties agree that the loss lies where it falls, irrespective of fault and without recourse to other parties (i.e., ‘your people, your property, your problem’). Its purpose is to strike a balance between the tug owner and the hirer. It also offers contracting parties certainty, reducing insurance costs and avoiding the time, expense and difficulties in attributing fault and causation. In essence, each party is responsible for and agrees to indemnify the other contracting parties against injury to, or death of, its own personnel, loss of or damage to its property, and any other specified losses (such as consequential loss or environmental liability).

In 2008, the 1985 version of the TOWCON form was amended to clarify the period to which the regime applies (i.e., from arrival of the tug at the place of departure until disconnection at the place of destination) and to exclude liability for direct or indirect financial loss, except for breaches of permits, tow-worthiness of the tow, seaworthiness of the tug and termination by the hirer or tug owner.

Recent interpretations of the term ‘consequential loss’ in exclusion clauses have cast doubt on the scope of such clauses (see discussion at Section II.ii). As with SUPPLYTIME 2017 and WINDTIME, TOWCON 2008 avoids this potential pitfall by setting out separate exclusions for loss of profit and similar losses (Clause 25(c)(i)) and ‘any consequential loss or damage whatsoever’ (Clause 25(c)(ii)).

One further interesting point in the context of Clause 25 is the operation of the knock-for-knock regime in circumstances where a tug and a tow part and the tow are subsequently successfully salvaged. An argument could be made that in the wording of Clause 25, liability for the salvage operation will not be covered by the knock-for-knock regime and the tug owners may be liable. Such an eventuality assumes that the situation has arisen as a result of a breach of contract by the tug owners. If a successful claim is made, then this will be subject to applicable limitation provisions in the usual way.

The 2008 version of the TOWCON form has been revised with the release of TOWCON 2021. Changes include a reordering of the sequence of clauses and, for the first time in TOWCON, a SUPPLYTIME-style ‘group’ definition has been introduced. This definition is used in the liability and indemnity provisions. Similar to SUPPLYTIME 2017 (discussed above), the ‘group’ definitions in TOWCON 2021 are still not without problems. Accordingly, thought should always be given to appropriate amendments to the ‘group’ definitions to ensure that the liability and indemnity regime applies as intended.

As regards the liability and indemnity regime, TOWCON 2021 has adopted broadly the same consequential loss (described as ‘excluded losses’) clause at Clause 22(c) as Clause 14(b) of SUPPLYTIME 2017 (described above). Although parties may still wish to make minor amendments to the language for the tug and tow context, broadly this is a beneficial change.

Although the consequential loss clause has been updated by reference to the like provision in SUPPLYTIME 2017, the remainder of the liability and indemnity provisions in TOWCON 2021 have not. This is surprising, given that the inclusion of the SUPPLYTIME 2017 language in Clause 22(c) of TOWCON 2021 (which achieves,

inter alia, the ‘regardless-of-cause’ effect), contrasts somewhat starkly with the absence of such language elsewhere raising questions as to the intended scope of those other knock-for-knock provisions.

Unlike TOWCON 2008, salvage is now expressly referenced in the knock-for-knock regime.

IV TOWHIRE

While TOWCON is a contract for a specific voyage, TOWHIRE is used for the hire of towage services for a certain period. The TOWHIRE 2008 and TOWHIRE 2021 forms follow the same format as TOWCON 2008 and TOWCON 2021, save that the basis of remuneration is a daily rate of hire rather than a lump sum payment. There are no demurrage provisions, as the daily rate continues to be payable while the vessel is in service.

V PROJECTCON

This charter party form is specially designed for the transport of large project cargoes, often loaded either by a roll-on, roll-off method or using a semi-submersible barge. The form is generally used to cover a single venture involving the use of a barge and tug to transport special or project cargo (such as project components and other complex cargoes that cannot be containerised). It was produced in an attempt to avoid the difficulties of amending and adapting existing offshore shipping contracts, which are not suitable for this specialised service.

VI HEAVYCON 2007

There are many similarities between the PROJECTCON and HEAVYCON forms, but their primary uses differ. HEAVYCON has been adapted for use in the heavy-lift sector. The HEAVYCON form is used almost exclusively for the carriage of deck cargoes on semi-submersible vessels with a single cargo. Again, as with most prominent contracts in the offshore sector, the HEAVYCON form contains a knock-for-knock risk allocation provision that is specific for its intended use.

VII HEAVYLIFTVOY

HEAVYLIFTVOY is drafted for the carriage of multiple heavy-lift shipments carrying cargoes both above and below deck. Unlike the other contracts discussed here, liability is not allocated on a knock-for-knock basis but according to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules) and the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules). BIMCO advised in its explanatory notes to HEAVYLIFTVOY that the form is drafted to be sufficiently flexible to cover ‘various loading and discharging methods, single or multiple loading and discharging ports, on or under deck stowage’.

VIII DISMANTLECON

On 23 September 2019, BIMCO published its first standard form decommissioning contract. DISMANTLECON has been drafted as a flexible agreement for significant or multiple stages of decommissioning work offshore, as well as more defined removal operations. The agreement makes provision for price and time adjustment on an ongoing basis as it is often difficult to determine the scope of work at the outset. Coupled with this, it uses adjudication as a form of fast-track interim dispute resolution mechanism with the intention of avoiding delay and reducing costs. It adopts a knock-for-knock liability regime similar to the other agreements in the BIMCO suite of offshore documents. For further details in relation to this contract, see the Decommissioning chapter.

IX LOGIC

The most recent addition to the LOGIC suite of contracts, which has been a long-standing feature of the offshore industry, is the LOGIC decommissioning standard form contract. This has been drafted for use in the dismantling, removal and transport to shore of offshore facilities and infrastructure. For further details in relation to this contract, see the Decommissioning chapter.

X RECENT DEVELOPMENTS

Boskalis Offshore Marine Contracting BV v. Atlantic Marine and Aviation LLP (the 'Atlantic Tonjer')

The High Court of England and Wales handed down its first decision in relation to a SUPPLYTIME 2017 time charter party in *Atlantic Tonjer*,⁶ an appeal of an arbitration decision, concerning the interpretation of the payments clause thereof, Clause 12(e), and whether the charterers were permitted to withhold payment of an invoice disputed after the due date. The decision emphasises the need to comply strictly with the time limits under Clause 12(e).

Pursuant to a SUPPLYTIME 2017 time charter party, the charterers chartered the multi-purpose support vessel *Atlantic Tonjer* from the owners, Atlantic Marine. Under the charter party, invoices were to be issued 14 days in arrears and payment of hire was to be made 21 days after that. The payment clause, Clause 12(e), was in unamended form and provides as follows:

Payments – Payments of hire, fuel invoices and disbursements for the Charterers' account shall be received within the number of days stated in Box 24 from the date of receipt of the invoice . . . in full without discount or set-off to the account stated in Box 23... If payment is not received by the Owners within five (5) Banking Days following the due date the Owners are entitled to charge interest . . .

⁶ *Boskalis Offshore Marine Contracting BV v. Atlantic Marine and Aviation LLP (the 'Atlantic Tonjer')* [2019] EWHC 1213 (Comm).

If the Charterers reasonably believe an incorrect invoice has been issued, they shall notify the Owners promptly, but in no event no later than the due date, specifying the reason for disputing the invoice. The Charterers shall pay the undisputed portion of the invoice but shall be entitled to withhold payment of the disputed amount.

Between 16 June 2018 and 13 July 2018, the owners issued invoices for hire, meals, accommodation and other services in the amounts of €1,475,029.26 and £42,683.04. As at the date of the hearing, those invoices remained unpaid.

Interpreting Clause 12(e) of SUPPLYTIME 2017, the High Court stated that the language ‘is clear and unambiguous’, concluding that a reasonable person would understand the wording to require ‘prompt payment or prompt identification of any issue preventing payment’ within the context of the time limits agreed by the parties. The clause is not analogous to a time bar, limitation of liability or exclusion of liability warranting further enquiry and (on occasion) permitting the implication of terms. Properly construed, the clause required the charterers to dispute the invoice within 21 days of receipt. Boskalis’ failure to dispute the invoice within that time precluded their defences to the invoice but did not prevent a counterclaim in respect of financial loss resulting from that payment nor did it prevent a claim by way of their rights of audit under Clause 12(g).

XI CONCLUSION

There are a number of situation-specific offshore charter parties, each with its own unique set of situation-specific provisions. As the industry continues to develop, these contracts will likewise evolve to suit the needs of the contracting parties. This is a growing body of law and users of these contracts should ensure that they are aware of changes to the legal environment around the chartering of offshore support vessels and assets.

ABOUT THE AUTHORS

PAUL DEAN

HFW

Paul Dean is global head of shipping at HFW, managing 200 specialist shipping lawyers across a worldwide network of 20 offices. Paul specialises in offshore and marine, focusing mainly on charter parties, bills of lading, shipbuilding, rig disputes, collisions, fire and explosion, salvage, general average, groundings, total loss, towage, seismic and limitation.

He regularly speaks at and chairs offshore vessel conferences and has been teaching on the BIMCO panel for its 'Using SUPPLYTIME' course for more than 10 years, the review committee for the SUPPLYTIME 2005 revision and on the drafting committee for BIMCO's new standard form Offshore Dismantling Services Agreement, DISMANTLECON. Experience gained working for an International Group P&I Club specialising in offshore vessels enables Paul to combine practical understanding with the legal role.

Paul is identified in the legal directories as one of the leading individuals in his fields and is recognised by Lloyd's List as one of the 100 most influential people in the maritime industry and one of the market's top 10 lawyers in 2019 and 2020.

Paul has also contributed to the two most recent editions of *The Law Of Tug and Tow and Offshore Contracts* by Simon Rainey QC: 'Paul Dean of HFW, one of the leading and busiest practitioners in the field of offshore contracts and a veritable guru on the topic of the BIMCO forms, particularly "Supplytime", who as before very kindly gave me the benefit of his great experience and practical insights and with whom once again I have had the great good fortune to work.'

Paul is qualified in England and Wales.

ALISTAIR LOWETH

HFW

Alistair Loweth is a senior associate at HFW. He advises clients on a wide range of marine, commercial and international matters in the offshore and energy sectors. He has extensive practical experience of both transactional and contentious work, including more than five years working in-house for a global oilfield service company. Mr Loweth's work comprises advising on regulatory issues, day-to-day operational matters, contracts (including charters, offshore service contracts, drilling contracts, shipyard agreements, ship agency agreements, equipment leases, product sales and licence arrangements), bespoke complex projects and restructurings, disputes and crisis response.

NICHOLAS KAZAZ

HFW

Nicholas Kazaz is a senior associate at HFW. He is an experienced international commercial dispute resolution lawyer, specialising in offshore oil and gas, energy and marine. He focuses on disputes arising from installation contracts, charter parties, bills of lading, shipbuilding, rig disputes, towage, collisions, salvage, general average, groundings, total loss and limitation. Clients he advises include energy companies, cable owners and operators, contractors, shipowners, charterers, shipyards, ship managers, brokers, insurers and P&I clubs. His experience extends to all the major arbitral institutions, including LCIA, ICC, SIAC, SCMA, LMAA, ad hoc arbitration and the English courts.

HFW

Level 39, Bourke Place
600 Bourke Street
Melbourne, VIC 3000
Australia
Tel: +61 3 8601 4500
Fax: +61 3 8601 4555
gavin.vallely@hfw.com
simon.shaddick@hfw.com
tom.morrison@hfw.com
carlita.bloecker@hfw.com

4th Floor, Building 7
18 Gongping Road
Hongkou District
Shanghai 200082
China
Tel: +86 21 2080 1000
Fax: +86 21 2080 1177
jean.cao@hfw.com
nicholas.poynder@hfw.com

25–27 rue d’Astorg
75008 Paris
France
Tel: +33 1 44 94 40 50
Fax: +33 1 42 65 46 25
mona.dejean@hfw.com

83 Akti Miaouli & Flessa Street
6th Floor
Piraeus 185 38
Greece
Tel: +30 210 429 3978
Fax: +30 210 429 3118

dimitri.vassos@hfw.com
anna.papadopoulou@hfw.com

15th Floor, Tower One
Lippo Centre
89 Queensway
Admiralty
Hong Kong
Tel: +852 3983 7788
Fax: +852 3983 7766
nicola.hui@hfw.com

30 Raffles Place, #24-01
Singapore 048622
Tel: +65 6411 5300
Fax: +65 6411 5355
toby.stephens@hfw.com
pooja.kapadia@hfw.com Cours de Rive 13–15
6th Floor
1204 Geneva
Switzerland
Tel: +41 22 322 4800
Fax: +41 22 322 4888
william.hold@hfw.com

Level 8, Building 6
Emaar Square
Sheikh Zayed Road
PO Box 53934
Dubai
United Arab Emirates
Tel: +971 4 423 0555
Fax: +971 4 425 7941
yaman.alhawamdeh@hfw.com
tariq.idais@hfw.com

Friary Court
65 Crutched Friars
London EC3N 2AE
United Kingdom
Tel: +44 20 7264 8000
Fax: +44 20 7264 8888
gudmund.bernitz@hfw.com
simon.blows@hfw.com
jonathan.bruce@hfw.com
andrew.chamberlain@hfw.com
holly.colaco@hfw.com

paul.dean@hfw.com
thomas.dickson@hfw.com
eliza.eliades@hfw.com
catherine.emsellem-rope@hfw.com
nicholas.kazaz@hfw.com
alex.kemp@hfw.com
alastair.loweth@hfw.com
william.maclachlan@hfw.com
daniel.martin@hfw.com
richard.neylon@hfw.com
johanna.ohlman@hfw.com
michael.ritter@hfw.com
jenny.salmon@hfw.com
vanessa.tattersall@hfw.com
tom.walters@hfw.com
matthew.wilmshurst@hfw.com
anthony.woolich@hfw.com
5151 San Felipe
Suite No. 400
Houston, TX 77056
United States
Tel: +1 713 917 0888
Fax: +1 713 953 9470
james.brown@hfw.com
melanie.fridgant@hfw.com
chris.hart@hfw.com
alex.mendez@hfw.com
thomas.nork@hfw.com
svetlana.sumina@hfw.com
michael.wray@hfw.com

www.hfw.com

ISBN 978-1-80449-079-2