



DO I NEED A SHIP RECYCLING POLICY?

The entry into force of the European Ship Recycling Regulation EC NO. 1257/2013 (the SRR) on 31 December 2018 once again brought ship recycling back into the limelight.

Recent prosecutions and investigations by national environment agencies into the activities of ship owners and insurers have reinforced the need for awareness of the complex regulations and laws found in the recycling sphere. Against the backdrop of the global drive for greater sustainability and environmental responsibility, coupled with the consequences for non-compliance, a number of banks and insurers now actively require ship owners to adhere to green recycling policies to benefit from their products. Owners are also showing a growing consciousness for their green credentials.

“Several ship owners have been widely praised for voluntarily adopting the Hong Kong Convention for the recycling of their end-of-life ships”

HFW has been at the forefront of the recycling industry advising all stakeholders, including banks, insurers, owners, cash buyers and recycling facilities, on how to navigate the international legal requirements and obtain the necessary permits where applicable. In recent months, HFW has seen a rise in requests from ship owners to develop bespoke green recycling policies throughout the life-cycle of their vessels. This briefing considers why a ship recycling policy is essential for all prudent ship owners by first examining recent developments and then moving on to the regulatory landscape.

Developments

Responsible Ship Recycling Standard

- Several ship owners have been widely praised for voluntarily adopting the Hong Kong Convention¹ (not yet in force) for the recycling of their end-of-life ships (an example being Maersk's Responsible Ship Recycling Standard). These plans generally involve a hands-on supervisory role at the selected yards.
- In furtherance of these objectives, a number of owners have signed up to the Sustainable Shipping Initiative (the SSI), which pushes

for greater transparency on ship recycling.

- Whilst these cases may be seen as the pinnacle of recycling practices, the increased planning, supervision, management time and costs of the recycling process are not necessarily something that every ship owner can follow in the current market.

Responsible Ship Recycling Standard

- In May 2017, a number of banks signed the Responsible Ship Recycling Standard (the RSRS) at the NOR-Shipping event in Oslo. The signatories included ABN AMRO, ING, NIBC, DNB, Eksportkreditt, Nordea, Danske bank and KFW.
- Broadly speaking, the RSRS requires that banks' clients adopt the green passport requirements set out in the Hong Kong Convention and the SRR (applicable to EU flagged ships).

Insurer investigation

- In 2018, the Norwegian authorities opened an investigation into a leading Norwegian insurer in relation to an alleged breach of the EU Waste Shipment Regulations (the WSR) (which implemented the Basel Convention within the

EU).² It is alleged that the insurer provided final voyage H&M cover to the vessel EIDE CARRIER for a trip to Oman for repairs when, in fact, the real intention was to scrap the ship at Gadani, Pakistan.

- The WSR requires consent to be obtained from the exporting and importing waste States, and further prescribes an outright ban on the transboundary movement of waste from OECD to non-OECD countries (the Indian subcontinent nations all being the latter). Accordingly, it is alleged that insurance was provided in support of a banned transboundary movement of waste (the ship) from Norway to a non-OECD country (Pakistan).
- The investigation makes clear that insurers need to undertake compliance due diligence (including into the purpose of a voyage and potential exporting and importing States) before issuing final voyage insurance, particularly for elderly or laid-up ships. The inclusion of an 'anti-recycling' clause in insurance policies may be considered.
- It has recently been reported that the Singapore-based cash buyer of the EIDE CARRIER (who was also the commercial manager

1. The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (the Hong Kong Convention).

2. Although Norway is not an EU Member State, the WSR was implemented into Norwegian law via a further statutory instrument (Waste Regulation (FOR2004-06-01-930) Chapter 13).

for the voyage in question) has accepted and paid a fine of over US\$700,000 to the Norwegian Maritime Authority for breaches of the Norwegian legislation that implements the WSR.

Ship owner prosecution

- In the same year, the Netherlands' authorities found that a ship owner had breached the WSR by selling four reefer vessels for scrap in India, Bangladesh and Turkey.
- It is reported that the company's executives were personally fined almost US\$1 million.
- Whilst some may argue about whether or not the WSR applies to ships (does a 'ship' constitute 'waste?'), the position generally taken in the EU is that any end-of-life vessel exported from an EU State is subject to the WSR.³ In any event, identifying the exporting State can be problematic given that the decision to recycle a ship and the commencement of the final voyage rarely coincide. The WSR still applies to non-EU flagged ships being imported or exported into/from the EU for recycling. HFW has procured a number of consents for the legal export of end-of-life ships caught within the scope of the WSR.

EURUS LONDON

- In 2018, the former beneficial owners of the EURUS LONDON were reported to have reached an out-of-court settlement with a Bangladeshi steel cutter as a result of an injury sustained whilst taking apart the vessel at a Bangladeshi yard. The steel cutter brought a claim in the English High Court against the company directly despite the fact that (i) they were not the registered owners of the ship; and (ii) the ship had been sold to cash buyers pre-recycling. The claim was brought on the basis that the company knew, or ought to have known, that there was a foreseeable risk of harm to workers when they sold their ship to a Bangladeshi yard through a cash buyer.
- No judgment was handed down, but we will wait to see with

interest whether such claims become prevalent in the English Courts. In the meantime, the case suggests that even with the involvement of an intermediary cash buyer, a determined and financed claimant could at least create litigation risk for an owner.

Regulations

EU flagged ships: The SRR (European Ship Recycling Regulation EC NO. 1257/2013)

- The SRR came into force on 31 December 2018. It applies to EU flagged vessels (trading worldwide). In broad terms, the SRR mirrors the green passport requirements in the Hong Kong Convention (not yet in force) which require EU flagged vessels to:
 - Have on board an Inventory of Hazardous Materials (the IHM);
 - Undertake a series of surveys (roughly every five years) to check, amongst other things, that the IHM is up-to-date;
 - Develop a ship recycling plan prior to recycling; and
 - Only be sent for recycling at yards on the approved European List. The EU published its fifth version of the EU List on 28 June 2019, adding eight new yards including two in Denmark, five in Norway and one in Turkey. This brings the total number of yards on the EU List to 34. Crucially, there are no approved yards in the Indian subcontinent (despite such yards being Class certified for compliance with the Hong Kong Convention standards by recognised organisations (known as 'ROs'), e.g. Class NKK). Therefore, presently, EU flagged vessels cannot be recycled on the Indian subcontinent.
- EU Member States are to lay down penalties for infringements of the SRR, which are to be *civil or administrative and effective, proportionate and dissuasive*. The SRR will be policed through port state control inspections.

- Even if a no-deal Brexit is pushed through, a draft Statutory Instrument is currently being considered in order to adopt the SRR to the fullest extent possible into English law.
- Particular thought must also be given to EU flagged ships that are deemed total losses following a casualty. If the ship needs to be recycled, then under the SRR this would need to take place at an EU approved yard. If the casualty is, for example, off an Australian coast, this could involve exorbitant salvage costs to tow the vessel to the nearest EU approved yard.

Non-EU flagged ships

- The Basel Convention 1989 (the Basel Convention) continues to apply internationally. The Basel Convention has been adopted by 187 countries worldwide and implemented into EU law by the WSR. The consensus view is that a ship constitutes 'waste' within the Basel Convention, meaning a process of informed consent is required between the importing and exporting States.
- In our experience, States show a varying attitude towards the enforcement of the Basel Convention. For example, Australia and New Zealand historically take a strict approach, whereas Singapore is not known to have enforced the Basel Convention in relation to ships despite its legislation prescribing fines of up to SC\$300,000 for non-compliance (possibly due to political alliances with the Indian subcontinent).

3. In fact, the recitals to the SRR suggest that it is designed to replace the WSR in respect of the recycling of ships flying EU flags.

NEW BUILDS

To develop an IHM, including monitoring materials (e.g. asbestos) used in construction.

PURCHASING A SECOND-HAND SHIP

To check compliance with all applicable regulations and the presence of an up to date IHM before entering into an MOA.

SELLING A SECOND-HAND SHIP

Due diligence is on the seller. Thus, questions to be asked include: Is the ship being recycled? Is an 'anti-recycling' clause required in the MOA?

BANKS, INSURERS AND INVESTOR COMPLIANCE

To benefit from finance/ insurance products.

So why do I need a policy and what should it cover?

In light of the above complex regulatory landscape we set out below a diagrammatic representation of why a green recycling policy is needed and what it should include.



AUDIT TRAILS

Inspection by relevant authorities, particularly during vessel calls to EU ports.

DECOMMISSIONING

The recycling laws and conventions will equally apply to the dismantling of oil rigs, FPSOs and other off-shore and on-shore structures.

YARD SELECTION

Where can the ship be recycled? EU approved yards only?

CHOICE OF FLAG

Where will the vessel be trading (see casualty response below)?

CASUALTY RESPONSE

Where can a total loss be recycled? Where can damaged cargo or other waste from a casualty be recycled (e.g. dirty fire-fighting water collected in holds)?

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