

CMI IWG on Decarbonisation

Greener Contracts Workstream

Questionnaire to MLAs

Maritime Law Associations will recall that the CMI International Working Group on Decarbonisation has been working on the impact of growing demands for decarbonisation in the shipping sector. The WG has been working under the direction of a Steering Group chaired by Haris Zogrofikis over the last two years, with its work being presented at both the Gothenburg and the Tokyo Colloquia. The IWG has divided its work along four workstreams, one of which has been particularly charged with looking at “Greener Contracts” under the chairmanship of Charles Debattista.

The members of the Greener Contracts Workstream have looked at Time Charterparties, Bills of Lading, International Sales Contracts and Bunker Supply Contracts and they have now put together a short questionnaire for responses from MLAs. The purpose of the questionnaire is to collect views internationally as to whether the maritime laws of different jurisdictions already contain the tools necessary to accommodate concepts and remedies which might become more relevant in a greener shipping environment. With that data collected, the Greener Contracts Workstream hope to come to the Rio Colloquium with an indication as to whether and where maritime law may need updating in the regulation of contracts in a greener shipping environment.

It would assist the Greener Contracts Workstream if answers were on the brief side, with specific references to relevant legislation in your jurisdictions, most of which legislation will these days be available online.

To allow for the necessary work by the Greener Contracts Workstream in the lead-up to Rio, it would be helpful if MLAs would respond to Daniel-Luc Farrugia, a member of the Workstream, at daniel.farrugia@fenechlaw.com **by 1st March 2026**.

The Greener Contracts Workstream has asked that its thanks are conveyed to MLAs in anticipation of their respective responses to the Questionnaire.

1. Time Charterparties

- a. In a time charterparty there is usually an obligation stipulating for delivery of the vessel in a “good” or “efficient” condition, with an ongoing obligation to maintain the ship in “a thoroughly efficient state”. Over time, as ships’ efficiency improves, could charterers oblige owners to bring a ship up to current, greener, market standards? Would any such obligations need to be express, and if so, would your current law on charterparties recognise and enforce such terms?

- b. Would the well-known “seaworthiness” obligation comprise in your jurisdiction a duty to ensure that the vessel is “greenworthy”? “Un- Greenworthy” in this sense could include a failure to meet plans set out in the vessel’s SEEMP or a failure to have the ability to connect to shore power where the ship will be calling at ports capable of using shore power. Would you envisage that there are any obstacles in your jurisdiction preventing the concept of “seaworthiness” from encompassing such “green” concepts?
- c. What tools are available to owners and charterers in your jurisdiction to obtain disclosure of data regarding the efficiency of a vessel, whether from the counterparty to a charterparty or from elsewhere?
- d. In the absence of express clauses in the charterparty, where any carbon/GHG tax or levy is imposed on the ship/owner, but where the charterer is responsible for providing and paying for fuel, are there any tools that owners could use in your jurisdiction to pass the cost on to charterers?

2. Bills of Lading

- a. ***Environmental Clauses:*** Does your jurisdiction permit the inclusion of clauses in Bills of Lading that impose environmental responsibilities on carriers or shippers, and are such clauses commonly used in practice in your jurisdiction?
- b. ***Emissions Reporting:*** What legal mechanisms exist in your jurisdiction to ensure transparency and accuracy in maritime emissions reporting by carriers or ship operators?
- c. ***Legal Recognition and Enforceability:*** Are there any restrictions under your domestic law of carriage that could prevent environmental clauses in Bills of Lading from being recognized or enforced?

3. Bunker Supply Contracts

The requirements for fuel compliance put forward by the most recent EU Regulations dictate certain consideration/revision of the position and allocation of parties’ underlying responsibilities under bunker supply contracts. We set out here below certain areas/questions for consideration by different jurisdictions:

- a. ***Due Diligence*** with respect to both sellers/buyers: What is the standard of due diligence required under your jurisdiction that a Buyer needs to demonstrate for considering the following aspects:
 - What is the standard of KYC/Vetting for sanctions purposes?
 - With respect to the origin of the fuel?
 - With respect to the certification of the fuel?

- b. **Fuel specification:** If the contract provides for a specification with which the fuel ought to comply, but the fuel is not compliant with MARPOL's latest regulations, or Fuel EU Maritime requirements, will an implied term be considered to exist making such fuel "not fit for purpose"? Absent an express term to that effect, could a buyer/shipowner advance a claim for penalties and losses suffered against its counterparty? Are there any limitations on the types of loss which would be recoverable in the event of such non-compliance? Would any recovery of any such damages be subject to any limitation in your jurisdiction?
- c. **The defence of Force majeure:** Where a supplier is responsible for providing "green" fuel, whether under an express or an implied term, and yet is unable to procure such fuel, would your jurisdiction provide the supplier with a force majeure defence? Would unavailability of fuel be classified as a force majeure event?

4. Sale Contracts

a. Timely Arrival Obligations

How might greener shipping practices affect the sellers' obligations under a sale contract to ensure that goods arrive by a certain date? For example, what would happen if the owner of a ship nominated under a sale contract takes the view that the voyage proposed by the charterers would result in a lower CII rating and so refuses to perform? What would the impact of such a decision be on the seller's arrival duties under a sale contract providing for arrival by a certain date?

b. Reasonable Contract of Carriage

Where applicable under the relevant law, what criteria might define a greener "reasonable" contract of carriage (for example, by reference to legislation such as section 32(2) of the UK Sale of Goods Act 1979, or any equivalent provision in other jurisdictions requiring contracts of carriage to be "reasonable") typically provided by sellers under an arrival sale contract?

In this context, could environmental considerations form part of the assessment of "reasonableness", including in relation to the performing vessel, and might this give rise to legal challenges similar to existing restrictions based on factors such as a vessel's age or flag?

c. Laytime and Demurrage Clauses

How might greener charterparties, which would prioritise carbon intensity and energy efficiency (seeking to convert port waiting time into sailing time), impact demurrage as between the seller/charterer and buyer? Who, in the future, should bear the (environmental/Scope 3) cost of ballast voyages?

Members of the Green Contracts Workstream in the IWG on Decarbonisation are:

Charles Debattista (Chair), Helen Barden, Alexandra Couvadelli, Daniel-Luc Farrugia, and Grant Hunter

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