



STRIKING THE RIGHT BALANCE: ENSURING COMMERCIALLY MINDED COMPLIANCE IN AN EVOLVING REGULATORY ENVIRONMENT

*RECOMMENDED STEPS TO BE FOLLOWED IN ACCORDANCE WITH BEST PRACTICE TO ENSURE
COMPLIANCE WITH EVOLVING ENVIRONMENTAL REQUIREMENTS AND STANDARDS IN A WAY THAT
MAKES COMMERCIAL SENSE*

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REGULATING THE INDUSTRY – THE JOURNEY SO FAR

- **BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES AND THEIR DISPOSAL, 1992**
 - 187 signatory parties – current principal international regime
 - HFW view – recovery and disposal of end of life vessels within its scope
- **IMO GUIDELINES ON SHIP RECYCLING - RESOLUTION A.962 (23), 2003**
 - “green passport” initiative and “incentive mechanisms” for ship recycling facilities
- **WASTE SHIPMENT REGULATION (EC) 1013/2006**
 - Export prohibited outside the OECD
 - “prior-informed consent” for the transboundary movement of hazardous wastes



Photo Credit: Jana Asenbrennerova

- **HONG KONG INTERNATIONAL CONVENTION FOR THE SAFE AND ENVIRONMENTALLY SOUND RECYCLING OF SHIPS, 2009**
 - IMO guidelines for early implementation of technical standards (i.e. inspection of ships, development of Ship Recycling Plan, safe and environmentally sound ship recycling, authorization of ship recycling facilities)
 - Not yet in force, but some stakeholders are following the guidelines and have the certificates to confirm such compliance
- **SHIP RECYCLING REGULATION (EU) 1215/2013 – “EU LIST” OF APPROVED SHIP RECYCLING FACILITIES**
 - Intention to “facilitate early ratification of the HKC both within the Union and third countries by applying proportionate controls to ships and ship recycling facilities on the basis of the Convention”.



THE HFW VIEW – KNOW YOUR OBLIGATIONS

- **EU FLAG VESSEL**

→ **COMPLIANCE** with the requirements of the Ship Recycling Regulation and the European list of approved ship recycling facilities along with applicable national legislation

- **NON EU FLAG END OF LIFE VESSEL DEPARTING OR TRANSITING FROM AN EU MEMBER STATE**

→ **COMPLIANCE** with the requirements of the Waste Shipment Regulation (and, when applicable, the Ship Recycling Regulation) and the Basel Convention along with applicable national legislation

- **NON EU FLAG END OF LIFE VESSELS**

→ **COMPLIANCE** insofar as possible with HKC (i.e. sending ships for recycling to certified HKC-compliant yards)

→ **MAKE ENQUIRIES** with respect to local national legislation relating to the export of hazardous waste and the environment (check ratification status on the Basel Convention website)



Photo Credit: bendt nielsen



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CONSCIENTIOUS AND COMPLIANT RECYCLING CAN BE COMMERCIALY SENSIBLE, COST-EFFICIENT AND TIMELY IF **SUITABLE ADVICE IS SOUGHT**.

GIVEN THE UNCERTAINTY IN THE APPLICATION OF THE REGULATORY FRAMEWORK, IT IS IMPORTANT TO SEEK THE **ASSISTANCE OF EXPERTS**, WHO WILL ENSURE THAT COMPLIANCE AND PROCESSES ARE RESPECTED AND THAT NO UNNECESSARY COSTS AND TIME ARE INCURRED.

➔ **SIMPLE STEPS FOR ANY SHIPOWNER WISHING TO DEMONSTRATE ITS ENGAGEMENT TO SUSTAINABLE RECYCLING WITHOUT UNDUE EFFORT OR UNDUE FINANCIAL IMPACT.**

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STEP 1

SEEK ADVICE AND NEGOTIATE A SUITABLE CONTRACT FOR YOUR SALE



SAFEGUARD YOUR POSITION IN CONTRACT

- Stakeholders must ensure that when negotiating contracts for the sale of end of life vessels, full account is taken of all relevant environmental, health and safety considerations.
 - Commercially sensible parties will also ensure that sufficient safeguards are in place to minimise risk of reputational damage and residual liability.
- Standard form BIMCO contracts have been carefully elaborated to assist parties in ensuring that all relevant environmental, health and safety considerations are taken into account in the sale, with further drafting being required to tailor the contract to each specific sale and set of circumstances.

→ **SAMPLE RECYCLECON CLAUSE (2012):**

18. Safe and Environmentally Sound Recycling

The Buyers shall on the Sellers' request (i) either provide a copy of the Ship Recycling Facility Plan or an attestation that the Ship Recycling Facility has a Ship Recycling Facility Plan and (ii) allow the Sellers to visit the Ship Recycling Facility to review the Ship Recycling Facility Plan and verify that the Ship Recycling Facility is compliant with the Ship Recycling Facility Plan.



“RECYCLECON” FORM

If not already provided, the Sellers shall provide the Buyers with Part I of the Inventory of Hazardous Materials as soon as possible after the date of this Contract.

The Sellers shall provide the Buyers with provisional Parts II and III of the Inventory of Hazardous Materials as soon as possible after the date of this Contract and final Parts II and III upon delivery of the Vessel.

The information contained in the Inventory of Hazardous Materials is given to the best of the Seller’s knowledge but always without guarantee.

Following the receipt of Part I and the provisional Parts II and III of the Inventory of Hazardous Materials, the Buyers shall without undue delay provide the Sellers with the Ship Recycling Plan.

The Buyers shall ensure that after delivery the Sellers’ representatives are allowed to visit the Ship Recycling Facility to ascertain that the Recycling of the Vessel is being conducted in accordance with the Ship Recycling Facility Plan and the Ship Recycling Plan.

The Buyers shall within two (2) weeks of completion of recycling of the Vessel provide the Sellers with a Statement of Completion as per Annex C (Statement of Completion).



SENSIBLE AND TAILORED DRAFTING

Review and adapt contract to specific sale, and safeguard the position of the Seller :

- when applicable, vessel to be recycled in a certified HKC-compliant yard;
- vessel to be recycled according to a pre-agreed ship recycling plan;
- Buyer to make Seller aware of any deviation from the ship recycling plan;
- Buyer to be required to take necessary remedial action to ensure compliance and provision of a statement of completion within a given period of time;
- obligations of the Buyer may be fortified by a performance bond as security for the Buyer's due performance of its contractual obligations;





SENSIBLE AND TAILORED DRAFTING

- "as is where is" sale – Seller may require access to communications and reports from the tug during the relevant voyage from the place of delivery to the ship recycling facility;
- transfer to any recycling facility which is not the named recycling facility in the contract, without the prior written consent of the Seller (which the Seller may withhold in the absence of proof of competence of the alternative facility in the form of an approved ship recycling plan and certificate of compliance with the HKC by a reputable recognised organisation, i.e. an IACS classification society), is in breach of the contract;
- Seller to provide IHM / green passport;
- Seller may provide gas free certificates on delivery, but responsibility to obtain gas free certificates at port of entry should be for the Buyer.





STEP 2

GET THE EXPERTS' VIEW ON THE REGULATORY PROCEDURES TO ENSURE TIMELY AND COST EFFECTIVE TREATMENT



NOTIFICATION AND REPORTING PROCEDURES

Potential to be a tedious, time consuming process and costly undertaking

- The legislative and regulatory framework (particularly with the potential duality of regime from 01.2019) is complex and not straightforward in its application – risk is considerable so getting it right is key.
- Varying implementation of the regulations in different jurisdictions - complete legal advice on compliance and the necessary procedures must be obtained in the relevant countries (export, transit and import or flag state, port state and recycling state, as applicable).
- Experience in dealing with the relevant authorities in Europe and worldwide is invaluable in avoiding the pitfalls and ensuring application is tailored to each individual case.

➔ the process can be swift and cost effective through established relationships with the authorities and understanding of the legal implications and practical application of the legislation.

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STEP 3

BE AWARE OF THE RISKS



Photo Credit: Safety4Sea

- M/V EURUS LONDON (2017-2018)
 - Shipowner required to take all reasonable steps to ensure that the disposal of the vessel does not endanger human health, damage the environment nor breach international regulations for the protection of human health and the environment.

- SEATRADE (2018)
 - Seatrade was convicted of violating the Waste Shipment Regulation in selling four reefer ships for onward demolition in India, Bangladesh and Turkey.
 - Two board members were sentenced to professional suspensions and fines.
 - Shipowners beware - Dutch court has stated that the criminal proceedings were waived only because this was the first criminal prosecution over the transfer of waste.

- ROYAL NAVY SHIP NETHERLANDS LAURENCE (2019)
 - 780 million euros in fines and 2.2 million euros in settlement for arranging for the breaking of the vessel under conditions that *“cause serious damage to the environment and expose the health of workers and the local population to grave danger”*

Following the rules is not enough — shiprecyclers have to go the extra mile

There is no universally accepted standard for what ‘green’ means in demolition, and it is time for that to change

December 20th, 2018 18:00 GMT by **Hitesh Vyas**

- ✓ Increased level of scrutiny on all practices relevant to sustainability
- ✓ Steps must be taken by all stakeholders to meet with the standards required to ensure safety to health and the environment
- ✓ The objective remains an international and legally enforceable standard for ship recycling, for operators and ship recyclers worldwide