Standard Club

A guide to key offshore jurisdictions

Introduction

With our members regularly exploring new opportunities in diverse territories we are frequently asked how the law in a particular jurisdiction may impact the enforceability of key contractual provisions. Having extensively engaged with our contacts around the world, we thought that we would share our findings with the wider membership and so have produced this jurisdiction guide in which we consider these issues in fifteen separate regions. This guide therefore provides a snapshot view for the selected countries, where we consider:

- the right to limit liability
- specifically the right to limit liability in respect of wreck removal
- the application and geographical reach of the CLC Convention, Wreck Removal Convention, Maritime Labour Convention or any related domestic legislation
- the enforceability of knock-for-knock provisions in a contract and whether there are any gross negligence or wilful misconduct exceptions to this.

We have been fortunate to have the support and guidance of local law firms from within each of the jurisdictions considered and would like to offer our thanks for their excellent help with this project. The information given is intended to be general in nature and used as a starting point for any detailed advice that should be sought for a specific contract or query relating to that jurisdiction. We have credited the local co-authors of each country and would be pleased to refer any such further enquiries to them.

We hope you find the guide helpful.

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We value feedback from all who read this guide and we are always interested in hearing your suggestions or queries. Please direct these to Sian Dinnadge, the editor.

Angola

Limitation of Liability

Is Angola signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

Yes, the International Convention relating to the Limitation of the Liability of Owners of Seagoing Vessels, 1957, is applicable in Angola without the SDR Protocol. Note that the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976) does not apply in Angola.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

The 1957 Convention is applicable in the territorial waters, contiguous zone and Exclusive Economic Zone (EEZ). The 2010 Angolan Law on Maritime Spaces defines territorial waters, contiguous zone, exclusive economic zone and continental shelf in accordance with United Nations Convention on the Law of the Sea (UNCLOS).

Are there any exclusions or exceptions in respect of offshore vessel types?

No, there are no exclusions or exceptions in respect of offshore vessels.

Is it possible to limit for wreck removal in Angola?

No, it is not possible to limit liability for wreck removal in Angola under the 1957 Convention.

Bunkers Convention

Is Angola signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

No, Angola is not signatory to the Bunkers Convention.

Civil Liability Convention

Is Angola signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes, Angola is signatory to CLC 1992 Protocol.

What is the geographical application of CLC in respect of Angola?

The geographical application is as per the CLC. EEZ is defined in local laws in accordance with UNCLOS (see above).

Are there any exclusions or exceptions in respect of offshore vessel types?

No, there are no exclusions or exceptions in respect of offshore vessel types.

Wreck Removal Convention

Is Angola signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No, Angola is not signatory to the WRC.

Maritime Labour Convention

Is Angola signatory to the Maritime Labour Convention (MLC)?

No, Angola is not signatory to the MLC.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Angolan law?

Yes, both concepts have legal consequences in both criminal and civil law.

Negligence is the failure to exercise reasonable care, prudence or competence required (acting with neglect, imprudence or inability).

Gross negligence is a qualified negligence whereby the agent foresees the possibility of the outcome but does not believe it will occur due to lack of thought, caution or prudence and omission of the most basic care.

The agent acts with wilful misconduct when (i) he predicts the unlawful outcome and acts accordingly with intent to produce it or (ii) he foresees the unlawful outcome and accepts it as a necessary consequence of his immediate intention or (iii) he anticipates the possibility of the unlawful outcome and acts accordingly, without being confident it will not occur.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Angolan law?

Angola does not have specific legislation on the knock-for-knock liability regime.

Private parties have contractual freedom under Angolan Civil Code which means they can freely negotiate contractual terms and conditions between themselves, so long as this is within the limits of the law (civil, criminal, administrative, etc). If contractual provisions conflict with the law, for example, if they are contrary to public order, if they offend standards of public decency under the Civil Code, if there is an issue of gross negligence or wilful misconduct, knock-for-knock terms between the parties may not be enforceable.

If knock-for-knock is a recognised liability regime under Angolan law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

Knock-for-knock will not be upheld in the event of 'gross negligence' or 'wilful misconduct'.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Angolan law?

Standard industry contracts contain knock-for-knock and limitation of liability clauses. Please see answers above. Knock-for-knock and limitation clauses may be deemed unenforceable if they conflict with mandatory provisions of Angolan law.

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Australia

Limitation of Liability

Is Australia signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

Yes. The Convention on Limitation of Liability for Maritime Claims 1976 (LLMC) (as amended by the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims 1976 ('96 Protocol)) was given the force of law in Australia by virtue of the *Limitation of Liability for Maritime Claims Act 1989* (Commonwealth) on 30 May 1991. The '96 Protocol was given force of law in Australia on 13 May 2004. The LLMC is subject to the reservations noted below.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

The LLMC applies within the territorial waters and Exclusive Economic Zone (EEZ) of Australia.

The *United Nations Convention* on the Law of the Sea (1982) (UNCLOS) grants coastal states jurisdiction and sovereignty beyond their respective land territory and internal waters (Article 2).

In Australia, UNCLOS is implemented by the *Seas and Submerged Lands Act 1973* (Commonwealth), which gives Australia sovereignty and jurisdiction up to 200 nautical miles seaward from the baselines from which the breadth of the territorial sea is measured (UNCLOS, Articles 55-57, 73 and 76).

Are there any exclusions or exceptions in respect of offshore vessel types?

Yes. In respect of offshore vessel types, the LLMC does not apply to floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof (LLMC, Article 15(5 (b)).

Is it possible to limit for wreck removal in Australia?

No. Section 6 of the *Limitation of Liability for Maritime Claims Act 1989* (Commonwealth) expressly excludes the following two categories of claims referred to in the LLMC from having the force of law in Australia:

- *'claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship'*
- *'claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship'.*

Bunkers Convention

Is Australia signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

Yes. Australia is signatory to the Bunkers Convention (adopted on 23 March 2001 and entered into force on 21 November 2008). The Bunkers Convention was implemented in Australia by the Protection of the Sea (*Civil Liability for Bunker Oil Pollution Damage*) Act 2008 (Commonwealth) (Australian Bunker Oil Act), which came into force on 16 June 2009. The Australian Bunker Oil Act only gives effect to Articles 3, 5, 6, 7(10) and 8 of the Bunkers Convention.

What is the geographical application of the Bunkers Convention in Australia?

The Bunkers Convention applies to Australia's EEZ. Further, section 7 of the Australian Bunkers Oil Act provides that the Bunkers Convention applies to Australia or the EEZ of Australia.

Are there any exclusions or exceptions in respect of offshore vessel types?

No. There are no specific exclusions or exceptions in respect of offshore vessel types.

Civil Liability Convention

Is Australia signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes. Australia is signatory to the CLC (adopted on 27 November 1992 and entered into force on 30 May 1996). The CLC was implemented into Australian law by the Commonwealth through the Protection of the Sea (*Civil Liability*) Act 1981 (Commonwealth) (**CLC Act**). The CLC Act became law in Australia on 5 April 1984, with the 1992 Protocol becoming law on 6 October 2000.

What is the geographical application of the Civil Liability Convention in Australia?

The CLC applies within the territorial waters and EEZ of Australia.

Are there any exclusions or exceptions in respect of offshore vessel types?

There are no express vessel exclusions under the CLC Act. However, the CLC as enacted through the CLC Act only applies to Regulated Australian Vessels (**RAV**). A RAV is a ship regulated for the purposes of the Navigation Act 2012 (Commonwealth) (**Navigation Act**) (see sections 3(1) and 7(1) of the CLC Act). Under section 15 of the Navigation Act, an RAV is a vessel that requires registration under the Shipping Registration Act 1981 (Commonwealth) (**Shipping Registration Act**),[1] is not a recreational vessel and either:

- is proceeding on an overseas voyage (ie in the course of the voyage will be present in waters outside the outer limits of the EEZ of Australia) or is for use on an overseas voyage
- has been issued with a certificate under the Navigation Act (with certain exclusions)[2]
- is subject to an opt-in declaration with respect to the Navigation Act.[3]

Provided the 'offshore vessel type' is classified as an RAV under section 15 of the Navigation Act, the CLC Act will apply.

Wreck Removal Convention

Is Australia signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No. Australia has not signed or ratified the Nairobi International Convention on the Removal of Wrecks 2007.

Maritime Labour Convention

Is Australia signatory to the Maritime Labour Convention (MLC)?

Yes. Australia is signatory to the MLC. The MLC came into force in Australia on 20 August 2013 and was primarily implemented into Australian law by the Navigation Act and its regulations.

Has Australian law determined whether offshore vessels such as mobile offshore drilling units, mobile offshore production units (eg floating production offloading units or floating storage offloading units), dredgers, cable/pipe layers, semi-submersible/ heavylift vessels, accommodation units or supply/ support vessels are 'ships' within the meaning of the MLC?

It has not been conclusively determined under Australian law whether any of these units are 'ships' within the meaning of the MLC.

Some guidance is provided in *Marine Order 11 (Living and Working Conditions on Vessels 2015* (Commonwealth) (**MO11**). Pursuant to section 6(1), MO11 applies (excluding Division 2) to RAVs (see above). MO11 Divisions 2 and 19 apply to 'Foreign Vessels' (see definition below).

Whether the MLC applies to one of the offshore units listed above will depend on whether they fall within the definition of RAVs or Foreign Vessels.

RAV – for the purposes of MO11 (and hence the MLC), the definition of RAV under section 15 of the Navigation Act is adopted.

Foreign Vessel – for the purposes of MO11 (and hence the MLC), a 'Foreign Vessel' is defined under section 14 of the Navigation Act as a vessel that:

(a) does not have Australian nationality; and

(b) is not a recreational vessel.

Provided a vessel is an RAV or a 'Foreign Vessel', the MLC will apply to these vessels within Australia's EEZ.

Do the 2014 Amendments to the MLC whereby shipowners must have financial security in place to cover the repatriation of seafarers in the event of abandonment (under Regulation 2.5) and contractual payments in the event of a seafarer's death or long-term disability due to an occupational injury, illness or hazard (Regulation 4.2) apply under Australian law?

Yes. The 2014 amendments apply to the MLC as enacted in Australia. These amendments became law on 18 January 2017. The requirement for financial security arises in section 34A(1) of MO11. In addition, the Seafarers Rehabilitation and Compensation Act 1992 (Commonwealth) provides for payments in the event of death or long-term disability suffered by a seafarer.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Australian law?

'Gross negligence' and 'wilful misconduct' are not recognised as separate categories of tort under Australian law, and there is no single recognised definition of these terms. However, these terms are often used in contracts, which from time to time have been considered by Australian courts.

The cases suggest that the difference between 'gross negligence' and simple negligence is one of degree rather than one of kind – 'gross negligence' involves a serious disregard of or indifference to an obvious risk: *Canerata v Credit Suisse* [2011] EWHC 479 (Comm), [160]-[161]; *Armitage v Nurse* [1998] Ch 241, 254.

'Wilful misconduct' has received judicial consideration in certain contexts and is found in some Australian legislation, eg Marine Insurance Act 1909 (Commonwealth) section 61(1). The section was considered by the Supreme Court of Queensland in *Wood v Associated National Insurance Company Limited* (1985) 1 Qd R 297. McPherson J said that wilful misconduct amounted to 'the reckless exposure of the vessel to the perils of navigation knowing that she was not in a condition to encounter them' (305).

In *Transport Commission (Tas) v Neale Edwards Proprietary Limited* (1954) 92 CLR 21, the High Court of Australia found at 228 that wilful misconduct means a person knows that the conduct is wrong yet makes a positive choice to do or to omit to do something with reckless indifference of the consequences. Wilful misconduct therefore appears to involve an element of intention to behave in a reckless way, not caring for the consequences of its conduct (see also *National Semiconductors (UK) Ltd v UPS Ltd* [1996] 2 Lloyd's Rep 212, 214).

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Australian law?

Yes. Knock-for-knock provisions for the allocation of liabilities are generally recognised under Australian law. The ordinary rules of contractual construction will apply to those clauses. The High Court of Australia in *Darlington Futures Ltd v Delco Australia Pty Ltd* (1986) 161 CLR 500, 510 said:

> *'... interpretation of an exclusion clause is to be determined by construing the clause according to its natural and ordinary meaning, read in the light of the contract as a whole, thereby giving due weight to the context in which the clause appears including the nature and object of the contract, and, where appropriate, construing the clause contra proferentem in case of ambiguity. ... the same principle applies to the construction of limitation clauses.'*

However, knock-for-knock provisions seeking to exclude or limit liability can be impaired if they are drafted ambiguously or come within legislation that seeks to specifically bar or restrict the effect or operation of such clauses (Toll (FGCT) *Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165, [48] citing *Darlington Futures Ltd v Delco Australia Pty Ltd* (1986) 161 CLR 500, 507-508). For example, if such an agreement with a party is considered a consumer contract, the Australian Consumer Law will operate to void any provision that seeks to exclude or limit liability arising from breach of an implied statutory warranty (*PNSL Berhad v Dalrymple Marine Services Pty Ltd* (2007) 210 FLR 243).

If knock-for-knock is a recognised liability regime under Australian law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

A knock-for-knock provision may be upheld in circumstances of 'gross negligence' or 'wilful misconduct' if and only to the extent that the instrument expresses the parties' intent to cover such acts or omissions. It is important that the parties clearly state what behaviour is intended to be included or excluded by the liability regime in order to avoid any ambiguity which could result in the clause being construed against the party seeking to rely on it (*Darlington Futures Ltd v Delco Australia Pty Ltd* (1986) 161 CLR 500). For example, a clause that seeks to broadly and simply disclaim liability for 'any act whatsoever', on its own, may be construed as not having contemplated acts that would constitute a material breach of the contract (*Glebe Island Terminals Pty Ltd v Continental Seagram Pty Ltd* (The Antwerpen) (1993) 40 NSWLR 206, 239).

In *Glebe Island*, the carrier was not liable for its subcontractor's wilful misconduct, which involved the intentional and unauthorised removal of goods. The Court of Appeal held that the exclusion clause alone would not have operated to avoid liability but for another clause that provided the liability exemptions will apply even where the loss or damage is caused by an act amounting to a fundamental breach.

In *Andar Transport Pty Ltd v Brambles Ltd* (2004) 217 CLR 424 at [27], the High Court of Australia supported the proposition that contract provisions seeking to exclude or limit liability for negligent acts will be upheld where they expressly contemplate such behaviour.

In *Australian Securities and Investments Commission v Drake* (No 2) (2016) ALR 75 [282]-[284], the Federal Court of Australia affirmed the principle that an exemption clause could validly exclude a trustee from liability for gross negligence.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Australian law?

Yes, standard form contacts will generally be upheld and construed in accordance with the ordinary rules of contractual construction prevailing in Australia (to the extent that they are not limited by legislation or otherwise found unenforceable at law). See generally *PNSL Berhad v Dalrymple Marine Services Pty Ltd* [CLR] [FLR] [2007] QSC 101 (where Helman J of the Supreme Court of Queensland gives effect to the United Kingdom Standard Conditions standard form contract by construing its provisions). For examples of general acceptance of specified standard forms, see *Megalift Pty Ltd v Terminals Pty Ltd* [2009] NSWSC 324 (HEAVYCON); *Ships 'Hako Endeavour', 'Hako Excel', 'Hako Esteem' and 'Hako Fortress' v Programmed Total Marine Services Pty Ltd* (2013) 211 FCR 369 (SUPPLYTIME); *Challenge Charter Pty Ltd v Curtain Bros (Qld) Pty Ltd* [2004] VSC 1, [141] (TOWCON); *Svitzer Salvage Australasia Pty Ltd v Trident Australasia Pty Ltd* [2012] NSWDC 146 [50] (TOWHIRE).

1 Under section 12 of the Shipping Registration Act, subject to certain exemptions, every 'Australian-owned ship' must be registered under that Act. An 'Australian-owned ship' includes a ship that is owned by an Australian national and by no other person (section 8). An 'Australian national' includes a body corporate established by or under a law of the Commonwealth or of a State or Territory. Section 13 provides exemptions from the requirement for registration of Australian-owned ships that are less than 24 metres in tonnage length, government ships, fishing vessels and pleasure crafts.
2 'Certificate' is not defined in the Navigation Act. We note that the Navigation Act provides for a number of Australian certificates, including (but not limited to): seafarer certificates, maritime labour certificates, pollution and vessel safety certificates.
3 Section 25(1)-(5) of the Navigation Act allows vessel owners to opt in for their vessel to be an RAV for the purposes of section 15 of the Navigation Act.

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Brazil

Limitation of Liability

Is Brazil signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

Brazil has not ratified the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, 1957; the Convention on the Limitation of Liability for Maritime Claims, 1976; nor the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims 1976.

Brazil is party to the 1924 International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Seagoing Vessels (the 1924 Brussels Convention).

The 1924 Brussels Convention establishes a few rules related to the limitation of liability and entitles a shipowner to limit his liability to an amount equal to the value of the vessel, the freight and the accessories of the vessel in particular circumstances. The Brazilian Civil Code of 2002, on the other hand, does not provide for limitation and establishes that anyone who causes damage to the other party must fully compensate the damages caused. Hence, considering that the Code is subsequent to the 1924 Convention, owners may encounter difficulties in applying the limitation in court.

In theory, shipowners would be able to limit liability under a contract. There are some cases where the limitation of liability was tested and judges accepted the validity of such limitation. Nevertheless, if the contract is considered a 'standard form contract', the limitation clause might be considered null and void by Brazilian courts.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

The geographical application of the 1924 Brussels Convention is restricted to the territories of the signatory countries. The Brazilian territorial waters are limited to 12 nautical miles from the low-water line along the Brazilian coast. The Brazilian Civil Code was enacted by Law no. 10.406/2002, thus is a federal rule applicable throughout the Brazilian territory.

Are there any exclusions or exceptions in respect of offshore vessel types?

There are no exclusions or exceptions in the Brazilian Civil Code in relation to offshore vessel types.

Is it possible to limit for wreck removal in Brazil?

No, it is not possible to limit for wreck removal in Brazil. Wreck removal in Brazil is regulated by Law no. 7,542/1986 and by the Normative Resolution no. 10 (NORMAN 10).

Bunkers Convention

Is Brazil signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

Brazil has not ratified the Bunkers Convention. However, Brazil does have internal regulations concerning the matter of oil pollution, such as the Brazilian Environmental Policy Act (Federal Law no. 6.938/1985), which establishes the National Environmental Policy; Law of Environmental Crimes (Law 9.605/1998), which provides for the penal and administrative sanctions arising from the breach of environmental laws and other activities in any way harmful to the environment; and the Oil Law (Law 9.966/2000 and Dec. 4.136/2002), which provides for the prevention, control and monitoring of pollution caused by the release of oil and other harmful or dangerous substances in waters under national jurisdiction.

What is the geographical application of the above-mentioned internal regulations?

All regulations indicated above (Federal Law no. 6.938/1985; Law no. 9.605/1998; Law no. 9.966/2000 and Dec. no. 4.136/2002) are federal laws applicable throughout the Brazilian territory, including waters under national jurisdiction.

In this regard, the Oil Law (Dec. 4.136/2002) specifically determines that it shall consider the following as waters under national jurisdiction:

(i) inland waters

(ii) maritime waters, all waters under national jurisdiction other than inland waters, namely:

a. Brazilian territorial waters

b. waters covered by a range extending from 12 to 200 nautical miles from the baselines used to measure the territorial waters, which constitute the exclusive economic zone (EEZ)

c. the waters overlying the continental shelf when it exceeds the limits of the EEZ.

Are there any exclusions or exceptions in respect of offshore vessel types?

There are no exceptions in relation to offshore vessel types in respect of the internal regulations indicated above.

Civil Liability Convention

Is Brazil signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes, Brazil is signatory to the CLC 1969. The Convention was approved by the National Congress through the Legislative Decree no. 74 of 3 September 1976 and came into force on 17 March 1977, without any restrictions to its original text. Brazil is not a signatory to the CLC 1992.

What is the geographical application of the CLC in respect of Brazil?

According to the text of the CLC 69, it applies to pollution damage 'caused on the territory, including the territorial sea of a Contracting State'.

Considering that Brazil approved the Convention without making any reservations to its directives, CLC 69 applies to Brazilian territorial waters.

Law no. 8.617/1993 defines the Brazilian 'territorial sea' as a range of 12 nautical miles measured from the low-water line of the continental and insular littoral.

Are there any exclusions or exceptions in respect of offshore vessel types?

No. There are no specific exclusions or exceptions in respect of offshore vessel types. The CLC 69 applies to 'any sea-going vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo'. Any vessel falling within said criteria will be subjected to the Convention.

Wreck Removal Convention

Is Brazil signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No. The WRC has not been ratified by Brazil.

Wreck removal in Brazil is regulated by Law no. 7.542/1986, which regulates the research, exploitation, removal and demolition of objects or properties sunk, submerged, stranded and lost in waters under national jurisdiction, on marine land and on marginal land, and by the Normative Resolution no. 10 (NORMAN 10), which is enacted by the Directorate of Ports and Coasts (DPC) to establish standards and procedures for authorising the research, removal, demolition or exploitation of wrecks. Said legislation establishes procedures for the removal and exploitation of sunken objects, determining who is liable for the removal and damages arising from it.

According to Brazilian regulation, both the owner of the asset sunk and its insurer, who covered specifically the risks of research, exploitation, removal or demolition of such goods, are jointly liable for damages caused, directly or indirectly, to the safety of navigation, to third parties or to the environment, until the goods are removed or demolished. There is no cap or limitation on such liability.

The owner of the asset sunk would have a cause of action brought against him firstly. Nonetheless, the Brazilian jurisprudential understanding nowadays is moving towards the recognition that both the owner of the asset sunk and its insurer can be co-defendants.

In the specific case of the P&I clubs, there has been cases in Brazil where parties attempted to treat clubs as insurers, bringing a claim directly against the club. A very recent decision from the Court of Appeals of Rio de Janeiro has dismissed a case brought against a club directly, stating that the club cannot be treated as an insurer. Although this is a very important precedent, it is not binding.

If the club does not have a legal entity established in Brazil, the most common procedure is to accept a Letter of Undertaking issued by the club as a guarantee of the future payment due. The Brazilian Law expressly recognizes as species of security the deposit in cash and bank guarantee. However, the Brazilian Civil Procedure Code does not forbid any type of credit guarantee, as long as it is accepted by the creditor. Therefore, a guarantee if accepted by the creditor may be accepted by the Brazilian Courts.

What is the geographical application of the local regulations outlined above?

Law no. 7.542/1986 is a federal law applicable throughout the Brazilian territory, in waters under national jurisdiction, on navy properties and its surpluses, and on marginal lands.

NORMAN 10 is a regulation whose application is restricted to the Brazilian Jurisdictional Waters (AJB), which are defined as inland waters and maritime areas in which Brazil has jurisdiction to some extent over activities, persons, facilities, vessels, and living and non-living natural resources found in the liquid mass, in the seabed or subsoil, for control and inspection purposes, within the limits of international and national legislation. These maritime spaces comprise the 200 nautical miles from the baselines, plus the waters overlying the extension of the continental shelf beyond such 200 nautical miles, where it occurs.

Are there any exclusions or exceptions in respect of offshore vessel types?

No. There are no exclusions or exceptions in relation to offshore vessel types.

Maritime Labour Convention

Is Brazil signatory to the Maritime Labour Convention (MLC)?

No. Brazil is not signatory to the MLC 2006.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Brazilian law?

Brazil has the concepts of 'culpa' (fault) and 'dolo' (wilful misconduct). Both concepts admit active actions as well as omissions; therefore, 'dolo' could be compared to gross negligence and wilful misconduct.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Brazilian law?

Brazilian law is based on civil rules, and indemnities are governed by the Brazilian Civil Code. A basic principle of Brazilian civil law is that any person who causes damage to another must indemnify the aggrieved party in a form proportional to the damage suffered. Additionally, the Brazilian Civil Code provides that each party shall be fully responsible for the acts of its employees and subcontractors.

The principles adopted by Brazilian law are quite different from the principles set out in the standard knock-for-knock clauses. Notwithstanding this, Brazilian law accepts freedom of contract, which means that the parties are free to establish the clauses and conditions of the contracts as long as such terms and conditions do not contradict matters of public order or affect third parties' interests.

However, up to this date, there has been no case law in Brazilian courts discussing the application of knock-for-knock clauses under Brazilian law contracts.

If knock-for-knock is a recognised liability regime under Brazilian law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

The regime itself is not recognised in Brazil, so it would be a matter of analysing the terms of contractual clause.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Brazilian law?

In Brazil, it is common for international oil companies to adopt their own contract terms or the traditional standard forms, usually incorporating the knock-for-knock principle.

When freely negotiated between the parties, the standard contracts and the knock-for-knock clause would, in principle, be valid. Nevertheless, if the contract is considered a standard form contract, such clause might be considered null and void by Brazilian courts. Considering that offshore contractors and oil companies are usually considered equal with respect to their bargaining strength, it is unlikely that a contract between such parties would be considered a standard form contract and deemed null and void on this basis.

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India

Limitation of Liability

Is India signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

Yes, India has incorporated the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976) in its Merchant Shipping Act 1958 (MSA), with substantial modifications. The restrictions contained in Article 15 (1) are also contained in the Indian MSA.

The provisions of the Indian MSA that deal with limitation of liability leaves the issue of security/guarantee to the discretion of the relevant High Court. The High Court (absent consent of the liability claimants) will inevitably insist on a bank guarantee and not accept a club Letter of Undertaking (LOU) as a valid form of security.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

LLMC 1976, as adopted in the MSA, applies within the territorial waters of India, with modifications. A person who is entitled to limit liability may do so in India regardless of where the damage occurred. The relevant factor is whether the ship is within Indian territorial waters at the time of limitation or if a claim capable of limitation has been made before the courts in India.

Are there any exclusions or exceptions in respect of offshore vessel types?

No. There are no exclusions or exceptions in respect of offshore vessel types.

Is it possible to limit for wreck removal in India?

No. It is not possible to limit for wreck removal in India. Article 2(1)(d) of the LLMC is omitted in Section 352A of the MSA that refers to claims capable of limitation.

Bunkers Convention

Is India signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

No. India has ratified the Bunkers Convention but has yet to enact domestic legislation to give effect to this.

What is the geographical application of the Bunkers Convention in respect of India?

As stated above India has not yet enacted domestic legislation to give effect to the Bunker Convention. However, there are provisions in the draft MSA which do give effect to the Bunkers Convention.

These provisions apply to pollution damage caused due to bunker oil discharged by any ship while it is within:

(i) the territorial waters of India

(ii) the Exclusive Economic Zone (EEZ).

Are there any exclusions or exceptions in respect of offshore vessel types?

No, there are no exceptions or exclusions for offshore vessels. The provisions apply uniformly to any ship, ie a sea going vessel or craft.

Civil Liability Convention

Is India signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes, India is signatory to the CLC.

What is the geographical application of the CLC in respect of India?

The CLC applies within the territorial waters/EEZ of India.

Are there any exclusions or exceptions in respect of offshore vessel types?

The expression 'ship' bears the same meaning as that contained in CLC 92. This may effectively exclude offshore craft unless at the time of the incident they are actually carrying 'oil' (as defined in the CLC) on board as cargo or in the bunkers of such a ship.

Wreck Removal Convention

Is India signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

Yes, India is signatory to the WRC. As with the Bunkers Convention, India has not yet enacted domestic legislation to bring the WRC into force. The WRC is to form part of a new amendment to the MSA.

What is the geographical application of the WRC in respect of India?

The WRC provisions in the draft Merchant Shipping Bill, apply to the wrecks located within the territory of India including the territorial sea or any marine areas adjacent thereto, ie the EEZ, over which India has jurisdiction.

Are there any exclusions or exceptions in respect of offshore vessel types?

All vessels are included, except floating platforms that at the relevant time are engaged in the exploration, exploitation or production of seabed mineral resources.

Maritime Labour Convention

Is India signatory to the Maritime Labour Convention (MLC)?

Yes, India is signatory to the MLC.

Have the laws of India determined whether offshore vessels such as mobile offshore drilling units, mobile offshore production units (eg floating production offloading units or floating storage offloading units), dredgers, cable/pipe layers, semi-submersible/heavy lift vessels, accommodation units or supply/support vessels are 'ships' within the meaning of the MLC?

The Indian Rules incorporating the MLC only provide an exclusive definition which excludes vessels referred to in Article II (1) (i) and (4) of the MLC. Subject to those exclusions any ship falling within the definition of 'ship' under the Indian Merchant Shipping Act would apply. The Act simply states that "ship" does not include a sailing vessel. However, there is a Merchant Shipping Bill pending in Parliament which provides a more helpful definition, and provides that a 'ship' means any watercraft, used or capable of being used in navigation by its own propulsion, in, above, or under the water, but does not include fishing vessels or sailing vessels. It would therefore appear that offshore craft may fall within the definition of 'ship', as long as it is capable of navigation.

Do the 2014 Amendments to the MLC 2006 apply under the laws of India, whereby shipowners must have financial security in place to cover the repatriation of seafarers in the event of abandonment (under Regulation 2.5) and contractual payments in the event of a seafarer's death or long-term disability due to an occupational injury, illness or hazard (Regulation 4.2).

Yes, the same has been adopted in the Indian Rules incorporating the MLC.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Indian law?

No. The courts of India have not considered the legal concepts of 'gross negligence' or 'wilful misconduct'

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Indian law?

No, the knock-for-knock regime is presently unknown under Indian law and has yet to be tested in the courts of India.

That said, the courts will uphold clauses where both parties agree that they may limit their liability unless such offends public policy or is contrary to convention or statute.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under the laws of India?

Yes, save where they offend public policy

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Indonesia

Limitation of Liability

Is Indonesia signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

No. Indonesia is not signatory to any international convention relating to limitation of liability for maritime claims. However, under local law, and pursuant to the Indonesian Commercial Code, a shipowner can limit its liability for cargo claims and claims arising out of a collision with another vessel. Nevertheless, Indonesian courts rarely apply such a provision and prefer to determine the limitation amount based on their sole discretion instead.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

Indonesian law is silent on this issue.

Are there any exclusions or exceptions in respect of offshore vessel types?

Indonesian law is silent on this issue.

Is it possible to limit for wreck removal in Indonesia?

Indonesia has not ratified the Nairobi International Convention on the Removal of Wrecks of 2007, and there are no local laws purporting to the limitation of liability for wreck removal. According to Article 203 of Law No. 17 of 2008 on Shipping (Shipping Law), a shipowner is obliged to remove its shipwreck if it obstructs navigation, no later than 180 calendar days as of the sinking of the ship. Failure to do so entitles the government to remove such wreck at the expense of the shipowner.

Bunkers Convention

Is Indonesia signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

Indonesia has ratified the Bunkers Convention by virtue of Presidential Regulation No. 65 of 2014.

What is the geographical application of the Bunkers Convention in respect of Indonesia?

The ratification was made without reservation. As such, the Bunkers Convention shall apply to archipelagic waters, territorial waters and the Exclusive Economic Zone (EEZ).

Are there any exclusions or exceptions in respect of offshore vessel types?

Indonesian law is silent on this issue.

Civil Liability Convention

Is Indonesia signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Indonesia has ratified the CLC by virtue of Presidential Decree No. 18 of 1978 as well as its Protocol of 1992 by virtue of Presidential Decree No. 52 of 1999.

What is the geographical application of the CLC in respect of Indonesia?

The ratification was made without reservation. As such, the CLC shall apply to archipelagic waters, territorial waters and the EEZ. It may also apply to internal waters, as one of the implementing national legislations of the CLC, Presidential Regulation No. 109 of 2006 on the Prevention of Oil Spill in Sea, defines the 'sea' as consisting of internal waters, archipelagic waters, territorial waters and the EEZ of Indonesia.

Are there any exclusions or exceptions in respect of offshore vessel types?

Indonesian law is silent on this issue.

Wreck Removal Convention

Is Indonesia signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No. Indonesia is not signatory to the Nairobi International Convention on the Removal of Wrecks (WRC).

Maritime Labour Convention

Is Indonesia signatory to the Maritime Labour Convention (MLC)?

Indonesia has ratified the Maritime Labour Convention, 2006 (Law No. 15 of 2016).

Has the law of Indonesia determined whether offshore vessels such as mobile offshore drilling units, mobile offshore production units (eg floating production offloading units or floating storage offloading units), dredgers, cable/pipe layers, semi-submersible/heavylift vessels, accommodation units or supply/support vessels are 'ships' within the meaning of the MLC?

While the MLC has been ratified, no implementing regulation has been issued to date. Therefore, there is no regulation which defines if offshore vessels are to fall within the definition of a 'ship' for the purposes of the MLC.

Do the 2014 Amendments to the MLC whereby shipowners must have financial security in place to cover the repatriation of seafarers in the event of abandonment (under Regulation 2.5) and contractual payments in the event of a seafarer's death or long-term disability due to an occupational injury, illness or hazard (Regulation 4.2) apply under the laws of Indonesia?

Indonesia has not ratified the 2014 Amendments to the MLC 2006.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Indonesian law?

As far as civil law is concerned, the Indonesian Civil Code (ICC) is silent on the concept of gross negligence and wilful misconduct. Article 1366 of the ICC mentions 'negligence or carelessness' without further elaborating the threshold as to what constitutes negligence or carelessness.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Indonesian law?

A knock-for-knock liability regime is not a legal concept expressly recognised under Indonesian law; therefore, its applicability and interpretation will be determined by the court on a case-by-case basis.

If knock-for-knock is a recognised liability regime under Indonesian law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

As concepts of knock-for-knock liability, gross negligence and wilful misconduct are not expressly recognised under Indonesian law, each case must be determined on its own facts and merits, although considerations may be given to previously decided/similar cases and academic theories.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Indonesian law?

If parties agree to Indonesian law as the governing law, such standard contracts are enforceable or upheld to the extent that they do not contain provisions in violation of mandatory provisions of Indonesian law (eg carrier waiving or limiting its liability with regard to cargo damage in certain circumstances, or exercising a lien). Any provisions that contravene mandatory provisions of Indonesian law will be deemed null and void.

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Malaysia

Limitation of Liability

Is Malaysia signatory to an international convention on limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

Two different vessel limitation conventions are applicable in Malaysia:

i. The International Convention Relating to the Limitation of Liability of Owners of Sea-going Ships, 1957 (the 1957 Convention) applies in East Malaysia (comprising the states of Sabah and Sarawak)

ii. The Convention on Limitation of Liability for Maritime Claims 1976 amended by the 1996 Protocol (the LLMC 1996) applies in West Malaysia (comprising the states of Peninsula Malaysia and the Federal Territory of Labuan).

In East Malaysia, the 1957 Convention is given domestic effect through subsidiary legislation made under the Merchant Shipping Ordinance No.2 of 1960 (MSO No.2 1960) in Sarawak and under Merchant Shipping Ordinance No.11 of 1960 (MSO No.11 1960) in Sabah.

In West Malaysia, the LLMC 1996, to which Malaysia is a state party, is given force through section 360 of the Merchant Shipping Ordinance 1952 (MSO 1952).

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

The 1957 Convention applies within the territorial waters of East Malaysia. The LLMC 1996 applies to every ship in the territorial waters and the exclusive economic zone of West Malaysia and the Federal Territory of Labuan.

Are there any exclusions or exceptions in respect of offshore vessel types?

With respect to East Malaysia, the domestic legislation giving effect to the 1957 Convention (MSO No.2 and MSO No.11, 1960) defines a 'ship' as 'any vessel other than a vessel solely propelled by oars' and a 'vessel' as 'anything constructed or used for the carriage on water of persons or property'. It is likely that FPSOs and drilling units connected to the seabed would fall outside the scope of definition of a 'ship' or 'vessel' for limitation under the 1957 Convention; however, with no local case law on this point, it remains a grey area.

With respect to West Malaysia, and the MSO 1952, 'ship' is defined as including 'every description of vessel used in navigation'. Following Article 15(4) of LLMC 1996, floating platforms constructed for the purpose of exploring or exploiting natural resources of the seabed or the subsoil thereof are excluded. This would exclude FPSOs while they are connected to the seabed but arguably not while they are unconnected and/or navigating. However, as domestic legislation has not excluded drill ships, LLMC 1996 will apply to drill ships which have been constructed for, adapted to and engaged in drilling provided they fall within the meaning of a ship.

Is it possible to limit for wreck removal in Malaysia?

In East Malaysia, it would not be possible to limit liability for wreck removal expenses under the 1957 Convention because such expenses if claimed by the authorities under statute will not be considered as 'damages' that can be limited under the Convention but as a statutory debt.

In West Malaysia and the Federal Territory of Labuan, claims for wreck removal can be limited under the LLMC 1996.

Bunkers Convention

Is Malaysia signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

Yes, Malaysia is signatory to the Bunkers Convention, which has been implemented domestically by the Merchant Shipping (Liability and Compensation for Oil and Bunker Oil Pollution) Act 1994 (the 1994 Act).

What is the geographical application of the Bunkers Convention in respect of Malaysia?

The 1994 Act applies to territorial waters and EEZ throughout Malaysia.

Are there any exceptions for offshore vessel types?

A ship is widely cast as 'any seagoing vessel and seaborne craft of any type' under the 1994 Act and, hence, would include offshore vessels and units.

Civil Liability Convention

Is Malaysia signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes, Malaysia is signatory to the CLC, which together with the Bunkers Convention, has been implemented domestically by the 1994 Act.

What is the geographical application of the CLC in respect of Malaysia?

The CLC is applicable throughout Malaysia in its territorial waters and EEZ.

Are there any exceptions for offshore vessel types?

The CLC defines a ship as 'any seagoing vessel and seaborne craft of any type constructed or adapted for the carriage of oil in bulk as cargo', pointing to trading tankers engaged in the carriage of oil as cargoes on a voyage. There is no case law on the point, but in view of this definition we consider it unlikely that the 1994 Act would apply to FPSOs.

Wreck Removal Convention

Is Malaysia signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

Yes, Malaysia is signatory to the WRC.

However, under section 381A, MSO 1952, only the financial security and compulsory insurance for wreck removal provision mirroring Article 12 of the WRC, has been adopted for West Malaysia and the Federal Territory of Labuan for ships over 300 tons entering or leaving a Malaysian port or place in the territorial waters. Otherwise, the other provisions of the WRC aimed at and covering the EEZ waters of a Convention state are yet to be brought into force in Malaysia.

Maritime Labour Convention

Is Malaysia signatory to the Maritime Labour Convention (MLC)?

Malaysia ratified the MLC on 20 August 2013 and domestically implemented the provisions under MSO 1952 for application in West Malaysia and the Federal Territory of Labuan with effect from 1 March 2017.

The MLC provisions are yet to be extended to East Malaysian states of Sabah and Sarawak.

Have the laws of Malaysia determined whether offshore vessels such as mobile offshore drilling units, mobile offshore production units (eg floating production offloading units or floating storage offloading units), dredgers, cable/pipe layers, semi-submersible/heavy lift vessels, accommodation units or supply/support vessels are 'ships' within the meaning of the MLC?

The MLC provisions are not applicable to and excludes offshore units, whose primary service is drilling operation for the exploration, exploitation or production of resources beneath the seabed and are not ordinarily engaged in navigation or international voyages, FSOs and FPSOs, or any other vessel of similar operations.

Do the 2014 Amendments to the MLC 2006 apply under the laws of Malaysia whereby shipowners must have financial security in place to cover the repatriation of seafarers in the event of abandonment (under Regulation 2.5) and contractual payments in the event of a seafarer's death or long-term disability due to an occupational injury, illness or hazard (Regulation 4.2)?

The Malaysian Marine Department, by way of a Malaysian Shipping Notice dated 23 December 2016, has implemented the MLC 2014 Amendments

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under the laws of Malaysia?

Malaysian courts recognise the legal concepts of 'gross negligence' and 'wilful misconduct', though there is no authoritative definition of either concept so far.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under the laws of Malaysia?

There is no specific case law on this point. However, noting that the concept of knock-for-knock liability has applied to motor insurance cases for a long time in Malaysia, with liability between insured vehicles being resolved by the underwriters under the scheme, it is highly likely the knock-for-knock liability regime will be upheld by the courts.

If knock-for-knock is a recognised liability regime under Malaysian law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

There are no reported decisions on the question whether a knock-for-knock liability regime will survive or be excluded by an event of 'gross negligence' or 'wilful misconduct'. It is likely, however, where contractual exceptions or 'carve-outs' change the character of the liability and indemnity regime agreed in a contract, that the courts will give effect to them.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Malaysian law?

Malaysian courts will uphold industry standard contracts such as TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON, etc.

SUPPLYTIME contracts form the bulk of the offshore vessel charter contracts that have been litigated in Malaysia through the courts and arbitration.

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Mexico

Limitation of Liability

Is Mexico signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

Mexico ratified the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976) on 13 May 1994, however, it has not ratified the 1996 Protocol. The Convention is incorporated into national law and implemented via the Law of Navigation and Maritime Commerce (Ley de Navegación y Comercio Marítimos 1/06/2006).

Although the LLMC 1976 is in force, a decision by the Supreme Court of Mexico in 2010 deprived a shipowner of their right to limit liability when the shipowner's offshore supply vessel collided with a floating platform.

This decision was based on the Supreme Court's interpretation of the exclusion contained in Article 15 (5) (b) of the LLMC 1976: 'This Convention shall not apply to: ...; (b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof'.

While the Mexican legal system is not based on case law, a decision from the Supreme Court does have strong persuasive authority. Since the Supreme Court's decision in 2010, lobbying has taken place in Mexico through the IMO with a view to persuading the authorities that Article 15 (5) (b) is not intended to deprive shipowners of their right to limit their liability under the LLMC 1976 and that the exclusion to the right to limit is intended to apply to liabilities incurred by owners of floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof. It is worth noting that since 2010, shipowners have successfully upheld their right to limit liability in local courts in Mexico indicating a general move away from the Supreme Court's decision.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

The LLMC 1976 applies to Mexican territorial waters, EEZ and waters within ports of Mexico. Mexican authorities have jurisdiction over these areas under the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and local legislation.

Are there any exclusions or exceptions in respect of offshore vessel types?

The only exclusions are those contained in Article 15 (5) of the LLMC 1976, ie floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof.

Is it possible to limit for wreck removal in Mexico?

Yes, shipowners can limit their liability for wreck removal in Mexico.

Bunkers Convention

Is Mexico signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

No. Mexico is not signatory to the Bunkers Convention.

Civil Liability Convention

Is Mexico signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes. Mexico is signatory to the CLC.

What is the geographical application of the CLC in respect of Mexico?

The CLC applies to the territorial waters and the EEZ of Mexico.

Are there any exclusions or exceptions in respect of offshore vessel types?

There are no specific exclusions or exceptions as long as the vessels fall within the CLC definition of 'ship'.

Wreck Removal Convention

Is Mexico signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No. Mexico is not signatory to the WRC.

Maritime Labour Convention

Is Mexico signatory to the Maritime Labour Convention (MLC)?

No. Mexico is not signatory to the MLC.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Mexican law?

The concepts of 'gross negligence' and 'wilful misconduct' under the Mexican legal system translate as 'negligencia', 'imprudencia' and 'conducta dolosa':

- 'Negligencia' is an action taken without due diligence, the lesser form of fault under the Mexican legal system.
- 'Imprudencia' is an action where due diligence was not duly followed and the agent should have foreseen the potential consequences.
- 'Conducta dolosa' is an action carried out with the intention to cause a deleterious effect.

As an example, Article 59 of the Mexican Law of Navigation and Commerce states that in respect of the activities of port pilots:

'the port pilot is responsible for damages and losses caused to vessels and port installations, resulting from her lack of knowledge, negligence, carelessness, recklessness, bad faith or wilful misconduct in respect of instructions when controlling a manoeuvre'.

Mexico is a civil law country where cases have a persuasive authority but are not necessarily binding on other judgments. There is no case law on maritime matters related to fault, but there are instances in other areas where these principles have been upheld.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Mexican law?

Knock-for-knock contracts are widely used in the offshore industry in Mexico. The concept has not been tested judicially, but under the principle of freedom of contract, the parties are technically entitled to contract out or apportion liabilities between them, provided this does not go against public order.

If knock-for-knock is a recognised liability regime under Mexican law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

As mentioned above, this issue has not been tested but it is unlikely that 'gross negligence' and 'wilful misconduct' will be upheld in respect of a knock-for-knock contract, particularly if this behaviour is against public order or gives rise to criminal liability. There is no case law on this matter.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Mexican law?

These industry standard contracts are used in the offshore industry in Mexico but have not been tested in court to date. Contracts with the national oil company PEMEX will be subject to the formats that PEMEX provides, which may or may not have a knock-for-knock arrangement in place. However, subcontractors are known to have used BIMCO's standard contracts for several years as a basis for meeting their requirements

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Nigeria

Limitation of Liability

Is Nigeria signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

Yes, Nigeria is signatory to the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 1976), and has ratified and domesticated it into national law by virtue of the provisions of Section 335(1) (f) of the Merchant Shipping Act 2007, which expressly provides that the provisions of the Convention shall apply in Nigeria.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

There is nowhere in Nigeria's laws where the extent of applicability of the LLMC 1976 is expressly stated; however, the provisions of both the Territorial Waters Act, 1967 and the Exclusive Economic Zone Act of Nigeria, 1978 (EEZ) expressly provide for the extent of the geographical and sovereign powers of Nigeria.

The Territorial Waters Act gives jurisdiction to the Federal Government of Nigeria over any part of the territorial waters of Nigeria. Under the Territorial Waters Act, the territorial waters of Nigeria shall include every part of the open sea within 12 nautical miles of the low water mark of the coast of Nigeria.

The EEZ on the other hand provides that Nigeria can exercise certain sovereign rights, especially in relation to the conservation or exploitation of the natural resources of the seabed, its subsoil and super adjacent water, and the right to regulate by law the establishment of artificial structures and installations, and undertaking of marine scientific research. The EEZ of Nigeria extends up to 200 nautical miles seawards from the coast of Nigeria.

The combined reading of these two statutes by implication presupposes that the extent of application of any law or convention to which Nigeria is a signatory will be limited to the extent of applicability of the Territorial Waters Act and the EEZ.

Are there any exclusions or exceptions in respect of offshore vessel types?

No. There are no exclusions or exceptions in respect of offshore vessel types. However, most of Nigeria's laws include offshore vessel types as vessels/ships in their definition section; therefore, it is safe to conclude that the laws as applicable to ships/vessels will be applicable to offshore vessel types.

Is it possible to limit for wreck removal in Nigeria?

Yes, it is possible to limit for wreck removal in Nigeria. The provisions of Section 352 (1) (g) of the Merchant Shipping Act, 2007 provide that claims in respect of raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, shall be subject to limitation of liability.

Bunkers Convention

Is Nigeria signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

Yes, Nigeria is signatory to the Bunkers Convention and has ratified it, however, it is yet to domesticate it into national law in accordance with the provisions of Section 12 of the Constitution of the Federal Republic of Nigeria and therefore this Convention may not have the force of law.

Civil Liability Convention

Is Nigeria signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes, Nigeria is signatory to the CLC and has ratified and domesticated it into law by virtue of the provisions of Section 335 (1) (e) of the Merchant Shipping Act, 2007 and the Merchant Shipping (Civil Liability for Oil Pollution Damage and Compensation) Regulations, 2010.

What is the geographical application of the CLC Convention in respect of Nigeria?

As per the LLMC 1976, Nigeria's relevant laws are silent on the extent of applicability of the CLC, however the provisions of both the Territorial Waters Act, 1967 and the Exclusive Economic Zone Act of Nigeria, 1978 (EEZ) expressly provide for the extent of the geographical and sovereign powers of Nigeria. The combined reading of these two statutes presupposes that the extent of application of any convention in which Nigeria is a signatory will be limited to the extent of the Territorial Waters Act, 1967 and the EEZ.

Are there any exclusions or exceptions in respect of offshore vessel types?

No. There are no exclusions or exceptions in respect of offshore vessel types. However, most of Nigeria's laws include offshore vessel types as vessels/ships in their definition section therefore, it is safe to conclude that the laws as applicable to ships/vessels will be applicable to offshore vessel types.

Wreck Removal Convention

Is Nigeria signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

Yes, Nigeria is signatory to the WRC and has ratified it. However, it is yet to domesticate it into national law in accordance with the provisions of Section 12 of the Constitution of the Federal Republic of Nigeria and, therefore, this Convention may not have the force of law.

Maritime Labour Convention

Is Nigeria signatory to the Maritime Labour Convention (MLC)?

Although Nigeria is signatory to the MLC, it is yet to domesticate it into national law.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Nigerian law?

Yes, 'gross negligence' and 'wilful misconduct' are recognised as legal concepts under Nigerian law. Both terms, although related, have distinct features attributable to them. The main difference is that the resultant damage is envisaged in one while it is not in the other. In wilful misconduct, the defendant, before embarking on the action resulting in the damages is aware of the probable result of his actions. In gross negligence, however, the defendant would not have envisaged the damages that would flow from his actions but would merely have failed to exercise due diligence and care expected of him.

In Nigeria, a party may, in some cases, be subject to imprisonment for up to two years where they are found to be liable due to misconduct. For example, in cases of misconduct endangering life or ship under Section 194 of the Merchant Shipping Act, 2007.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Nigerian law?

We are unaware of any cases or decisions addressing the concept of knock-for-knock. However, Nigerian law would usually uphold a clause containing liability provisions in a contract voluntarily executed, because Nigerian law recognises and respects the sanctity of contracts. Where parties have reduced the terms and conditions of service into an agreement, the conditions must be observed. A party cannot ordinarily withdraw from a contract or agreement just because they later found that the terms of the contract or agreement are not favourable to them.

If knock-for-knock is a recognised liability regime under Nigerian law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

As noted above, the knock-for-knock regime has not come up in any reported decisions under Nigerian law and, to the best of our knowledge, there are no decided cases in relation to the concept. In cases where there is either a lack of judicial authorities in Nigeria, recourse can be made to the Common Law and, in particular, decisions of the courts of England, because Nigerian laws largely follow English law. Please note that decisions of the English courts are merely persuasive and not binding on the Nigerian courts.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Nigerian law?

Yes, industry standard contracts such as TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON will be upheld under Nigerian law.

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Norway

Limitation of Liability

Is Norway signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

The Norwegian rules on limitation of liability are based on the rules of the 1976 London Convention on Limitation of Liability on Maritime Claims, as amended by the 1996 Protocol (LLMC 96). Norway adopted the LLMC 96 in 2000 and it is transformed into Norwegian law by being implemented in the Norwegian Maritime Code of 1994 (NMC), chapter 9.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

Under Norwegian law, there are no geographic limits with respect to the application of the LLMC 96. Pursuant to the NMC, Section 182, the rules on limitation in chapter 9 apply in all cases where limitation is argued before Norwegian courts. Thus, the question is more a jurisdiction issue than a matter of geographic application.

Are there any exclusions or exceptions in respect of offshore vessel types?

The NMC applies as a starting point to all ships, including offshore vessels, that are used in the exploration, exploitation, storage or transportation of subsea natural resources.

Is it possible to limit for wreck removal in Norway?

Yes, in accordance with the NMC, section 172a, it is possible to limit liability for wreck removal in Norway. Under the LLMC 96 Protocol, countries may reserve the right to exclude limitation of liability for wreck removal and clean-up costs from the scope of the LLMC 96, which a number of states have done. Norway adopted this reservation in 2002 and, in 2006, more than doubled the amount of the limitation fund in the LLMC 96 for such costs.

The right to limitation only applies to monetary claims. The Norwegian Supreme Court recently held that an administrative order to remove the wreck made in accordance to the Norwegian Pollution Act is not subject to the NMC's rules on limitation.

Bunkers Convention

Is Norway signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

Yes, Norway adopted the Bunkers Convention in 2007 and it is incorporated into the NMC, chapter 10.I.

What is the geographical application of the Bunkers Convention in respect of Norway?

The Bunkers Convention is applicable to damage which occurs within the Norwegian territory and the Exclusive Economic Zone (EEZ), and to the same zones of other member states. In addition, it applies to preventive measures taken anywhere in order to avoid damage within the above-mentioned scope of the NMC, section 190.

Are there any exclusions or exceptions in respect of offshore vessel types?

No, there are no particular exclusions or exceptions in respect of offshore vessel types.

Civil Liability Convention

Is Norway signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes, Norway adopted the CLC in 1995 and the Convention is incorporated into the NMC, chapter 10.II.

What is the geographical application of the CLC in respect of Norway?

The scope of applicability for the CLC is limited to damage which occurs within the Norwegian territory and the EEZ, and such zones of other member states. It also applies to preventive measures taken elsewhere in order to avoid such damage within the above-mentioned scope of the NMC, section 206.

Are there any exclusions or exceptions in respect of offshore vessel types?

No, there are no particular exclusions or exceptions in respect of offshore vessel types.

Wreck Removal Convention

Is Norway signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No, Norway has not ratified the Nairobi International Convention on the Removal of Wrecks. A white paper was issued by the Norwegian Ministry of Transport in 2016 with a proposal to adopt the Convention and implement its principles into national legislation. The proposal is still pending approval.

Maritime Labour Convention

Is Norway signatory to the Maritime Labour Convention (MLC)?

Norway adopted the MLC in 2009. The Convention is implemented into Norwegian law mainly through the Norwegian Ship Safety and Security Act of 2007 and the Ship Labour Act of 2013.

Has the law of Norway determined whether offshore vessels such as mobile offshore drilling units, mobile offshore production units (eg floating production offloading units or floating storage offloading units), dredgers, cable/pipe layers, semi-submersible/ heavylift vessels, accommodation units or supply/ support vessels are 'ships' within the meaning of the MLC?

There is still no statutory definition in Norway which determines what constitutes a 'ship' within the meaning of the MLC, but the law allows the Ministry to make such definition at a later stage if necessary. This has not yet been done. The MLC is thus applicable to all types of Norwegian ships, as long as the relevant ship is registered in Norway or fulfils the nationality requirement without registration in accordance with the NMC, section 1 to 3. However, the Ministry has used the opportunity to restrict the MLC's application for workers on board offshore units. The MLC only applies to workers on board such units insofar as they are under transfer or undertaking work on a foreign continental shelf.

Do the 2014 Amendments to the MLC whereby shipowners must have financial security in place to cover the repatriation of seafarers in the event of abandonment (under Regulation 2.5) and contractual payments in the event of a seafarer's death or long-term disability due to an occupational injury, illness or hazard (Regulation 4.2) apply under the laws of Norway?

Yes. The 2014 Amendments to the MLC 2006 entered into force in Norway in 2017 and were implemented in section 4-7 of the Norwegian Ship Labour Act of 2013

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Norwegian law?

In Norway, liability normally presupposes negligent conduct, both in tort and contract law. Simple negligence is normally sufficient, but in certain circumstances and under some rules, gross negligence is required to constitute liability. The legal concept of negligent conduct is also present in several Norwegian standard contracts, where for instance an exception to the right to limit liability often applies in the event of gross negligence or display of intent.

Gross negligence has no statutory definition and the legal concept is mostly developed and defined through case law. The Norwegian Supreme Court has stated that in order for an act to be grossly negligent, it must represent 'a pronounced derogation from common proper behaviour'. To establish gross negligence, an act is required to be 'seriously culpable, and the relevant person must be substantially more to blame than where an act would be considered as mere negligence'.

Under Norwegian law, wilful misconduct as a legal concept is mainly developed within criminal law. The concept presupposes conscious conduct or intention to cause harm. For torts, or claims in contract, the definition has limited importance as most standard contracts do not distinguish between the remedies for wilful misconduct and gross negligence.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Norwegian law?

Yes. The knock-for-knock liability regime was adopted as a contractual standard and is today a recognised concept under Norwegian law.

If knock-for-knock is a recognised liability regime under Norwegian law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

The Norwegian courts' approach to the construction of contracts includes an application of the principle of reasonableness based on the parties' intentions and a notion of 'good business practice'. The contract will be interpreted as a whole, and considerations of the balance between the contracting parties and whether the wording of the clauses are generally accepted in the industry will play an important role in the construction exercise. Other aspects the courts take into consideration are the parties' ability to obtain insurance cover, the need for predictability and any applicable international regulations. Clauses which discharge a contracting party from liability caused by gross negligence or wilful misconduct have traditionally been held as unenforceable by Norwegian courts.

More recent decisions show that this may no longer be an absolute rule in contracts between professional parties, and especially in respect of standard agreed contracts such as those used in the offshore sector. However, in the case of the Njord Bravo from 2012, the Norwegian Appeal Court set aside the contractual exclusion for any indirect or consequential losses based on the fact that the acting party displayed grossly negligent behaviour. Knock-for-knock or other types of limitation clauses are more likely to be accepted where the gross negligence or wilful misconduct act is committed by employees not qualifying as the company's 'alter ego'.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Norwegian law?

Yes, standard contracts will in general be upheld under Norwegian law. However, each contract will be assessed individually and the balance between the parties as well as the reasonableness of the contract terms will be taken into consideration.

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NOR

Qatar

Limitation of Liability

Is Qatar signatory to an international convention relating to limitation of liability for maritime claims?

No, Qatar is not signatory to the LLMC; however, domestic legislation (the Qatari Maritime Code No. 15 of 1980) may allow a shipowner to limit his liability at Qatari Riyals (QR) 250 per ton for loss of or damage to property, QR500 per ton for personal injury or death and QR750 per ton for both loss of or damage to property and personal injury or death.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

The Qatari Maritime Code does not impose geographical restrictions on the limitation of liability provisions. Accordingly, standard international principles incorporated in the United Nations Convention on the Law of the Seas related to maritime claims will apply.

Are there any exclusions or exceptions in respect of offshore vessel types?

No, there are no exclusions or exceptions in respect of offshore vessel types. The limitation of liability provisions under Qatari Maritime Law apply to any 'vessel', which is broadly defined as 'any craft intended for sea transport, fishing, towage or any other purpose even when it is not set for profit'. We expect that offshore vessels would fall under this definition and therefore the limitation of liability provisions shall apply to them.

Is it possible to limit for wreck removal in Qatar?

Yes. A shipowner can limit his liability for the raising of a wreck, refloating, raising or breaking up of a sunken, stranded or abandoned vessel under Article 68 of the Qatar Maritime Code.

Bunkers Convention

Is Qatar signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

No, Qatar is not signatory to the Bunkers Convention.

Civil Liability Convention

Is Qatar signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes, Qatar is signatory to the CLC 1992.

What is the geographical application of the CLC in respect of Qatar?

The CLC applies within the territorial waters/EEZ (Exclusive Economic Zone) of Qatar.

Are there any exclusions or exceptions in respect of offshore vessel types?

No, there are no exclusions or exceptions in respect of offshore vessel types.

Wreck Removal Convention

Is Qatar signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No, Qatar is not signatory to the WRC.

Maritime Labour Convention

Is Qatar signatory to the Maritime Labour Convention (MLC)?

No, Qatar is not signatory to the MLC.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Qatari law?

Yes, both 'gross negligence' and 'wilful misconduct' are recognised legal concepts under Qatari law.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Qatari law?

Yes, unless the claim involves fraud, gross negligence, personal injury/death or pollution.

If knock-for-knock is a recognised liability regime under Qatari law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

No, knock-for-knock provisions will not be upheld in the event of 'gross negligence' or 'wilful misconduct'.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Qatari law?

Yes, industry standard contracts will be upheld under Qatari law.

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Saudi Arabia

Limitation of Liability

Is Saudi Arabia signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

No, Saudi Arabia is not signatory to any international limitation conventions, and shipowners cannot limit their liability under local law.

Bunkers Convention

Is Saudi Arabia signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

No, Saudi Arabia is not signatory to the Bunkers Convention.

Civil Liability Convention

Is Saudi Arabia signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes. This was ratified by Saudi Arabia as an International Convention. This was not enacted by domestic legislation.

What is the geographical application of the Bunkers Convention in respect of Saudi Arabia?

It applies to the territory of Saudi Arabia including its territorial sea.

Are there any exclusions or exceptions in respect of offshore vessel types?

No. There are no exclusions or exceptions in respect of offshore vessel types.

Wreck Removal Convention

Is Saudi Arabia signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No, Saudi Arabia is not signatory to the WRC.

Maritime Labour Convention

Is Saudi Arabia signatory to the Maritime Labour Convention (MLC)?

No, Saudi Arabia is not signatory the MLC.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Saudi law?

'Gross negligence' is referred to under Saudi law in relation to commercial instruments. However, there is no definition of 'gross negligence' and it is not recognised as a legal concept under other Saudi laws. 'Wilful misconduct' is not recognised as a legal concept under Saudi law.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Saudi law?

No. The knock-for-knock liability regime is not a recognised concept under Saudi law. Limiting liability under contract may in theory be recognised and upheld under Saudi law. However, the approach of the Saudi courts is uncertain and will depend on whether they would classify the claim as arising out of contractual or tortious liability. Limitation of liability clauses will not be upheld in the case of tortious liability.

If knock-for-knock is a recognised liability regime under Saudi law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

The position in relation to contractual claims is unclear, as 'wilful misconduct' is not a recognised legal concept under Saudi law and 'gross negligence' is only recognised in the context of commercial instruments.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Saudi law?

Industry standard contracts would be upheld by the Saudi courts provided that the terms of the contract do not violate public policy or Islamic Sharia law. The position is therefore uncertain.

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Singapore

Limitation of Liability

Is Singapore signatory to an international convention on limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

Singapore is signatory to the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 1976) but not to the 1996 Protocol. It has enacted the LLMC 1976 with some modification in the Merchant Shipping Act (Cap 179) (MSA), which amendment came into effect from 1 May 2005 (Singapore LLMC). The amendment does not apply to occurrences which took place before 1 May 2005.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

The Singapore LLMC applies as part of the *lex fori* if the claim is brought in Singapore, regardless where the incident occurred.

Are there any exclusions or exceptions in respect of offshore vessel types?

The MSA provides that notwithstanding paragraph 2 of Article 1 of the LLMC 1976, the right to limit under the LLMC 1976 applies in relation to any ship whether seagoing or not, and 'shipowner' in that paragraph has a corresponding meaning. A 'ship' is defined in the MSA to mean any kind of vessel used in navigation by water, however propelled or moved, and includes an 'off-shore industry mobile unit', which is further defined in the MSA. The fact that Article 15(4) and (5) of the LLMC 1976 (which excludes the application of the LLMC 1976 in certain situations to certain types of vessels such as drilling vessels and floating platforms) has not been included in the Singapore LLMC suggests that vessels as therein described may also rely on the Singapore LLMC.

Is it possible to limit for wreck removal in Singapore?

Yes, if liability is incurred under section 10 of the Wreck Removal Act 2017 (No. 25 of 2017) (WRA), which gives effect to the Wreck Removal Convention.

Section 10 of the WRA provides that, subject to the exclusions in the WRA, where a ship is involved in a maritime casualty resulting in a wreck in Singapore's Convention area, the registered shipowner of the ship is liable for the costs incurred by the Director for locating, marking and removing the wreck under Part 3 of the WRA.

Section 12 of the WRA gives a shipowner who has incurred liability under section 10, the right to limit its liability in the manner provided by the Singapore LLMC as if paragraph 1(d) and (e) of Article 2 of the LLMC 1976 has the force of law in Singapore, but it does not provide the registered shipowner or any other party the right to limit under any other circumstances.

Bunkers Convention

Is Singapore signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention)?

Yes. Singapore is signatory to the Bunker Convention and this has been enacted in Singapore's Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act (Cap. 179A) (CLCBOPA).

What is the geographical application of the Bunker Convention in respect of Singapore?

The CLCBOPA applies to damage caused in the territory of Singapore and 'territory of Singapore' is defined to include the territorial sea and EEZ of Singapore.

Are there any exclusions or exceptions in respect of offshore vessel types?

No. There are no express exclusions or exceptions in respect of offshore vessel types. The CLCBOPA will apply as long as the particular vessel falls within the definition of 'ship' within the meaning of the CLCBOPA, which defines ship as 'any seagoing vessel and seaborne craft of any type'.

Civil Liability Convention

Is Singapore signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes. Singapore is signatory to the CLC and this has been enacted in the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (Cap.180) (CLCOPA).

What is the geographical application of the CLC in respect of Singapore?

The CLCOPA applies to any damage caused in the territory of Singapore, and 'territory of Singapore' is defined to include the territorial sea and EEZ of Singapore, and the EEZ is further defined in the CLCOPA.

Are there any exceptions for offshore vessel types?

Although there are no express exclusions or exceptions in respect of offshore vessel types, the CLCOPA makes it clear that the liability for oil pollution would only apply to ships constructed or adapted for carrying oil in bulk as cargo. If the ship is also capable of carrying other cargoes besides oil, the CLCOPA would only apply while it is carrying oil in bulk as cargo and while it is on any voyage following the carriage of any such oil, unless it is proved that no residues from the carriage of any such oil remain in the ship.

Wreck Removal Convention

Is Singapore signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

Yes, Singapore is signatory to the WRC. This has been enacted in the Wreck Removal Act (WRA) as referred to above.

What is the geographical application of the WRC in respect of Singapore?

The WRA only imposes obligations and liability on the registered shipowner of a ship involved in a maritime casualty resulting in a wreck in 'Singapore's Convention Area'. This term has been defined to mean the EEZ of Singapore.

Singapore has not elected to expand the application of the Convention to wrecks located within the territory, including the territorial sea.

Are there any exceptions for offshore vessel types?

The term 'ship' has been defined widely to mean a seagoing vessel of any type whatsoever and includes 'floating craft and floating platforms', except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

The WRA, however, does not apply to government ships coming within section 20 of the WRA.

Maritime Labour Convention

Is Singapore signatory to the Maritime Labour Convention (MLC)?

Yes, Singapore is signatory to the MLC, which has been enacted in the Merchant Shipping (Maritime Labour Convention) Act 2014 (No. 6 of 2014) (MLCA).

Have the laws of Singapore determined whether offshore vessels such as mobile offshore drilling units, mobile offshore production units (eg floating production offloading units or floating storage offloading units), dredgers, cable/pipe layers, semi-submersible/heavy lift vessels, accommodation units or supply/support vessels are 'ships' within the meaning of the MLC?

The MLCA applies to all offshore ship types that fall within the definition of a 'ship' within the meaning of the MSA and which have not been excluded by the MLCA. One such category of ship which has been excluded is a ship which has been issued a Mobile Offshore Drilling Unit Safety Certificate in accordance with the Merchant Shipping (Maritime Labour Convention) (Definition of Ship Order) 2014.

Do the 2014 Amendments to the MLC 2006 apply under the laws of Singapore whereby shipowners must have financial security in place to cover the repatriation of seafarers in the event of abandonment (under Regulation 2.5) and contractual payments in the event of a seafarer's death or long-term disability due to an occupational injury, illness or hazard (Regulation 4.2)?

Yes, Singapore has enacted the 2014 Amendments to the MLC whereby shipowners must have financial security in place to cover the repatriation of seafarers in the event of abandonment (under Regulation 2.5) and contractual claims in the event of a seafarer's death or long-term disability due to an occupational injury, illness or hazard (Regulation 4.2). This can be found in the Merchant Shipping (Maritime Labour Convention) (Amendment) Act 2016 and the Merchant Shipping (Maritime Labour Convention) (Financial Security) Regulations 2017.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under the laws of Singapore?

The Singapore High Court has held in Sie Choon Poh v Amara Hotel Properties Pte Ltd [2005] 3 SLR (R) 576 that the term 'gross negligence' as a concept is not susceptible of definition and would depend very much on the circumstances giving rise to the duty to act, which can vary from case to case as well as vary in infinite degree. The cases have shown that factors, such as notice or awareness of the existence of the risk, the extent of the risk, the character of the neglect, the duration of the neglect and, not least, the ease or difficulty of fulfilling the duty are important, and in some cases vital, in determining whether the fault (if any) of a defendant is 'so much more than merely ordinary neglect, that it should be held to be very great, or gross negligence'.

'Wilful misconduct' has been interpreted to mean conduct 'far beyond any negligence, and necessarily implies that the person responsible for wilful misconduct knows and appreciates that it is wrong conduct on his part in the circumstances to do or omit to do a particular thing, or acts with reckless carelessness, not caring what the results of his carelessness may be'. (Marine Centre Holdings Pte Ltd v Pars Carpet Gallery Pte Ltd [1997] 2 SLR (R) 897 at [22]).

Singaporean law does not prevent parties from excluding their liability for acts of gross negligence or wilful misconduct. However, to avoid the Singapore courts attributing their own meaning to such words, clear words should be used to define the intended scope of gross negligence and wilful misconduct, as any ambiguity will be construed strictly against the party seeking to rely on it.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under the laws of Singapore?

There are no directly reported cases in Singapore, but passing reference to knock-for-knock agreements in local cases suggests that it is a recognised concept under Singapore law.

If knock-for-knock is a recognised liability regime under Singaporean law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

There are no reported cases on whether it will be upheld in the event of 'gross negligence' or 'wilful misconduct'. It will very much depend on the actual wording of the clause and the circumstances of the case.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Singaporean law?

There is no reason why industry standard contracts such as TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON will not be upheld under Singapore law, provided they have not been amended or varied in any way that might make them unenforceable. Where amendments and variations (including rider clauses) are made to the industry standard contracts, specific legal advice should be sought on whether the particular contract as amended or varied will be upheld under the laws applicable.

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SIN

Thailand

Limitation of Liability

Is Thailand signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

No, Thailand is not signatory to an international convention relating to limitation of liability for maritime claims. Shipowners are not able to limit their liability under local law because there is no specific law dealing with limitation of liability for maritime claims.

Is it possible to limit for wreck removal in Thailand?

No. Thailand has not ratified the Nairobi International Convention on the Removal of Wrecks of 2007, and there are no local laws purporting to the limitation of liability for wreck removal.

Bunkers Convention

Is Thailand signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

No, Thailand is not signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage.

Civil Liability Convention

Is Thailand signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes, Thailand is signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC). Thailand deposited the instruments of accession on 7 July 2017 which shall become effective on 7 July 2018. The country has also enacted The Civil Liability for Oil Pollution Damage from Vessel Act, which shall come into force on 8 July 2018, in order to bring the application of the CLC into local law.

What is the geographical application of the CLC Convention in respect of Thailand?

The Convention, and the Act, shall apply within the territorial waters of Thailand, including the EEZ.

Are there any exclusions or exceptions in respect of offshore vessel types?

Not identified.

Wreck Removal Convention

Is Thailand signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No. Thailand is not signatory to the Nairobi International Convention on the Removal of Wrecks.

Maritime Labour Convention

Is Thailand signatory to the Maritime Labour Convention (MLC)?

Yes, Thailand is signatory to the Maritime Labour Convention, 2006. Thailand deposited the instruments of ratification on 7 June 2016, which became effective on 7 June 2017. Thailand also enacted the Maritime Labour Act B.E. 2558 (A.D. 2009) in order to comply with the provisions of the MLC 2006.

Have the laws of Thailand determined whether offshore vessels such as mobile offshore drilling units, mobile offshore production units (eg floating production offloading units or floating storage offloading units), dredgers, cable/pipe layers, semi-submersible/heavylift vessels, accommodation units or supply/support vessels are 'ships' within the meaning of the MLC?

It is unclear whether the laws of Thailand determine such offshore vessels as 'ships' within the meaning of the Maritime Labour Act B.E. 2558 (A.D. 2009).

Do the 2014 Amendments to the MLC whereby shipowners must have financial security in place to cover the repatriation of seafarers in the event of abandonment (under Regulation 2.5) and contractual payments in the event of a seafarer's death or long-term disability due to an occupational injury, illness or hazard (Regulation 4.2) apply under the laws of Thailand?

The Maritime Labour Act B.E. 2558 (A.D. 2009) does not apply the amendments to the MLC under Regulation 2.5 or 4.2.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under Thai law?

Both 'gross negligence' and 'wilful misconduct' are recognised legal concepts under Thai law. The terms 'gross negligence' and 'wilful misconduct' have appeared in various Supreme Court judgments (eg judgments nos. 943/2510 and 1156/2546). However, it is unclear what degree of negligence would be considered 'gross', and the difference is between gross negligence and wilful misconduct.

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under Thai law?

Yes. The knock-for-knock liability regime is recognised as a contractual concept under Thai law.

If knock-for-knock is a recognised liability regime under Thai law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

There is no test case whether a knock-for-knock shall be upheld in the event of 'gross negligence' or 'wilful misconduct'.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under Thai law?

Yes. Industry standard contracts such as TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON may be upheld under Thai law due to the principle of freedom of contract. However, there have been no Supreme Court judgments in this regard.

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UK

Limitation of Liability

Is the UK signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

Yes, the UK is signatory to the 1996 Protocol to Amend the Convention on the Limitation of Liability for Maritime Claims. However, it has denounced the 1976 Convention on Limitation of Liability for Maritime Claims as an international treaty. The 1976 Convention is given effect in the UK by the Merchant Shipping Act 1995 (MSA 1995) Schedule 7, which has been amended by the 1996 Protocol.

What is the geographical application of the international convention or the local law under which shipowners can limit their liability?

The UK's jurisdiction for the LLMC is the territorial limit ie 12 miles.

Are there any exclusions or exceptions in respect of offshore vessel types?

No, the LLMC applies to ships. The definition of ships 'include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.'

Article 15(5) provides that the LLMC 1976 shall not apply to floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof.

In the case of the UK, this provision does not appear in the MSA 1995 and therefore does not apply in the UK. Accordingly, it would seem that the LLMC does apply to floating platforms. The UK has enacted the broad definition of a 'ship' as set out above therefore it is possible that an offshore unit that is being used in navigation say, en route from one location to another might be classed as a 'ship' and therefore her owners might be able to limit their liability. But, once on location, it is possible that she may not be classed as a 'ship' and so her owners may not be able to limit their liability. See 5(b) regarding the definition of 'ships' in respect of the Income and Corporation Taxes Act 1988. We have been unable to find any authority on this point, so whether offshore drilling units or MODUs can limit could be decided either way if it came before the courts.

Is it possible to limit for wreck removal in the UK?

No. The UK has made a reservation by virtue of paragraph 3 of Schedule 7, Part II of the MSA 1995 and so the cost of wreck removal is unlimited.

Bunkers Convention

Is the UK signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

Yes, the UK is signatory to the Bunkers Convention since November 2008.

What is the geographical application of the Bunkers Convention in respect of the UK?

The Bunkers Convention applies within the territorial waters and within the Exclusive Economic Zone (EEZ) or if no EEZ up to 200 nautical miles from the baseline.

Are there any exclusions or exceptions in respect of offshore vessel types?

No, it applies to ships which 'means any seagoing vessel and seaborne craft, of any type whatsoever'.

Civil Liability Convention

Is the UK signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

Yes, the UK is signature to the CLC 92.

What is the geographical application of the CLC in respect of the UK?

The CLC applies within the territorial waters and within the EEZ or if no EEZ up to 200 nautical miles from the baseline.

Are there any exclusions or exceptions in respect of offshore vessel types?

No, there are no exclusions or exceptions in respect of offshore vessel types.

Wreck Removal Convention

Is the UK signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

Yes, the WRC came into force in April 2015. It is worth noting though that whilst a registered owner must carry insurance up to the LLMC limits, as set out above, a registered owner will not be able to set up a limitation fund for wreck removal in the UK.

What is the geographical application of the WRC in respect of the UK?

The UK will apply the WRC to a wreck located within its territorial sea and EEZ.

Are there any exclusions or exceptions in respect of offshore vessel types?

No, there are no exclusions or exceptions in respect of offshore vessel types.

Maritime Labour Convention

Is the UK signatory to the Maritime Labour Convention (MLC)?

The UK is signatory of the MLC 2006, although currently not to the MLC amendments 2014.

Have the laws of England & Wales determined whether offshore vessels such as mobile offshore drilling units, mobile offshore production units (eg floating production offloading units or floating storage offloading units), dredgers, cable/pipe layers, semi-submersible/heavylift vessels, accommodation units or supply/support vessels are 'ships' within the meaning of the MLC?

The MLC 2006 applies to 'ships'. The definition of ship has been considered in a number of cases. In a notable criminal case in *R v Goodwin* [2005] EWCA Crim 3184 a ship for the purposes of section 58 of the Merchant Shipping Act was defined as a seagoing vessel that could be used in navigation which is defined as 'the planned or ordered movement from one place to another'. In in *Perks v Clark* [2001] 2 Lloyd's Rep 431 jack-up drilling rigs, which were towed from one location to another to drill for oil, were 'ships' for the purposes of the Income and Corporation Taxes Act 1988. Therefore if there are 'seafarers' onboard which are defined in the MLC as any person, including the master of a ship, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on board a ship, it is likely that the MLC will apply to the above vessels.

Do the 2014 Amendments to the MLC whereby shipowners must have financial security in place to cover the repatriation of seafarers in the event of abandonment (under Regulation 2.5) and contractual payments in the event of a seafarer's death or long-term disability due to an occupational injury, illness or hazard (Regulation 4.2) apply under the laws of England & Wales?

It does not yet apply as it has not yet been enacted into English law. However, if the flag state of a vessel within the English jurisdiction applies the 2014 Amendments a claim may be brought under the financial security insurance for the above payments.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under English law?

Until relatively recently, English law did not recognise 'gross negligence' as a concept distinct from negligence. However in the case of *Camerata Property Inc v Credit Suisse Securities (Europe) Ltd* [2011] 1 C.L.C. 627 Andrew Smith J re-visited the meaning of 'gross negligence'. He concluded that although the distinction between gross negligence and mere negligence is one of degree the term 'gross negligence' was clearly intended to represent something more fundamental than failure to exercise proper skill and/or care constituting negligence. His view was that, as a matter of ordinary language and general impression, the concept of gross negligence is capable of embracing not only conduct undertaken with actual appreciation of the risks involved, but also serious disregard of or indifference to an obvious risk.

Wilful misconduct is conduct by a person who knows that he is committing, and intends to commit a breach of duty, or is reckless in the sense of not caring whether or not he commits a breach of duty (*De Beers UK Limited v Atos Origin IT Services* [2010] EWHC (TCC)).

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under English law?

Yes, knock-for-knock liability is a recognised concept under English Law.

If knock-for-knock is a recognised liability regime under English law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

There is a line of argument that says where a parties breach goes to the root of the contract ie a fundamental breach, that conduct may fall outside the scope of the knock for knock clause (*A Turtle Offshore SA v Superior Trading Inc. (the A Turtle)* [2009] 2 Lloyd's Rep 295).

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under English law?

Yes, the standard contracts all have the option to incorporate the English jurisdiction clause and will be construed accordingly.

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USA

Limitation of Liability

Is the US signatory to an international convention relating to limitation of liability for maritime claims? If not, can shipowners limit their liability under local law?

The US is not signatory to any international conventions relating to the limitation of liability for maritime claims. However, there is a right to limit under US law, under the Limitation of Liability Act 1851 (the Limitation Act), which allows shipowners to limit their liability based on the value of the vessel (post casualty) plus the outstanding freight, except where the loss occurred with their privity or knowledge.

Owners and bareboat charterers are entitled to rely upon the right to limit under the Limitation Act. Time or voyage charterers are not entitled to do so. Ship managers may be entitled to rely upon the right to limit if they exercise sufficient 'management and operational control over a vessel' and 'act as a manager of the vessel or acquires work for and dispatches the vessel' (*In re Ingram Barge Co.*, 2007 US Dist. LEXIS 52662, at 14-16, E. D. La. 2007).

Insurers cannot rely upon the right to limit. However, under Louisiana law, a plaintiff can sue an insurer directly and the courts will enforce insurance policy defences, which includes limiting the insurer's liability to the amount to which the assured is entitled to limit his liability (C*rown Zellerbach Corp. v Ingram Industries, Inc.*, 783 F.2d 1296, 5th Cir. 1986).

The Limitation Act applies generally to all types of maritime claims, which includes personal injury/death, collision and cargo damage, with certain exceptions. Historically, the most important exception was the 'personal contract' exception, which applies to contracts entered into by the actual shipowner, such as charterparties, contracts for repairs and employment contracts with crew. However, the concept is rather limited as it is difficult to establish that a contract is truly 'personal' to the shipowner.

It is not possible to rely upon the right to limit under the Limitation Act for pollution damage or clean-up costs. The Oil Pollution Act 1990 (OPA) establishes a separate liability regime regarding the discharge of oil into the navigable waters of the US or adjoining shorelines or its exclusive economic zone (EEZ). Under OPA, the 'responsible party' for a vessel or facility from which oil is discharged is strictly liable for the clean-up costs and damage caused by the pollution. However, the responsible party's liability in damages is capped at a certain figure, based on the type of vessel or facility and the amount of oil discharged, unless the spill was caused by their gross negligence, wilful misconduct or violation of federal regulations. The limit of liability for offshore facilities is capped at $133.65m in damages, but liability for pollution clean-up costs is unlimited.

What is the geographical application of the local law under which shipowners can limit their liability?

The US Supreme Court has held that a shipowner may seek relief in the US courts under the Limitation Act without regard to where the casualty occurred (The Titanic, 233 US 718, 1914). The maritime claim can arise within the navigable waters of the US or the high seas and navigable waters of other countries. However, this is subject to choice of law considerations and the doctrine of *forum non conveniens*, ie the US courts may apply the foreign limitation law or dismiss the limitation proceeding if the foreign forum is a more convenient forum.

Are there any exclusions or exceptions in respect of offshore vessel types?

The right to limit under the Limitation Act extends to the owner of any 'vessel', which is defined under US law as 'every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water'. Mobile Offshore Drilling Units have consistently been held to be vessels for the purposes of the Limitation Act.

Is it possible to rely upon the right to limit for wreck removal?

No. There is no right to limit in respect of wreck removal

Bunkers Convention

Is the US signatory to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention)?

No. The US is not signatory to the Bunkers Convention.

Civil Liability Convention

Is the US signatory to the International Convention on Civil Liability for Oil Pollution Damage (CLC)?

No. The US is not signatory to the CLC.

Wreck Removal Convention

Is the US signatory to the Nairobi International Convention on the Removal of Wrecks (WRC)?

No. The US is not signatory to the WRC.

Maritime Labour Convention

Is the US signatory to the Maritime Labour Convention (MLC)?

No. The US is not signatory to the MLC and will therefore not enforce compliance on US vessels or foreign vessels whilst navigating within US waters. However, the US Coast Guard will issue a Statement of Voluntary Compliance Maritime Labour Certificate to vessels demonstrating compliance with the Convention.

Gross Negligence and Wilful Misconduct

Is 'gross negligence' or 'wilful misconduct' recognised as a legal concept under US law?

Yes, gross negligence and wilful misconduct are recognised concepts under US law. The principal consequence of such conduct is the availability of punitive damages for 'gross negligence' and 'wilful, wanton, and reckless indifference for the rights of others' (*Exxon Shipping Co. v Baker*, 554 US 471, 493, 2008).

Knock-for-knock

Is the knock-for-knock liability regime a recognised concept under US law?

Yes, knock-for-knock agreements whereby parties to a contract agree to indemnify each other for injury claims by their respective employees, damage to their respective property, etc, even if the party seeking indemnity is negligent or otherwise at fault, are very common in the US, especially in the offshore energy industry. The enforceability of such agreements, however, is a frequently litigated issue. Such agreements are enforceable under maritime law to require the indemnitor to indemnify the indemnitee for the indemnitee's own negligence so long as the agreement is clear and unequivocal. However, many contracts related to offshore energy development are governed by state law, and the laws of some states (eg Louisiana and Texas) prohibit or place restrictions on the enforcement of such agreements if the party who seeks indemnity is found to be or is alleged to be negligent.

If knock-for-knock is a recognised liability regime under US law, will it be upheld in the event of 'gross negligence' or 'wilful misconduct'?

The US courts have indicated that a two-step analysis is required to determine the enforceability of such agreements (*re Oil Spill by the Oil Rig Deepwater Horizon*, 841 F. Supp. 2d 988, E.D. La. 2012). First, the court must review the indemnity agreement to determine whether the parties intended for the indemnities to extend to gross negligence. Then, the court must determine whether enforcement of the indemnity agreement would violate public policy.

Will industry standard contracts such as BIMCO's TOWCON, TOWHIRE, SUPPLYTIME, WRECKHIRE, WRECKSTAGE, WRECKFIXED and HEAVYCON be upheld under US law?

These contracts would be considered maritime contracts governed by US maritime law and, as noted above, indemnity agreements are generally enforceable according to their terms under maritime law, provided the language of the contract is clear and unequivocal. Applying this standard, the indemnity provisions contained in the BIMCO SUPPLYTIME 2005 form, whereby the parties mutually agree to indemnify each other for certain risks 'even if such loss, damage, injury or death is caused wholly or partially by the act, neglect, or default' of the indemnitee, would be enforceable.

However, many of the indemnity provisions in these contracts do not specify that the indemnity will apply even if the party seeking indemnity was negligent or otherwise at fault, eg clause 25(a) of BIMCO TOWCON 2008 and clause 23(a) of BIMCO TOWHIRE 2008. These provisions are probably not enforceable under US maritime law.

In addition, US law prohibits enforcement of exculpatory clauses in towing contracts that exculpate the towing vessel for its own negligence (*Bisso v Inland Waterways Corp.*, 349 US 85, 1955). Accordingly, the provisions in clauses 25(b)(ii) of BIMCO TOWCON 2008, clause 23(b)(ii) of BIMCO TOWHIRE 2008 and clause 14(b)(ii) of BIMCO SUPPLYTIME 2005 that purport to exonerate the tug for damage to the tow are probably unenforceable.

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