

**STEPHENSON
HARWOOD**

*May 2026
Edition 1*

MARITIME PULSE

*Transportation, trading
and offshore bulletin*

INTRODUCTION



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Welcome to the 1st Edition of **Maritime Pulse**, Stephenson Harwood's Athens newsletter for clients engaged in the transportation, trading and offshore industry.

We hope this edition finds you well. Our experienced global Stephenson Harwood Maritime, Trade & Offshore team has been closely involved in all the topics covered in this issue and continues to be at the forefront of developments across the sector. Details of the team and how to contact them can be found at the end of this newsletter. If you have any comments or would like to learn more about any topic, please do not hesitate to get in touch with us.

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MIDDLE EAST TENSIONS: KEY CONSIDERATIONS FROM A SHIP FINANCE PERSPECTIVE



Geopolitical Risk and Asset Protection

Renewed instability in the Middle East has brought a number of familiar ship finance issues back into focus, particularly around insurance, trading restrictions, information flow and compliance with financing terms.

For ship finance parties, this is not simply an operational issue, but one that goes directly to asset protection, insurance continuity and the robustness of the financing structure under stress.

From a financing perspective, the vessel remains the primary source of security, and its trading profile is therefore of direct relevance to lenders. This places particular emphasis on how geopolitical risk translates into asset risk within the financing structure, and ultimately into credit risk. Where vessels are operating, or may operate, in areas affected by the current tensions, including the Strait of Hormuz, lenders are likely to focus not only on compliance with existing provisions, but also on the sufficiency of those provisions in a rapidly evolving risk environment.

Insurance, Trading Restrictions and Information Flow

Insurance is the immediate pressure point. War risks cover is central to the lender's credit protection, and particular attention should be given

to its scope, validity and continuity. Recent developments indicate that insurers may issue cancellation notices or revise terms at short notice, while additional premiums may be triggered for entry into high-risk areas. From a lender's perspective, the key question is not only whether cover is in place, but whether it is reliable in a stress scenario. This includes ensuring that mortgagee interests remain protected and that no act or omission of the borrower prejudices recoverability under the policies. Any erosion in insurance effectiveness may have a direct impact on credit assumptions underpinning the financing.

Trading restrictions and consent requirements also take on increased significance in this context. Financing documentation will typically include limitations on trading in designated high-risk areas, as well as undertakings requiring lender consent for certain voyages. These provisions are substantive rather than merely technical. Entry into a high-risk area without the necessary approvals or without appropriate insurance in place, may give rise to compliance issues, including potential events of default. More broadly, these provisions operate as a key control mechanism for lenders in managing exposure to heightened geopolitical risk.

MIDDLE EAST TENSIONS: KEY CONSIDERATIONS FROM A SHIP FINANCE PERSPECTIVE

Information undertakings, often treated as routine in more stable conditions, become critical in periods of volatility. Facility agreements commonly require borrowers to notify lenders of material developments affecting the vessel, its trading or its insurances, and to provide supporting information upon request. In the current environment, lenders are likely to place increased emphasis on proactive and real-time visibility over risk exposure. This includes visibility over trading patterns, entry into higher-risk areas, correspondence with insurers (including cancellation or amendment notices) and any operational disruption affecting the vessel. A disciplined and transparent information flow is essential to maintaining lender confidence and enabling timely decision-making.

Operational Challenges and Financing Structure Resilience

Although charterparties sit outside the financing arrangements, they remain highly relevant from a credit perspective. War risks clauses may permit owners or masters to refuse orders or re-route vessels where there is a real likelihood of exposure to defined risks. While such decisions may be necessary from a safety and operational standpoint, they may also lead to delay, increased costs or disputes. In a stressed environment, this may have a direct bearing on earnings, liquidity and ultimately debt service capacity, thereby indirectly affecting the financing.

It is also important to recognise that financing arrangements do not typically provide force majeure relief. The doctrine of frustration under English law remains narrow and exceptional and will only rarely be engaged in this context. As a result, borrowers remain obliged to perform their financing obligations notwithstanding disruption, increased costs or operational difficulty. This asymmetry between operational flexibility and financing rigidity is often most visible in periods of geopolitical stress.

Looking ahead, lenders may also reassess aspects of their risk appetite, including pricing, covenant calibration and the degree of control embedded in financing documentation. Increased scrutiny of trading flexibility, insurance robustness and information undertakings may form part of a broader recalibration of credit approach in response to heightened geopolitical uncertainty.

In a volatile environment, the resilience of a financing structure is tested not only by external events, but by the discipline with which contractual protections are implemented and observed. Early engagement, disciplined compliance with financing terms and careful management of insurance arrangements will be critical to preserving both asset value and lender protection.

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WHAT DECARBONISATION MEANS IN TODAY'S WORLD?



The Broader Scope of Decarbonisation

There has always been confusion as to what – exactly – decarbonisation entails. Most people focus on policy and the regulatory environment: national, international or supranational. Those are undoubtedly important aspects, but decarbonisation is also about energy efficiency: “the best fuel is the one you don’t need to use”, as the saying goes.

And in today’s world of high uncertainty about the reliability and cost of petroleum, energy efficiency is emerging as a top priority. It is this aspect of decarbonisation that remains relevant at a time when the overall decarbonisation effort has lost momentum.

Our Experience in Maritime Energy Efficiency

Our leading decarbonisation practice at Stephenson Harwood, has assisted clients from across the maritime industry on energy efficiency projects, measures and products. For example:

- + We have advised Singapore’s Global Center for Maritime Decarbonisation on its innovative fund for financing energy efficiency retrofits¹, which aims to address a major obstacle to their adoption: the fact that the capital expenditure required falls on the shipowner, who does not bear the fuel cost in a time charter. Also, the

financing structures needed to address the difficulties around the mortgagee bank’s position with regard to expensive equipment installed on the ship.

- + We have acted as co-ordinators of the Blue Visby Consortium, a leading initiative comprising 44 companies and institutions, dedicated to eradicating the operational practice of Sail Fast Then Wait, which is shipping’s largest systemic energy inefficiency, accounting for about 20% of the fuel consumption, and the consequent GHG emissions². We have played a central role in the development of the contractual architecture that enables the technology to operate, including making the necessary adaptations to laytime, demurrage, laydays, laycans and utmost despatch, all of which underpin SFTW.
- + We have acted for buyers and sellers of energy efficiency technologies, including in dispute resolution caused by incidents or by performance issues. Our team’s shipbuilding experts add their invaluable experience, but some novel issues arise with regard to damages in terms of increased exposure to regulatory compliance cost.

WHAT DECARBONISATION MEANS IN TODAY'S WORLD?

+ We have advised shipowners and charterers on the necessary contractual adaptations for introducing benefit-sharing mechanisms in charterparties, so as to incentivise the use of energy efficiency measures, and deal with the “split incentives” features prevalent in all shipping contracts.

The Shift in Shipping Industry Priorities

Regardless of the outcome of the negotiations and the fate of the IMO's Net Zero Framework, shipping has irreversibly moved away from the assumption that marine fuel is abundant, cheap and irrelevant to the profitability, and towards ever-increasing focus on efficiency measures.

Implementing energy efficiency measures and technologies requires extensive contractual adaptations and sometimes innovative solutions in the legal aspects, just as much as in the technology involved.

Sources:

¹<https://www.stephensonharwood.com/news/stephenson-harwood-llp-advises-the-global-centre-for-maritime-decarbonisation-on-groundbreaking-vessel-retrofit-fund/>

²www.bluevisby.com

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CHARTERS AND FINANCING: UNDERSTANDING RIGHTS, RISKS AND QUIET ENJOYMENT

The Role and Types of Charters in Ship Financing

In maritime trade, a charterparty is the contract through which a shipowner agrees to lease the vessel's use to a charterer. The three principal forms, voyage charters, time charters and demise (or bareboat) charters, differ in how possession, control and operational obligations are divided.

- + **Voyage Charter:** The owner retains possession and operation, undertaking a single voyage in exchange for freight.
- + **Time Charter:** The charterer hires the ship's services for a specified period, directing operation, while the owner maintains possession and crew and arranges for insurances.
- + **Demise (or Bareboat) Charter:** Possession and control pass to the charterer, who hires the crew, arranges for insurances and operates the vessel as a *de facto* owner or "owner *pro hac vice*".

In ship finance, these distinctions are fundamental. The extent of a charterer's possessory and operational rights determines how the lender (usually the mortgagee) can enforce its security without breaching existing contractual obligations.

Charters in the Context of Finance Transactions

From a financier's perspective, a ship's value as collateral depends not only on its physical state but also its employment. While charter arrangements can enhance income stability, they may also restrict enforcement options. A lender taking a mortgage over a ship must therefore assess whether existing or prospective charters could impair the enforcement of its security.

The Merchant Shipping Act 1995 treats a mortgage as security only: ownership remains with the mortgagor until possession is taken. Under English law, performing charterers (both time and bareboat) automatically benefit from a level of quiet enjoyment protection from a mortgagee as a matter of law without the need for a letter of quiet enjoyment.

English law has tried to balance a ship mortgagee's rights of enforcement against the rights acquired by a performing charterer with respect to the vessel. The leading case, *The Myrto* (1977), established that an owner may deal with the ship freely unless doing so materially impairs the mortgagee's security. A mortgagee cannot interfere (e.g. through possession or arrest) with lawful employment under a charter unless the owner is (i) unable or unwilling to perform or (ii) the charter jeopardises the mortgagee's interests.

These principles were applied when the mortgage was granted before the charter was entered into (as in *The Myrto* (1977)). The shipowner was found insolvent and unable to pay its debts. This was sufficient to fall within the exception of "inability to perform". A mortgagor, unable to pay its debts to its mortgagee, would be deemed insolvent, thus falling within this exception.

However, if the mortgage is granted after a charter has been entered into, the relative priority between the charterparty and the ship mortgage depends (1) on the type of charter and (2) whether the mortgagee had notice of the charter.

1. If the charter is a time charter and the mortgagee is aware of the charter at the time the mortgage is granted, the mortgagee is considered to have taken its security subject to the existing contractual employment of the vessel. The only exception is (as above) where the owner is unable to perform the charterparty (regardless of the impairment of the mortgagee's security) such as where the owner is insolvent or unable to pay its debts.
2. If the charter is a bareboat charter, as possessory and proprietary rights prevail over security, the interests of the bareboat charterer are capable of prevailing as against third parties, such as a purchaser or mortgagee, irrespective of them having notice of the charter. Therefore, the charter will usually take priority irrespective of the mortgagee's notice of the charter.

CHARTERS AND FINANCING: UNDERSTANDING RIGHTS, RISKS AND QUIET ENJOYMENT

Subject always to the charter being a performing charter, a mortgagee should then only be able to enforce its mortgage free of any interest of, or claim by, a bareboat charterer if the bareboat charterer acts (or fails to act) in a way which materially impairs or imperils the mortgagee's security.

Quiet Enjoyment Rights and Letters

Charterers, particularly under long-term or demise charters, seek contractual assurance that financiers will not disturb their lawful possession. This protection often takes the form of a Quiet Enjoyment Letter (QEL), a tripartite or unilateral undertaking from the lender guaranteeing that, so long as the charterer performs its obligations, it may continue to use the vessel undisturbed even if the owner defaults.

While not standardised, a typical QEL includes:

- + a lender's covenant not to interfere with the charterer's possession during good performance;
- + restriction of the mortgagee's rights if the owner is in breach of the finance documents (with a standstill period, at the end of which the mortgagee is allowed to either replace the owner under the charter or sell the vessel subject to the charter);
- + restriction of the charterer's rights if the owner is in breach of the charter (with step-in or novation rights enabling the financier (or its nominee) to perform or assign the charter if enforcement becomes necessary); and
- + the charterer's obligation to notify the lender of owner defaults.

QELs serve as commercial bridges between lender and charterer interests. They enhance a charter's reliability, facilitating project finance and sale-and-leaseback structures. However, their drafting requires care, particularly regarding termination triggers and governing law, to ensure that the lender's security rights remain enforceable without undue exposure to tortious interference claims.

Earnings Assignment and Charter Assignment

An earnings assignment gives the mortgagee direct rights over freight and hire, ensuring that vessel income services the debt. In practice, this involves a collateral deed assigning receivables, often coupled with a notice to the charterer requiring payments directly to a designated account.

A charter assignment, by contrast, transfers the benefit of the charter itself to the lender. In a default by the owner, a carefully drafted charter assignment may permit the financier to "step into" the owner's shoes and either continue performance or novate the charter to a purchaser. The owner is allowed to remain the key counterpart when performing the charter until it defaults and the mortgagee decides to enforce.

When reviewing such arrangements, financiers must ensure that the assignment is validly perfected and that the charter does not prohibit or restrict assignment without consent. Current documentation often anticipates this through express assignment clauses and notice provisions within the charterparty.

Conclusion

Charters sit at the heart of shipping finance, bridging the operational and financial dimensions of maritime trade. Their interaction with mortgages and enforcement rights requires balancing flexibility with certainty. Through prudent drafting, combining quiet enjoyment protections, clear rights of the financier (including assignment and step-in rights) and transparent charter structures, both financiers and charterers can navigate the competing imperatives of commercial opportunity and legal security.

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MIDDLE EAST TENSIONS: FORCE MAJEURE, DISRUPTION AND CONTRACTUAL RISK

Force Majeure and Contractual Protection

Renewed instability in the Middle East is already affecting supply chains, logistics and trading patterns across multiple sectors. For many businesses, the immediate concern is operational disruption. The legal question, however, is whether the contract provides any meaningful relief where performance is affected by events of this kind.

Under English law, force majeure is not a general doctrine that applies automatically. Its application depends entirely on the wording agreed between the parties. Whether relief is available, and in what form, will therefore turn on the specific drafting of the clause in question and the factual circumstances affecting performance.

The starting point is to consider whether the current situation falls within the scope of the clause. Some provisions expressly refer to events such as war, hostilities, armed conflict or government action. Others rely on broader language, such as events beyond a party's reasonable control. Whether the present instability is captured will always be a matter of contractual construction, assessed against the particular facts.

Key Considerations: Operation, Causation and Notice

Even where the clause is engaged in principle, the next question is how it operates in practice. Much will depend on the degree of impact required before relief becomes available. Some clauses apply only where performance is prevented altogether. Others extend to situations where performance is delayed, hindered or materially affected. That distinction is often critical. In many cases, performance may still be possible, but slower, more complex or more costly. Whether that is sufficient will depend on the language used.

Causation is also central. It will not be enough simply to point to geopolitical instability in general terms. The party seeking to rely on the clause will usually need to demonstrate that the relevant event has directly affected its ability to perform the contract. In addition, force majeure clauses often require reasonable steps to be taken to avoid or mitigate the

effects of the disruption. This may involve considering alternative means of performance, even where these are commercially less attractive. Notice provisions require equally careful attention. Many clauses impose specific requirements as to the timing, form and content of any notice. These procedural steps are not mere formalities. A failure to comply may prejudice, or even defeat, the ability to rely on the clause, regardless of the underlying circumstances.

Alternatives and Practical Steps

Where no force majeure clause is available, parties sometimes look to the doctrine of frustration. Under English law, however, frustration remains a narrow and rarely available route. It will not apply simply because performance has become more difficult, more expensive or commercially unattractive. The threshold is high and will be met only in limited circumstances.

In practical terms, businesses should review their contracts closely, identify any force majeure provisions that may be relevant and ensure that any notice requirements are complied with strictly. The impact of disruption on performance should be documented as it arises, and counterparties should be engaged at an early stage where appropriate.

In periods of uncertainty, outcomes are unlikely to be determined by broad concepts alone. Careful attention to contractual wording, combined with disciplined and timely action, will be central to managing risk effectively.

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