
Foreword

Introduced in the 1920s, the UK Standard Conditions for Towage and Other Services ('UKSCT' or 'Conditions') provides a framework of liability protection for tugs when assisting other vessels.

Towage is complex and places tugs in potentially hazardous positions where they are often under the direction of a third party, be that a ship Master or Pilot. It is the UKSCT that provides the legal assurances required for insurers to provide cover to tugowners so they can provide these services. UKSCT is also designed to allow claims to be dealt with promptly, which benefits both insurers and assureds. Therefore, it is important that the intention of the provisions are made clear.

The last comprehensive review of UKSCT was in 1974, with a subsequent update in 1986 in light of UK legislation that was considered at that time necessary to be reflected in the Conditions. The wording brought in in 1986 led to some tug operators in the Commonwealth (in particular in Canada, New Zealand and Australia) continuing to use the more generic 1974 Conditions.

Notwithstanding the above, the 1986 revision of UKSCT is understood and applied widely in Courts across many jurisdictions. However, it lacks the language to allow it to be relevant in a contemporary world of, amongst other things, automation, electronic systems and digitalisation.

In addition, some of the legislation the 1986 revision was seeking to deal with, such as the Unfair Contract Terms Act (1977), is now better understood and tested in the Courts. The 1986 version amendments can now therefore be updated to reflect the tested interpretation of those laws. Simply put, whilst the 1986 UKSCT version was in many respects functioning well, it required modernisation.

The British Tugowners' Association ('BTA'), the custodians of the UKSCT, engaged with wider industry and interested parties to establish a panel in 2023 to review those Conditions. The review panel included members drawn from the BTA, the International Group of P&I Clubs, senior admiralty lawyers from several prominent international firms, the UK Chamber of Shipping and a Fellow of the Chartered Institute of Arbitrators.

That review concluded with the publication of the UK Standard Conditions for Towage and Other Services (2024), set out in Appendix 1, with explanatory notes at Appendix 2.

The Chair and the BTA would like to thank the members of the review panel – Paul Dean, Robert Gay, Ben Harris, Nick Jeffery, Nicholas Kazaz, Fabien Lerede, Alex McCooke (Coordinator), Robert Merrylees, Robert Shearer and Simon Tatham – for their engagement, professional expertise and diligence culminating in the 2024 version of this longstanding and effective towage agreement.

Nick Dorman - Chair of the Review Panel

November 2024

Appendix 1

United Kingdom Standard Conditions for Towage
and Other Services (2024)

UNITED KINGDOM STANDARD CONDITIONS FOR TOWAGE AND OTHER SERVICES (REVISED 2024)

1. (a) The agreement between the Tugowner and the Hirer is and shall at all times be subject to and include each and all of the conditions herein-after set out.

(b) For the purpose of these conditions:-

- (i) The word "Towing" means any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of or assisting or standing by the Vessel, including the passing of, picking up, casting off and retrieval of ropes, wires or lines to the Vessel, and the expressions "to Tow" and "Towage" shall be defined likewise.
- (ii) The word "Vessel" shall include any vessel, craft or object of whatsoever nature (whether or not coming within the usual meaning of the word "vessel") which the Tugowner agrees to Tow or to which the Tugowner agrees at the request, express or implied, of the Hirer, to render any service of whatsoever nature other than Towing.
- (iii) The word "Tender" shall include any vessel, craft or object of whatsoever nature which is not a tug but which is provided by the Tugowner for the performance of any Towage or other service.
- (iv) The word "tug" shall include "tugs", the word "Tender" shall include "Tenders", the word "Vessel" shall include "Vessels", the word "Tugowner" shall include "Tugowners", and the word "Hirer" shall include "Hirers".
- (v) The word "Hirer" means any person or body who requests a service from the Tugowner under this agreement.
- (vi) The word "Tugowner" shall include any person or body (other than the Hirer or the owner of the Vessel on whose behalf the Hirer contracts as provided in Clause 2 hereof) who is a party to this agreement whether or not they in fact own any tug or Tender, and the expression "other Tugowner" contained in Clause 5 hereof shall be construed likewise.
- (vii) The expression "whilst Towing" shall cover the period commencing when the tug or Tender is in a position to commence Towing, and ending when the tug or Tender has ceased Towing and is safely clear.
- (viii) Any service of whatsoever nature to be performed by the Tugowner other than Towing shall be deemed to cover the period commencing when the tug or Tender is in a position to commence the service and ending at the time when the tug or Tender has ceased performing the service and is safely clear. However, if at that time there remain on board the tug or Tender anything of whatsoever description, or any persons, that were taken on board for the performance of the service (other than equipment or other items belonging to or hired by the Tugowner and the Tugowner's own employees or agents or the personnel of independent contractors engaged by the Tugowner) then the period shall not end until all such things and persons have been discharged or disembarked from the tug or Tender and the tug or Tender is safely clear of the place where they were discharged or disembarked.
- (ix) For the avoidance of doubt, the word "negligence" includes gross negligence.
- (x) The expression "howsoever caused" means arising from any cause whatsoever, including (without prejudice to the generality of the foregoing) negligence at any time of the Tugowner their servants or agents, and the unseaworthiness, unfitness or breakdown of the tug or Tender, its crew, its machinery, equipment, computer or other systems, towing gear, lines, ropes or wires, including unseaworthiness, unfitness or breakdown by reason of lack of fuel, stores, speed, bollard pull or otherwise, whether arising before or during the Towage or other service or whenever such unseaworthiness, unfitness or breakdown arises.

2. If at the time of making this agreement or of performing the Towage or of rendering any service other than Towing at the request, express or implied, of the Hirer, the Hirer is not the owner of the Vessel, the Hirer expressly represents that it is authorised to make and does make this agreement for and on behalf of the owner of the Vessel subject to each and all of these conditions and agrees that both the Hirer and the owner of the Vessel are bound jointly and severally by these conditions. Further, in any case where the Hirer is bound by these conditions, if the Vessel requests or accepts any service from the Tugowner, the owner of the Vessel shall hereby become jointly and severally bound by these conditions in the same way as if they were the Hirer.

3. Whilst Towing or whilst at the request, express or implied, of the Hirer, rendering any service other than Towing, the master and crew of the tug or Tender shall be deemed to be the servants of the Hirer and under the control of the Hirer and/or their servants and/or their agents, and anyone on board the Vessel who may be employed and/or paid by the Tugowner shall likewise be deemed to be the servant of the Hirer and accordingly, the Hirer shall be vicariously liable for any act or omission by any person so deemed to be the servant of the Hirer, except that the Hirer shall not be vicariously liable for any harm or loss caused by an act or omission of any such person if it is proved that the person committed the act or omission with the intent to cause such harm or loss or recklessly and with knowledge that such harm or loss would probably result.

4. Whilst Towing, or whilst at the request, either expressed or implied, of the Hirer rendering any service of whatsoever nature other than Towing:-

(a) The Tugowner shall not (except as provided in Clause 4 (c)(i)) be responsible for or liable for:-

- (i) damage of any description done by or to the tug or Tender; or done by or to the Vessel or done by or to any cargo or other thing on board or being loaded on board or intended to be loaded on board the Vessel or the tug or Tender; or to any other object or property;
 - (ii) loss of the tug or Tender or the Vessel or of any cargo or other thing on board or being loaded on board or intended to be loaded on board the Vessel or the tug or Tender or any other object or property;
- or
- (iii) any claim by a person not a party to this agreement for loss or damage of any description whatsoever (including death or personal injury);

howsoever caused,

and

(b) The Hirer shall (except as provided in Clause 4 (c)) be responsible for, pay for and indemnify the Tugowner against and in respect of any loss, damage or expense, personal injury or death, and any claims of whatsoever nature or howsoever caused, whether direct or indirect, whether covered by the provisions of Clauses 4 (a) hereof or not, suffered by or made against the Tugowner and which shall include, without prejudice to the generality of the foregoing, any loss of or damage to the tug or Tender or any property of the Tugowner.

(c) The provisions of Clause 4 (a) and 4 (b) hereof shall not be applicable in respect of any claims which arise in any of the following circumstances:-

- (i) Where the Hirer has proven that the loss has resulted from the personal act or omission of the Tugowner committed with the intent to cause such harm or recklessly with the knowledge that such harm would probably result.
- (ii) All claims which arise when the tug or Tender, although having commenced Towing or rendering some service other than Towing, is not in a position of proximity or risk to or from, and is detached from, the Vessel or any other craft attending the Vessel and is safely clear. Provided always that, notwithstanding the foregoing, the provisions of Clauses 4 (a) and 4 (b) shall be fully applicable in respect of all claims which arise at any time when the tug or Tender is at the request, whether express or implied, of the Hirer, their servants or their agents, carrying persons or property of whatsoever description (in addition to the Officers and crew and usual equipment of the tug or Tender) and which are wholly or partly caused by, or arise out of the presence on board of such persons or property or which arise at any time when the tug or Tender is proceeding to or from the Vessel in hazardous conditions or circumstances.

(d) Notwithstanding anything hereinbefore contained, the Tugowner shall under no circumstances whatsoever be responsible for or be liable for any loss, damage or costs, howsoever caused, whether direct or indirect, resulting from or contributed to by or arising out of any delay or detention of the Vessel or of the cargo on board or being loaded on board or intended to be loaded on board the Vessel or of any other object or property or of any person, or any consequence thereof, whether or not the same shall be caused or arise whilst Towing or whilst at the request, either express or implied, of the Hirer rendering any service of whatsoever nature other than Towing or at any other time whether before during or after the making of this agreement.

5. (a) The Tugowner shall at any time be entitled to substitute one or more tugs or Tenders for any other tug or Tender.

(b) The Tugowner shall at any time (whether before or after the making of this agreement between them and the Hirer) be entitled to contract with any other Tugowner (hereinafter referred to as "the other Tugowner") to hire the other Tugowner's tug or Tender and in any such event it is hereby agreed that the Tugowner is acting only (or is deemed to have acted) as the agent for the Hirer, notwithstanding that the Tugowner may in addition, if authorised whether expressly or impliedly by or on behalf of the other Tugowner, act as agent for the other Tugowner at any time and for any purpose including the making of any agreement with the Hirer. In any event should the Tugowner as agent for the Hirer contract with the other Tugowner for any purpose as aforesaid it is hereby agreed that such contract is and shall at all times be subject to the provisions of these conditions so that the other Tugowner is bound by the same and may as a principal sue the Hirer thereon and shall have the full benefit of these conditions in every respect expressed or implied herein.

(c) Where the Tugowner contracts with another Tugowner to provide the services, as agent for the Hirer, the Tugowner as agent gives no warranty as to the quality or abilities of the other Tugowner of any kind, and the Tugowner shall have no liability whatsoever to the Hirer in relation to the work of the other Tugowner or their servants, whether through breach of contract, fiduciary duty or otherwise.

6. Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Tugowner may have against the Hirer including, but not limited to, any rights which the Tugowner or their servants or agents may have to claim salvage remuneration or special compensation for any extraordinary services rendered to vessels or anything aboard vessels by any tug or Tender. Furthermore, nothing contained in these conditions shall limit, prejudice, or preclude in any way any right the Tugowner may have to limit their liability.

7. The Tugowner will not in any event be responsible or liable for the consequences of:-

(a) war or warlike operations, riots, civil commotions, acts of terrorism or sabotage, piracy, capture, seizure, acts of God, any disease, computer malware, the failure of autonomous systems, computer hacking, phishing, any government requisition, intervention, requirement or interference, blockades or embargoes, fires, accidents, explosions, or (whether they be a party thereto or not) strikes, lockouts, disputes, stoppages, labour disturbances, or other industrial action or anything done in contemplation or furtherance thereof;

or

(b) delays to the tug or Tender or their operation(s) of any description, howsoever caused.

8. (a) The Hirer undertakes not to take or cause to be taken any proceedings whatsoever against any servant or agent of the Tugowner or of any other Tugowner as referred to in Clause 5.

(b) All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by these conditions or by any applicable statute, rule or regulation for the benefit of the Tugowner, and the provisions of Clause 9 of these conditions, shall also apply to and be for the benefit of the Tugowner's servants and agents and contractors and sub-contractors (of any tier) and their personnel (whether or not under Clause 3 of these conditions they are deemed to be servants of the Hirer, and regardless of any negligence or fault on their part).

9. (a) Unless otherwise agreed between the Hirer and the Tugowner, the agreement between the Tugowner and the Hirer is and shall be governed by and construed in accordance with English law and the Tugowner and the Hirer hereby accept, subject to the proviso contained in sub-clause (b) hereof, the exclusive jurisdiction of the English Courts.

(b) No suit shall be brought in any jurisdiction other than that provided in sub-clause (a) hereof save that both the Tugowner and the Hirer shall have the option to bring proceedings to obtain security by way of the arrest of or other similar remedy against any vessel or property owned by the other party hereto in any jurisdiction where such vessel or property may be found.

Appendix 2
Explanatory Notes

Clause 1 – Definitions

This Clause explains the meaning of the key words and phrases used in the contract, in particular those which govern the liability regime.

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Some rearrangement of the order of the definitions has been made here for ease of reading. Terms have also been capitalised where defined. The word tug has remained uncapitalised as it is not defined and features in this section only as part of a general clarification that use of the singular includes the plural.

By adding some clarity to the definition of towing and considering how towing begins and ends in practice today, this clause has been simplified significantly. There is, for example, with modern communications technology, no material concept of the tug coming within a physical proximity of the tow which permits it to receive orders.

Accordingly, towing now commences merely when the tug is in a position to commence towing – in other words, in both a physical location and in other respects practically ready to begin towing. It ends when the towing has ceased and the tug is safely clear. The same applies where the tug is providing services other than towing, with one additional recognition. Where the tug service includes redelivering property or returning people, the service shall end only after the tug has moved safely clear, following that redelivery or return.

A short definition of hirer has also been included, as this was previously undefined, in contrast to the term tugowner. Further, the Conditions previously used two terms to refer to the vessel being assisted; both vessel and the hirer’s vessel. For simplicity, only the term vessel has been retained in this revision.

A clarification has been added that the term negligence includes gross negligence. As a matter of English Law, this goes without saying. However, it was felt the confirmation may be helpful where the parties choose to

nominate a different governing law, as under some legal systems the concepts of negligence and gross negligence are distinct.

In order to avoid repetition, the meaning of the phrase 'howsoever caused', which is referenced four times in the Conditions, has now been clarified in this section.

Clause 2 – Joint and several application

This Clause explains that both the hirer and owner of the vessel are bound jointly and severally by the Conditions (i.e. they are both responsible for the obligations undertaken by the hirer).

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Additional wording has been added to the end of this Clause. This seeks to ensure that, where a vessel willingly accepts towage services arranged by the hirer, its owners cannot later deny that they are bound by the Conditions.

Clause 3 – Provision that tug is servant of tow

This Clause makes it clear that, during the services, the tug and its employees are servants of the tow.

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An express carve out has been made for, effectively, acts of the tug's employees which amount to wilful misconduct. It is hoped that this addition strengthens the efficacy of the original wording, by demonstrating that the transfer of responsibility is not unlimited or arguably unreasonable.

Clause 4 – Liability

This Clause sets out the liability regime which applies to the parties to the towage Conditions and details the exceptions to this regime.

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Clause 4 (a) has been updated to replace the out-of-date language 'boilers', with the more general term 'systems'. It has also been updated to reflect the removal of Clause 4(e) as set out below. There have also been minor amendments to add clarity and make it clear that the reference to the tug is intended to encompass its crew.

Clause 4 (b) has been modified to account for the absence of Clause 4 (e), which is dealt with further below. The word expense has been added to 'loss or damage' to make it clear this is not intended only to refer to physical loss or damage.

The words ‘whether direct or indirect’ have also been added to confirm that the heads of loss referenced are encompassed, whether or not they fall under the first or second limb of the test in *Hadley v Baxendale* (1854).

The clarification that the indemnity applies even in circumstances where the negligence of the tugowner (or their servants or agents) was a factor, has been moved from the end of the subclause. It is now present in the centre of the subclause, alongside the other ‘whether’ stipulations.

The first section of Clause 4 (c) has been redrafted entirely. This provision forms a carve out from the liability regime, and previously required a six-stage test to be considered. Under the previous revision, for the carve out to apply the hirer had to prove that the claim resulted (i) directly and (ii) solely from the (iii) personal failure of the tugowner to (iv) exercise reasonable care to (v) make the tug seaworthy for navigation (vi) at the commencement of the service. There was also an extensive test to discern which parties’ decisions could be construed as being within the tugowner’s ‘*personal*’ responsibility, relating to those having ultimate control and chief management of the business.

This section has been replaced with a simpler, more familiar carve out provision similar to that found in other maritime conventions and standard form charterparties. The new wording disapplies the indemnity regime under Clause 4 (a) and (b) in relation to claims where the hirer can prove that ‘*the loss has resulted from the personal act or omission of the Tugowner committed with the intent to cause such harm or recklessly with the knowledge that such harm would probably result*’.

The second section of Clause 4 (c) has been amended to provide greater clarity on when the liability regime in Clauses 4 (a) and (b) will be suspended. It now specifies that towing, as defined, must have commenced, and that the tug must be detached from the hirer’s vessel and be in all respects safely clear of any associated position of proximity or risk.

Clause 4 (d) has benefitted from some minor edits to make the wording more explicit. In particular, it has been specified, for the avoidance of doubt, that the phrase ‘... *under no circumstances whatsoever* ...’ includes circumstances where the tugowner or their servants or agents have been negligent.

The word ‘costs’ has also been included, to ensure the exclusion of loss or damage is not construed as referencing only physical loss or damage, but also any costs incurred as a result of the delays or detentions outlined. Finally, the words ‘*whether direct or indirect*’ have been added to confirm that the Clause is intended to capture both direct and consequential losses; in other words, costs which would fall under both the limb one and two of the judgment in *Hadley v Baxendale* [1854] EWHC J70.

Clause 4 (e) was inserted into the Conditions in 1986, being considered necessary against the legislative backdrop in the UK at the time. This provision caused a degree of uncertainty when read in the context of the Conditions as a whole. It also led to some tug owners outside the UK continuing to use the 1974 Conditions. As a result of greater clarity in the relevant areas of law following the 1986 Conditions, this clause is no longer required and it will not feature in the 2024 Conditions.

The UKSCT has traditionally made it clear that tugowners have no liability for claims involving injury and death arising out of the services. The 1974 revision stated *“The Tugowner shall not be responsible or liable for any personal injury or loss of life howsoever and wheresoever caused ...”*.

When the Conditions were revised in 1986, the Unfair Contracts Terms Act 1977 had come into force in the UK. The Act prohibited terms in contracts which sought to exclude a party’s liability for negligently causing injury or death. There was a fear that an exclusion clause which contained elements that did not comply with the Act may be struck out entirely. In order to avoid this risk, the drafters of the 1986 Conditions added Clause 4 (e), to demonstrate that the Conditions were not seeking to make exclusions for injury or death which were not permissible at law.

Accordingly, the new 1986 review Clause 4 (e) made it clear that the Conditions did not act as an *exclusion of liability* of the shipowner for death or personal injury arising from negligence. The Clause did not, however, remove the general indemnity principle at Clause 4 (b) that *“The Hirer shall ... indemnify the Tugowner against ... any claims of whatsoever nature or howsoever arising or caused ...”*. Nor did it remove the general principle at Clause 3 that, whilst towing, the crew of the tug would be considered the servants of the hirer, and the hirer should be vicariously liable for their acts or omissions. This complex combination of provisions was partly due to the limited case law on how the Act would operate at the time.

What the 1977 Act precludes is now well understood. It does make it unlawful for a contract to seek to exclude the rights of injured parties (or their next of kin) to claim against a responsible party in relation to their negligently causing injury or death. It does not preclude commercial parties allocating liability for such claims as between themselves. Further, it is now clear that even where part of an exclusion clause is considered to breach the Act and be unenforceable, any other lawful provisions of such an exclusion clause may survive and be applied. The supposed concerns which Clause 4 (e) was inserted to address are, therefore, no longer extant.

Clause 5 – Substitution and agency

This Clause permits the tugowner to use a substitute tug, or to instruct another tugowner, to perform the services.

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This clause has been amended only to emphasise its intended operation.

Where another tugowner is contracted to perform the services, it is now made clear that the original tugowner does not retain any liability for the work. In this scenario, they take on a role only as agent for the hirer in instructing the other tugowner.

Clause 6 – Salvage and limitation

This Clause makes it clear that the Conditions do not impinge on the tugowner's rights to make claims for salvage, where applicable, or to apply rights of limitation.

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This Clause has not been amended other than with respect to the introduction of gender-neutral language.

Clause 7 – Force majeure and delay

This Clause excludes the tugowner's liability for a series of force majeure events and for delays.

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This Clause has been rearranged to make it clear that it has two elements in respect of which the tugowners' liability is excluded. First, there is a list of effectively 'force majeure' events, and second there is the concept of delays to the tug or tender or their operations.

The language used to describe the force majeure events has been updated to bring it into line with such clauses in other modern commercial maritime contracts. Today the component elements in such lists are typically outlined in a more detailed form than the more generic references which previously featured in the Conditions.

The list of events has also been more clearly delineated to identify and narrow the list of events the 'whether they be a party thereto or not' language applies to. For example, the Clause does still exclude the tugowner's liability for the consequences of industrial action, even where their own crew may be involved. It is now clear, however, that it does not exclude their liability in the case of, for example, their being involved in acts of terrorism.

Clause 8 – Himalaya Clause

This Clause seeks to protect the tugowner's servants and agents by extending the benefits of defences in the Conditions to them, and ensuring proceedings are not brought against them directly.

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This Clause has been split into two sections to identify the two elements it is dealing with more clearly.

First, at part (a) there is an undertaking that the hirer shall not take any legal proceedings against the tugowner's servants or agents. This is intended to avoid direct action being taken against parties other than the original contracting tugowner; or any other tugowner, where the towage has been contracted to them under Clause 5 (b). The word 'whatsoever' has been added to make it clear that this restriction on legal proceedings against such parties is intended to cover any legal proceedings. Non-substantive proceedings against such parties in order to obtain security, or seek a declaration on liability for example, are also intended to be prevented by the undertaking.

A portion of the previous wording from the end of this Clause has been removed, as it was considered superfluous given the broad scope of the restriction. The relevant words specified that the restriction would apply in instances where there would have been a direct right of claim against such a party, notwithstanding the provision itself, as a result of negligence, breach of duty or due to some other wrongful act on their part. The wording in relation to subletting was similarly considered unnecessary and has been removed.

Second, a more standard, modern form of 'Himalaya' clause wording has been inserted at part (b) to most effectively ensure that the servants, agents, contractors and sub-contractors of the tugowner (and their personnel) have the benefit of the protections afforded to the tugowner under the Conditions. The words 'of any tier' here are intended to extend those protections to those working for any of the listed parties, even where they are part of a chain of contracts and regardless of their place in that chain.

Clause 9 – Governing law and jurisdiction

This Clause sets out the governing law of the Conditions, the jurisdiction forum for disputes, and provides an exception in relation to arrest of assets outwith that jurisdiction.

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Four amendments have been made to this Clause. These are to add clarity and to bring the form into line with modern commercial practices.

An express provision now recognises the right of the parties to agree a governing law other than English Law, or to choose a dispute resolution forum other than the English Courts. For example, they may wish to refer disputes to arbitration.

The automatic application of Scottish Law and jurisdiction where tugowners are based in Scotland has been removed. The general preference for tugowners across all areas of the United Kingdom is for the Conditions to be subject to English law and jurisdiction by default, as the terms have been drafted in accordance with English law. However, as noted in the preceding paragraph, the parties may now agree to apply any law and dispute resolution forum they wish under Clause 9 (a), if the default option is not their preference.

Additional words have been added to make it clear that the governing law is also the law which controls how the terms of the agreement are to be interpreted. This could arguably arise where the operation was undertaken outside of England and Wales and the English courts were hearing the dispute. The words adopted to address this are now commonly used in similar commercial agreements.

Clause 9 (b) now makes it explicit that the right of the parties to arrest assets of the other party in situ, even where outside the agreed jurisdiction for dispute resolution, is a right which arises in order to obtain security for claims under the agreement. The requirement that arrest proceedings may only be brought in rem has been removed, as it is considered unnecessarily restrictive language.

N.B. The UKSCT is generally used in a business-to-business context. If the Conditions are to be used with a Hirer who is a private individual, it would be prudent to consider whether any amendments to the Conditions are required to take account of local consumer laws in the applicable jurisdiction.