



AUTHOR / KEY CONTACT



Elisabetta Scanferla
Solicitor

✉ elisabetta.scanferla@LA-law.com
☎ 01202 786179

The Red Sea Crisis: Contractual Remedies Available to the Parties

The Houthi rebel group is a Yemeni political and military organisation that, for the past nine months, has carried out numerous attacks in the Red Sea, which have caused significant disruption to all shipping trade passing through the Red Sea.

So far, the Houthis have carried out over 100 strikes on commercial ships passing through the Suez Canal by drones, ballistic missiles, unmanned surface boats, and hijacking. Sadly, three seafarers have died as a result of these attacks.

Until now, the Houthis have limited their attacks to ships that have some connection with either Israel or the US. However, the rebel group has since announced that in the future, they will attack any ship passing through the Suez Canal, regardless of the ship's connection with those countries.

Unfortunately, there is no end in sight. The attacks are likely to continue during the next six months and well into 2026, even after the war in Gaza has ended.

The increased hostility of the Houthi rebels has forced most shipping companies to avoid using the Suez Canal altogether. They are now rerouting their vessels around the southern tip of Africa, the Cape of Good Hope.

The detour is significant, adding around 3,500 nautical miles to each voyage and taking, on average, an extra 15-20 days. In particular, such delays to vessels carrying perishable goods could be significant and cause the goods to become a total loss. But companies are willing to take such 'risks' rather than the risk of attack by the Houthis.

The attacks have also caused severe congestion and disruption in the supply chain. Disputes may arise between parties of shipping and logistics contracts. Those parties with shipping contracts affected by prolonged delays will certainly look for remedies themselves if there is disruption and they suffer loss as a result. The increased likelihood of shipping disputes merits a review of certain actions that parties can take to avoid loss and prevent disagreement:

Force Majeure clauses

Many shipping contracts include a force majeure clause. These clauses provide relief from liability when a party fails to perform its contractual obligations due to certain events beyond the party's control.

The burden of proof is on the party invoking the force majeure clause, who must prove that the event is listed in the contract and that it is the reason why the party could not perform its obligation.

Often, a force majeure clause will require the party to overcome the effects of the force majeure event through "reasonable endeavours." These can be described as certain steps that a party is expected to take to avoid or circumvent in order to avoid a force majeure event.

This raises the additional issue of establishing whether the disruptive event is sufficient to excuse the party from performing its obligation. Accordingly, it is essential to conduct a careful case-by-case analysis of each situation and the contracts at hand.

One issue could be the fact that, quite often, the delays are not caused by the Houthi attacks themselves but by the fear of such attacks occurring. If the force majeure clause does not cover the "risk of attacks", the party will not be excused if it does not perform the obligation.

Another issue is whether the disruptive event makes the performance of the contractual obligation impossible or merely more expensive. In some contracts the threshold which is required to trigger the force majeure clause is high, requiring the disruptive event to make the performance of the obligation impossible. If the obligation becomes merely more expensive, the party will not be excused if it does not perform the obligation.

Romalpa clause

When there are disruptions in the supply chain, there is a risk that some companies will enter into administration and become insolvent. The risk of non-payment for goods supplied as a result of the buying party suffering financial difficulties is an ever-increasing problem.

One way to limit exposure to the risk of non-payment of goods is by including a "Romalpa clause" in the contract. This is a clause which allows the Seller to retain their legal title to the goods supplied until they have received payment for the goods in full. In other words, the clause ensures that until the Seller is paid, the Buyer does not obtain any right in relation to the goods which the Seller has supplied.

[The Romalpa clause](#) is accordingly a protectionist clause and ensures that if the Buyer in question is unwilling or unable to make payment for the goods supplied, the Seller can look to repossess them and considerably reduce any loss it may have suffered if it were not able to do so.

Lien on cargo

[A lien](#) is a form of security and is the legal right of a carrier to refuse to release the goods or documents to the

receivers if its charges remain unpaid. Whilst it is sometimes the only remedy that a carrier may have to recover its losses, it can be used to great effect by putting pressure on the non-paying party.

Once the carrier has put a lien on cargo, the carrier then may seek an order from the local court that it can sell the goods by public auction.

Under English law, there must be a contractual right to lien. As such, Owners can only lien charterers' cargo if the charter between the Owners and Charterers has a lien clause.

In order for the Owners to lien cargo which belongs to a third party, for example, the holder of the bill of lading, the charterparty lien clause must be incorporated (expressly or by reference) into the bill of lading.

Importantly, the lien should be exercised when the vessel arrives at the discharge port and before the cargo is delivered. Once the cargo is delivered to the consignee and is no longer in the Owners' control, the lien is lost.

Even if there is a contractual right to a lien under the charter party and bill of lading, the lien must be capable of being exercised in the local jurisdiction, which is the place of discharge. Some jurisdictions do not recognise a lien on cargo unless the cargo is owned by the debtor.

If the right of lien is not exercised lawfully, the Owners may be exposed to a claim in damages for delay from the bill of lading holder.

Find out more

If you need advice on dealing with the impact of Houthi attacks on shipping, contact our team at online.enquiries@LA-law.com for tailored solutions.