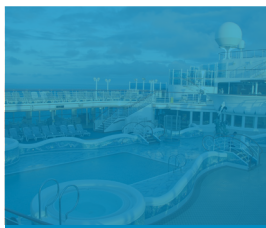


CRUISE BULLETIN



Welcome to the December edition of our Cruise Bulletin.

In this issue we begin by looking at polar cruising and its growing popularity. We particularly focus on the Polar Code which will come into force on 1 January 2017 and what it means for the polar cruise sector.

Next we consider cruise terminals in the Mediterranean and the ongoing expansion and improvements there. We consider what these changes mean in relation to the marketability and profitability of the region in the face of competing calls for the attention of cruise lines from Asia.

The final two articles concern legislation. The first on the Modern Slavery Act and its impact on cruise lines due to the requirement that they, like other companies, report each financial year on the steps they have taken to ensure that there is no slavery or human trafficking in their supply chain.

The second is the Consumer Rights Act. This legislation was initially expected to have a significant impact on the cruise and travel industry as it provided a number of new remedies for consumers. However, as concern has been raised about the interplay of this Act with existing regulations, a government consultation on the Act has been held, the outcome of which is expected in the first quarter of 2016. Therefore, only time will tell how this piece of legislation will impact the cruise industry.

Should you require any further information or assistance on any of the issues dealt with here, please do not hesitate to contact any of the contributors to this bulletin, or your usual contact at HFW.

Paul Dean, Partner, paul.dean@hfw.com

Elinor Dautlich, Partner, elinor.dautlich@hfw.com

William Maclachlan, Senior Associate, william.maclachlan@hfw.com



hfw Code for cruising on ice

The cruise industry is described as being driven by passenger demand and having to constantly develop new themes and destinations. Expedition cruising in the world's more extreme and remote regions, including the polar regions, is rapidly becoming one such theme.

The dangers of ice in the mass transit of passengers were first made apparent by the loss of the Titanic, following its collision with an iceberg in the North Atlantic. Within two years of this event, the first International Convention for the Safety of Life at Sea (SOLAS) was adopted. The 2007 sinking of the Explorer, in Antarctica, spurred the International Maritime Organisation (the IMO) to develop regulations aimed at minimising risk when sailing in the polar regions. Eight years later and the maritime industry is facing the implementation of the Polar Code (the Code).

The first part of the Code concerns safety and the second, environmental aspects of sailing in the polar regions. Both parts contain mandatory regulations and non-binding guidance. The Code will be implemented by amending the SOLAS and MARPOL conventions. It will come into force on 1 January 2017 but will initially only apply to ships built on or after that date. Any ships built before this date must comply with the Code by the date of their next intermediate or renewal survey falling after 1 January 2018, whichever occurs first.

Under the Code any ship planning to enter either polar region must obtain a Polar Class Certificate. The grade of the Certificate will determine where the vessel can sail and will be dependant on its main characteristics, like structure, stability and the quality of its built materials and how they are expected to perform in the lowest likely temperatures. For some ships it will



...crew members must train on how to work with an icebreaker and understand the implications of the presence of icebergs and what is deemed a safe speed in ice infested waters.

GEORGE EDDINGS, PARTNER

mean hull strengthening for ice. An expensive modification.

One of the biggest areas of impact for the polar cruise industry is likely to be the additional requirements in terms of safety and life-saving equipment. Compliance with these requirements may prove difficult and expensive. For example, cruise ships will have to carry fire extinguishers which can be operated in icy conditions, by crew wearing bulky cold weather gear. Enclosed or partially enclosed lifeboats, sufficiently fitted with appropriate survival and communications equipment are also required by the Code. Each passenger and crew member will have to have a cold water immersion suit. Unlike the crew, the passengers (possibly elderly and children) are unlikely to have had the benefit of undertaking repeated drills on how to don survival wear, which might cause issues in the event of an incident that requires them to do so.

Ships hoping to sail in polar waters have to be ready for regular ice removal and the areas of the ship where ice could result in a hazard will have to be made ice free. The crew's usual routine will have to accommodate this work and they must be trained when and how to deal with ice accretion using designated electrical or pneumatic devices, axes

and wooden clubs, whilst wearing cold weather gear.

The Code imposes other crew training requirements. Such requirements vary depending on the ship, ice conditions, and the crew member's position. However amongst other requirements, crew members must train on how to work with an icebreaker, understand the implications of the presence of icebergs and what is deemed a safe speed in ice infested waters.

In addition to crew training, the Code requires each ship to develop its own Polar Water Operational Manual, which is specific to that ship's own operational capabilities and limitations in ice conditions.

The Code has certain ambiguities. For example, one of the recommendations is that ships carry sleeping bags – one sufficient for at least two people. This may not be adequate considering the harsh polar environment or the fact that passengers may find such things objectionable. However sharing, to benefit from body heat, whilst reasonable, will only work if two people can actually fit into one sleeping bag. It will be up to each flag state to enact the Code in its own legislation and to set the standard required. Accordingly, the question remains: how will the Code



be interpreted and enforced by different flag states? Will some flags operate less onerous standards than others? Whilst this might occur, as it has with other IMO regulations, the expectation is that the insurance market, particularly where the carriage of passengers is concerned, will effectively set its own minimum level of compliance below which cover will not be available. However, this, of course, remains to be seen.

From the cruise industry's perspective, compliance with the Code will be key from both a reputational and financial point of view. Complacency may increase the risk of liability for a passenger's injuries during a polar voyage. Furthermore, if compliance with the Code is not assured, there is a risk that ship's hull and machinery insurance cover may be prejudiced.

HFW is working with a number of cruise lines and operators of cruise ships either currently active in the polar regions or considering such operations and this is an area tipped for substantial growth. Whilst the Code is likely to affect almost every aspect of a ship's operation (cruise ship or not), the increasing numbers of passengers being carried in these regions means that the polar cruise industry, perhaps more than most, must take the implications of the Code seriously and should start preparing now for its implementation.

For more information, please contact [George Eddings](mailto:george.eddings@hfw.com), Partner, on +44 (0)20 7264 8114, or george.eddings@hfw.com, or [Filip Koscielecki](mailto:filip.koscielecki@hfw.com), Associate, on +44 (0)20 7264 8378, or filip.koscielecki@hfw.com, or your usual contact at HFW.

hfw Focus on cruise terminals in the Mediterranean

The Mediterranean has always been a popular destination for cruise passengers, lured by the azure seas, good weather and variety of local cultures on offer. Faced with the consequences of the recent economic crisis, attracting further tourism through cruise lines is an obvious growth opportunity. HFW's ports and terminals team has been seeing increased activity in the market, be it port privatisation designed to attract the private capital required for the expansion of cruise terminals and other infrastructure, or investment by port authorities themselves designed to capture a greater share of the market.

Demand for berths on board Mediterranean cruises

Overall, passenger numbers across the Mediterranean region were static in 2014. Whilst figures are yet to be published, growth in 2015 is also predicted to remain flat. There are various reasons for this including the focus by cruise lines on growing the Asian market and socio-political and security concerns in the Mediterranean. However, the numbers cruising the Mediterranean remain strong and extensive construction work on new cruise terminals is taking place in some of the largest ports in the Mediterranean in an attempt to boost those numbers and harness the associated business benefits.

Cruise terminal construction

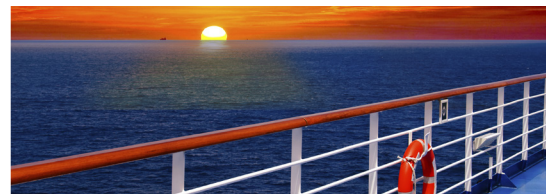
The Civitavecchia Port Authority in Italy, together with the ICEP, is investing in Civitavecchia's expansion. Although there was a fall in passenger traffic at Civitavecchia in 2014, it is expected to rise by over 6% in 2015, with strong growth figures also predicted for 2016.

Construction work on a new €20 million, 10,000m² terminal at Civitavecchia is due to commence in January 2016; this terminal is designed to handle 4,500 passengers and up to 9,000 items of luggage at a time.

Elsewhere, Ports of Tenerife is developing a new 8,473m² cruise passenger terminal and construction work on the new Lisbon Cruise Terminal is expected to be completed by the end of 2016 (at an estimated cost of €22.7 million). The Port of Istanbul plans to construct a new 19,000m² terminal as part of an ambitious project to regenerate the waterfront into a hospitality and recreational district. A new €14.4 million passenger terminal at Limassol is part of the commercialisation process of the Port of Limassol, and the Cyprus Ministry of Transport, Communications and Works has received pre-qualification documents submitted by interested parties. A new 640m² cruise terminal is also expected to be completed at the Port of Cagliari, Italy in early 2016.

However, it is not just the larger ports with the big ambitions. At Igoumenitsa Port in Greece (recipient of 3,096 cruise passengers in 2014), the second phase of development costing €66.2 million is nearing completion. The development will contain a 2,324m² passenger terminal building that will provide Schengen Agreement controls exclusively for cruise ships. A new two-storey terminal at the Port of Šibenik in Croatia should be completed by 2017 and a new cruise terminal at Tarragona Port in Spain is expected to be operational in 2018. A new terminal should also be operational by 2019 at the Port of Sète in France.

It is worth noting that not all development is as a result of investment by the ports themselves. Many cruise lines see the Mediterranean as a continuing and important part of their offering. For example, Carnival Corporation announced in July 2015 that it plans to invest over €30 million



Although the Mediterranean has always been a popular cruise destination, markets elsewhere may be less complicated and more profitable to operate in.

ALEX KYRIAKOULIS, PARTNER

to develop and operate its second private cruise terminal at the Port of Barcelona. Construction is scheduled to begin some time in 2016, with the new terminal due to open in 2018.

Cruise terminal modernisation

A number of ports are also investing to improve the facilities within existing

cruise terminals with the aim of improving the passenger experience and cutting boarding times. The passenger terminal at the Port of Palermo is undergoing interior modernisation at a cost of €28 million, with work scheduled to finish in 2017. Among the smaller ports, refurbishment of the cruise terminal at the Port of Portimão is taking place. The Port of Koper recently added free Wi-Fi and video surveillance, and improved connections to the city centre. The Port of Palamòs intends to expand its cruise terminal to contain all security and border facilities required to cater for non-EU passengers.

Future of cruising in the Mediterranean?

Will these shiny new terminals and extended facilities attract the business and profits that the ports hope for?

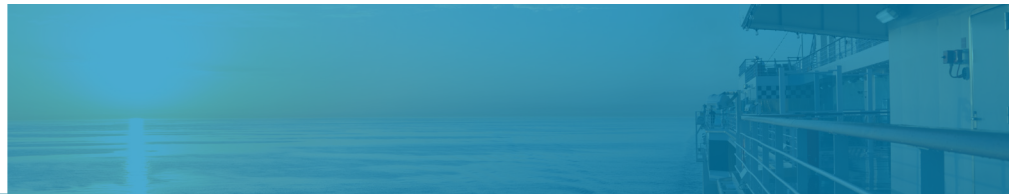
It remains to be seen whether these measures will make the Mediterranean attractive enough to increase, significantly, the number of cruise ship calls. Although the Mediterranean has always been a popular cruise destination, markets elsewhere may be less complicated and more profitable to operate in. Cruise ships operating in Europe have to contend with levels of

bureaucracy and compliance not seen in a number of the other regions in which the cruise industry is active. The use of exhaust gas cleaning systems, for example, is far from resolved in Europe and in the meantime the rising middle class in China are keen to enjoy the fruits of their labours with short holidays on board China-oriented vessels. Improved terminals do not necessarily create the cruise business and associated jobs for which ports hope. The future of the Mediterranean cruising may be boosted by improvements to ports facilities but challenges remain.

HFW's ports and terminals team is involved in a number of ports and terminals transactions across the Mediterranean including in Spain, Greece and Cyprus. Globally, HFW's ports and terminals team is also active in the development of ports and terminals infrastructure, including cruise terminals, in Australia and Asia.

For more information, please contact [Alex Kyriakoulis](#), Partner, on +44 (0)20 7264 8782, or alexis.kyriakoulis@hfw.com, or your usual contact at HFW. Research conducted by Sammy Beedan, Trainee Solicitor.

Port	Country	Total Cruise Passengers (2014)	Total Cruise Passengers (2013)	Variation (2014/2013)
Barcelona	Spain	2,364,292	2,599,232	-9%
Civitavecchia	Italy	2,140,039	2,538,259	-15.7%
Venice	Italy	1,733,839	1,815,823	-4.5%
Balearic Islands	Spain	1,587,064	1,541,376	+3%
Marseille	France	1,311,284	1,188,031	+10.4%
Naples	Italy	1,113,762	1,175,018	-5.2%
Piraeus	Greece	1,055,556	1,302,581	-19%
Savona	Italy	1,018,794	939,038	+8.5%
Dubrovnik/Korcula	Croatia	894,216	1,136,503	-21.3%
Tenerife Ports	Spain	840,268	794,151	+5.8%



hfw Supply chains and modern slavery

The coming into force in the UK of the Modern Slavery Act (the Act) increases yet further the burden of regulation on business. Cruise lines (in common with other large companies) need to look carefully at their supply chains in order to ensure compliance. Cruise lines may face particular challenges because of the complexity of their supply chains, the conditions in some of the regions in which they operate and the source of their goods and services in these regions.

Overview

As well as provisions relating to slavery and human trafficking, the Act creates a new reporting obligation, which will require companies to certify that their supply chains are free of slavery and human trafficking. By way of a recent example, in November 2015 Nestlé launched its Seafood Action Plan to address problems of forced labour and worker abuse in its seafood supply chain in Thailand¹.

Companies that are subject to the obligation will be required to publish a Slavery and Human Trafficking Statement (Statement) each financial year setting out the steps they have taken to ensure that there is no slavery and human trafficking in any part of their business or supply chains.

There is a particular urgency for companies with a financial year ending on 31 March 2016, as they are the first organisations which will be required to publish their Statement. They need to report on events in the financial year 2015/2016 “as soon as reasonably practicable” after the financial year end.



There is a particular urgency for companies with a financial year ending on 31 March 2016, as they are the first organisations which will be required to publish their Statement.

DANIEL MARTIN, PARTNER

Detailed requirements

The reporting obligation applies to companies which satisfy all four of the following criteria:

- They supply goods or services.
- They are a commercial organisation (i.e. a company or a partnership).
- They carry on a business or a part of a business in the UK, regardless of where they are incorporated (note that the Act uses the same formulation as the UK Bribery Act in this regard).
- They and their subsidiary undertakings (wherever operating) have an annual turnover of £36 million or more.

The Act does not stipulate the information that must be included in the annual Statement (although it does offer some suggestions, as supplemented by guidance issued by the UK Government in October 2015). It also does not require companies to employ third parties to verify the integrity of supply chains, although some companies may determine that this is prudent.

Instead it suggests that the following information may be included in the Statement:

- The organisation’s structure, its business and its supply chains.
- Its policies in relation to slavery and human trafficking.
- Its due diligence processes in relation to slavery and human trafficking in its business and supply chains.
- The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk and its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate.
- The training about slavery and human trafficking available to its staff.

The Statement must have high level (i.e. board or equivalent) approval and must be published on the organisation’s website or, if it does not have a website, be available on request.

Other legislation - the amended EU

¹ <http://www.nestle.com/media/newsandfeatures/nestle-action-plan-human-rights-seafood-supply-chain>



The non-financial statement (sometimes called an ESG report) must provide information about, amongst other things, environmental matters, social and employee matters (e.g. gender equality and respect for workers' rights) and governance (including respect for human rights, anti-corruption and bribery).

Accounting Directive

There is a degree of overlap between the requirements of the Act and the reporting obligation under the amended EU Accounting Directive (the Directive)².

Once fully implemented³, the Directive will require undertakings that are public interest entities (as defined in the Directive) with an average number of 500 employees or more and either a balance sheet of at least €20 million or net turnover of at least €40 million to prepare a "non-financial statement" as part of their management reports.

The non-financial statement (sometimes called an ESG report) must provide information about, amongst other things, environmental matters, social and employee matters (e.g. gender equality and respect for workers' rights) and governance (including respect for human rights, anti-corruption and bribery). Issues covered by the Statement may of course be relevant both to social/employee matters and also to governance matters in the ESG report.

Recommendation

Those cruise lines with a UK nexus, which includes all those carrying on a business or part of a business in the UK, should carefully review their supply chains to establish where they have

operations and the countries from which goods and services are sourced.

The risks associated with the relevant sectors, geographies, transactions and business partners should be identified and consideration given to how best to mitigate those risks.

A clear paper trail evidencing any review and resulting mitigating actions should be carefully maintained to document the actions which have been taken to comply with the Act.

Key dates should also be diarised so that there is sufficient time to collate information and prepare the Statement.

For further information, please contact [Daniel Martin](#), Partner, on +44 (0)20 7264 8189, or daniel.martin@hfw.com, or your usual contact at HFW.

hfw UK Consumer Rights Act 2015: potential relief for maritime, aviation and rail

The new UK Consumer Rights Act 2015 (CRA) has caused concern in some quarters, particularly given the potential impact on the transport sector of some of the new remedies it creates. In particular, outside of the CRA, the maritime, aviation and rail sectors already have their own industry-specific legal regimes providing remedies to passengers when transport services are disrupted or subject to delays or cancellations. The new statutory remedies in the CRA – which could sit alongside those regimes - have the potential to cause overlap and confusion amongst industry and the travelling public alike.

The implementation date for the services sections of the CRA has been deferred until 6 April 2016 for consumer transport services in the maritime, aviation and rail sectors. However, there is also an ongoing government consultation, the outcome of which is expected in the first quarter of 2016, which advocates the exemption for those sectors from certain provisions.

The EU maritime sector's compensation regime is governed by EU Regulation 1177/2010 which establishes compensation, refund and other entitlements where services are delayed or cancelled. However, cruise passengers are only covered by this regulation if they embark at an EU port and, importantly, they are not covered by some of the provisions concerning delays.

² Directive 2013/34/EU as amended by Directive 2014/95/EU

³ The Directive must be transposed by the 28 EU Member States by 6 December 2016 and will apply to financial years commencing on or after 1 January 2017.



...cruise ship passengers are only covered by this regulation if they embark at an EU port and, importantly, they are not covered by some of the provisions concerning delays.

SUE BARHAM, PARTNER

It may have been hoped by passengers of cruise ships that the new CRA, which in part consolidates existing statutes and introduces new remedies, would provide them with four new statutory rights:

1. To have services performed with reasonable skill and care.
2. To have services performed within a reasonable time.
3. To have services performed for a reasonable price.
4. To have services performed in conformity with information provided about the service by a trader on which the consumer has relied.

The remedies available for breach of these rights are either:

1. To have the service properly performed by it being performed again (unless that is impossible).
2. To provide a reduction in price, which could be a complete refund.

Contractual terms which seek to exclude any of these remedies are prohibited.

For the maritime, aviation and rail sectors, it is proposed that an exemption be enacted enabling operators to continue to limit their liability by way of their contracts with their passengers to, as the Consultation Paper puts it, “existing and well-established sector-specific compensation arrangements that already provide a significant level of consumer protection”.

If the Department of Transport seeks an exemption for the maritime sector in the CRA and it is granted, then cruise passengers will be in no better position than they currently are.

Whilst this is potentially good news for cruise lines, until the Department of Transport has reached a decision as to whether to seek exemption, it remains a case of “watching this space” in relation to cruise passenger compensation for delays, cancellation or denial of boarding.

For further information, please contact [Sue Barham](#), Partner, on +44 (0)20 7264 8309, or sue.barham@hfw.com, or [Edward Waite](#), Associate, on +44 (0)20 7264 8266, or edward.waite@hfw.com or your usual contact at HFW.

Conferences and events

CLIA Summit at Sea

Interlaken, Switzerland

8 January

Attending: Toby Stephens

Seafreight symposium

Interlaken, Switzerland

22 January

Presenting: Craig Neame



Lawyers for international commerce

hfw.com

© 2015 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com

São Paulo London Paris Brussels Geneva Piraeus Dubai Shanghai Hong Kong Singapore Melbourne Sydney Perth