



**BRODOSPLIT**

Member of DIV GROUP

Zoran Tasić

**IUC, 7 SEPTEMBER, 2020**  
**Force Majeure clauses**  
**in**  
**Shipbuilding Contracts**

# Shipbuilding Contract

- ❑ English law of international shipbuilding contracts.
- ❑ Shipbuilding Contract: an agreement for construction and sale of a vessel, as a future good, in accordance with her description, with a defined date of delivery of the vessel.

# Force Majeure

- ❑ There is no doctrine of „Force Majeure“ in English law.
- ❑ Force Majeure in Shipbuilding Contracts is constituted by provisions agreed upon by the parties.

## Cont'

FM provisions are normally included in clauses dealing with delayed delivery of the vessel and list the events that are:

- beyond the builder's control,
- not foreseen or anticipated at the time of contract, and
- likely to cause delay in construction and/or delivery of the vessel.

# Cont'

FM events usually include:

- war or warlike events or terrorist attacks or riots or the imposition of embargoes,
- actions by the government of the builder's place prohibiting or preventing the builder from proceeding with the shipbuilding,
- extraordinary weather conditions,
- strikes, lockouts,
- explosions, fires,
- disruptions of power supplies,
- defects in materials and equipment, etc.



# Notices of delay

- ❑ Notice of delay is a condition precedent to the application of extension of time provisions in the Shipbuilding Contract.
- ❑ A written notice to the buyer usually includes:
  - commencement of the event
  - likely duration of the event
  - end of the event
  - new, extended delivery date.

# Cont'

## ❑ Buyer's rights:

- to know when the vessel will be delivered, and
- if appropriate, to reject the builder's notice of delay

## ❑ Builder's right:

- to exclude or limit its liability for delays in construction and/or delivery of the vessel. (In *Adyard Abu Dhabi LLC v SD Marine Services* [2011] and *Zhousan Jinhaiwan Shipyard Co. V. Golden Exquisite and Others* (2014) the shipyard failed to send a notice to the buyer and its claim for extension of time failed.)

# Cont'

- ❑ In addition to sending a notice, the builder needs to prove that:
  - the FM event has actually caused delays in construction and/or delivery of the vessel (*Jerram Halkus Construction Ltd v Fenice Investments Inc (No.4)* [2011];
  - the FM event is in the critical path of delivery of the vessel for a number of days beyond the agreed delivery date; and
  - it has done all it can to avoid or minimise the actual delay in delivery of the vessel.



# Consequences of the delayed delivery

Liquidated damages or termination of contract by the buyer and claim for refund of the pre-delivery instalments, with interest, and damages.

# Conclusion

If shipyards wish to rely on Force Majeure clauses in their shipbuilding contracts in order to claim extension of time, they need to make sure that they have in place:

- a strict documentary policy
- critical path diagram
- a system of recording relevant events that are causing delays in construction
- a system of prompt notifications to the buyer

THANK YOU!