

# Soundings

## Maintenance of class not a condition: Court of Appeal overturns “The Arctic” ruling

**In our April, 2019 Soundings (“A question of class”), we reported on the Commercial Court’s ruling that an obligation to maintain a ship in class is a condition of the contract, breach of which will entitle the other party to terminate the charter. The Court of Appeal has now overturned that decision, in *Ark Shipping Co LLC v. Silverburn Shipping (IOM) Ltd, “The Arctic”* [2019] EWCA Civ 1161, clarifying that the obligation to keep a ship in class is an innominate term.**

### Classification of terms

As a matter of English law, contractual terms are categorised as conditions, warranties or innominate terms. Breach of a condition entitles the innocent party to terminate the contract, whilst breach of a warranty merely gives rise to a claim for damages. An innominate term is one which can either be classified as a condition or a warranty, depending on the severity of the breach.

The Court of Appeal has now unanimously confirmed that the obligation to keep a ship in class is an innominate term, meaning that a breach will only entitle the other party to terminate the charter if that breach is sufficiently serious and goes to the root of the contract. What that means will be a question of fact in each case.

### Implications

According to the first instance ruling, if a ship was out of class for only a day, the charterer would be entitled to

terminate the charter. In other words, a potentially minor breach could lead to drastic consequences. The appeal decision therefore provides an arguably more measured approach which may be seen to be more in keeping with commercial realities.

The Arctic case involved a bareboat charter, where it was the charterer’s duty to keep the ship in class. However, the ruling could apply equally to time charters, where the owner has the equivalent obligation.

In light of this judicial clarification, parties (whether time charter owners or bareboat charterers) should not be quick to terminate a charter based on a failure of class and should seek legal advice before doing so to confirm that the severity of the breach is sufficient to give rise to a right of termination.

**Members are welcome to contact the Managers directly for any further advice and guidance.**