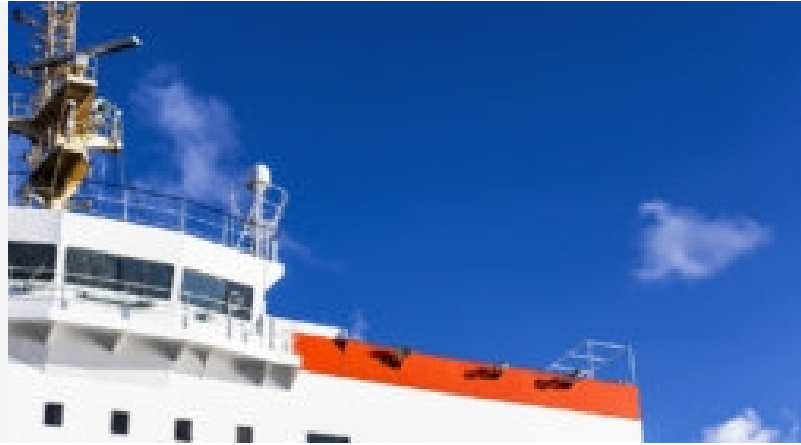


THE POSEIDON PRINCIPLES: WILL THEY AFFECT ME?

4 JULY 2019 • ARTICLE



THE POSEIDON PRINCIPLES LAUNCHED ON THE 18 JUNE 2019, WITH FOUNDING SIGNATORIES INCLUDING CITI, DNB, SOCIETE GENERALE, ABN AMRO, AMSTERDAM TRADE BANK, CREDIT AGRICOLE CIB, DANISH SHIP FINANCE, DANSKE BANK, DVB, ING AND NORDEA.

Together they have a combined shipping loan portfolio of c. US\$100bn – roughly 20% of the global total. Additional banks are expected to join them in the near future and it is hoped that ship lessors and financial guarantors including export credit agencies will also become signatories to the Poseidon Principles (“Signatories”).

WHAT ARE THE POSEIDON PRINCIPLES?

The Poseidon Principles establish a global framework for assessing and disclosing whether ship finance portfolios align with the **International Maritime Organisation’s** (“IMO”) goal of reducing shipping’s total annual greenhouse gas emissions by at least 50% by 2050.[1]

They take as their basis the IMO’s MARPOL Annex VI Data Collection System for fuel oil consumption of ships, adopted by resolution MEPC.278(70) which entered into force on 1 March 2018.

2019 is the first year that ships of 5,000 gross tonnage and above are required to collect data relating to:

1. The amount of fuel consumption for each type of fuel in metric tonnes;
2. Distance travelled;
3. Hours underway; and
4. The technical characteristics of the ship including design deadweight.

The aggregated data is reported to the flag State at the end of each calendar year and the flag State, having determined said data has been reported in accordance with the IMO’s requirements, issues a Statement of Compliance to the ship. Flag States are then required to transfer this data to an IMO Ship Fuel Oil Consumption Database. Flag States are expected to delegate these responsibilities to a Recognised Organisation (usually classification societies). The IMO will be required to produce an annual report to the **Marine Environment Protection Committee**, summarising the data collected.

"THE POSEIDON PRINCIPLES ASSOCIATION WILL CALCULATE & PUBLISH THE TARGET CARBON INTENSITY FOR GIVEN SHIP TYPES & SIZE CLASSES "

The **Poseidon Principles Association** will calculate and publish the target carbon intensity for given ship types and size classes in a given year by calculating a decarbonisation-consistent carbon intensity trajectory from 2012 out to 2050 ending in the IMO target of 50% of the 2008 figure.

Signatories will use the same data as that which must be supplied to the IMO (and the accompanying Statement of Compliance) to calculate the carbon intensity of each ship in their portfolio that has to report to the IMO DCS. They must do this by reference to the published target carbon intensities and then report the weighted average of their portfolio based on the debt secured (in the case of loans) and capital payments (in respect of leases) and the guarantee liability (for guarantors) so

it will be clear to what extent the portfolio as a whole meets the IMO target for the reporting year.

Both the IMO DCS reporting and the Poseidon Principles reporting are anonymised so it will not be possible to identify particular ships.

The aim is that lenders, lessors and guarantee providers will take carbon intensity into account when considering the ships they are prepared to finance which will in turn encourage 'greener' ships that are aligned with the IMO targets.

HOW WILL THIS AFFECT FINANCIERS?

Any ship financier that becomes a signatory will have to calculate and report its portfolio alignment annually starting in the year after the year in which it becomes a signatory. Whilst any lender might well be able to obtain the relevant information under the standard information covenants included in syndicated ship finance documentation, the Poseidon Principles include a standardised covenant together with definitions, requiring the ship owner to supply the relevant information. Whilst it is not compulsory to include this, signatories agree to use their best efforts to include it.

The clause contains a number of options, including a requirement that the owner supply what is referred to in the covenant as a "Carbon Intensity and Climate Alignment Certificate". Obtaining this will reduce the calculations that a Signatory would have to make and therefore it is an attractive option (as well as being the preferred option in the Principles). However, as the certificate needs to be produced by a Recognised Organisation, its production is unlikely to be free and there might be pushback from owners if Signatories require them to meet the cost of obtaining it, if that cost is material.

It is possible that some financiers may choose to avoid or delay becoming signatories or become signatories but nonetheless be prepared to continue to fund non-aligned ships on the basis that this is likely to become more profitable if owners of such ships struggle to find funding.

It should also be noted that the door has been left open for the Poseidon Principles to be amended to reflect further initiatives, particularly as climate change and other environmental issues attract increasing attention.

**FINANCIERS MAY CHOOSE TO
AVOID OR DELAY BECOMING
SIGNATORIES...NONETHELESS BE**



PREPARED TO CONTINUE FUNDING
NON-ALIGNED SHIPS ON THE BASIS
THAT IT COULD BE MORE
PROFITABLE.

HOW WILL THIS AFFECT SHIPOWNERS?

An owner financed by a signatory should not find compliance with its obligations onerous. If it simply has to provide copies of the data submitted to the IMO DCS together with a copy of the resulting Statement of Compliance then either it or its classification society should easily be able to do this. It is too early to say how much a classification society would charge for making the relevant calculations but, as these are very simple and they will have the relevant information, it is anticipated that this should not be significant.

However, owners of non-aligned ships might find the pool of possible financiers is reduced as signatories try to ensure that their portfolios consist of ships that comply with the **IMO greenhouse gas emissions targets**.

Some owners might be wary about future amendments to the Poseidon Principles and seek to ensure that its definition in any documentation is restricted to any amendment that reflects legal or regulatory changes to mandatory requirements of the IMO in order to limit the extent to which its obligations might become more onerous in the future. However, as the covenant is restricted to the supply of information (which in many cases financiers will have the right to request in any event) it is unlikely this issue will become a major sticking point.

Watson Farley & Williams provided legal oversight and drafting input to the group of major banks and other leading industry players developing the Poseidon Principles as well as preparing the Poseidon Principles Association's governance rules and membership agreement in conjunction with Danish law firm Gorrissen Federspiel.

Footnotes:

[1] IMO (2018). Resolution MEPC.304 (72) (adopted on 13 April 2018), Initial IMO strategy on reduction of GHG emissions from ships, IMO doc MEPC 72/17/Add. 1, Annex 11.

KEY CONTACTS



NIGEL THOMAS
SENIOR ADVISOR • LONDON

T: +44 20 7814 8020

nthomas@wfw.com



LINDSEY KEEBLE
MANAGING PARTNER
• LONDON

T: +44 20 7814 8227

lkeeble@wfw.com



CHRISTINA HOWARD
PARTNER • LONDON

T: +44 20 7814 8189

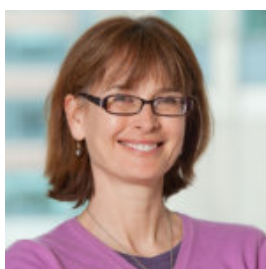
choward@wfw.com



TOBY ROYAL
PARTNER • LONDON

T: +44 20 7814 8014

troyal@wfw.com



ELAINE ASHPLANT
KNOWLEDGE COUNSEL
• LONDON

T: +44 207 814 8109

eashplant@wfw.com

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.