

## Andreas Dracoulis and Jack Spence in Maritime Risk International: ‘On Demand Guarantees: Don’t Tie Your Hands’

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March 1, 2022 Andreas Dracoulis, Jack Spence

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**PRACTICES** Shipping, Ship Construction and Conversion, Energy, Power and Natural Resources, Offshore Oil and Gas, Oil and Gas

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In September 2011 Reignwood International Investment invested US\$200 million in the purchase of a newbuild offshore drillship from Shanghai Shipyard Co Ltd.

It was perhaps no coincidence, however, that Reignwood – a company with no obvious connection to the offshore drilling sector – happened to invest in the sector amid the sustained period of high oil prices in the early part of the last decade.

Reignwood initially entered into the shipbuilding contract, but always intended to novate the contract to a special purpose company part-owned by Reignwood and its partners (the SPV buyer). The contract required Reignwood to provide a guarantee to the shipyard, securing the final (delivery) instalment of US\$170 million (the guarantee).

The guarantee included the following provisions:

- Clauses 1, 3 and 10: that Reignwood “IRREVOCABLY, ABSOLUTELY, and UNCONDITIONALLY” guaranteed “as the primary obligor and not merely as the surety” payment of the delivery instalment and interest thereon at a rate of 5 per cent (for up to 60 days)
- Clause 4: if the SPV buyer defaulted in payment of the delivery instalment for 15 days, then Reignwood was to immediately pay the instalment on the shipyard’s “firstwritten demand”; however, if there was a dispute between the shipyard and the SPV buyer related to payment of the delivery instalment and which was submitted to arbitration, then Reignwood was entitled to withhold payment pending an award confirming the SPV buyer’s liability.

Following various delivery date extensions, in December 2016, the shipyard gave notice of completion and, in January 2017, demanded payment of the delivery instalment.

The SPV buyer did not pay. Reignwood took steps to take control of the SPV buyer, having seemingly fallen out with its partners, but could not procure the commencement of arbitration proceedings against the shipyard until June 2019 (presumably arguing that the instalment was not due because the drillship was not in a deliverable condition).

Excerpted from *Maritime Risk International*. To read the full article, click [here](#).