

BIMCO Infectious or Contagious Diseases Clause for Voyage and Time Charter Parties

The outbreak from time to time of virulent diseases can have significant implications for ship owners and operators. This might include quarantine of a vessel and crew in an area where the disease is prevalent as well as the imposition of restrictions, possibly weeks or months later, in ports remote from the infected region as a precaution against the disease spreading further.

At the time of writing, the Ebola virus has highlighted the issues but, some ten years ago, the Severe Acute Respiratory Syndrome (SARS) was a cause of similar concern.

It is likely that equally serious strains of existing, or newly identified, diseases will occur from time to time. For this reason BIMCO has chosen to develop a set of comprehensive and clearly worded generic clauses for voyage and time charter parties that can be applied not only to the Ebola outbreak but to other similar virulent diseases that may occur in the future.

BIMCO is grateful to the following members for their work in the development process:

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General principles

The clauses have been developed for use in response to any virulent disease and therefore drafted in general terms without reference to specific conditions. The provisions are intended for application only in the most severe cases. A high threshold has therefore been inserted so that the triggering mechanism will take effect only in instances of extreme illness and cannot be misused for commercial purposes in relation to more commonly encountered or widespread viruses. Given the potential for ambiguity and lack of clear meaning, the term "epidemics" has been avoided both in the heading (the provisions are called the "Infectious or Contagious Diseases Clause") and in the definition of disease.

The content and structure has been modelled on the BIMCO War and Piracy Clauses where, within limitations, owners may refuse to trade to an area or zone of danger. If, nevertheless, that option is waived and the vessel proceeds, charterers will be responsible for resulting liabilities and any additional costs of preventative measures taken by owners to protect the vessel and crew. It is important to note that whether an area presents the degree of danger justifying a refusal to proceed is a subjective decision to be taken by owners in the light of available evidence and information.

Under the time charter party clause, and recognising charterers' commercial control over the vessel, charterers' obligations are expressly stated to include post contractual costs such as cleaning, quarantine or fumigation arising from the vessel's previous trading pattern. In this respect and in order to secure their interests, owners will need to consider the most effective means of obtaining appropriate financial guarantees either at the time of fixing or when agreeing to allow the vessel to proceed to an area considered to be at risk.

The voyage charter version expressly limits application of the clause to situations arising after the date of the charter party. This is because parties should know about events that arise prior to or during negotiations and make appropriate arrangements accordingly. Events arising post-fixture may be more problematic and so the clause sets out a regime to address such changed circumstances.

The provisions in the clauses might result in contractual or geographic deviation. Accordingly, when considering incorporating the clause, owners and charterers should consult their respective

P&I Club to ensure that inclusion will be compatible with their cover and also to discuss any special considerations or requirements that might be applied.

Main features of the Infectious or Contagious Diseases Clauses

1. Time Charter Party Clause

Sub-clause (a) This sets out two interdependent definitions to trigger the clause. The first, "Disease", is drafted with closely defined criteria to fulfil the provisions of extreme circumstances of sickness and not everyday occurrences of illness. The accompanying definition, "Affected Area", means the location where the vessel, crew or other person on board may be at risk of exposure to Disease (as defined).

It is important to note that exposure is not limited only to the immediate effects while the vessel is within an area of risk, but also anticipates potential future restrictions weeks or months later when the vessel calls at a port outside, and possibly remote from, the Affected Area but, because of the earlier trading, may be subjected to quarantine or restrictions on crew changes or movements.

Sub-clause (b) It is for owners/master to determine, on the basis of "reasonable judgement", whether to allow the vessel to proceed to, continue to or remain at an Affected Area although, as with the war and piracy clauses, the level of danger must be real and significant. Considerations to be taken into account when deciding whether to proceed would be likely to involve making background inquiries and seeking guidance from relevant sources which could be expected to include regulatory or advisory bodies in the owners' Flag State as well as reference to guidance issued by specialist intergovernmental organisations, such as the World Health Organisation (WHO). The vessel's subsequent trading pattern might also influence the decision.

Sub-clause (c) The owners must notify charterers if they decide not to proceed or continue towards an Affected Area.

Sub-clause (d) If already at a location that becomes an Affected Area, and provided charterers are notified, the vessel may leave with or without cargo.

Sub-clause (e) This requires charterers to issue alternative voyage orders within 48 hours of owners' notification, under sub-clauses (c) or (d), that the vessel will not proceed to, continue to or remain at an Affected Area.

If such alternative orders are not given, any cargo already on board may be discharged at any port or place. The vessel will remain on hire throughout with charterers responsible for all resulting costs and liabilities.

Sub-clause (f) owners are under no obligation to load cargo or sign (and charterers may not sign or authorise) bills of lading, waybills or other documentation evidencing contracts of carriage for any Affected Area.

Sub-clause (g) charterers must indemnify owners for costs and liabilities, including claims from third party bill of lading holders, resulting from delay awaiting or complying with charterers' alternative orders in accordance with sub-clause (e).

Sub-clause (h) addresses the position where a vessel is nevertheless permitted to proceed to an Affected Area. In such event, owners do not waive their contractual rights; owners must endeavour to take reasonable precautionary measures in accordance with World Health Organisation (WHO) recommendations; and the vessel remains on hire with charterers also responsible for any additional cleaning, fumigation or quarantine costs.

Sub-clause (i) this is a standard liberty provision permitting owners to comply with orders, advice or recommendations given by competent authorities as to sailing or routing to an Affected Area.

Sub-clause (j) provides that the exercise of any rights under the clause is not a contractual or geographic deviation or off-hire event, and also addresses conflict between the clause and underlying charter party.

Sub-clause (k) holds charterers responsible for any post contractual costs, such as cleaning, quarantining and fumigation, arising from the vessel's trading during the currency of the charter party. According to the circumstances of the contract and relationship with charterers, owners should consider the appropriateness of ensuring financial security or guarantees to cover expenses that might arise after redelivery.

Sub-clause (l) this is the standard incorporation in provision.

2. Voyage Charter Party Clause

Sub-clause (a) the definitions are the same as those used in the time charter clause.

Sub-clause (b) owners' option not to proceed with the voyage applies only if a place becomes an Affected Area after the date of entering into the charter party.

Sub-clause (c) this reflects the approach in VOYWAR and gives owners the option, prior to loading, to cancel the contract; refuse to perform any part of it that will bring the vessel into an Affected Area; or, if loading has started, to leave with cargo on board and complete elsewhere for owners' account. However, if the charter party provides a range of ports, owners must first request charterers to nominate an alternative loading port and may cancel the contract or depart only if charterers fail to respond within 48 hours.

Sub-clause (d) addresses the position before or after arrival at the discharging port. As with VOYWAR, owners may request nomination of an alternative port in the charter party range with the right to discharge for owners' convenience in the absence of the required nomination within 48 hours, and may recover certain additional costs and freight from charterers.

Sub-clause (e) owners are not required to sign, and charterers may not authorise, bills of lading and other documentation for Affected Areas.

Sub-clause (f) mirrors the principles in the time charter clause (see sub-clause (h)) where a vessel proceeds to an Affected Area. Under Sub-paragraph (iii), any time lost counts as laytime or time on demurrage.

Sub-clauses (g) to (j) are all standard provisions.

Availability

The text of the BIMCO Infectious or Contagious Diseases Clauses follows at the end of this Circular and can be downloaded free of charge from the Chartering/Clauses section of the BIMCO website (www.bimco.org). Users of the IDEA-2 contract editing system, which contains digital copies of all the widely used BIMCO standard contracts and many other forms, can add the new Clause to their agreements by using the Clause Manager.

BIMCO Infectious or Contagious Diseases Clause for Time Charter Parties

(a) For the purpose of this Clause, the words:

"Disease" means a highly infectious or contagious disease that is seriously harmful to humans.

"Affected Area" means any port or place where there is a risk of exposure to the Vessel, crew or other persons on board to the Disease and/or to a risk of quarantine or other restrictions being imposed in connection with the Disease.

(b) The Vessel shall not be obliged to proceed to or continue to or remain at any place which, in the reasonable judgement of the Master/Owners, is an Affected Area.

- (c) If the Owners decide in accordance with Sub-clause (b) that the Vessel shall not proceed or continue to an Affected Area they shall immediately notify the Charterers.
- (d) If the Vessel is at any place which the Master in his reasonable judgement considers to have become an Affected Area, the Vessel may leave immediately, with or without cargo on board, after notifying the Charterers.
- (e) In the event of Sub-clause (c) or (d) the Charterers shall be obliged, notwithstanding any other terms of this Charter Party, to issue alternative voyage orders. If the Charterers do not issue such alternative voyage orders within forty eight (48) hours of receipt of the Owners' notification, the Owners may discharge any cargo already on board at any port or place. The Vessel shall remain on hire throughout and the Charterers shall be responsible for all additional costs, expenses and liabilities incurred in connection with such orders/delivery of cargo.
- (f) In any event, the Owners shall not be obliged to load cargo or to sign, and the Charterers shall not allow or authorise the issue on the Owners' behalf of, bills of lading, waybills or other documents evidencing contracts of carriage for any Affected Area.
- (g) The Charterers shall indemnify the Owners for any costs, expenses or liabilities incurred by the Owners, including claims from holders of bills of lading, as a consequence of the Vessel waiting for and/or complying with the alternative voyage orders.
- (h) If, notwithstanding Sub-clauses (b) to (f), the Vessel does proceed to or continue to or remain at an Affected Area:
- (i) The Owners shall notify the Charterers of their decision but the Owners shall not be deemed to have waived any of their rights under this Charter Party.
- (ii) The Owners shall endeavour to take such reasonable measures in relation to the Disease as may from time to time be recommended by the World Health Organisation.
- (iii) Any additional costs, expenses or liabilities whatsoever arising out of the Vessel visiting or having visited an Affected Area, including but not limited to screening, cleaning, fumigating and/or quarantining the Vessel and its crew, shall be for the Charterers' account and the Vessel shall remain on hire throughout.
- (i) The Vessel shall have liberty to comply with all orders, directions, recommendations or advice of competent authorities and/or the Flag State of the Vessel in respect of arrival, routes, ports of call, destinations, discharge of cargo, delivery or in any other respect whatsoever relating to issues arising as a result of the Vessel being or having been ordered to an Affected Area.
- (j) If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation, nor shall it be or give rise to an off-hire event, but shall be considered as due fulfilment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of this Charter Party, this Clause shall prevail to the extent of such conflict, but no further.
- (k) The Charterers shall indemnify the Owners if after the currency of this Charter Party any delays, costs, expenses or liabilities whatsoever are incurred as a result of the Vessel having visited an Affected Area during the currency of this Charter Party.
- (l) The Charterers shall procure that this Clause shall be incorporated into all subcharters and bills of lading, waybills or other documents evidencing contracts of carriage issued pursuant to this Charter Party.

BIMCO Infectious or Contagious Diseases Clause for Voyage Charter Parties

(a) For the purposes of this Clause, the words:

“Disease” means a highly infectious or contagious disease that is seriously harmful to humans.

“Affected Area” means any port or place where there is a risk of exposure to the Vessel, crew or other persons on board to the Disease and/or to a risk of quarantine or other restrictions being imposed in connection with the Disease.

(b) The Vessel shall not be obliged to proceed to or continue to or remain at any place which, in the reasonable judgement of the Master/Owners, becomes an Affected Area after the date of this Charter Party

(c) In accordance with Sub-clause (b):

(i) at any time before loading commences, the Owners may give notice to the Charterers cancelling this contract of carriage or may refuse to perform such part of it as will require the Vessel to enter or remain at an Affected Area;

(ii) if loading has commenced, the Owners may notify the Charterers that the Vessel will leave with or without cargo on board, provided always that if the Charter Party provides that loading or discharging is to take place within a range of ports, the Owners shall first request the Charterers to nominate any other safe port which lies within the range for loading and discharging and may only cancel this Charter Party or leave the loading port if the Charterers fail to nominate such alternative safe port within forty-eight (48) hours of receipt of notice of such request. If part cargo has been loaded, the Vessel may complete with cargo for the Owners' account at any other port or ports whether or not on the customary route for the chartered voyage.

(d) If prior to or after arrival and in accordance with Sub-clause (b) the discharging port is determined to be in an Affected Area, the Owners may request the Charterers to nominate an alternative safe port which lies within the Charter Party range. If the Charterers fail to make such nomination within forty-eight (48) hours of receipt of the Owners' request, the Owners may discharge the cargo, or such cargo remaining on board if discharging has not been completed, at any safe port of their choice (including the port of loading) in complete fulfilment of the contract of carriage. If discharge takes place at any port other than the loading port or at a port that lies outside the range of ports in the Charter Party, the Owners shall be entitled to recover from the Charterers the extra expenses of such discharge, to receive full freight as if the cargo had been carried to the discharging port and, if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route. The Owners shall have a lien on the cargo for such extra expenses and freight.

(e) The Owners shall not be obliged to sign, and the Charterers shall not allow or authorise the signing of, bills of lading, waybills or other documents evidencing contracts of carriage for any Affected Area.

(f) If, notwithstanding Sub-clauses (b) to (e), the Vessel does proceed to or continue to or remain at an Affected Area:

(i) The Owners shall notify the Charterers of their decision but the Owners shall not be deemed to have waived any of their rights under this Charter Party.

(ii) The Owners shall endeavour to take such reasonable measures in relation to the Disease as may from time to time be recommended by the World Health Organisation.

(iii) Any additional costs, expenses or liabilities whatsoever arising out of the Vessel visiting or having visited an Affected Area, including but not limited to screening, cleaning, fumigating and/or quarantining the Vessel and its crew, shall be for the Charterers' account and any time lost shall count as laytime or time on demurrage.

(g) The Vessel shall have liberty to comply with all orders, directions, recommendations or advice of competent authorities and/or the Flag State of the Vessel in respect of arrival, routes, ports of call, destinations, discharge of cargo, delivery or in any other respect whatsoever relating to issues arising as a result of the Vessel being or having been ordered to an Affected Area.

(h) If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation but shall be considered as due fulfilment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of this Charter Party, this Clause shall prevail to the extent of such conflict, but no further.

(i) The Charterers shall indemnify the Owners for claims arising out of the Vessel proceeding in accordance with any of the provisions of Sub-clauses (b) to (h) which are made under any bills of lading, waybills or other documents evidencing contracts of carriage.

(j) The Charterers shall procure that this Clause shall be incorporated into all bills of lading, waybills or other documents evidencing contracts of carriage issued pursuant to this Charter Party.