



SOUNDINGS

Tianjin Explosion

The explosions that occurred late in the evening of 12th August, 2015 in warehouses at the port of Tianjin have resulted in significant loss of life, damage to property and suspension of shipping and port movements. The following briefing is intended to provide initial advice to assist Members who may be intending to load or discharge at Tianjin.

What if a ship is ordered to proceed to load/discharge at Tianjin?

First, it is possible that some terminals at Tianjin will still be in operation. The position should be checked with local agents as the situation is likely to change from day to day. However, if the intended place of discharge is unavailable, further considerations will apply.

Both time and voyage charters typically impose a duty on the charterer to nominate only safe ports and/or berths through an express clause in the charterparty. The classic test (in *The EASTERN CITY*) is that a port (or berth) is safe if in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to unavoidable danger. If there is a risk to the crew but not the ship the port may still be unsafe. The warranty

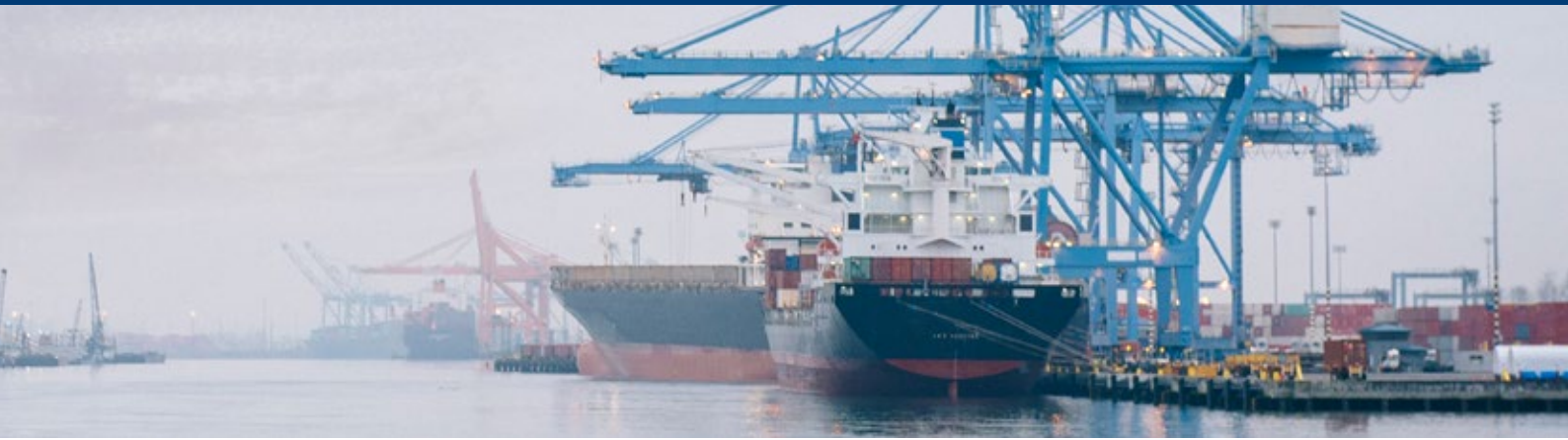
on the part of the charterer is prospective; the charterer is warranting that, when nominated, the port will be safe to approach, use and depart from.

If an order was given before the explosion to proceed to a berth which is now unsafe, time charterers are under a duty to nominate an alternative, safe port. However, under a voyage charter the position is different and there is no general duty or right of re-nomination in the case of the port becoming unsafe between nomination and expected arrival.

Are ports which are closed unsafe?

The fact that a ship may have to wait for a time before entering the port does not make it unsafe. However, if the delay is "inordinate" then the port will be unsafe. The period of delay must be such a period as would frustrate the charter. There is

continued overleaf



no definitive rule as to how long that delay must be – it will depend on the circumstances of each individual case, and advice should be sought before making any claim that the charter is frustrated.

If the port is closed is the charterparty frustrated?

The affected terminals at Tianjin will re-open at some point, and the question therefore is whether their temporary closure means that the contract is frustrated. A charterparty is frustrated, and therefore brought to an immediate end, if during its performance a fundamentally different situation arises, through no fault of either party, and for which the parties have made no provision in the charter, so that it would be unfair in the new circumstances to require them to perform the rest of their obligations. The position regarding the right to claim frustration will have to be assessed on a case-by-case basis with regard to the length of the delay and the charter period. This may only be possible once the extent of closures become known.

The charterparty may of course make provision for supervening events causing delay, in which case the legal consequences of the event must be determined by the provisions of the contract.

Is this a “force majeure” event?

English law has no general definition of what constitutes “force majeure”, and the exceptions that may apply to protect an owner or a charterer will be those specifically stated in the charterparty terms. That said, a standard exceptions clause is likely to contain fire and explosion as an excepted event.

Is the ship at liberty to deviate due to the non-availability of a berth?

Reference of course should be made to the express terms of the charterparty. However, the master has the right to divert in order to avoid danger, whether navigational or otherwise affecting his ship or property or life. What will be critical is the extent to which there is a reasonably held belief that the deviation is required.

What is the position with regard to bills of lading?

In circumstances where the ship is physically unable to go to the agreed place of discharge, problems may arise in respect

of an owner's obligations to a third party under a bill of lading to deliver there. In the absence of an express provision authorising deviation or delivery to an alternative port, the contract may become frustrated, depending on how long the place of discharge is likely to be closed/restricted.

If the Hague or Hague-Visby Rules are incorporated into the bill of lading, the owner may be able to rely on the “fire” exception to avoid liability for deviating to a different port, though this will depend on the terms of the contract and the factual circumstances.

Members should also consider the liberty clause to determine if proceeding to another port is allowed under the bill of lading terms. If so, going to a different port may not be considered a deviation.

It is recommended that Members seek advice from their P&I Club as to how to proceed in such circumstances. If required, the Club can advise on obtaining any additional cover that may be needed.

What is the position with regard to injury to crew members, damage to cargo or ships?

Initial reports indicate that there has been very little damage to ships using the port at the time of the explosion, and perhaps therefore little damage to cargo on board. Injury to crews and damage to cargo (which is perhaps likely to be limited to containerised cargo carried on deck) may be covered by P&I cover. Members are advised to consult their P&I Club in this connection. Where cargo that has been previously discharged has been damaged or destroyed and Members retain responsibility for it, the P&I Club concerned should be advised promptly.

Conclusion

The tragic events at Tianjin may give rise to a number of issues concerning Members' contractual rights and obligations. The extent of these will become clearer as further information becomes available. Members should consider the terms of their charters and contracts of carriage and should consult their P&I Club or usual contact at the Managers as appropriate.

The UK Defence Club

Thomas Miller Defence Ltd, 90 Fenchurch Street, London, EC3M 4ST
 tel: +44 207 283 4646 fax: +44 207 204 2131
 email: tmdefence@thomasmiller.com web: www.ukdefence.com

