

KPI Information Update IU-13-2012 **(BIMCO Documentary Committee meeting update)**

The BIMCO Documentary Committee met in Copenhagen on 15 November to review and consider ongoing work in the development of contractual provisions, forms and clauses. Under the continuing Chairmanship of Mr. Karel Stes, and with more than forty participants from BIMCO ship owner and club membership, a lively exchange of views took place on a broad range of topics of interest and concern to industry practitioners. The following is a brief summary of developments and discussions.

1- Singapore arbitration:

In recognition of its increasing importance as a maritime centre, work has been underway, in close consultation with the Singapore Chamber of Maritime Arbitration (SCMA), to develop a forum specific clause for arbitration in Singapore. The new clause is based on the wording in the current London arbitration provision but adjusted to reflect procedural issues in Singapore. Users are given the option to decide whether to apply Singapore or English law as the governing law of the contract. The clause was unanimously adopted. It now provides a third named venue, together with London and New York, in the standard BIMCO Dispute Resolution Clause, as well as the further option for users to agree their own choice of forum and applicable law.

2-Slow Steaming Clause:

Proposals for a Slow Steaming Clause for Virtual Arrival were reviewed. The purpose is to enable charterers to request owners to adjust a vessel's speed to meet specified arrival requirements. The provision will have particular relevance in trades where charterers control the supply chain and can determine their scheduling requirements. Owners are to be compensated by charterers for any extra time used on the voyage; while charterers can expect to offset the cost against potential savings in demurrage. Nevertheless, demurrage will accrue in the normal way if a vessel is delayed on arrival at its destination. The Working Group will now consider a number of issues put forward and propose a final text for the next meeting in Paris.

3-Hull Fouling Clause:

A new Hull Fouling Clause for Time Charter Parties is under development. It will address the current absence of a standard industry provision allocating liability, responsibility and costs for the removal from a vessel's underwater parts of marine growth resulting from charterers' trading requirements involving periods of waiting at anchor or "idling". The number of days required to trigger procedures for inspection and cleaning remains to be determined but will need to reconcile paint manufacturers' guarantees with the potential for damage arising from excessive hull cleaning. Work will continue.

4- Designated Entities Clause:

The increasing use of sanctions and restrictions by states and inter-governmental organisations means that ship owners often have to undertake in-depth counterparty

investigations before entering contractual agreements. In response to lists of proscribed persons and entities, work has been underway to develop a provision under the working title BIMCO Designated Entities Clause for Charter Parties.

The provision will supplement the BIMCO Sanctions Clause for Time Charter Parties which addresses the different aspect of international trade sanctions.

The Documentary Committee supported the intended purposes of the new clause but suggested that the blocking provisions could be misapplied to terminate an inconvenient charter in circumstances where trade is restricted between states engaged in a "private" diplomatic dispute. The Working Group will consider how this concern can be resolved.

5-Australian Pollution Liabilities:

The Australian Government initiated new legislation at the end of last year to increase criminal penalties for pollution, extend liability to charterers and create new offences for Masters. As a result, owners and charterers are now severally liable. In order to respond to the appearance of unsatisfactory market clauses the International Group of P&I Clubs, with BIMCO participation, has developed a provision designed to protect party interests in the context of criminal fines and civil penalties (but not civil liability issues which are separately covered under the oil pollution conventions). Central to the provision, which is not country specific and capable of broad application, is a mutual indemnity designed to preserve party liability as it would have been but for the legislation. Subject to minor refinement to improve the clarity, the clause was approved for adoption.

6-WINDTIME Charter Party:

Work is continuing on the new WINDTIME Standard Offshore Wind Farm Transfer Vessel Time Charter Party. This is a very specialised trade, comprising small ships often carrying no more than eight to ten persons, with vessels actually working for only a part of a longer hire period. Discussions continue, particularly on the question of liquidated damages for late delivery in a trade subject to time-sensitive needs. It is hoped that this, and other outstanding matters, will be satisfactorily resolved so that a draft document can be put forward for approval at the May meeting.

7-Revising NYPE 93 form:

Progress was reported on developments to revise the NYPE 93 form. Discussions are underway within a BIMCO sub-committee which is liaising with ASBA and working in co-operation with the Singapore Maritime Foundation (SMF). It is hoped that the outcome will result in a suitably updated document supported by the three organisations.

8-War risk clauses:

Work will begin shortly to review the CONWARTIME and VOYWAR war risk clauses to take account of legal and practical developments during the period since they were

last re-issued in 2004. The Working Group will also consider the Piracy Clause for Time Charter Parties 2009 and the need for amendment due to the increase in the on-board carriage of, often armed, security guards.

9-MLC related documents:

Entry into force next August of the Maritime Labour Convention 2006 will place obligations and responsibilities on ship owners for on-board personnel for whom they are not currently contractually liable. Work is now being undertaken to address the issues through the development of Recommended Additional Clauses for incorporation into BIMCO's CREWMAN, SHIPMAN and SUPPLYTIME forms. Given the urgency of the task, the provisions will be put forward for consideration through the fast track procedure in advance of adoption at the Paris meeting.

10-Laytime interpretation:

Revision of the Voyage Charter-party Lay-time Interpretation Rules 1993 (VOYLAYRULES), which were updated from the original Charter-party Lay-time Definitions 1980, is underway. Work is being undertaken together with CMI, FONASBA and INTERCARGO which co-sponsored the earlier exercise.

A representative from the Baltic Exchange has also joined the Working Group with a view to aligning and harmonising the broadly similar content of the Baltic Code Charter-party and Lay-time Terminology and Abbreviations. A significant change has been made with the decision to revert to the 1980 concept of Definitions so as to offer statements of meaning in place of the prescriptive term "Rules". It has also been agreed that, in contrast to VOYLAYRULES, the provisions should be brought into line with English law. The provisions are now being examined and, as appropriate, adjusted to take account of developments and court decisions over the last twenty years. A final draft will be put before the Documentary Committee in Paris.

11- Offshore Installation Decommissioning Contract:

Future work will include the development of a new Offshore Installation Decommissioning Contract. While this is not strictly maritime in the accepted sense, it is in line with BIMCO's active involvement in the development of the ship recycling agreement, RECYCLECON, and the WRECKHIRE contracts. A new time charter will be drawn up for Ro/Ro passenger vessels. In addition, development will begin on a Bunker Non-Lien Clause for Time Charter Parties to assist owners overcome the problem of unpaid bunkers when charterers fail to, or cannot, meet their financial obligations.

12-Delaying amendments for York Antwerp Rules:

At the recent CMI Conference in Beijing, it was decided to delay proposals to amend the controversial York Antwerp Rules 2004. An in-depth study will now be undertaken to develop recommendations for change to be considered at the next Conference in 2016. BIMCO will work in close co-operation with ICS to promote ship owner views through a CMI Working Group and International Sub-Committee.

13-Delivery of cargo without surrendering B/L:

The vexed issue of demands for delivery of cargo without surrender of bills of lading has often been discussed in shipping circles. However, and while some electronic systems provide a limited solution, the underlying problem remains. BIMCO's policy is very firm with owners strongly recommended not to agree to delivery in such circumstances. Nevertheless, at day to day level, the problem is very real. The Secretariat was therefore requested to look again at the matter and develop recommended guidelines to assist ship owners. A further review will take place in Paris.

14-Marine Risk Assessment Clause:

The Documentary Committee has previously considered a Marine Risk Assessment Clause to address charterers' requirements for carrying out a vessel risk assessment immediately prior to or during a time charter. A clause, setting out agreed procedures and aiming to remove the dangers posed by market provisions often imposing far-reaching obligations on owners, has not yet been adopted. The issue is to be looked at again with recommendations to be developed for consideration at the next meeting. The Documentary Committee received a report and discussed proposals for streamlining the Committee's composition. New arrangements will be phased in over a two year period.

The next meeting will be held on Monday 27 May 2013. It will take place in Paris where the Documentary Committee first met in 1913 one hundred years ago.