

SPECIAL CIRCULAR

No. 7 – 19 July 2013

161 Bagsvaerdvej

DK - 2880 Bagsvaerd

Tel: +45 4436 6800

Fax: +45 4436 6868

Email: mailbox@bimco.org
Web: www.bimco.org

Revised Piracy Clauses

Background

Specialist Piracy Clauses setting out party rights and obligations in response to piracy risks were first issued in 2009. Three provisions were drafted respectively for time charter parties, consecutive voyage charters/COAs and single voyage charters. However, following a recent court case, changing trade practices, the need for clarifying charterers' liabilities after a vessel is released following seizure and insurers' response to user demands for specialist cover, a review has been undertaken to determine adjustments required to ensure that the provisions remain in line with commercial requirements. As a result, the Clauses have been updated. The 2013 editions of the Piracy Clauses are now available for market use in charter parties. BIMCO strongly recommends that members use the latest versions of the Piracy Clauses.

BIMCO is grateful to the following members, together with a specialist adviser on market insurance issues, for their work in developing updated provisions:

Mr Jean-Pierre Laffaye, Cetragpa, France (Chairman)

Mr Peter Eckhardt, F.Laeiz, Germany

Mr Georg Scheel, Nordisk, Norway

Mr Chris South, West of England P&I Club, UK

Mr Neil Roberts, Lloyd's Market Association Joint War Committee, UK

The revision was conducted in parallel with a review of the BIMCO War Risks Clauses to ensure consistency between provisions common to both sets of Clauses. Commentary on the updated War Risks Clauses is set out in Special Circular No. 5, dated 16 July 2013.

The main changes to the BIMCO Piracy Clauses are summarised below:

General

As part of the review, the opportunity has been taken to streamline the content and layout of all three Clauses. A number of minor and consequential amendments have therefore been made to ensure consistency and improve or clarify the text.

BIMCO Piracy Clause for Time Charter Parties 2013

A significant change arises from the case of the "Triton Lark" where the court considered the construction of CONWARTIME (on which the Piracy Clause is modelled) in relation to measuring the risk of attack by pirates. The court placed considerable emphasis on the meaning of "may be" and "are likely to be" for determining the existence of risk and when owners have the right to refuse to proceed. In order to remove potential uncertainty, the test in CONWARTIME 2013 for determining whether to proceed has been amended and is now based on whether an area is dangerous. The level of danger is likely to be high but a stated reference point removes the need for complex analysis of degree of risk and whether or not it is more or less likely to occur. The same approach has been taken in the Piracy Clause for Time Charters where sub-clause (a) has been adjusted accordingly.

Sub-clause (c) sets out owners' liberties to take appropriate precautions when a vessel proceeds to or through an area exposed to piracy risks. In sub-paragraph (i), covering on-board and navigational preventative measures, express reference has been made to the embarkation/disembarkation of security personal and equipment.

Reference in the 2009 edition of the Piracy Clause to owners' rights to comply with war risk underwriters' "orders, directions or recommendations" is not strictly correct. Insurers have no authority to give orders or instructions about routeing or navigation. Insurers might, however, require an assured to comply with reporting arrangements such as UKMTO or follow Best Management Practices. This is now reflected in revised text (sub-clause (c)(ii)) which provides that owners have liberty to comply with requirements "under the terms of the Vessel's insurance(s)".

The provisions in sub-clause (d)(iii) for taking out insurance cover are now more clearly stated. Charterers are liable for any additional premium (i.e. beyond owners' normal war risk insurance cover) imposed by underwriters as a result of the vessel navigating in an area of enhanced risk. Charterers are also liable for the cost of any additional insurances required by owners with the stated, but non-exhaustive, illustrative examples of War Loss of Hire and/or maritime Kidnap and Ransom (K&R) cover.

Sub-clause (f) deals with seizure of a vessel by pirates and the position on subsequent release. The 90 day cap on charterers' exposure to hire during captivity is maintained - although this does not affect charterers' other contractual obligations which remain in place no matter how long the period of detention. The cap represents a sharing of risk but it is a starting point and parties are free to negotiate a figure which meets their specific needs. In any event, the capping of hire payments should be viewed together with owners' option in sub-clause (d)(iii) to take out War Loss of Hire cover with the costs payable by charterers.

A vessel on release is likely to require repairs to make good damage and deterioration arising from the period of detention. However, the 2009 Clause does not deal with this and, in the absence of clear wording to the contrary, any time used for refurbishment could be expected to be an off-hire event. This has now been addressed with the inclusion of an express provision in subclause (f) holding charterers liable for hire, or if after redelivery the equivalent of charter party hire, for any time lost for repairs.

BIMCO Piracy Clause for Consecutive Voyage Charter Parties and COAs 2013

Adjustments have been made in line with the changes noted in relation to the Piracy Clause for Time Charter Parties. In particular, sub-clause (a) has been amended to reflect the danger-based

-

¹ Pacific Basin Ihx Ltd v Bulkhandling Handymax AS (*The Triton Lark*) (2012)

test for determining whether or not to proceed to or through an area exposed to piracy risks; subclause (b)(i) now makes reference to the embarkation/disembarkation of security personnel and equipment; and in sub-clause (b)(ii) the current reference to following underwriters' orders is replaced by owners' liberty to comply with the "terms of the Vessel's insurance(s)".

The basis of charterers' obligation in sub-clause (c)(iii) to reimburse owners half the cost of any additional premiums or additional insurance cover is maintained. However, the provision has been amended to reflect the principles set out in the time charter version with illustrative examples of the type of cover which owners may wish to take out.

A technical adjustment has been made to the requirement in sub-clause (e) to incorporate the Clause into any bill of lading. The obligation has been broadened to include "waybills or documents evidencing contracts of carriage", collectively described as "Contracts of Carriage".

BIMCO Piracy Clause for Single Voyage Charter Parties 2013

In line with the position set out above, sub-clause (a) has been adjusted to reflect the test for determining the risk of piracy; sub-clause (b)(i) now includes reference to the embarkation/disembarkation of security personnel and equipment; sub-clause (b)(ii) sets out owners' liberty to comply with the terms of the vessel's insurance; and the incorporation provision in sub-clause (e) has been amended to include waybills and other documents. As this is a voyage charter party clause, the costs of preventative measures and additional insurances are owners' responsibility and are not therefore addressed.

Availability

The full text of the three 2013 edition Piracy Clauses is set out below 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, can add the new Clauses to their agreements by using the Clause Manager.

BIMCO Piracy Clause for Time Charter Parties 2013

- (a) The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter "Area") which, in the reasonable judgement of the Master and/or the Owners, is dangerous to the Vessel, cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), whether such risk existed at the time of entering into this Charter Party or occurred thereafter. Should the Vessel be within any such place as aforesaid which only becomes dangerous, or may become dangerous, after entry into it, the Vessel shall be at liberty to leave it.
- (b) If in accordance with sub-clause (a) the Owners decide that the Vessel shall not proceed or continue to or through the Area they must immediately inform the Charterers. The Charterers shall be obliged to issue alternative voyage orders and shall indemnify the Owners for any claims from holders of the Bills of Lading or third parties caused by waiting for such orders and/or the performance of an alternative voyage. Any time lost as a result of complying with such orders shall not be considered off-hire.
- (c) If the Owners consent or if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:

- (i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation).
- (ii) to comply with the requirements of the Owners' insurers under the terms of the Vessel's insurance(s);
- (iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and
- (iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

and the Charterers shall indemnify the Owners for any claims from holders of Bills of Lading or third parties caused by the Vessel proceeding as aforesaid, save to the extent that such claims are covered by additional insurance as provided in sub-clause (d)(iii).

(d) Costs

- (i) If the Vessel proceeds to or through an Area where due to risk of Piracy additional costs will be incurred including but not limited to additional personnel and preventative measures to avoid Piracy, such reasonable costs shall be for the Charterers' account. Any time lost waiting for convoys, following recommended routeing, timing, or reducing speed or taking measures to minimise risk, shall be for the Charterers' account and the Vessel shall remain on hire;
- (ii) If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers;
- (iii) If the Vessel proceeds to or through an Area exposed to the risk of Piracy, the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers and the costs of any additional insurances that the Owners reasonably require in connection with Piracy risks which may include but not be limited to War Loss of Hire and/or maritime K&R.
- (iv) All payments arising under Sub-clause (d) shall be settled within fifteen (15) days of receipt of Owners' supported invoices or on redelivery, whichever occurs first.
- (e) If the Vessel is attacked by pirates any time lost shall be for the account of the Charterers and the Vessel shall remain on hire.
- (f) If the Vessel is seized by pirates the Owners shall keep the Charterers closely informed of the efforts made to have the Vessel released. The Vessel shall remain on hire throughout the seizure and the Charterers' obligations shall remain unaffected, except that hire payments shall cease as of the ninety-first (91st) day after the seizure until release. The Charterers shall pay hire, or if the Vessel has been redelivered, the equivalent of Charter Party hire, for

any time lost in making good any damage and deterioration resulting from the seizure. The Charterers shall not be liable for late redelivery under this Charter Party resulting from the seizure of the Vessel.

(g) 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 the Charter Party, this Clause shall prevail.

BIMCO Piracy Clause for Consecutive Voyage Charter Parties and COAs 2013

- (a) If, in the reasonable judgement of the Master and/or the Owners, any port, place, area or zone, or any waterway or canal (hereinafter "Area") on any part of the route which is normally and customarily used on a voyage of the nature contracted for is dangerous to the Vessel, cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), whether such risk existed at the time of entering into this Charter Party or occurred thereafter, the Owners shall be entitled to take a reasonable alternative route to the discharging port and, if they so decide, immediately give notice to the Charterers that such route will be taken. In respect of consecutive voyages the Owners shall be entitled to take a reasonable alternative route to the loading port in accordance with the provisions of this Clause. Should the Vessel be within any such place as aforesaid which only becomes dangerous after entry, it shall be at liberty to leave it.
- (b) In any event, if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:
 - (i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation);
 - (ii) to comply with the requirements of the Owners' insurers under the terms of the Vessel's insurance(s);
 - (iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and
 - (iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.
- (c) Costs
 - (i) If in accordance with Sub-clause (a) the Owners take an alternative route, they shall be entitled, if the total extra distance exceeds one hundred (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 taking into consideration any savings or adjustments made by using this alternative route;

- (ii) If the Vessel proceeds to or through an Area where due to risk of Piracy additional costs are incurred by Owners, including but not limited to additional personnel and preventative measures to avoid piracy attacks, then half such costs shall be reimbursed by the Charterers to the Owners;
- (iii) If the Vessel proceeds to or through an Area exposed to risk of Piracy, the Charterers shall reimburse to the Owners half of any additional premiums required by the Owners' insurers and half the cost of any additional insurances that the Owners reasonably require in connection with Piracy Risks which may include but not be limited to War Loss of Hire and/or maritime K&R;
- (iv) All payments arising under Sub-clause (c) shall be settled within fifteen (15) days of receipt of Owners' supported invoices or on completion of discharge, whichever occurs first.
- (d) If the Vessel is attacked or seized as a result of Piracy any time so lost shall be shared equally between the Owners and the Charterers. The Charterers shall pay the Owners an amount equivalent to half the demurrage rate for any time lost as a result of such attack or seizure. Such payments shall fall due day by day and be payable latest fifteen (15) days after receipt of the Owners' invoice or on completion of discharge, whichever occurs first. If the Vessel is seized the Owners shall keep the Charterers closely informed of the efforts made to have the Vessel released.
- (e) This Clause shall be incorporated into any bill of lading, waybills or documents evidencing contracts of carriage (hereinafter "Contracts of Carriage") issued pursuant to this Charter Party. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the Master signing Contracts of Carriage as presented to the extent that the terms of such Contracts of Carriage impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Clause.
- (f) 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 the Charter Party, this Clause shall prevail.

BIMCO Piracy Clause for Single Voyage Charter Parties 2013

- (a) If, after entering into this Charter Party, in the reasonable judgement of the Master and/or the Owners, any port, place, area or zone, or any waterway or canal (hereinafter "Area") on any part of the route which is normally and customarily used on a voyage of the nature contracted for becomes dangerous, or the level of danger increases, to the Vessel, cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), the Owners shall be entitled to take a reasonable alternative route to the discharging port and, if they so decide, immediately give notice to the Charterers that such route will be taken. Should the Vessel be within any such place as aforesaid which only becomes dangerous, after entry, it shall be at liberty to leave it.
- (b) In any event, if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:

- (i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation);
- (ii) to comply with the requirements of the Owners' insurers under the terms of the Vessel's insurance(s);
- (iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and
- (iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.
- (c) This Clause shall be incorporated into any bill of lading, waybills or other documents evidencing contracts of carriage (hereinafter "Contracts of Carriage") issued pursuant to this Charter Party. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the Master signing Contracts of Carriage as presented to the extent that the terms of such Contracts of Carriage impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Clause.
- (d) 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 the Charter Party, this Clause shall prevail.

Grant Hunter Chief Officer Legal and Contractual Affairs BIMCO 19 July 2013

E-mail: documentary@bimco.org