

ANDREW LIU & CO LTD

Address: 25th Floor, Fortis Bank Tower

No. 77-79 Gloucester Road, Wanchai

Hong Kong

Tel: +852 2521 0373

Fax: +852 2521 2715

Email: marketing@andrewliu.com.hk

Website: <http://www.andrewliu.com.hk>

And at Shanghai: +86 21 6323 0825



Circular Ref: 2012/0023

Date: 26, March 2012

A Simple Guide to Owners when Charterers Stop Paying Hire

This article provides some of the key issues to be kept in mind when charterers are in default of stop paying hire. ATTENTION: Please seek advice from the Club under FDD cover.

As payment of hire is a contractual obligation, the first question to be looked at is whether the hire is due and outstanding. Owners should check the dates with following key words: midnight on the due date for payment; off-hire when payment is due; last working day before weekend if due on weekend; etc. The hire may be paid but in a lesser amount than owner thought it would be. Charterers may argue that they have made a bona fide and reasonable deduction from hire such as off-hire and express right in charterparty to deduct agreed claims.

If there exists non-payment of hire, it does naturally mean such conduct of charterer could be legally considered as a repudiatory breach of charter. Payment of hire is rarely a condition of charter, thus owners may not be entitled to bring the charter to an end. It is necessary for the owners to show that charterers have “evinced an intention not to be bound by the terms of the charter”, which is actually very difficult to prove. Owners should beware of holding charterers in repudiatory breach and declaring the charter at an end, when non-payment of hire can be shown only. Such conduct may constitute a repudiatory breach on the owners’ side, which offer the option to charterer to accept such declaring in order to bring the charter to an end and claim damages for their losses.

Thus, the charterparty may give owners express remedies when hire is not paid, such as the right to withhold services and the right to withdraw.

The BIMCO Non-Payment of Hire Clause expressly gives owners the right to suspend services from the midnight on the due date for hire, without requirement of formal notice in advance but just advise to charterers of withholding. The NYPE 1993 form also gives a similar right but only after expiry of a grace period. It is probable that owners would be liable to consignees in the first instance, though both clauses above provide that charterers are to indemnify owners for such liability as a result of withholding.

Anti-technicality notices is possibly required by the charterparty, the giving of which is a condition to the contractual right to withdraw. Such notices could be in various forms with different requirements. Owners need to pay attention that a notice threatening withdrawals will not be an effective one. The proper form is to require payment within contractual period in the charter and clearly state that the vessel WILL be withdrawn if the notice is not complied with. If an owner who failed to serve an anti-technicality notice in a reasonable time period, he may be held to have waived the right of anti-technicality and thus lose the right to withdraw.

If charterers still do not pay the hire under the terms of the anti-technicality notice, then it is time for owners to give notice of withdrawal. Such notice that the vessel has been withdrawn brings the charter to a complete end and would have its effects when received by charterers. In the charterparty, the term which gives owners the right to withdraw for “any breach” of charter is legally considered as only applicable to repudiatory breach of the charterparty. Mere non-payment of hire is not a repudiatory breach as mentioned above. The right to withdraw in non-payment of hire will not exist unless it is expressly said in the charterparty.