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BIMCO - Anti-corruption clause

On 24 November 2015, BIMCO launched an anti-corruption clause for charter parties which, according to the BIMCO's official introduction, *"will give owners and charterers a contractual platform for co-operative action to resist demands for illegal payments from port officials and others"*. Its use is voluntary at this stage. A key provision of BIMCO's Anti-Corruption Clause is a mechanism for owners to issue a note of protest if an illegal demand is made and the demand is not withdrawn.

The draft BIMCO Anti-Corruption Clause for Charter Parties is as follows:

(a) The parties agree that in connection with the performance of this Charter Party they shall each:

(i) comply at all times with all applicable anti-corruption legislation and have procedures in place that are, to the best of its knowledge and belief, designed to prevent the commission of any offence under such legislation by any member of its organisation or by any person providing services for it or on its behalf; and

(i) make and keep books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions in connection with this Charter Party.

(b) If a demand for payment, goods or any other thing of value ("Demand") is made to the Master or the Owners by any official, any contractor or sub-contractor engaged by or acting on behalf of Owners or Charterers or any other person not employed by Owners or Charterers and it appears that meeting such Demand would breach any applicable anti-corruption legislation, then the Master or the Owners shall notify the Charterers as soon as practicable and the parties shall cooperate in taking reasonable steps to resist the Demand.

(c) If, despite taking reasonable steps, the Demand is not withdrawn, the Master or the Owners may issue a letter of protest, addressed or copied to the Charterers. If the Master or the Owners issue such a letter, then, in the absence of clear evidence to the contrary, it shall be deemed that any delay to the Vessel is the result of resisting the Demand and (as applicable):

(i) the Vessel shall remain on hire; or

(ii) any time lost as a result thereof shall count as laytime or (if the Vessel is already on demurrage) as time on demurrage.

(d) If either party fails to comply with any applicable anti-corruption legislation it shall defend and indemnify the other party against any fine, penalty, liability, loss or damage and for any related

costs (including, without limitation, court costs and legal fees) arising from such breach.

(e) Without prejudice to any of its other rights under this Charter Party, either party may terminate this Charter Party without incurring any liability to the other party if

(i) at any time the other party or any member of its organisation has committed a breach of any applicable anti-corruption legislation in connection with this Charter Party; and

(ii) such breach causes the non-breaching party to be in breach of any applicable anti-corruption legislation.

Any such right to terminate must be exercised without undue delay.

(f) Each party represents and warrants that in connection with the negotiation of this Charter Party neither it nor any member of its organisation has committed any breach of applicable anti-corruption legislation. Breach of this Sub-clause (f) shall entitle the other party to terminate the Charter Party without incurring any liability to the other.

Corruption can exist in various forms in shipping such as cigarette cartons demanded by pilots at local ports (at times even in developed countries' ports), convenience fees at a local authorities' for obtaining a required certificate etc. In most countries, it is a requirement that companies have policies that dissuade companies to indulge in corrupt practices.

Pursuant to the stipulations in this clause, if a demand is made to the Master or the owners by any official or other relevant person, the charterers shall cooperate with the owners to take reasonable steps to resist the demand. If the demand is not withdrawn thereafter and the vessel is delay due to the resisting, the vessel shall be deemed as on hire during the delayed period or the delayed period shall be count as laytime or demurrage, as long as the owners issue a letter of protest addressing or coping to the charterers.

On the other hand, this clause also protects the charterers from the illegal corruption behavior by entitling them to terminate the charter party in particular circumstances.

Andrew Liu's FDD department's based in Shanghai advice to Andrew Liu's client is as follows:

1. The use of this clause is voluntary. Therefore, while fixing the vessel, both Owners and Operators will need to see whether the other party has placed it in the Rider clause.
2. Once the anti-corruption clause is included, there is onus to maintain details records, have good company practices that are highlighted to both ship and shore staff and more importantly proper systems are in place to weed out corruption or prevent employees indulging in the corrupt practices
3. What is or what is not a corrupt practice is also culturally sensitive, but our advice is to proceed with caution if you have any doubt or discuss with Andrew Liu's case handlers.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk