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BIMCO – 反腐败条款

2015年11月24日，BIMCO发布了针对租船合同的反腐败条款，根据BIMCO官方的介绍，该条款“*将给与船东和租家一个基于合同的合作平台，以抵御港口当局官员等人的非法索贿*”。目前该条款的使用仍属自愿行为。该条款的重点是为船东提供了一套使其在面临非法索贿时可以发出抗议书的机制。

BIMCO为租船合同起草的反腐败条款如下：

(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(c) If, despite taking reasonable steps, the Demand is not withdrawn, the Master or the Owners may issue a letter of protest, addressed or copied to the Charterers.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.

腐败行为以多种形式存在于航运实践中，如港口当地引水员索要香烟(甚至包括一些发达国家的港口)，港口当局在签发证书时索要“方便费”等。在多数国家，都有要求公司不得行贿的规定。

根据该条款，如果有官员或其他相关人员向船长或船东索贿，租家应配合船东采取合理的措施拒绝贿赂。如果索贿人员仍然坚持索贿并且船舶因拒绝贿赂而导致延误，只要船东向租家出具了抗议书，船舶在延误期间就应被视为仍处于正常租用状态，或者计入装卸时间或滞期费。

另一方面，该条款给予租家在特定情况下解除合同的权力，从而保护租家免受腐败行为的影响。

Andrew Liu公司位于上海的FDD部门向客户提出以下建议：

1. 该条款自愿使用。因此，在签订租约时，无论作为船东还是租家，都应该确认该条款是否被纳入附加条款中。
2. 如果租约包含了反腐败条款，双方将有义务保存详细的记录，向船员和岸上人员强调正确的操作，设立适当的系统以防止雇员卷入贿赂行为中。
3. 某些行为是否构成贿赂也与当事人所处的文化背景有关，我们建议客户在遇到疑问时谨慎行事或者咨询Andrew Liu理赔部门的意见。

以上由 ANDREW LIU & CO.,LTD 编译，应以英文为准！

信息来源：Andrew Liu & Co., Ltd www.andrewliu.com.hk