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COVID-19 & Maritime Law Issues

Recently ALCO through their marketing team of Windy and Sarah organised a webinar that was well attended by numerous clients of ALCO. Our Dr. (Capt.) Vivek Jain, provided his insights into the current issues and how to mitigate the issues during the webinar. There was very positive feedback. This article is for those, who could not attend the webinar.

His focus was on the effects of COVID-19 issue on commercial aspects of maritime trade. His focus on commercial issue was based on the fact, that if the stakeholders can protect their economic interest, then it is more likely that kind of distress faced by the seafarers can be alleviated. The reasoning being that ultimately all boils down to issues of costs and expenses, and no matter how unfair it seems to seafarers in distress. Therefore, the financial aspects cannot be divorced from social aspects in the commercial shipping. There has to be a realist angle to it and of course he highlighted a need of solidarity and all parties in commercial chain should refrain from being adversarial as it affects the backbone of shipping – the seafarers.

More importantly, he highlighted that his advice way back in February/ March 2020 needs to be modified as now the COVID issues are 6-month old and stakeholders are aware of the risks and consequences. Most of the risks are foreseeable unless there is an abnormal occurrence (very rare event) at any port. The date of fixture will also affect the analysis of the maritime law issues. Additionally, various international and local regulatory bodies have come out with specific guidance to mitigate those risks. As a result, he opined:

- a) It will be difficult for the Owners to argue the unsafety of the port as a result of the pandemic unless there are rare risks of prolonged detention or the risk of blacklist at the next port;
- b) It will again be difficult to argue the concept of implied indemnity against the Charterers as the risks are foreseeable.
- c) Deviation of a vessel, if a crew is infected, will still be allowed as per most charterparties and Hague Visby rules. However, one to check the other clauses of the charterparties very carefully. However, be careful to distinguish between common cold and COVID-19 as it can open the can of worms in such cases.
- d) May be difficult to argue Force Majeure (“FM”) in case it is triggered only for ‘unforeseen event’ (as per the wording of the clause) as per the wordings of FM Clause. The FM certificates issued

by many local bodies to importers and exporters will not be conclusive of the issue. The main focus should be on the wording of FM Clauses. Formal requirement of the FM should be followed.

- e) Again it would be difficult to argue the frustration of the contract, just because it has now become more difficult to perform the contract or more expensive to perform obligations.
- f) Unless the words, 'quarantine', 'epidemic' or 'extended delay' are included in the off hire clause, it is likely very difficult to off hire the vessel. However if lots of crew is sick and charterers can argue 'deficiency of men', then it may be possible to argue the concept of off hire against the owners.
- g) Issue of Ship Sanitation certificate or Free pratique can affect the issue of Notice of Readiness ('NOR') and there could be wordings that can be incorporated in the clauses by Owners or even by Charterers to counter the wordings of Owners' clause. BIMCO and INTERTANKO has drafted specific clauses to allocate the responsibility for COVID -19 and stakeholders can seek guidance in those clauses, but they prefer the Owners rather than the Charterers. However, he suggested bespoke wordings for the Charterers that needs to be adopted to surrounding circumstances.
- h) There are some clauses in the charterparties that needs to be modified such as SIRE survey or Rightship survey as at times like these, the surveys cannot be conducted. Also a few clauses also affected the shore staff, as at times due to working from home, they cannot provide documents in time, for example when claiming demurrage. So all such issues needs to be carefully checked in contractual documents/charterparties/Fixture Notes.
- i) Each party in the contract should try their best to allocate the responsibility/obligations due to COVID 19 to the other side and all existing exceptions clauses needs to be checked carefully in the contract.

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