

Circular From SKULD

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English Law Charterparty Issues Relating to Potential Hostilities Between the Ukraine and Russia

Sadly, it is now clear that armed conflict has broken out between Ukraine and Russia. Events are fast moving, and it is difficult to have a clear picture of what is happening on the ground. However, we updated, in light of the new situation, the FAQs below so that our members and assureds can continue to have some general guidance on a few fundamental questions. Please note that this is not specific advice, and each case turns on its own specific facts. In the event that an actuals matters arises, members and assureds should immediately contact the club for further guidance.

We would like to thank Glenn Winter of Winter Scott, London Solicitors, for the assistance in the formation of and comment on these FAQs.

1. Are Owners currently entitled to refuse to follow orders to proceed to or remain in a Ukrainian port?

All Ukrainian ports are now reported to be closed, including Odessa, Chernomorsk, Pivdenny (Yuzhny), Nikolaev, Deprobugsky, Berdyansk and Mariupol. Passage of the Kerch Strait may also now be restricted or prohibited.

Irrespective of port closures, it appears that, in light of reports of widespread and continuing hostilities and of three vessels off the coast of Odessa and Yuzhny having been struck by shells or missiles, Owners / Disponent Owners should generally be entitled to rely on standard war risk clauses in their Charterparties to avoid proceeding to or remaining at or close off Ukrainian ports, at the present time.

However, Owners / Disponent Owners and Charterers should check their Charterparties carefully as cases may be contract-specific and there may be applicable time limits for exercising rights. In addition, the position needs to be carefully considered at the time a particular decision is taken, as the situation is very fluid and should be continually kept under close review.

2. Are ports in the Ukraine (at present) unsafe ports?

All Ukrainian ports are likely to be unsafe at the present time but the situation should be continually monitored as it may change very quickly (if, for example, hostilities cease).

If ports and nearby anchorages are unsafe, then Owners/Disponent Owners would generally be entitled to refuse to proceed to or remain at such places and, under Time Charterparties, Charterers would probably be obliged to give alternative orders. The position under Voyage Charterparties may be more complicated and, depending on the particular charter terms, the circumstances and the way in which legal principles develop, Charterers may also have an obligation to nominate a different (safe) port, or Owners/Disponent Owners may be entitled to proceed to a different (safe) port, or Owners/Disponent Owners may be obliged to wait (at a safe place), or one of the parties may be entitled to terminate the Charterparty, or the Charterparty may be frustrated.

3. What about Russian Ports?

All Russian ports in the Black Sea are reported as continuing to operate as normal. However, navigation in the north-west Black Sea to north of parallel 45-21 is reported to be prohibited and navigation in the Sea of Azov is reported to have been suspended.

It may be potentially arguable as to whether Owners/Disponent Owners would be entitled to refuse to proceed to Russian ports under standard war risk clauses. This is likely to depend upon the clauses, the circumstances at the port, the recommendations or directions of the flag state or other authorities and on how matters develop.

In particular, Owners/Disponent Owners of Ukrainian-flagged vessels or vessels with Ukrainian crewmembers may be entitled to refuse to proceed to a Russian port on the basis that there may be a risk of detention of the ship or crewmembers. This will be contract-specific and fact-specific (for which purposes it may be sensible to obtain advice from local agents or correspondents).

4. How will sanctions affect Charterparties?

The EU, US Government and UK Government have all introduced sanctions relating to Russia. These sanctions are directed primarily at specified Russian entities (including banks) and individuals or specific activities but also apply to commercial transactions generally relating to the regions of Donetsk and Luhansk.

The current EU, US and UK sanctions primarily apply to EU, US and UK companies, nationals or vessels respectively and to business carried out in the respective jurisdictions. The sanctions are subject to numerous exceptions; in particular, some of the US sanctions do not apply to transport of agricultural commodities, petroleum or coal and a number of the sanctions provide for a 'wind down' period.

However, further sanctions are likely, including barring Russian banks from using the SWIFT payment system.

The sanctions regulations are complex and subject to rapid change. Therefore, it is important to obtain up to date advice if there are any sanctions concerns.

Details of sanctions can be found on EU, US (OFAC) and UK (Treasury) websites as follows:

- EU: [EU restrictive measures in response to the crisis in Ukraine – Consilium \(Europa.eu\)](#)
- OFAC: [Ukraine / Russia – related sanctions / US Department of the Treasury](#)
- UK: [UK sanctions relating to Russia](#) – GOV.UK (www.gov.uk)

If sanctions are imposed in such a way as to make performance of a Charterparty (by innocent parties) illegal, the Charterparty would probably be treated as if it were frustrated (by supervening illegality), unless there is a sanctions clause such as the BIMCO Sanctions Clause for Time Charter Parties 2020 or BIMCO Sanctions Clause for Voyage Charter Parties 2020 (in which event Owners/Disponent Owners may be in breach if they or other vessel's interests become sanctioned and Charterers may be in breach if they, Sub-Charterers, Shippers, Receivers or Cargo Interests become sanctioned).

Where Charterers' bank is sanctioned (making it difficult to pay hire, freight, demurrage, etc.), Charterers are likely to remain under an obligation to make alternative arrangements (depending on the circumstances).

It may be that, even where the sanctions do not actually apply, banks may become reluctant to process payments from companies with a Russian connection. However, in that event, it would probably remain the responsibility of the party making the payment (unless the only problem is with the receiving bank).

5. What if vessels are delayed by restrictions or unsafety affecting the ports to which they are ordered?

There may be specific clauses in the Charterparty (for example, a force majeure clause in a Voyage Charterparty) which allow cancellation or otherwise provide for the consequences of delay.

In the absence of such clauses, the Charterparty would be frustrated if the delay and prospective delay are so lengthy as to radically change the nature of the contract, unless either party was in breach (which would be the case if Charterers, for example, were in breach of their safe port obligations). In the absence of a breach, an applicable clause or a frustrating delay, loss will generally lie where it falls so that Charterers would be obliged to pay hire under a Time Charterparty, but Owners/Disponent Owners would not be entitled to recover the costs of detention under a Voyage Charterparty.

6. What is the insurance position in respect of liabilities, costs or expenses caused by war?

War risk liabilities, costs or expenses are, of course, generally excluded under standard P&I Cover. However, the IG has arranged an excess War policy for all members. It applies excess of the value of the vessel or USD 500 million, whichever is the less, and it has a cover limit of USD 500 million. More information can be found [in this Circular](#).

7. What should Owners / Disponent Owners and Charterers take into account before entering into a new Charterparty?

If Owners / Disponent Owners do not wish to trade to Ukraine or Russia during the charter period, these places should be expressly excluded from permitted trading areas.

Owners / Disponent Owners should also ensure that their Charterparties contain favourable war risks and sanctions clauses.

Conversely, if (in a long-term charter) Charterers wish the vessel to trade to Ukraine and Russia in the future, they should insert a clear clause entitling them to do so.

If (due to their particular trading requirements), Charterers are concerned about potential war risks or sanctions adversely affecting their position, they should not agree to standard (pro-owner) clauses but insert tailor made clauses protecting their interests (for example, permitting them to terminate in appropriate circumstances).

The position on the ground and the position regarding the imposition of sanctions, are both rapidly changing. The legal position in any particular case may not just be fact-specific but also contract-specific. Therefore, if Members are concerned about how the hostilities or sanctions will affect their Charterparties or potential Charterparties, they should contact the Club for specific advice.

Source of Information: The Skuld P&I Club