

"SARNIA NEWS" CIRCULAR

(Ref: 293 /16/SS)

TO ALL SHIPOWNER CLIENTS

13th April 2016

IMPORTANT NOTICE – TRADE TO IRAN – SANCTIONS - CHARTER PARTY CLAUSES

Please note that we have received the following information, along with the attached from one of the Group P&I Clubs which should be reviewed carefully in the event that trade to Iran is being considered. **(WE WOULD ADD THAT ALL OWNERS MUST FIRSTLY CHECK THEIR TRADING WARRANTY IN THEIR P&I POLICIES OF INSURANCE TO ENSURE THAT TRADE TO IRAN IS COVERED AND NOT EXCLUDED).**

QUOTE

Here is a general advice on Iranian trade which may be of help:-

We attach by way of assistance a copy of a bespoke Iran Trading clause obtained by the Club.

Having discussed the Iran issue with lawyers, the recommendation is that (where appropriate) Owners use both the BIMCO sanctions clause for time charters and the BIMCO designated entities clause in order to ensure sanctions protection. Both those clauses should be used in conjunction with the bespoke Iran Trading clause(s) which deal specifically with trade to Iran and a possible 'snap back' - namely, the reimplementing of sanctions by the international community.

You will note from the attached that clauses have been prepared for both a time charter and a voyage charter. The structure of the time charter clause is to utilise the two BIMCO clauses (although there has been one slight marked up change to para (b) of the standard form Designated Entities Clause) which should work in combination with the Iran specific clause which as mentioned above addresses the "snap back" scenario. This includes various warranties/undertakings given by Charterers including the provision as to currency of payment which is aimed at addressing the fact

that US Sanctions still impact US Dollar payments. In this regard, we refer Members to clause (vi) where a suitable exchange rate mechanism will need to be inserted.

We also refer Owners to sub clause (iii). An attempt has been made to address the situation where there is arrest or detention and Owners are unable to provide security because of sanctions and impose an obligation on Charterers to do so. There is of course a risk that the clause does not cover every eventuality.

Also included is a general proviso that agreement to trade Iran is subject to Owners' Banks and insurers not objecting. This is intended to provide some let out if commercially the Banks or insurers cause problems even though legislation-wise Owners could still trade. Again, this could be spelt out in clearer/more absolute terms but it is a question of what is negotiable.

As to the voyage charter clauses, these do not have the BIMCO sanctions clause (which is a time charter designed clause) but otherwise follows the same approach as the time charter clauses with logical amendments. They do not address the currency of payment as in a voyage charter situation it probably makes sense to stipulate the currency of payment as Euros, not USD.

UNQUOTE

Please contact us if further information is required in connection with trading to Iran.

The Loss Prevention Team

(A) Time Charter

BIMCO sanctions clause for time charters

(a) The Owners shall not be obliged to comply with any orders for the employment of the Vessel in any carriage, trade or on a voyage which, in the reasonable judgement of the Owners, will expose the Vessel, Owners, managers, crew, the Vessel's insurers, or their re-insurers, to any sanction or prohibition imposed by any State, Supranational or International Governmental Organisation.

(b) If the Vessel is already performing an employment to which such sanction or prohibition is subsequently applied, the Owners shall have the right to refuse to proceed with the employment and the Charterers shall be obliged to issue alternative voyage orders within 48 hours of receipt of Owners' notification of their refusal to proceed. If the Charterers do not issue such alternative voyage orders the Owners may discharge any cargo already loaded at any safe port (including the port of loading). The Vessel to remain on hire pending completion of Charterers' alternative voyage orders or delivery of cargo by the Owners and Charterers to remain responsible for all additional costs and expenses incurred in connection with such orders/delivery of cargo. If in compliance with this Sub-clause (b) anything is done or not done, such shall not be deemed a deviation.

(c) The Charterers shall indemnify the Owners against any and all claims whatsoever brought by the owners of the cargo and/or the holders of Bills of Lading and/or sub-charterers against the Owners by reason of the Owners' compliance with such alternative voyage orders or delivery of the cargo in accordance with Sub-clause (b).

(d) The Charterers shall procure that this Clause shall be incorporated into all sub-charters and Bills of Lading issued pursuant to this Charter Party.

BIMCO Designated entities clause

(a) The provisions of this clause shall apply in relation to any sanction, prohibition or restriction imposed on any specified persons, entities or bodies including the designation of specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America.

(b) Owners and Charterers respectively warrant for themselves (and ~~in the case of any sublet,~~ Charterers further warrant in respect of any sub-charterers, shippers, receivers, or cargo interests) that at the date of this fixture and throughout the duration of this Charter Party they are not subject to any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause (a) which prohibit or render unlawful any performance under this Charter Party or any sublet or any Bills of Lading. Owners further warrant that the nominated vessel, or any substitute, is not a designated vessel.

(c) If at any time during the performance of this Charter Party either party becomes aware that the other party is in breach of warranty as aforesaid, the party not in breach shall comply with the laws and regulations of any Government to which that party or the Vessel is subject, and follow any orders or directions which may be given by any body acting with powers to compel compliance, including where applicable the Owners' flag State. In the absence of any such orders, directions, laws or regulations, the party not in breach may, in its option, terminate the Charter Party forthwith or, if cargo is on board, direct the Vessel to any safe port of that party's choice and there discharge the cargo or part thereof.

(d) If, in compliance with the provisions of this Clause, anything is done or is not done, such shall not be deemed a deviation but shall be considered due fulfilment of this Charter Party.

(e) Notwithstanding anything in this Clause to the contrary, Owners or Charterers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.

(f) Owners or Charterers shall be liable to indemnify the other party against any and all claims, losses, damage, costs and fines whatsoever suffered by the other party resulting from any breach of warranty as aforesaid.

(g) Charterers shall procure that this Clause is incorporated into all sub-charters, contracts of carriage and Bills of Lading issued pursuant to this Charter Party.

Iranian sanctions clause

Provided always and so long as Owners' Banks and insurers do not object, Iran trading is permitted but the following provisions shall apply in respect of all and any trade involving Iran.

Notwithstanding any other provisions contained herein and without in any way limiting the scope of their application, the BIMCO Sanctions and BIMCO Designated entities clauses contained in this Charter Party shall, for the avoidance of doubt, apply in respect of sanctions or prohibitions against or in respect of Iran and Iranian interests imposed by any State, Supranational or International Governmental Organisation which continue to apply notwithstanding the partial lifting of sanctions pursuant to the Joint Comprehensive Plan of Action dated 14 July 2015 ("JCPoA") and/or which may be imposed or reimposed at any time in the future, including in the event of reinstatement of sanctions or prohibitions in whatever form pursuant to the "snap back" provisions under Article 37 of JCPoA.

Charterers warrant and undertake in respect of any trade to Iran that:-

- (i) Only lawful containerised cargo which is not prohibited by any sanction or prohibition imposed by any State, Supranational or International Governmental Organisation will be carried on board the Vessel and that such carriage shall be performed in full compliance with all and any such sanctions or prohibitions;
- (ii) All parties and persons involved are not at any time persons who are designated as being subject to any sanction, prohibition or restriction under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America;

- (iii) In the event that the Vessel is detained/delayed/arrested in respect of actual, anticipated or alleged claims of whatsoever nature and howsoever arising (including any arising out of or in connection with negligence of the Owners, their servants or agents) in Iran and/or in connection with trading to Iran and Owners are unable to provide security due to any sanctions or prohibitions applicable to it or its insurers or banks, the Charterers shall procure the provision of security and the release of the Vessel and/or settle any such claims and Charterers shall indemnify Owners against all consequences of any such detention, delay or arrest throughout which the Vessel shall remain on hire;
- (iv) The Vessel shall not trade to any port, terminal or facility operated or owned by Tidewater Middle East or any person which is or may at any time be designated as being subject to any sanction, prohibition or restriction under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America;
- (v) Charterers shall not sub-let the Vessel;
- (vi) If on any day any sum is payable and/or paid by Charterers to Owners under this Charter Party the Vessel is carrying any cargo loaded in or destined for Iran and/or is in Iranian waters, the payment shall be made in Euros and not United States Dollars. The rate of exchange to be used in determining the Euros payment to be made shall be **[INSERT AGREED EXCHANGE RATE MECHANISM]**;
- (vii) Charterers shall reimburse to the Owners any and all additional premiums required by the Owners' insurers (including, but not limited to, any surcharge for calling Iran) and the costs of any additional insurances that the Owners reasonably require in connection with any trade to Iran

(B) Voyage Charter

BIMCO Designated entities clause

(a) The provisions of this clause shall apply in relation to any sanction, prohibition or restriction imposed on any specified persons, entities or bodies including the designation of specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America.

(b) Owners and Charterers respectively warrant for themselves (and ~~in the case of any sublet,~~ Charterers further warrant in respect of any sub-charterers, shippers, receivers, or cargo interests) that at the date of this fixture and throughout the duration of this Charter Party they are not subject to any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause (a) which prohibit or render unlawful any performance under this Charter Party or any sublet or any Bills of Lading. Owners further warrant that the nominated vessel, or any substitute, is not a designated vessel.

(c) If at any time during the performance of this Charter Party either party becomes aware that the other party is in breach of warranty as aforesaid, the party not in breach shall comply with the laws and regulations of any Government to which that party or the Vessel is subject, and follow any orders or directions which may be given by any body acting with powers to compel compliance, including where applicable the Owners' flag State. In the absence of any such orders, directions, laws or regulations, the party not in breach may, in its option, terminate the Charter Party forthwith or, if cargo is on board, direct the Vessel to any safe port of that party's choice and there discharge the cargo or part thereof.

(d) If, in compliance with the provisions of this Clause, anything is done or is not done, such shall not be deemed a deviation but shall be considered due fulfilment of this Charter Party.

(e) Notwithstanding anything in this Clause to the contrary, Owners or Charterers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.

(f) Owners or Charterers shall be liable to indemnify the other party against any and all claims, losses, damage, costs and fines whatsoever suffered by the other party resulting from any breach of warranty as aforesaid.

(g) Charterers shall procure that this Clause is incorporated into all sub-charters, contracts of carriage and Bills of Lading issued pursuant to this Charter Party.

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Charterers warrant and undertake in respect of any trade to Iran that:-

- (i) Only lawful cargo which is not prohibited by any sanction or prohibition imposed by any State, Supranational or International Governmental Organisation will be carried on board the Vessel and that such carriage shall be performed in full compliance with all and any such sanctions or prohibitions;
- (ii) All parties and persons involved are not at any time persons who are designated as being subject to any sanction, prohibition or restriction under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America;

- (iii) In the event that the Vessel is detained/delayed/arrested in respect of actual, anticipated or alleged claims of whatsoever nature and howsoever arising (including any arising out of or in connection with negligence of the Owners, their servants or agents) in Iran and/or in connection with trading to Iran and Owners are unable to provide security due to any sanctions or prohibitions applicable to it or its insurers or banks, the Charterers shall procure the provision of security and the release of the Vessel and/or settle any such claims and Charterers shall indemnify Owners against all consequences of any such detention, delay or arrest;
- (iv) The Vessel shall not trade to any port, terminal or facility operated or owned by Tidewater Middle East or any person which is or may at any time be designated as being subject to any sanction, prohibition or restriction under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America;
- (v) Charterers shall not sub-let the Vessel;
- (vi) Charterers shall reimburse to the Owners any and all additional premiums required by the Owners' insurers (including, but not limited to, any surcharge for calling Iran) and the costs of any additional insurances that the Owners reasonably require in connection with any trade to Iran.