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Konu : Sefer Esaslı Gemi Kira Sözleşmelerinde Personel Değişimi Sebepi Sefer Sapmalarına Yönelik Klok Taslağı

Sirküler No :570

Sayın Üyemiz,

Uluslararası Deniz Ticaret Odası (ICS) tarafından gönderilen 7 Mayıs 2020 tarihli ve MLC(20)17 sayılı yazıda, gemi sahiplerinin, mevcut küresel kriz sürecinde personel değişimi için geminin seferinden sapması ihtiyacına yönelik, sefer esaslı gemi kira sözleşmeleri ve konşimentolarda kullanılmak üzere belirtilecek klocklara ilişkin taslak bir çalışma yapıldığı bildirilmektedir.

Taslak çalışmada özetle, sefer esaslı gemi kira sözleşmelerinde, personel değişimi sebebiyle geminin rotasından saparak uygun bir liman veya lokasyonda personel değişimi gerçekleştirilmesi, gemi sahibinin sapmanın en az 48 saat öncesinde kiracıyı bilgilendirmesi, bu bilgilendirmenin personel değişimi yapılacak olan yeri, muhtemel harcamalar ve ek maliyetler ile süre tahminlerini içereceği, sapmadan vazgeçilmesi halinde durumun derhal kiracıya bildirileceği hususlarının yanı sıra personel değişimi maliyetlerinin gemi sahibi ve kiracı arasında hangi oranlarda paylaşılacağına ilişkin bilgileri içermektedir.

Bahse konu taslak çalışma ile Baltık ve Uluslararası Denizcilik Konseyi (BIMCO) tarafından taslak klok çalışması ile ilgili görüşü EK'te sunulmakta olup, çalışmaya yönelik görüş ve önerileriniz 11 Mayıs 2020 tarihine kadar Odamıza iletilmesi hususunda bilgi ve gereğini arz/rica ederim.

Saygılarımla,

*e-imza*İsmet SALİHOĞLU
Genel Sekreter**Ek: İlgi Yazı ve Ekleri (7 sayfa)**

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7 May 2020

MLC(20)17/COVID(20)62

**TO: MARITIME LAW COMMITTEE
INSURANCE COMMITTEE
ALL MEMBERS AND ASSOCIATE MEMBERS
CREW CHANGE TASK FORCE
INDUSTRY GROUP**

CREW CHANGES – DRAFT VOYAGE CHARTER PARTY CLAUSE FOR DEVIATION FOR CREW CHANGE

Action required: To note the report below on the development of draft clauses for use in charterparties and for inclusion in bills of lading and contracts of carriage to assist shipowners in their contractual and insurance arrangements when making necessary deviations to make crew changes in the current global crisis. To review and comment on the attached draft clause for voyage charterparties by Monday 11 May. It is appreciated that the deadline for responding is short but this is because the current extensions to crew contracts and flag State flexibility is due to expire on or about 15 May and owners may wish to address their contractual arrangements in readiness for then.

Members will be aware that ICS has been working on a number of measures to facilitate crew changes during the COVID-19 pandemic, which are at present severely restricted due to port and airport closures or difficulties embarking and disembarking seafarers.

As part of the package of protocols to assist the embarkation and disembarkation of crew for the purpose of crew changes and to respond to Members' concerns on contractual liabilities, insurance cover and the costs of a vessel's deviation from the voyage to make such crew changes, ICS is developing "Liberty to Deviate" clauses for use in charterparties and for inclusion in bills of lading and contracts of carriage. These recognise that ports and airports will most likely continue to be affected throughout the pandemic and are intended to assist owners with their contractual arrangements if they have to make a significant and necessary deviation to make crew changes at a limited number of places.

A draft clause for use in voyage charterparties is attached at **Annex A**. The clause is prefaced by an explanatory note that puts it into context and explains the reasoning behind the present drafting. The aim of the clause is to address specifically the need for a crew change at one of the limited places where this might be possible in the global COVID-19 crisis and to obtain the charterers' consent to this in the interests of clarity and certainty from the outset of the contract. The clause is designed to ensure that where shipowners are compelled to make a significant deviation for crew changes the

deviation is legitimate under the charterparty, that it is in accordance with the P&I cover rules and, finally, because significant costs might be incurred from the necessary deviation, to include a mechanism of recovery of some of these from the charterers.

It is recognised that there are clauses available under standard charterparties and bills of lading contracts that provide liberty to deviate for, inter alia, crew changes. These clauses however are general in nature and are not directed at the very specific circumstances presented by the COVID – 19 crisis and the consequent restrictions.

The draft clause recognises that the crew changes are necessary for humanitarian reasons and for the safety of the common maritime adventure and therefore it is considered fair to apportion the costs of what may be a significant deviation to effect these crew changes between the parties interested in that adventure. However, the parties are always free to negotiate such apportionment of costs as between themselves according to their business need, or even to not include this mechanism at all in the clause for their respective charterparty.

The clause is designed to respond to the very specific challenges of the present crisis and provide support for owners in their discussions with charterers. The wording has been developed in close coordination with the International Group of P&I Clubs to ensure as far as possible that charterers' consent to the deviation obtained by this clause would preserve the P&I cover for claims under the charterparty and the bills of lading where the same provision is incorporated.

ICS is seeking broad industry views on the clause and it has been/will be taken up for discussion with BIMCO, Intertanko, Intercargo and other associations that have been participating in the discussions on the draft Protocols. In this regard, the Secretariat has now received BIMCO's response to the clause, as attached at **Annex B**. In the interests of a full and considered discussion, members are invited to note the BIMCO response and reminded that the costs element of the draft clause is always open for negotiation and the clause has been developed to provide a starting point for discussions between the parties.

A clause intended for use in time-charterparties is also in development and a draft will be circulated very shortly for comment.

Once the clauses are further developed with the benefit of members' comments and agreement and the comments from other associations, it is hoped to engage charterers and their organisations to explain the clause and its benefits and seek their understanding and support.

Members' comments on the draft clause are invited by **Monday 11 May** and should be addressed to the undersigned at legal@ics-shipping.org

Kiran Khosla
Secretary, Maritime Law Committee

CORONAVIRUS (COVID-19) – CREW CHANGE AND DEVIATION CLAUSE FOR CHARTERPARTIES AND BILLS OF LADING

Explanatory Note

Background

1. G20 Governments, at their emergency meetings in March 2020, acknowledged that the Coronavirus (COVID-19) pandemic is a global challenge and requires a coordinated global response and committed to ensuring “*smooth and continued operation of the logistics networks that serve as the backbone of global supply chains*” and to “*explore ways for logistics networks via air, sea and land freight to remain open...*”.

2. Shipping companies and airlines are cooperating to meet this priority by ensuring that reliable operations and networks continue throughout the pandemic. In the maritime transportation sector, the networks will come to a halt if replacement ships’ crews are unavailable for duty because of the lack or suspension of flights from many of the world’s airports and restrictions to the travel and movement of ship’s crews. The crew changes are necessary for both humanitarian reasons and to meet flag State requirements for safe and efficient maritime transportation.

3. As well as being necessary for humanitarian reasons and the wellbeing of ships’ crews, the ability to changeover and repatriate ship’s crews is of critical importance to ensure compliance with international maritime regulations and flag State requirements for protecting maritime safety, seafarers’ health and welfare, and the prevention of fatigue. For reasons of ship safety and the maintenance of crew welfare, as well the crew contracts on which seafarers are employed, it is no longer possible for shipping companies to extend seafarers’ tours of duty indefinitely. The need to facilitate crew changes is therefore of vital importance to the efficient operation of maritime trade and the resilience of the global economy throughout the COVID-19 pandemic, in which all relevant stakeholders in the supply chain need to co-operate, as much as possible, and play a constructive part towards developing workable solutions.

4. Throughout the duration of the pandemic, the number of airports and ports from which crew changes can be facilitated may continue to be limited in number, and effecting vital crew changes may therefore **necessitate** a diversion by the vessel from the Vessel’s contracted voyage to a port in proximity, **or which has viable land transport connections**, to an airport from which flights are available. This clause is specifically intended to address this situation.

Scheme of the Deviation clause

The intention of the clause is to provide a clause which:

1. Contains first and foremost a liberty to deviate to make crew changes at a place or port which is closest in proximity, **or has viable land transport connections**, to an airport from which a crew change can be facilitated during

the pandemic and which will entail the shortest deviation from the contractual voyage (for voyage charterparties and Bills of lading contracts of carriage) or contractual service (for time charterparties); and

2. Contains a mechanism whereby the costs and expenses arising from the deviation may be agreed to be shared between the parties. This is because while the costs of crew changes generally form part of the shipowner's operational costs, the particular circumstances of the COVID-19 crisis mean that the shipowner is unable to complete these operations in the usual manner and must incur additional costs by way of the deviation. It recognises that the crew changes are necessary for the safety of the common maritime adventure and therefore it is considered fair to apportion the costs between the parties interested in that adventure. However, the parties are free to negotiate such apportionment of costs as between themselves according to their business need, or even to not include this mechanism at all in the clause for their respective charterparty, as considered appropriate;

Covid -19 Crew Change Deviation clause: Clause for Voyage Charterparties

Liberty to Deviate

1. The Vessel shall during the voyage or prior to its commencement have liberty to put back or deviate to a berth, port or place solely for the purpose of effecting a crew change during the restrictions imposed by reason of the COVID 19 pandemic, and the resulting hindrances on crew changes and movement, in order to comply with (i) the reasonable requirements of the Owners and/or (ii) the directions and/or requirements and regulations of competent authorities and/or the Flag State of the Vessel and/or other regulations and conventions in force (or that will come into force) (the "Deviation").
2. Any Deviation under this Clause shall be made reasonably, taking into account the proximity, and accessibility of the place where the crew change is to be effected and the safety of the Vessel and cargo on board.
3. Owners shall give Charterers due notice of the Deviation and, circumstances permitting, such notice shall be given no less than [48] hours before the anticipated commencement of the Deviation. The notice shall include the intended place of the crew change and Owners' projections as to the additional costs and expenses of, and time likely to be incurred in relation to, the Deviation. Owners shall in case of any changes to the Deviation promptly notify Charterers.
4. If Owners warrant that by reason of the Deviation, it reasonably appears to them that the Vessel will not be ready to tender NOR within the date for the laycan/the laycan spread agreed in this Charterparty ("the Charterparty Laycan"), Owners will give notice to Charterers proposing a new laycan date/laycan spread ("the New Laycan"), with the start date/time of the

Charterparty Laycan postponed by the projected period of the Deviation. The New Laycan will be substituted for the Charterparty Laycan unless, within [48] hours after Owners' notice, the Charterers either declare in writing their rejection of the New Laycan or exercise their right to cancel the Charterparty.

5. A Deviation under this clause shall be considered as proper performance of this Charterparty.
6. In the event of a conflict between this Clause and any other clause in the Charterparty, including those stated to be of paramount effect, this Clause shall prevail to the extent of such conflict.
7. The Charterers shall procure that this Clause shall be incorporated into any and all sub-charterparties, bills of lading, waybills or other documents evidencing contracts of carriage issued pursuant to this Charterparty.
8. Except where Charterers cancel the Charterparty in writing, any delay and/or additional costs or expenses of the Deviation ("The Deviation Costs") shall be apportioned between the Owners and Charterers as set out in the box below:

APPORTIONMENT OF COSTS / EXPENSES OF THE DEVIATION:

OWNERS: []%

CHARTERERS: []%

If this box is not completed, the Deviation Costs will be borne by Owners and Charterers in equal shares.

The Deviation Costs shall be paid to Owners within 21 days of completion of discharge, and shall include but not be limited to:

- (a) Additional port, berth, pilotage and tug costs incurred in connection with the Deviation;
- (b) The cost of stores and fuel (at last invoice price) consumed from the commencement of the Deviation until the Vessel's return to the same or equidistant point and the fuel consumed while the Vessel remains in port for the purpose of this clause;
- (c) Time from the commencement of the Deviation until the Vessel's return to the same or equidistant point, which shall count at the demurrage rate [or at the rate agreed by the parties per day / pro rata ("Deviation Rate") if the box below is completed]:

DEVIATION RATE PER DAY PRO RATA: XX

Annex B to MLC(20)17/ COVID(20)62

BIMCO response to COVID-19 Clause for Voyage Charterparties, received 6 May 2020

“We appreciate being invited to comment on the draft ICS Crew Change Clause and we fully support the initiative being taken to formulate a “package” of measures to help ease the global crew change issue. A contractual clause is a small but important part of this “package”, so we believe that it is vitally important that the clause is sufficiently “commercial” to have any chance of being accepted. We feel that the ICS Crew Change Clause for voyage charter parties, even in its latest revision, would be rejected by charterers wholesale. We speak from bitter experience from only a few years ago when we responded to the Somalian piracy crisis with a piracy clause for charter parties. This was quickly produced to protect ships and crews, but we totally misread the market sentiment. The piracy clause was rejected by charterers on such a scale that we were obliged to withdraw the clause within 2 months of publication and re-draft it to make it less favourable to owners. We feel that the ICS Clause, if launched on the current market, would suffer the same fate.

Our view is that the industry already has at its disposal “standard” charter party clauses that have previously been accepted by charterers which could be used to serve the primary purpose of providing owners with the ability to deviate for crew change purposes. Our recommendation is that these existing liberty and deviation clauses that either expressly provide for crew changes or permit deviation for “reasonable purposes” should be offered as the recommended contractual solution in your “package”. We see no benefit in attempting to re-invent the wheel by drafting yet another charter party clause. P&I Clubs have not agreed to provide blanket cover for deviations related to COVID-19 crew changes – cover will still be on a case by case basis subject to the discretion of each club – so the position under current deviation clauses is no different or better to how it might be under the proposed ICS Clause. In recommending the use of existing liberty and deviation clauses we would also emphasise to owners the vital importance of contacting their P&I clubs to ensure club cover for any planned deviation.

In terms of cost sharing between owners and charterers, our view is that even to include an option to share costs in a voyage or trip charter party clause is unworkable and unrealistic. Cost sharing in other forms of contract covering longer periods such as COAs, consecutive voyage charters, period time charters and crew management agreements may, however, be achievable. At this moment in time when the consequences of the pandemic are well known and well publicised, owners should be anticipating additional costs when quoting freight rates. The general view of our subcommittee is that even if the cost sharing option is part of the clause it is almost certainly going to be rejected by charterers when proposed – so why even include it in the first place? It may make charterers even less inclined to consider accepting deviation for crew change provisions. If charterers want to consider contributing, then it could be raised during negotiations in any event without it being an option in the clause. But even this could lead to delays because charterers who agree to pay a percentage of the costs will still want to know what those costs are likely to be to avoid the “Florida crew change on a Hamburg to Rotterdam voyage” type scenario mentioned yesterday. In trades where multiple charterers may be

involved, such as the parcel tanker trades, negotiations on costs are likely to be even more protracted.

We also have reservations about using the COVID-19 pandemic as the “trigger” for the crew change clause. Travel restrictions affecting crew changes are likely to continue for a long time to come; most likely long after the “pandemic” has come to an end (or, worst case, an outbreak of a new virus occurs). The impact on air travel and the capacity of airlines may have a long-term effect on crew change arrangements. For this reason, we favour the more “general” approach of existing standard deviation clauses where the “cause” of the need to deviate does not form part of the wording.

We will be more than happy to investigate whether a scheme can be developed for longer term charters where a cost sharing mechanism could be more appropriate. We will post a note on the BIMCO Discussion Forum today to inform the Documentary Committee about the ICS initiative and the conclusion of the subcommittee on the proposed voyage charter party clause. We will also seek their approval to look at possible solutions for longer term charters.”

Kind regards

Grant

Grant Hunter
Head of Contracts & Clauses



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