



▶ CHEN ZHIDA: NOVEL CORONAVIRUS – IMPLICATIONS FOR SHIPOWNERS CHARTERPARTIES

Last month, the Club issued a bulletin on the [2019 Novel Coronavirus \(COVID-19\)](#) which explained the origin of the virus and provided advice for Members whose vessels may be trading in affected areas.

As the outbreak continues, there are now threats of significant delays to shipments around the world and in particular, Asia. Chen Zhida, Associate Director of Helmsman LLC, provides advice for shipowners and charterers who may be concerned about the impact that the COVID-19 may have on their charterparties.

This article will consider two key clauses that may alter the rights and obligations of shipowners and charterers in light of COVID-19.



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BIMCO INFECTIOUS OR CONTAGIOUS DISEASE CLAUSE

The [BIMCO Infectious or Contagious Disease clause](#) (with different versions for time and voyage charterparties) was released by BIMCO in 2015 in response to the Ebola virus outbreak. The clause can be viewed on [BIMCO's website](#).

The clause helpfully sets out the parties' rights and obligations in the event that an infectious or contagious disease affects certain areas such as the load port or discharge port.

All parties are therefore advised to check if their charterparties (including the shipping terms incorporated into their charterparties) contain the BIMCO Infectious or Contagious Disease clause. Three points, however, are worth highlighting:

- a) The clause covers only "*highly infectious or contagious disease that is seriously harmful to humans*". Currently, while it is mostly agreed that COVID-19 is "*highly infectious or contagious*", it is still unclear whether COVID-19 would meet the threshold of being "*seriously harmful to humans*", when compared to the Ebola virus.
- b) Sub-clause (b) restricts coverage to a risk of exposure (to the vessel, crew or other persons on board) to the disease and/or to a risk of quarantine or other restrictions being imposed in connection with the disease affecting any port or place *after* the date of the charterparty. In other words, if the port or place is already affected by COVID-19 or measures put in place in respect of COVID-19 *before* the charterparty is concluded, then the clause may not apply.
- c) Sub-clause (d) provides that "*... If discharge takes place at any port other than the loading port or at a port that lies outside the range of ports in the charterparty, the Owners shall be entitled to recover from the Charterers **the extra expenses of such discharge**, to receive full freight as if the cargo had*

been carried to the discharging port and, if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route. ...” Where the extra distance does not exceed 100 miles, there is some ambiguity as to whether the charterer can claim (in addition to full freight) for the expenses incurred in relation to the discharge operations only and/or the additional distance due to the change in the load or discharge port.

Shipowners and charterers should therefore bear these points in mind when contemplating the inclusion of the standard BIMCO Infectious or Contagious Disease clause into future charterparties to deal with COVID-19.

FORCE MAJEURE CLAUSE

In most common law jurisdictions (such as in Singapore and England), a party may be able to invoke ‘*force majeure*’ to relieve itself of its obligations where there is a force majeure clause in the contract. Whether a party can rely on the force majeure clause in respect of COVID-19, depends on the circumstances as well as the wording of the clause in the contract.

However, as a general rule (but subject to the precise wording of the clause):

- a) The force majeure event would usually have to be the effective cause of the non-performance or the delayed performance of the obligation under the contract. In some cases, the party relying on the force majeure clause may find it challenging to prove that the effective cause is COVID-19 outbreak - for instance, delays due to congestion at the port and in-land transport.
- b) The party relying on the force majeure clause would usually have to show that it has used reasonable endeavours to prevent or mitigate the effects of the force majeure event. In the context of a charterparty, which allows the vessel to call at a range of ports, this gives rise to the question of whether the shipowner or the charterer can invoke force majeure if there it is entitled (but not obliged) to re-nominate an alternative port within the range which is not affected by COVID-19.

Accordingly, while it may be attractive to immediately invoke the force majeure clause when performance of the charterparty appears to be adversely affected by COVID-19, shipowners and charterers are reminded to exercise caution when doing so.

If Members require any further advice on the information detailed in this article, please contact the [Club’s LCC team](#).

Disclaimer: This update is prepared for general information only and is not intended to be a full analysis of the points discussed. This update is also not intended to constitute and should not be taken as legal advice by Helmsman LLC.