



**BIMCO**

## **SPECIAL CIRCULAR**

No. 3 – November 2009

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### **BIMCO Piracy Clause for Consecutive Voyage Charter Parties and COAs**

#### **Introduction**

BIMCO recently revised its Piracy Clause for Time Charter Parties (see Special Circular No. 2, November 2009). In addition to the revised time charter edition, BIMCO has also developed two other standard piracy clauses: a Piracy Clause for Single Voyage Charter Parties (see Special Circular No 4, November 2009); and a Piracy Clause for Consecutive Voyage Charter Parties and COAs.

This Special Circular provides some background information on the new Piracy Clause for Consecutive Voyage Charter Parties and COAs.

#### **Background**

This Clause is designed to cover long term agreements rather than spot fixtures. These agreements may be in the form of a series of consecutive voyages or a contract for a volume of cargo or number of shipments (contract of affreightment (COA)). The Consecutive Voyage/COA version of the BIMCO Piracy Clauses is closely modelled on the time charter edition. The key difference between the two clauses is that while the vessel is under the orders and directions of the charterers under a time charter – and therefore they should bear any costs related to piracy arising out of their orders and directions – it was felt that in a consecutive voyage/COA scenario it would be more equitable if costs were shared between the owners and the charterers.

In summary, the Clause entitles the owners to take an alternative route on a particular voyage should the risk to the vessel of pirate attack be adjudged to be unacceptable. Should the owners decide that they wish to proceed through a risk area then provision is made for them to take necessary preventative measures to reduce the risk to the vessel. In terms of the allocation of costs, if the owners proceed through a risk area then any additional costs they incur in implementing risk reducing measures and obtaining additional insurance cover are to be shared by the parties. If an alternative route is sought then the Clause provides a formula to adjust the freight. In the event the vessel is seized by pirates, the charterers are liable to pay an amount equivalent to half the demurrage rate for the period of the seizure.

#### **Are you properly covered?**

As with all charter party clauses that deal with potential deviations, owners should always check with their P&I insurers to verify that any contractually agreed deviation does not in any way prejudice their P&I cover. There are no hard and fast rules in respect of whether a P&I Club will deem a deviation to be reasonable (and therefore covered) and it is often determined on a case by case basis. Similarly, charterers should check with their insurers to verify that they are

properly covered in respect of any indemnities they are required to provide to the owners under the Piracy Clause.

### **Explanatory note**

**Sub-clause (a)** provides the owners with the entitlement to take an alternative route to the discharging port in the event the Master considers in his reasonable judgement that his vessel and crew may be in danger if he proceeds. If the vessel is engaged on consecutive voyages this entitlement also extends to taking an alternative route to the loading port if needs be.

Consistent with the time charter edition of the Piracy Clauses, piracy has been defined for the purposes of the Clause to include acts of violent robbery. The inclusion of armed robbery is intended to broaden the application of the Clause to piracy acts that may take place in parts of the world other than the Gulf of Aden. For example, attacks on vessels in Nigerian waters by politically motivated brigands – who by virtue of the political aspect to their crime would normally fall outside the conventional definition of piracy.

As with the time charter edition of the clause, this provision applies regardless of whether the risk of piracy in the contemplated area existed at the time the contract was concluded or occurred afterwards. This reflects the long term nature of the contracts to which this Clause should be applied where the level of risk may vary over the period of the agreement.

**Sub-clause (b)** deals with the situation if the owners agree to proceed through an area where risk of pirate attack exists. It grants the owners certain liberties to assist in reducing the risk of successful attack against the vessel. For example, the owners may use prescribed “corridors” or re-route within the risk area to avoid piracy. The owners may also implement physical security measures and employ additional or security personnel.

**Sub-clause (c)** deals with costs arising out of the owners taking an alternative route or proceeding through the risk area.

If the owners take an alternative route and the extra distance sailed exceeds 100 nautical miles, then the charterers will be obliged to pay additional freight based on the percentage of the extra distance sailed over the distance of the customary route applied to the contracted freight rate. Any savings or adjustments obtained by using the alternative route are to be applied to the formula.

#### Example:

Original distance by customary route	= 2,653 nm
Distance by alternative route	= 3,157 nm
Difference expressed as a percentage	= +19%
Contracted freight rate	= \$26
Adjusted freight rate is \$26 +19%	= \$31 (less any per ton savings such as canal dues)

If the vessel proceeds through a risk area, the owners and the charterers are to share equally the costs of reasonable additional security measures taken by the owners and for additional insurances or premiums.

The sub-clause also deals with how and when payments to the owners by the charterers should be effected – basically within 15 days of receipt of the owners’ invoice or on completion of discharge, whichever of the two events occurs first.

**Sub-clause (d)** covers the issue of time lost due to attack or seizure by pirates. The actual time lost will be determined by the facts of each case. If the vessel is seized it may be that time will

*Issued by the Documentary Affairs Department of BIMCO, e-mail: [documentary@bimco.org](mailto:documentary@bimco.org)*

resume once the vessel resumes its voyage – however this may not necessarily be at the point of release if the vessel has been taken some distance since capture. It may also be the case that on release the vessel is unable to resume the voyage until repairs are made and stores replenished. Again, the Clause requires the parties to bear an equitable share of the time lost as a result – with the charterers paying the owners an amount equivalent to half the demurrage rate. The payment provisions for the time lost mirror those found in sub-clause (c) to the extent that the charterers are obliged to make payments to the owners within 15 days of the receipt of the owners’ invoice.

**Sub-clause (e)** is an important requirement for the Piracy Clause to be incorporated into any bill of lading issued under the voyage charter party. If a BIMCO bill of lading is being used then suitable words of incorporation will be found on the reverse of the bill; otherwise care should be taken to ensure that the Clause is properly incorporated into the bill of lading. Equally important is the indemnity that the charterers are required to provide to the owners against claims that may arise from signing bills of lading as presented if the terms of the bill of lading impose greater liabilities on the owners than agreed in the charter party.

**Sub-clause (f)** in line with the BIMCO War Risk Clauses, gives the owners protection from a claim of unjustifiable deviation provided the vessel has complied with the provisions of the clause. An overriding provision has been added as a final sentence to ensure that in the event of a conflict between the provisions of the Piracy Clause and other provisions in the charter party, the Piracy Clause will prevail.

BIMCO is confident that the Piracy Clause for Consecutive Voyage Charter Parties and COAs will be welcomed by the industry as it provides an equitable, reasoned and comprehensive contractual provision for ships trading under contracts of affreightment and consecutive voyage agreements.

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The full text of the Piracy Clause for Consecutive Voyage Charter Parties and COAs is set out below. The Clause may also be downloaded free of charge from the BIMCO web site at [www.bimco.org](http://www.bimco.org) and is also available as an additional clause to subscribers of BIMCO’s online charter party editing system, **idea**.

## **BIMCO Piracy Clause for Consecutive Voyage Charter Parties and COAs**

- (a) If, in the reasonable judgement of the Master and/or the Owners, any port, place, area or zone, or any waterway or canal (hereinafter "Area") on any part of the route which is normally and customarily used on a voyage of the nature contracted for is dangerous to the Vessel, her cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), whether such risk existed at the time of entering into this charter party or occurred thereafter, the Owners shall be entitled to take a reasonable alternative route to the discharging port and, if they so decide, immediately give notice to the Charterers that such route will be taken. In respect of consecutive voyages the Owners shall be entitled to take a reasonable alternative route to the loading port in accordance with the provisions of this Clause. Should the Vessel be within any such place as aforesaid which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be liberty to leave it.
- (b) In any event, if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:
- (i) to take reasonable preventative measures to protect the Vessel, her crew and cargo including but not limited to re-routeing within the Area proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel or equipment on or about the Vessel;
  - (ii) to comply with the orders, directions or recommendations of any underwriters who have the authority to give the same under the terms of the insurance;
  - (iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group, including military authorities, whatsoever acting with the power to compel compliance with their orders or directions; and
  - (iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.
- (c) Costs
- (i) If in accordance with Sub-clause (a) the Owners take an alternative route, they shall be entitled, if the total extra distance exceeds one hundred (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 taking into consideration any savings or adjustments made by using this alternative route;
  - (ii) If the Vessel proceeds to or through an Area where due to risk of Piracy additional costs are incurred by Owners, including but not limited to additional personnel and preventative measures to avoid piracy attacks, then half such costs shall be reimbursed by the Charterers to the Owners;
  - (iii) If the underwriters of the Owners' insurances require additional premiums or additional insurance cover is necessary because the Vessel proceeds to or through an Area

exposed to risk of Piracy, then half such additional insurance costs shall be reimbursed by the Charterers to the Owners;

- (iv) All payments arising under Sub-clause (c) shall be settled within fifteen (15) days of receipt of Owners' supported invoices or on completion of discharge, whichever occurs first.
- (d) If the Vessel is attacked or seized as a result of Piracy any time so lost shall be shared equally between the Owners and the Charterers. The Charterers shall pay the Owners an amount equivalent to half the demurrage rate for any time lost as a result of such attack or seizure. Such payments shall fall due day by day and be payable latest fifteen (15) days after receipt of the Owners' invoice or on completion of discharge, whichever occurs first. If the Vessel is seized the Owners shall keep the Charterers closely informed of the efforts made to have the Vessel released.
- (e) This Clause shall be incorporated into any bill of lading issued pursuant to this Charter Party. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the Master signing bills of lading as presented to the extent that the terms of such bills of lading impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Clause.
- (f) If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail to the extent of such conflict, but no further.