



BIMCO

SPECIAL CIRCULAR

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BIMCO Solid Bulk Cargoes that can Liquefy Clause for Charter Parties

Background

The safety implications of loading bulk cargoes that may be subject to liquefaction but are, nevertheless, not categorised as such under the International Maritime Solid Bulk Cargoes (IMSBC) Code 2009, have been well publicised. Carriage of iron ore fines and nickel ore has been a matter of particular concern. In many cases, and sometimes under extreme pressure or intimidation, shipowners and their representatives have been denied the opportunity to sample cargoes for moisture content prior to loading. In order to respond to this unsatisfactory situation, the International Group of P&I Clubs initiated a proposal for BIMCO to produce a charter party provision to address the issues. BIMCO and the International Group subsequently worked together and have developed an industry standard clause. BIMCO recommends the incorporation of the standard clause into time charter parties that allow for the carriage of solid bulk cargoes that may liquefy and in voyage charter parties fixed for such cargoes.

Summary of main features

The key issue is that if solid bulk cargoes prone to liquefaction are to be loaded then, in accordance with the IMSBC Code and sufficiently in advance of loading, charterers must provide owners with shippers' written evidence that the moisture content does not exceed the Transportable Moisture Limit (TML). The clause further provides a regime for owners to take and test samples prior to loading and gives the Master rights to require cargo to be made safe, offloaded and replaced or refuse to sail if he considers it to be hazardous to the vessel and crew. Charterers are responsible for all costs and claims arising out of their failure to comply with their obligations.

Detailed provisions

Sub-clause (a) sets out charterers' overriding obligation to ensure that **all** solid bulk cargoes are presented for carriage in compliance with all applicable international regulations, including the IMSBC Code.

Sub-clause (b) addresses the specific issue of solid bulk cargoes that might liquefy. Prior to the commencement of loading, charterers must provide the Master (or his representative) with documented information in accordance with the IMSBC Code. This includes a certificate of the Transportable Moisture Limit (TML) and declaration of the moisture content. Under the IMSBC Code, moisture samples must have been taken no more than seven days in advance of loading but in the event of any change (for example heavy rain) within that period, re-certification will be necessary.

Sub-clause (c) the first paragraph gives owners the right to take cargo samples before loading commences, if requested acting jointly with the charterers, for testing at an independent laboratory nominated by owners. The costs and time used are for charterers' account. Difficulties have occurred where a Master or agent has been denied access to cargo stockpiles ostensibly on health and safety grounds. The final sentence expressly provides that a Master or representative shall be permitted unrestricted and unimpeded access to cargo for sampling purposes. In practice, this may mean that cargo samples are provided from the shippers' conveyor belt.

The second paragraph sets out the options, by reference to the Master's "sole discretion using reasonable judgement", if he considers that there is any risk, not only due to liquefaction, to the vessel, crew or cargo. In such circumstances he may refuse to accept or load cargo or sail and may call for replacement cargo.

Sub-clause (d) sets out liability and indemnity provisions holding charterers responsible for all losses, costs, expenses and liabilities arising from their instructions or failure to comply with their obligations.

Sub-clause (e) is a clear statement that the clause does not affect charterers' obligations under the charter party and that the Master's or owners' compliance with any of the provisions in the clause is not a waiver of owners' rights.

Availability

The Solid Bulk Cargoes that can Liquefy Clause is available to download free of charge from BIMCO's website at www.bimco.org and is also available to users of BIMCO's online charter party editing system, **idea**, via the Clause Manager.

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BIMCO Solid Bulk Cargoes that Can Liquefy Clause for Charter Parties

- (a) The Charterers shall ensure that all solid bulk cargoes to be carried under this Charter Party are presented for carriage and loaded always in compliance with applicable international regulations, including the International Maritime Solid Bulk Cargoes (IMSBC) Code 2009 (as may be amended from time to time and including any recommendations approved and agreed by the IMO).
- (b) If the cargo is a solid bulk cargo that may liquefy, the Charterers shall prior to the commencement of loading provide the ship's Master, or his representative, with all information and documentation in accordance with the IMSBC Code, including but not limited to a certificate of the Transportable Moisture Limit (TML), and a certificate or declaration of the moisture content, both signed by the shipper.
- (c) The Owners shall have the right to take samples of cargo prior to loading and, at Charterers' request, samples to be taken jointly, testing of such cargo samples shall be conducted jointly between Charterers and Owners by an independent laboratory that is to be nominated by Owners. Sampling and testing shall be at the Charterers' risk, cost, expense and time. The Master or Owners' representative shall at all times be permitted unrestricted and unimpeded access to cargo for sampling and testing purposes.

If the Master, in his sole discretion using reasonable judgement, considers there is a risk arising out of or in connection with the cargo (including but not limited to the risk of liquefaction) which could jeopardise the safety of the crew, the Vessel or the cargo on the voyage, he shall have the right to refuse to accept the cargo or, if already loaded, refuse to sail from the loading port or place. The Master shall have the right to require the Charterers to make safe the cargo prior to loading or, if already loaded, to offload the cargo and replace it with a cargo acceptable to the Master, all at the Charterers' risk, cost, expense and time. The exercise by the Master of the aforesaid rights shall not be a breach of this Charter Party.

- (d) Notwithstanding anything else contained in this Charter Party, all loss, damage, delay, expenses, costs and liabilities whatsoever arising out of or related to complying with, or resulting from failure to comply with, such regulations or with Charterers' obligations hereunder shall be for the Charterers' account. The Charterers shall indemnify the Owners against any and all claims whatsoever against the Owners arising out of the Owners complying with the Charterers' instructions to load the agreed cargo.
- (e) This Clause shall be without prejudice to the Charterers' obligations under this Charter Party to provide a safe cargo. In relation to loading, anything done or not done by the Master or the Owners in compliance with this Clause shall not amount to a waiver of any rights of the Owners.

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