

# BIMCO

## SPECIAL CIRCULAR

D.C. 2004-06-15  
ITEM 12 a)



NO. 2 - 2003 - 26 NOVEMBER 2003

### BIMCO ISPS Clause for Time Charter Parties

On 1 July 2004 the International Code for the Security of Ships and Port Facilities (ISPS Code) will enter into force. Its aim is to establish an international framework involving co-operation between contracting governments, government agencies, local administrations and the shipping and port industries to detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade.

Amongst the measures imposed by the ISPS Code are requirements which the ship owners can only meet with the co-operation of the charterers, such as providing information about the full style contact details of the charterers and any sub-charterers. Furthermore, delays, costs and expenses may be incurred in connection with security measures taken by the local port authorities or other relevant authority according to the ISPS Code; the burden of which must be borne by the owners or the charterers or shared between them.

Over the past few months BIMCO has received an increasing number of enquiries from members concerning the possible need for special clauses to cover the charter party related implications of the ISPS Code. To meet this concern, BIMCO's Documentary Committee has developed the BIMCO ISPS Clause for Time Charter Parties.

Clause (a) sets out the fundamental requirement that as of 1 July 2004 and for the duration of the charter party, the owners will comply with the requirements of the ISPS Code. The owners are also required to provide to the charterers, documentary evidence of their compliance. Basically, this part of the clause forms the "comfort" element as such requirements are mandatory under the amended SOLAS Convention.

Additionally, Clause (a) puts an obligation on the owners to provide the charterers with the full style contact details of the Company Security Officer (CSO). The CSO will be the designated person from the company responsible for the actual operation of the vessel. Finally, Clause (a)(ii) stipulates that the owners will be accountable for their failure to comply with the requirements of the ISPS Code.

Clause (b) addresses the charterers' obligations to provide the owners with their full style contact details and those of any sub-charterers. This reflects the requirements under the ISPS Code for the owners to obtain such information. Clause (b)(ii) is the reciprocal provisions to Clause (a)(ii) whereby the charterers shall be accountable for failure to comply with the provisions of Clause (b). It should be noted that both Clauses (a)(ii) and (b)(ii) explicitly excludes liability for consequential loss. This is done to protect the parties against responsibility for consequential losses in the event that the charter party is silent on this matter.

Clause (c) offers a balanced solution to the issues of delays, costs and expenses arising out of or related to security regulations or measures required to comply with the ISPS Code. The first part of the Clause provides that all delays, costs or expenses arising out of security measures taken by the port facilities or other relevant authority (as it is possible that security measures may be called for by authorities other than the port facility) in accordance with the ISPS Code will be for the charterers' account. This requirement is irrespective of the security level imposed in the particular port or ports. The second part of the Clause addresses the owners' liabilities and makes it clear that the owners are accountable for all measures taken to comply with the Ship Security Plan (at Security Levels 1, 2 and 3). Thus, where the owners are required under their Ship Security Plan to use two guards at the gangway, even though the port security regulations may require only one guard, such costs will be borne by the owners. The cost of preparing and implementing a Ship Security Plan for Levels 1, 2 and 3 are for the owners' account.

Clause (c) does not address the issue of the vessel's trading history and this is deliberate – if the owners have complied with the ISPS Code even though the vessel has during the previous 10 voyages called at an unlisted or insecure port, then the risk rests with the charterers during the currency of the contracted voyage. BIMCO is of the

view that a prudent time charterer will request details of the vessel's last 10 voyages prior to fixing and then make a commercial decision on that basis. Certainly the owners should not be penalised where they have remained in full compliance with the ISPS Code.

Finally, Clause (d) contains an indemnity provision that secures that payments made in respect of the Clause will be covered by the responsible party under the Clause.

It is important to note that the ISPS Clause does not conflict with the incorporation of BIMCO's War Risks Clause, CONWARTIME 1993. The decision to call or not to call at a particular port exposed to defined war risks (which includes acts of terrorists) is regulated by CONWARTIME 93. However, once the decision is made to call at a port, the ISPS Clause will take effect.

### **BIMCO ISPS CLAUSE FOR TIME CHARTER PARTIES**

**(a)(i)** From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) in relation to the Vessel and thereafter during the currency of this Charter Party, the Owners shall procure that both the Vessel and "the Company" (as defined by the ISPS Code) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company". Upon request the Owners shall provide a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) to the Charterers. The Owners shall provide the Charterers with the full style contact details of the Company Security Officer (CSO).

**(ii)** Except as otherwise provided in this Charter Party, loss, damage, expense or delay, excluding consequential loss, caused by failure on the part of the Owners or "the Company" to comply with the requirements of the ISPS Code or this Clause shall be for the Owners' account.

**(b)(i)** The Charterers shall provide the CSO and the Ship Security Officer (SSO)/Master with their full style contact details and, where sub-letting is permitted under the terms of this Charter Party, shall ensure that the contact details of all sub-charterers are likewise provided to the CSO and the SSO/Master. Furthermore, the Charterers shall ensure that all sub-charter parties they enter into during the period of this Charter Party contain the following provision:

"The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that the contact details of all sub-charterers are likewise provided to the Owners".

**(ii)** Except as otherwise provided in this Charter Party, loss, damage, expense or delay, excluding consequential loss, caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account.

**(c)** Notwithstanding anything else contained in this Charter Party all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for the Charterers' account, unless such costs or expenses result solely from the Owners' negligence. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

**(d)** If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.