

Anchors Aweigh? Considering the revised time charterparty – “NYPE 2015”

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November 2015

Chartering a ship is not for the faint of heart. Risk lurks around every corner, for owner and charterer alike.

The standard form New York Produce Exchange Time Charter (“NYPE”) has been an industry favourite for just over a century, and its 2015 makeover is seeking to continue this.

The NYPE

The NYPE first took its place as the pre-eminent dry cargo time charterparty in 1913, with periodic revisions ever since. The Baltic & International Maritime Council (“BIMCO”) is the driving body behind the standard form contract, as currently supported by the Association of Ship Brokers & Agents (“ASBA”) and the Singapore Maritime Foundation (“SMF”). Arguably the most successful of such revisions was in 1946 (commonly referred to as “NYPE 46”) and remains widely used today, including in the Middle East. The document’s last revision was in 1993 (“NYPE 93”) and did well to gain market traction against its popular predecessor.

The NYPE 2015’s appeal to parties will, to a large degree, depend on their respective commercial interests. Given the contract’s standard form nature, balancing interests between owners and charterers is no mean feat. Market conditions will also play an important role in determining the negotiating powers of charterers and owners, and may affect the popularity of the document if it is considered to be particularly favourable to either.

Key Changes to the NYPE

The stalwart NYPE 46 spans all of 28 clauses. Its clauses are well trodden, steeped in history and, importantly, steeped in precedent. The NYPE 93 increased this to 45 clauses. The latest NYPE 2015 now encompasses 57 clauses. BIMCO has argued that parties routinely elect the NYPE but then flood it with rider clauses and amendments, dissipating many advantages of the standard form structure. BIMCO suggest that the NYPE 2015, after three years of concentrated discussions and debate, will embody many of these routinely incorporated riders and amendments.

Below we explore some of the key changes to the NYPE.

Preamble

A more comprehensive description of the vessel is now included in a (rather lengthy) annexure. Whilst the NYPE has avoided the “box style” format of many other BIMCO contracts, the addition of the standard form annexure does hold some semblance of this style.

Clause 1 – Trip or Period Charter?

A distinction is now drawn between “trip” and “period” charters. Should the parties stipulate a time charter longer than five months the arrangement will be deemed a period charter, resulting in the automatic application of further clauses, as outlined in Clause 52. The four default period charter clauses stipulate the following:

Firstly, a “last voyage” clause now permits a charterer to maintain the terms of the charterparty, either at the same rate or the prevailing market rate (whichever is the higher), should its last voyage exceed the stated charter period. This last voyage must either be a ballast voyage to the place of redelivery, or a laden voyage which was reasonably expected to have been completed within the charter period when the voyage commenced.

Secondly, charterers have the option to add any time the vessel is deemed “off-hire” to the charter period.

Thirdly, charterers may fly their own flag, and paint the vessel with their own markings.

Finally, owners will have the option of drydocking the vessel during the currency of the charterparty.

Clause 1 also now contains a NAABSA provision (Not-Always-Afloat-But-Safely-Aground) which permits the charterer to order the vessel to lie safely aground during loading and discharging. The provision requires express agreement and is subject to certain practical restrictions.

Clauses 2 & 4 – More Notices for Delivery & Redelivery

The required communications between the parties for delivery and redelivery of the vessel have been increased. Both require specific notices and a general obligation to inform the other party of the vessel’s itinerary. An owner is now required to notify a charterer of the vessel’s “approximate” delivery date, and subsequently her “definite” delivery date. Parties may elect the time periods for such notices. Once any such notice is given, an owner is restricted from providing the vessel with any employment orders that stand to jeopardise the stipulated delivery dates. A final notice is provided by owners when the vessel is in a position to come on hire. These delivery notices are virtually mirrored the in charterer’s redelivery notification obligations.

Clause 6 – Owners to Provide: Certificate of Financial Responsibility for Oil Pollution

Following the Exxon Valdez oil spill catastrophe, the United States Oil Pollution Act of 1990 now requires Certificates of Financial Responsibility (“COFR”) to be carried by vessels over 300 gross tonnes or which transport oil, in US waters. The NYPE places a direct obligation on owners to provide and maintain such COFR. If at the renewal of the COFR it is not available in the market place, or its premium has increased substantially, then the parties are obliged to attempt to find a mutually agreeable solution.

Clause 8 – Performance of Voyage: Due Despatch Subject to Slow Steaming Orders

Typically an owner is strictly obliged to perform voyages with the “utmost” or “due” despatch. Failure to adhere to this obligation may give rise to recourse by third parties, for example; bill of lading holders. The NYPE 2015 permits the charterer to order the vessel to “slow steam,” a practice which has become a popular fuel saving method, as detailed further in Clause 38. The reduced speed is deemed to nevertheless satisfy the owner’s due despatch requirements. Charterers are obliged to incorporate the clause in any sub contracts or contracts of affreightment issued pursuant to the charterparty. Charterers are further obliged to indemnify owners for any liability arising from such contracts due to a failure to proceed with due despatch.

Clause 9 – Bunkers

Bunkers play a pivotal role in the profitability of a time charter. The NYPE 2015 provides significantly extended and detailed provisions relating to bunkers. The amended clause relies on the latest industry standards, utilising MARPOL and ISO frameworks. The provisions cover quantities and pricing, bunkering prior to delivery/redelivery, bunkering operations and sampling, quality and liability, fuel testing, ECA trading, and grades and quantities on redelivery.

Clause 11 – Grace Period & Damages for Withdrawal

Perhaps the most striking amendment to the NYPE is the owner's clear right to claim damages following withdrawal after unpaid hire. Clause 11 stipulates that, following a failure to make punctual payment, an owner may give a charterer three banking days' written notice to rectify such failure. This is referred to as a "grace period." Should payment not be received after the grace period the owner may withdraw the vessel and claim damages for the loss of the remainder of the charterparty.

Clause 11 also introduces a new right of the owner to suspend its performance at any time hire is outstanding. BIMCO suggests that the suspension right may be an effective mechanism for owners wishing to place commercial pressure on tardy charterers. The suspension may be invoked immediately once hire is outstanding and is not subject to any grace period.

Further Noteworthy Amendments

The modernised NYPE 2015 has sought to address a plethora of other contemporary issues, with references to the prevailing international bodies and their respective legal instruments. These include:

- Piracy
- Electronic bills of lading
- Speed & Consumption
- Pollution
- Solid Bulk Cargoes
- Hull fouling
- Hold cleaning
- Ballast water regulations

Conclusion

Time will tell whether the NYPE 2015 will be a success. Many similarly styled amendments to other standard form maritime documents over the years have fallen by the wayside. Parties may find themselves driven by an array of factors when considering whether to adopt the new contract, such as legal certainty, efficiency, financial and commercial gains, market pressures and familiarity with the workings of the contract. The NYPE 2015 has certainly gone a long way to cater for contemporary issues faced by the industry. The extensive planning and reviewing is now complete. It's over to industry to see whether it is in with the new and out with the old, or simply business as usual.