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Cover Story

Can ship owners claim damages for loss of cargo in addition to demurrage when a ship is detained beyond laytime?

Introduction

In a recent English High Court decision *K-Line Pte Ltd v Priminds Shipping (HK) Co., Ltd* [2020] EWHC 2373 (Comm), the Court considers whether an owner is entitled to claim damages in addition to demurrage where the only breach of contract of affreightment by the charterer is the failure to complete loading / discharging cargo within laytime. It was held that ship owner has a right to claim damages over and above its right to demurrage without the need to prove a separate breach.

Background

K-Line Pte Ltd ("**K-Line**") and Priminds Shipping (HK) Co., Ltd ("**Priminds**") entered into a contract of affreightment for 9 separate voyages and all voyages were performed. By an agreement on 2 July 2015, 3 additional voyages were added (the "**COA**"). The COA was subjected to the terms amended from a Norgrain form. Clause 19 of the COA was a demurrage clause. K-Line nominated the dry bulk carrier, *Eternal Bliss*, as the chartered ship for June 2015 laycan, loading approx. 70,000 m.t. soybeans at Tubarao, Brazil for discharge in China. Due to port congestion and a lack of storage space onshore in the Chinese port, *Eternal Bliss* was kept at anchorage for 31 days. Upon discharge, the cargo was found to have developed significant moulding and caking. To prevent a ship arrest, the insurer of K-Line provided a letter of undertaking for USD 6 million as security for the release of the cargo.

K-Line subsequently settled the receivers' and insurers' claim at USD 1.1 million and commenced arbitration against Priminds,

seeking damages or an indemnity in respect of the loss. The parties took 2 questions of law to the Court as preliminary issues pursuant to section 45 of the 1996 Arbitration Act. The agreed facts between parties in the arbitration included the following:-

1. *Eternal Bliss* was detained beyond laytime due to congestion and lack of port storage;
2. Priminds breached its duty to complete discharge within laytime but not any other separate breaches; and
3. The cargo deterioration was a result solely due to detention beyond laytime but not any breach of duty by the ship owner.

Issues

When a voyage chartered vessel has been detained at a discharge port beyond laytime, while the delay has caused deterioration of the cargo and led to vessel's owners suffering loss and damage and being put to expense (liability to third parties), are the owners in principle entitled to recover from the loss / damage / expense by way of:-

1. damages for the charterers' breach of contract in not completing discharge within permitted laytime; and/or
2. indemnity in respect of consequences of complying with the charterers' orders to load, carry and discharge the cargo?

Decision

In terms of the nature of the losses, the Court stated that the cargo claim is a separate and distinct loss in addition to the loss for the detention of the ship since the cargo claim is a by-product of the detention of the ship. Regarding the nature of demurrage, the Court confirmed that it was an agreed rate of compensation given by the charterer to the ship owner for the loss when the ship was detained and could not be utilised to earn extra freight. Therefore, demurrage as liquidated damages fixed the amount of damages concerning delay to the vessel but it was never intended to preclude any other kind of losses. The Court mainly looked into 2 previous judgments including *Aktieselskabet Reidar v Arcos, Limited* [1927] 1 KB 352 ("***Reidar v Arcos***") and *The Bonde* [1991] 1 Lloyd's Rep 136.

The Bonde was a case where carrying charges under the F.O.B contract were incurred by the buyer. The buyer resisted liability of the carrying charges and argued that the carrying charges were incurred due to seller's breach of the demurrage clause in the F.O.B contract. Potter J ruled that an additional and different breach was necessary for claiming damages other than demurrage. It was an authority in favour of Primands. However, the Court ruled *The Bonde* to be wrongly decided as the decision and analysis of Potter J in the case was problematic since Potter J has misread the case *Reidar v Arcos*.

Reidar v Arcos is a case where there was a breach of charterparty by demurrage and failure to load a full cargo of timber. The majority of the Court of Appeal decided that the demurrage clause does not defeat a claim for breach of the full load obligation even when both breaches stems from the failure to load at the loading rate required by the charter. The Court viewed that the correct reading of *Reidar v Arcos* showed that it was a case with 2 breaches of contract which is different from the current case in K-Line which has only 1 breach of contract. Most importantly, the majority judgment of *Reidar v Arcos* did not rule that a party needed to establish a separate breach by the charter party other than the breach by the detention of the vessel if damages are to be obtainable over and above the demurrage payments. It was on this point that the Court thought Potter J has erred his decision in *The Bonde*. As a result, Baker J found that Priminds was in principle liable to compensate K-Line the loss and damages suffered for Priminds' breach of contract in not completing discharge within permitted laytime.

In terms of the 2nd issue, Baker J reserved the matter to be determined in the arbitration.

Conclusion

The case settles a long-standing debate in shipping law and clarifies the legal position of the court that there is no need to prove a separate breach to claim losses when the losses are caused by charterer's failure to load or discharge cargo within the allowed time. Ship owners may now claim damages in addition to demurrage even if the only breach by the charterer is the failure to load/discharge within laytime. Due to COVID-19, it is common for ships to face delays in loading or discharging cargo at the port as a result of the quarantine procedures implemented by the port authorities. Charterers should be more cautious towards laytime as the ship owner may now sue for consequential loss from a delay. While there is no need to prove separate breach of contract, causation remains a hurdle towards the claimants especially when it is alleged that the ship owner has breached its duty of care towards the cargo during the voyage.

China reported to have blocked Australian coal

China is reported to have imposed restrictions on imports of Australian coal, leaving the dry bulk market concerned about the potential impact on freight rates for the larger bulkers that utilize the route. State-owned Chinese utilities and steel mills were reported to have received verbal notice from Chinese authorities to stop purchases of Australian coking and thermal coal. A Chinese state utility has allegedly cancelled 12 cargoes of Australian coal that had been due for delivery in November and December.

It is expected that Chinese authorities would not clear vessels at custom even if they have been waiting before the ban. The ban will likely worsen the congestion issue in most of the Chinese ports, causing more cargoes to divert to ports in India. While there was no formal notification from China on how long the restriction would be, it is expected that freight rate will further drop until the first quarter of next year. While restricting coal imports can be seen as a seasonal pattern towards the end of the year as shown in 2018 and 2019, this is most likely a politically motivated bottleneck created on customs of Australian coal.

Currently, about 44% of Chinese coal imports are from Australia. Despite the heavy reliance, China has capacity to increase domestic production of coal, or they may source coal from other countries such as Indonesia, South Africa and Mongolia. Due to the newly imposed restriction, the average weighted time charter on the Baltic Exchange has taken a hit, dropping from a 13-month high of $34,896 on October 6 to $27,333 per day on October 12.

US retaliation challenges Hong Kong maritime hub prospects

The United States Government has decided to terminate a double tax agreement with Hong Kong. It is expected that US government's decision will mostly affect the liner shipping carriers operating on the transpacific trade. According to the Hong Kong Government, the termination of the agreement increases the operating costs of the shipping companies, in particular, the US companies as they will be subject to double taxation. Hong Kong's maritime community has expressed concerns over the extra costs shipping firms are now required to bear.

The escalating tension between the Chinese and the US will discourage owners from using Hong Kong flag and possibly opt for other flags like Singapore. In the long run, multinational shipping firms may reduce their operation in Hong Kong or even move their APAC headquarters to elsewhere in the region. This presents a serious challenge to the city's future as a maritime hub.

Hong Kong Ship Register is currently the world's 4th largest ship register and the world's largest national flag register. Hong Kong has signed the tax reciprocal deal with many countries and jurisdictions, providing mutual tax exemption on income derived by residents and companies from international shipping operation business.

Port delays could see cargo damage claims rise

A recent ruling in English Commercial Court K-Line Pte v Priminds Shipping [2020] EWHC 2373 (Comm) found in favour of the owners of the bulker Eternal Bliss after soybean dispatched from Brazil to China became mouldy. There was a 31-day delay in discharge at a port in China in 2015 due to congestion and lack of storage space. The ship owner settled the cargo interest claim for $1.1 million and sought to recover the costs from the charterers.

Judge Andrew Baker, who gave the ruling in the case Eternal Bliss, states that ship owner can recover separate losses from charterers following delay without the need to prove a separate breach. This case settled a long-standing legal debate on ship owner's right to damages, over and above its right to demurrage. Baker J found the case The Bonde [1991] 1 Lloyd's Rep 136 had been wrongly decided. Given the prevalence of delays in ports due to Covid-19, it is expected that there will be an increase in the number of owners seeking to make such a recovery. Causation will remain a hurdle to potential claimants, especially in cases where during the lengthy delays, there is a breach of the owner's obligation to care for the cargo.

Shipping, hackers and the law

Both CMA CGM, one of the largest box carriers in the world, and the International Maritime Organization (IMO), a United Nation agency have fell victim to cybercrime recently. CMA CGM lost control of its internal IT systems to ransomware, while IMO was paralyzed by what it described as a "sophisticated cyber-attack". According to the news article "CMA CGM confirms ransomware attack" previously published on Lloyd's list, the ransomware attack has shut down the website of the company as well as 2 subsidiaries, ANL and CNC along with its IT applications.

When facing a demand to pay-off a ransom with virtual currency, the victim should be aware of the law of his residing country. For example, under English law, payment of a ransom to a criminal is legal while payment of ransom towards terrorists is a criminal offence. In most cases, victims of cybercrime can never know the identity of their hackers. The best solution is to approach the police and relevant state antifraud bodies.

Another issue is whether there has been a breach of data protection. The European Union countries are subjected to the General Data Protection Regulation ("**GDPR**"). In the UK, GDPR also forms the basis of the Data Protection Act 2018. Shipping companies hold a large amount of personal data, including sea staffs and passengers. In case of a data breach, companies should engage with the regulators instead of trying to cover things up.

According to BIMCO cyber security guidelines, virus or malware on ships may cause a ship to be unseaworthy. If a ship were to knowingly set out on a voyage infected with malware, it would almost certainly be deemed unseaworthy, in contravention of the Marine Insurance Act. This will allow insurers and P&I clubs to avoid payment.

National Bank of Fujairah (Dubai Branch) v Times Trading Corp (Archagelos Gabriel)

[2020] EWHC 1983 (Comm)

This case sheds light on the conditions under which a time extension to commence arbitration proceedings can be granted by the Court. The Court held that where a party's conduct was causally connected to the other party's failure to comply with the time limit, the former's culpability will bar that party from strictly enforcing the time clause against the latter.

The counterclaimant, National Bank of Fujairah ("**NBF**"), was the holder of 27 bills of lading (the "**Bills**") issued for a cargo of steam coal loaded onto MV "Archagelos Gabriel" (the "**Vessel**"). The cargo was subsequently discharged against letters of indemnity without production of the Bills. NBF alleged that the cargo had been misdelivered and sought to bring claims against the owner. The Bills required, inter alia, that all disputes are to be submitted to arbitration in London.

NBF's lawyer sent a letter in respect of NBF's claim to Rosalind Maritime LLC ("**Rosalind**"), addressing Rosalind as the Vessel's registered owner. Unknown to NBF, the Vessel was actually bareboat chartered to Times Trading Corp ("**Times**") at the material time. The letter was passed on to the West of England ("**the Club**"), the P&I insurer of Rosalind and Times. The Club instructed Waterson Hicks ("**WH**") to respond to the letter. WH did not take issue with the addressing of the claim, thus giving NBF the impression that Rosalind was the carrier. NBF then issued a writ in rem in the Singapore High Court.

NBF commenced arbitration by notice against Rosalind within the one-year limitation period for actions for misdelivery pursuant to the General Paramount Clause provided under the Bills. Trafigure Pte Ltd ("**TPL**"), the sub-voyage charterer of the Vessel who entered into a cooperation agreement with Rosalind and Times to assume conduct of the defence of NBF's claims on behalf of Rosalind and Times, replied through its lawyer while reserving rights in respect of the validity of the arbitration notice. Upon expiration of the one-year limitation period, TPL alleged that the notice was invalid as the arbitration was commenced against the wrong party. Times subsequently applied for an anti-suit injunction against NBF to restrain it from pursuing the claims against Rosalind in the Singapore High Court. NBF applied to the Court for time extension to commence arbitration against Times.

The Court found that WH responded to NBF's lawyers in a misleading manner with the intention of concealing the true identity of the carrier under the Bills. As a result, NBF missed the time limit for raising claims against Times. As

WH was instructed by the Club to respond to the letter from NBF's lawyer, WH had the general authority to act for Times and hence its conduct was attributable to Times. Therefore, WH's conduct on behalf of Times in misleading NBF was causally related to NBF missing the time bar. The requisite causative nexus is established and it would be unjust to hold NBF to the strict terms of the time bar.

The Court noted that NBF's lawyer had the duty to investigate whether a bareboat charter exists. However, WH's conduct contributed to NBF's lawyer's mistaken belief. It would therefore be unjust to hold NBF to the strict one-year limitation period for commencing arbitration against Times.

In response, Times argued that NBF, by applying for time extension only eight months after first being notified of the possibility that Rosalind might not be the true charterer, should be barred from such application by reason of delay. The Court agreed that the delay could be an important consideration. However, the Court noted that NBF had actually sought to obtain a copy of the bareboat charter. It was Times who refused to provide the bareboat charter for several months and hence continued to mislead NBF. Hence, balancing between the two, the Court held that it was just to grant a time extension in favour of NBF in this case.

Calm Ocean Shipping S.A. v Win Goal Trading Ltd and Others

[2020] HKCFI 801

This case concerns an application of order for joinder of concerned parties of a cargo under the class of "Persons Unknown" in respect of the potential liability of ship owner incurred as carrier of cargo.

The Plaintiff was the owner and carrier of a vessel involved in a dispute concerning a cargo of carbon steel billets ("**Cargo**"). The Plaintiff was forced to sell that Cargo after the buyer (i.e. the 7th Defendant) refused to take delivery of the Cargo. Subsequently, the Plaintiff compensated itself the incurred loss from the Cargo's sale proceeds. All along no party had come forward to seek the return of the Cargo nor the compensation for its value. In this circumstance, the Plaintiff was concerned that in future a party would approach it, claiming as holder of the bill of lading and/or owner of an interest in the Cargo and thus, alleging that the Plaintiff had dealt with the Cargo in an unauthorized manner and/or had committed misdelivery or conversion.

The Plaintiff therefore, by way of Summons, sought to bring all concerned parties before the Court and to protect itself against future claims. In the Summons, the Plaintiff particularized the concerned parties as the class comprising each and all persons wherever situated or incorporated:

(a) falling within the definition of "Merchant" in the Bill of Lading; and/or

(b) entitled to assert any right against the Plaintiff as holder or otherwise under or in connection with the Bill of Lading; and/or

(c) being the legal and/or beneficial owner of, or entitled to assert any security interest in, or otherwise entitled to assert any right against the Plaintiff in connection with, the Cargo or any part of it (the "**Class**").

For the purpose of bringing all concerned parties before the Court, the Plaintiff applied for, inter alia: (i) the 1st Defendant (i.e. the seller of the Cargo) to be appointed to represent all members of a Class of persons (the "**Representative Action Application**"); (ii) or alternatively, the Plaintiff be at liberty to join members of the Class as defendants under the style "Persons Unknown comprising each and all persons wherever situated or incorporated" (the "**Alternative Relief**").

The Court first recognized that it was legitimate for the Plaintiff to seek protection against potential claims which might surface in the future. Despite the

absence of a party making a claim for the time being, it was difficult to believe there would be no potential claim given the significant sum of money involved in the case.

The Representative Action Application was dismissed by the Court on three grounds. First, there was a potential conflict of interest between the 1st to the 4th Defendants and the Class (the 2nd Defendant was the shipper of the Cargo, while the 3rd and 4th Defendants were the "production plant" in respect of the Cargo). Second, according to O.15 r.12(1) of the Rules of High Court, a representative action is only called for where the persons having the same cause in proceedings were "numerous" – which would be unlikely in the present case. Third, should the Application be granted, the obligations imposed on the Defendants would involve complicated procedures in identifying any interested party and thus, incur additional costs and time.

In respect of the Alternative Relief, with reference to *University of Hong Kong v Hong Kong Commercial Broadcasting Co Ltd (No 2)* [2016] 4 HKLRD 113, the Court held that it was permissible to sue a specific "Person Unknown" by describing the role and nature of the person, with amendment later if his identity became known. Hence, the Alternative Relief would serve to ensure that all concerned parties would be before the court and that the issues in the proceedings could be resolved with finality.

The draft order of the Alternative Relief also sought to impose an obligation on the 1st Defendant to inform in writing, any person from whom it had received any payment in respect of the Cargo of the existence of this Action and the substance of this Order. Despite the 1st Defendant's opposition of such obligation, the Court held that the obligation imposed was well justified given that any party or parties who had paid the 1st Defendant might well fell within the class of "Person Unknown" and would be joined to the current action. Further, the obligation was not an onerous one since the 1st Defendant must know if it had received any payment for the Cargo.

In the premises, the Court refused the Representative Action Application but granted the Alternative Relief.

Changhong Group (HK) Limited v Bright Shipping Limited

[2020] HKCFA 24

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This case concerns an application for leave to appeal to the Court of Final Appeal (the "**CFA**") against the Court of Appeal's decision in refusing a stay of proceedings.

On 6 January 2018, a collision occurred between M.V. Crystal, a Hong Kong flag cargo vessel owned by the Applicant and M.V. Sanchi, a Panamanian flag tanker owned by the Respondent in international waters in the East China Sea. M.V. Sanchi exploded and eventually sank. The collision resulted in pollution in the form of spilled bunkers and natural gas condensate. The Respondent commenced *in personam* collision action against the Applicant in Hong Kong while the Applicant applied to establish limitation funds in the Shanghai Maritime Court. There were other actions arising out of the collision that took place in both Hong Kong court and the SMC.

The Applicant applied to the Hong Kong Court for a stay of the Hong Kong action commenced by the Respondent on the ground of *forum non-conveniens*. The Applicant's application was refused by the Admiralty Court, and the Applicant's appeal to the Court of Appeal against the Admiralty Court's decision was also dismissed. The Applicant then sought leave to appeal to the CFA, contending that the case would give rise to three questions of great general or public importance. The main issue is under what circumstances should an action be stayed by virtue of *forum non-conveniens*.

Legal principle for stay of proceedings

The Court of Final Appeal first set out the legal principle in respect of stay of proceedings under *forum non-conveniens* and confirmed that the same approach adopted by the Court of Appeal was correct. The test for a stay of action was first laid out in *Spiliada* [1987] 1 AC 460, and subsequently approved in *SPH v SA (2014) 17 HKCFAR 364*:

1. The single question to be decided is whether there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of an action i.e. in which the action may be tried more suitably for the interests of all the parties and the ends of justice.

2. The Applicant must establish two elements: first, Hong Kong is not the natural or appropriate forum, i.e. the forum has the most real and substantial connection with the action; and second, there is another available forum which is clearly or distinctly more appropriate than Hong Kong ("**Stage 1**").

3. After the Applicant establishes the two elements, the Respondent must show that he will be deprived of a legitimate personal or judicial advantage if the action is tried in a forum other than Hong Kong ("**Stage 2**").

4. The Court will have to balance the advantages of the alternative forum with the disadvantages that the plaintiff may suffer. Deprivation of one or more personal advantages will not necessarily be fatal to the applicant for the stay if he is able to establish to the Court's satisfaction that substantial justice will be done in the available appropriate forum.

Question 1: Relevance of pending proceedings in another jurisdiction

With reference to *Dicey, Morris & Collis on The Conflict of Laws* (2012, 15th Ed), the CFA confirmed the legal principle that the existence of other proceedings in the alternative forum is simply a relevant factor which may or may not have particular weight depending on the facts. Thus, the CFA concluded that in the present case, the Applicant failed to establish that SMC was clearly and distinctly the more appropriate forum.

Question 2: Relevance of the PRC's exclusive economic zone ("EEZ")

The Applicant relied on two arguments: (i) the fact that the collision occurred in the PRC's EEZ distinguishes the present case from a collision occurring in international waters; and (ii) the principle in *The Albaforth* [1984] 2 Lloyd's Rep. 91, namely the jurisdiction in which a tort has been committed is prima facie the natural forum, applies.

The CFA rejected the first argument on the ground that it was a pure academic debate to consider the position as if the collision had occurred in international waters outside an EEZ. The CFA noted that the second argument was first raised at the present leave application. It opined that even if the point was open to the applicant to argue on, such point was again, to be tested against other factors on whether SMC was clearly or distinctly the more appropriate forum.

Question 3: Relevance of limitation proceedings

The Applicant's proposition was that where a limitation action has been commenced in a particular jurisdiction, it will require exceptional factors to displace that jurisdiction for the purposes of *forum non-conveniens*. The CFA disagreed, and ruled that it was a matter for the judge to exercise his discretion at Stage 1 of the *Spilida* test. Once again, the Applicant failed to demonstrate that SMC was the more appropriate forum.

In light of the above, the CFA dismissed the applicant's application for leave to appeal, and thus refused to grant a stay of Hong Kong proceedings.

What is the significance of Hong Kong being named an arbitration venue by BIMCO for the first time?

Introduction

Recently, the Baltic and International Maritime Council ("**BIMCO**"), being a non- governmental shipping association actively promoting the application of internationally agreed regulatory instruments and producing standard forms for shipping parties for the past century, has announced the introduction of the new BIMCO Law and Arbitration Clause 2020 (the "**New Clause**") which has, for the first time, included Hong Kong as the fourth named arbitration venue alongside with London, New York and Singapore. This Q&A will discuss the features of the New Clause and the introduction of Hong Kong as the second-named provider for arbitration proceedings in Asia for international parties to resolve maritime disputes.

What are international standard form contracts and what are their significance?

International standard forms such as the Uniform General Charter (GENCON 1994), the New York Produce Exchange (NYPE) Form 1993, the Lloyd's Open Form (LOF) 2000 and the Norwegian Sales Form (NSF) 1993, etc. have been widely used by shipping parties. Given that the parties to a shipping and trade contract involves various entities from builders which may be part of a large ship-building group or trading institutes, to buyers which may only be small ship-owning companies, and that such parties typically come from countries around the globe, there often exist a very differentiated bargaining power between them. Further, considering that nature of the shipping industry as being cyclical, time is always of the essence. Consequently, prior to the existence of standard contracts, substantial time and effort would have to be engaged for parties to negotiate and conclude contractual terms. As such, international standard forms are gradually created by maritime organisations and bodies. Thereafter, shipping parties prefer to adopt the use of international standard forms of shipping contracts as it is a more convenient way to settle the contractual terms whereby reducing the time and costs involved in the negotiation process.

Such standard forms generally contain arbitration clauses stipulating that in the event of a dispute arising from the shipping contract, such a dispute shall be submitted to arbitration instead of court proceeding. The use of arbitration has long been the conventional practice between the parties to a shipping and trade contract for resolving maritime disputes. Most often, they provide for London arbitration that allows parties to resolve disputes in London by applying the English law.

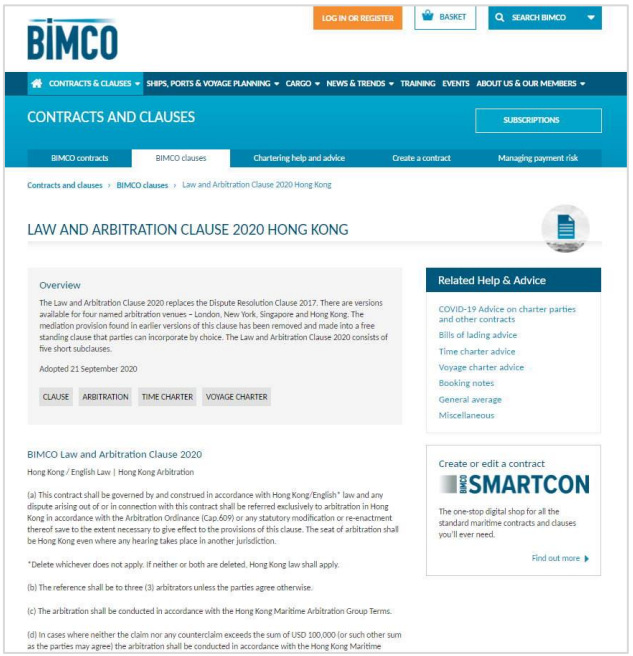
Why would Hong Kong be chosen as the fourth named arbitration centre under the present commercial climate?

As abovementioned, Hong Kong is now one of the arbitration service providers named under the BIMCO Law and Arbitration Clause 2020. Prior to the adoption of this new Clause by BIMCO, Hong Kong does not have the ability or support to put in place such standard forms to be used internationally by shipping parties for the selection of this city to be the location for the arbitration proceedings to take place, and neither has it been ever appointed by BIMCO as a recommended arbitration venue. But given the increasing high volume of cargo flow, its high value-added service sectors and the increasing prevalence and frequency of international trades taking place between foreign parties and Chinese parties, Hong Kong being a bilingual city adopting the well-established English maritime and commercial law and being geographically situated with close proximity to the mainland China, have paved its way to being one of the most popular locations for dispute resolutions and ranking among the top maritime arbitration centres worldwide.

What are the features in the New Clause?

When compared with the BIMCO Dispute Resolution Clause 2017 (the "**Old Clause**"), the standard form of shipping contract provided under the New Clause has now been converted into a single provision that operates with all four of the named arbitration venues instead of having separate sections for each of the named venues as in the Old Clause. As such, a standardized arbitration process has been established for all four of the arbitration venues.

The New Clause has also been shortened for easy adoption by users.



Further, shipping parties wishing to adopt the New Clause into their shipping and trade contracts could select the applicable law, place of arbitration, number of arbitrators and the procedural rules for giving effect to the New Clause.

Additionally, under sub-clause (f), the New Clause has provided a new mechanism to deal with the sending of notices for the commencement of arbitration proceedings and the appointment of arbitrators. Notices could be served to the other party to the contract by way of email or any other effective means, however, under the New Clause, there is an additional requirement for parties to clearly identify as to who are the authorizes persons for receiving arbitration notices and communication at the stage of entering into contracts. Shipping parties usually only provide their contacting details for operational purposes, however, such persons may not be the ones who are

authorized under their respective corporate structures to receive the documents of service of arbitration proceedings. Hence, the New Clause made clarifications regarding the distinction between notices being served as opposed to having them just simply sent to the other party albeit the more flexible nature afforded by arbitration proceedings.

How can I adopt the New Clause into my shipping and trade contract?

The digital version of the entire clause is available online where parties can make their choice by selecting the arbitration venues listed by a drop-down button thereby incorporating the specific provisions of each venue into their respective shipping and trade contracts.

The BIMCO Law and Arbitration Clause 2020 for Hong Kong can be downloaded from the following link:

https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/law-and-arbitration-clause-2020-hong-kong

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