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CORONA VIRUS (COVID-19) - HOW DOES IT AFFECT OWNERS AND CHARTERERS



The Corona Virus (COVID-19) is headline news all over the world nowadays. Both Owners and Charterers can insist on inserting certain clauses into Charter Party. How does this affect Charterers and Owners ?

Safe Port

Obviously there are different Charter Party contracts and each with their own specific terms and conditions. On a general note, and depending on the exact situation, mostly Charterers have the duty to nominate a safe port, which under English law means "A port will not be safe unless in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence being exposed to danger which cannot be avoided by good navigation and seamanship...".

This is very much relating to the physical safety of the vessel, although it does not specifically exclude risks to crew, rendering a port unsafe. The burden of proof of unsafety is with the owner and not easy to prove, when it comes to an infectious disease where precautions may be possible.

A port may not be legally "unsafe" simply because there are cases of Corona infections.

BIMCO Clause

Some Owners are now trying to include the BIMCO Infectious or Contagious Diseases Clause in the Charter Party, which is owner biased and in many ways ambiguous.

Disease is defined as "seriously harmful to humans". What is seriously harmful? According to World Health Organization (WHO) the Corona virus is not.

According to the WHO: "If you are in an area where there is an outbreak of COVID-19 you need to take the risk of infection seriously. Follow the advice issued by national and local health authorities. Although for most people COVID-19 causes only mild illness, it can make some people very ill. More rarely, the disease can be fatal. Older people, and those with pre-existing medical conditions (such as high blood pressure, heart problems or diabetes) appear to be more vulnerable."

Also "(..)where there is a risk of exposure to the Vessel, crew(..)" is an ambiguous phrase.

Charterers should be aware of the incorporation of "Any additional costs, expenses or liabilities whatsoever arising out of the Vessel visiting or having visited an Affected Area, including but not limited to screening, cleaning, fumigating and/or quarantining the Vessel and its crew, shall be for the Charterers' account and any time lost shall count as laytime or time on demurrage."

Force Majeure

Force Majeure is an entirely contractual agreement and the provisions are mutually agreed. Under English Law there is a strict and narrow approach to explain the scope and consequences of the specific Force Majeure clause. In other words: for one to declare Force Majeure it depends if the event is listed in the clause.

If a Charter Party contains a Force Majeure Clause it is likely to make reference to epidemic and/or quarantine. This may apply to certain situations. In relation to the Corona virus, however, in order to declare Force Majeure it has to be beyond reasonable control. In the context of COVID-19 it is hard to claim beyond reasonable control. Besides it is usually required to provide independent documentary evidence.